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AS AMENDED AND IN FORCE AT THE CLOSE OF THE
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1919, INCLUDING INITIATIVE AND REFEREN-
DUM ACTS ADOPTED AT THE GENERAL
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BY

W. H. HYATT

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CALIFORNIA

AS AMENDED AND IN FORCE AS THE CASE OF THE
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FOREWORD

The object of the following work is to present all of the general laws of the state of California, which are now in force, in a single volume, and in as complete a form as possible. With the purpose of rendering the compilation as convenient as practicable in use, the cyclopedic or alphabetical arrangement has been adopted, and no pains have been spared to make the whole as complete as possible, alike in statutes, their histories, and references to the cases decided in which a statute is involved. For the convenience of those who may desire to trace any particular statute from its inception to its present form, in each case the volume and page of the session laws where the original enactment appears is given, as well as the volume and the page of each and every amendment or revision thereof.

The general laws are found in thirty-six volumes of session laws, with many conflicting provisions; which volumes contain also an innumerable mass of conflicting special legislation. With special legislation, nothing has been attempted; it is only the general laws in force that have been collated. Many general laws have been codified and carried into the appropriate codes, and where this has been done the fact is noted and reference made to the appropriate section of the particular code into which the statute, or part of the statute, has been carried.

In the various conflicting enactments, amendments, revisions, and repeals, it is sometimes a difficult matter to decide just what acts, or parts of acts, are still in force, and it will require a decision of the supreme court to finally settle the question. We do not claim to be able to judicially determine whether certain laws are "in force." It is possible that the courts may in some decisions declare that there is some vitality existing in a statute that has been omitted from this volume as "superseded" or repealed; but our effort has been to err, if at all, by inserting statutes where there is doubt as to their vitality, rather than by omitting them.

There are many subjects of legislation having a history, and we have endeavored to give such history by reference, in the notes, to past legislation on such subjects. On the subject of Corporations, the notes embrace upwards of seventy statutes enacted from 1850 to the adoption of the codes. The subjects of Roads and Highways and Municipal Government are exhaustively annotated, and all other subjects are treated with thoroughness; so that it is believed the busy lawyer, the student, the professor, and the judge,—in fact, every one having occasion to consult the laws of this state,—will here find ready the laws as they are today, with references to the decisions construing them, and to the history of the legislation on the subjects they would inquire into.

A table of statutes, from 1872 to 1905, which have been held unconstitutional, or otherwise void, or repealed, in decisions of the supreme court of this state, together with references to the decisions, from volume 45 to volume 145, inclusive, of the California Reports, is given for convenience of ready reference.

Pacific Reporter citations, as well as duplicate references to the American Decisions, American Reports, American State Reports, and the Lawyers' Reports Annotated, are given.

Numerous references are made to the notes or annotations in the Trinity Series

FOREWORD.

and the Lawyers' Reports Annotated, wherein will be found valuable discussions on the points to which the references are made. No pains have been spared to make the work as complete and serviceable to the bench and bar as it is practicable to make it. In the matter of annotation it has not been sought to abstract the point decided or to give the reasoning of the court in arriving at its conclusion; the author has been contented with merely referring to the case and the page where the discussion will be found. The occasional departing from this rule is confined to a few instances only, in which the decision referred to is likely not to be found upon the shelves of the library of many lawyers.

The publication of this series, presenting the codes and statute laws of California as they are to-day, is not a spasmodic effort on the part of the publishers. A staff of trained writers and annotators has for some time been engaged in this work, and will be retained; so that not only the laws of California, as now presented, will be kept up to date in a convenient and inexpensive form in the future, but other valuable publications of various subjects in the different departments of the law will be put forth from time to time, in keeping with the public demand therefor.

W. F. HENNING.

AUGUST 11, 1905.

PREFACE TO SECOND EDITION

In the second edition, the general arrangement of the matter in the first edition has been preserved. For the sake of facilitating reference to the acts, however, the subject matter has been divided into chapters and the acts themselves have been numbered. For the information of the profession, many acts that have been repealed or codified and many special acts have been given by title. In 1907 the Code Commission, under the authority given them by the legislature, published a list of "statutes in force" from 1850 to 1907. This very valuable report has been made very largely the basis of the acts referred to. The Code Commissioners' notes on these acts have also been given. It has been the object to make the work as complete a history of the statutes as is possible under the circumstances. The general laws in force have been given in full. The other acts have been given by title only.

JAMES H. DEERING.

PREFACE TO THIRD EDITION

In the present edition of Henning's General Laws the general arrangement of the matter in the first and second editions is preserved. The only changes made are such as seemed to facilitate the practical use of the book. Certain acts have been transferred from one chapter to another where such change was believed to be in the interest of a more practical arrangement. All general laws in force are collected and published in full. All local and special acts in force are collected and published either in full or by title. All laws whether general or special that have been repealed or superseded are omitted. Such laws are referred to in the history of the repealing or superseding acts. A large number of acts that have been declared unconstitutional, or found to be obsolete by reason of the accomplishment of their purpose, have been omitted; but wherever the grounds of the unconstitutionality were of such general interest as to make the cases applicable to all other legislation, the acts were retained by title for the purpose of the annotations. No local or special act which carries rights still existing, has been omitted, although the act may have become obsolete for one reason or another. Local acts have been retained, wherever there was the slightest doubt upon the subject, although, in the editor's judgment, they have been repealed or superseded; but in all such cases an editor's explanatory note will be found.

The annotations have been restricted to questions of constitutionality, construction and application, and to the administrative questions which have arisen under the particular act. No attempt has been made to annotate the decisions which present mere principles of substantive law, not arising from the provisions of the act itself. For example, the annotations under the banking act do not include the decisions applicable to the subject of banking in general. The annotations under the motor vehicle act relating purely to questions of negligence, unless affected by provisions of the act itself, have been omitted. Otherwise, it has been the purpose to make the annotations as complete and as serviceable as possible. The editor has sought to bring the annotations down to the date of publication and believes that he has done so as far as the difficulties of the task would permit him.

W. H. HYATT.

SAN FRANCISCO, CAL.,
February 17, 1921.

TABLE OF CONTENTS

INTRODUCTORY MATTERS

Constitution of the United States, p. **xxi**.

Constitution of California, p. **xxxii**.

GENERAL LAWS OF CALIFORNIA

Chapter 1—Accountancy, p. 1.

state board of accountancy, Act 9, p. 1.

Chapter 2—Acknowledgments, p. 3.

legalizing certain acknowledgments,
Act 12, p. 3.

Chapter 3—Adulteration, p. 4.

food and drug adulteration, Act 25, p. 4.
food and liquor act, Act 26, p. 6.
drug act, Act 27, p. 12.
paints, oils, varnishes and pigments,
Act 29, p. 17.

dairy products, Act 36, p. 18.

honey, Act 38, p. 20.

syrup, Act 39, p. 21.

analysis, for adulteration, Act 41, p. 21.

insecticide and fungicide act, Act 45, p. 23.

Chapter 4—Advertisements, p. 28.

lawful and unlawful signs, etc., Act 60,
p. 28.

venereal disease remedies, Act 61, p. 29.

fraudulent, Act 62, p. 29.

Chapter 5—Agriculture, p. 30.

I. agricultural buildings and park, p. 31.

state fair buildings, Act 65, p. 31.

woman's building, Act 66, p. 33.

machinery hall, Act 67, p. 34.

dairy buildings, Act 68, p. 34.

memorial buildings, Act 69, p. 34.

extension of fair grounds, Act 70, p. 34.

improvement of park by day's work,
Act 70a, p. 35.

improvement of park, Act 70b, p. 35.

relief of directors of society, Act 70c,
p. 35.

II. state agricultural society, p. 36.

incorporation of society, Act 71, p. 36.

management and control of society,
Act 72, p. 36.

III. county and district agricultural so-
cieties and associations, p. 39.

incorporation of county and district so-
cieties, Act 73, p. 39.

sale of society lands, Act 74, p. 39.

IV. agricultural districts, p. 42.

district act of 1909, Act 74a, p. 42.

land leasing act, Act 74b, p. 45.

V. miscellaneous, department of agricul-
ture, p. 46.

improvement of cereal crops, Act 75,
p. 46.

propagation of Johnson grass, Act 77,
p. 46.

investigation of plant diseases, Act 78,
p. 47.

Chapter 5—Agriculture—(Continued).

agricultural expert, Act 93, p. 48.

delegates on rural credits and agricultural

finance commission, Act 94, p. 48.

agricultural extension work, Act 95, p. 49.

department of agriculture, Act 96, p. 49.

Chapter 6—Alameda City, p. 53.

freeholders' charter of the city of Ala-
meda, Act 104, p. 53.

street extension and widening, Act 106,
p. 53.

extension of streets, Act 107, p. 53.

school building fund, Act 108, p. 54.

salt marsh and tide land, Act 109, p. 54.

Chapter 7—Alameda County, p. 56.

increase of number of superior judges,
Act 124, p. 56.

receiving hospital, Act 130, p. 56.

bridge across San Antonio estuary, Act
131, p. 56.

Chapter 8—Albany, p. 56.

tide land grant, Act 146, p. 56.

Chapter 9—Alhambra, p. 57.

freeholders' charter, Act 147, p. 57.

Chapter 10—Aliens, p. 57.

licenses to aliens, Act 150, p. 57.

indexing of persons who have declared
intention, Act 151, p. 58.

escheated estates, Act 152, p. 58.

fishing by aliens, Act 153, p. 58.

employment of native born and natural-
ized citizens in public offices, Act 155,
p. 58.

alien land law, Act 156, p. 59.

Chapter 11—Amador City, p. 63.

hogs and goats, Act 176, p. 63.

Chapter 12—Amador County, p. 63.

portion of El Dorado county added to.
Act 185, p. 63.

indebtedness prior to organization, Act
186, p. 63.

Amador and Nevada wagon road, Act 187,
p. 64.

trespassing of goats, Act 188, p. 64.

hogs and goats, Act 189, p. 64.

Chapter 13—American Water and Mining Company, p. 64.

extension of works, Act 195, p. 64.

Chapter 14—Animals, p. 64.

destruction of squirrels and gophers, Act
249, p. 65.

abatement of squirrel nuisance, Act 250,
p. 65.

destruction of predatory animals, Act
251, p. 65.

TABLE OF CONTENTS.

- Chapter 14a—**Apiaries**, p. 66.
apiary inspection act, Act 282, p. 66.
- Chapter 15—**Appropriations**, p. 68.
general appropriations, 1919, Act 300, p. 68.
- Chapter 16—**Arbitration**, p. 84.
state board of arbitration, Act 306, p. 84.
- Chapter 17—**Arcata**, p. 86.
tide land grant, Act 313, p. 86.
- Chapter 18—**Architecture**, p. 88.
practice of architecture, Act 317, p. 88.
- Chapter 19—**Arms**, p. 92.
authorizing the governor to issue arms and accoutrements to colleges and academies, Act 323, p. 92.
- Chapter 20—**Asexualization**, p. 93.
asexualization in state institutions, Act 346, p. 93.
- Chapter 21—**Auburn**, p. 94.
removal of cemetery, Act 381, p. 94.
- Chapter 22—**Auditors**, p. 94.
report of commitments, Act 385, p. 94.
- Chapter 23—**Bakersfield**, p. 95.
freeholders' charter, Act 387, p. 95.
- Chapter 24—**Bankruptcy and Insolvency**, p. 95.
insolvent act of 1895, Act 392, p. 95.
- Chapter 25—**Banks and Banking**, p. 141.
involuntary dissolution of savings banks, Act 406, p. 141.
the "bank act," Act 409, p. 143.
involuntary liquidation of banks, Act 410, p. 231.
- Chapter 26—**Bathing Resorts**, p. 232.
bathing resorts on rivers and streams, Act 433, p. 232.
bathing resorts on seacoast and lakes, Act 434, p. 233.
general sanitation act, Act 435, p. 233.
- Chapter 26a—**Benefit Societies**, p. 235.
fraternal insurance act, Act 440, p. 235.
unincorporated societies may hold real estate, Act 441, p. 248.
fraternal fire insurance, Act 442, p. 249.
family protection, Act 443, p. 250.
change to regular life plan, Act 444, p. 252.
consolidation, merger, reinsurance, Act 445, p. 254.
- Chapter 27—**Benicia**, p. 255.
cession of waterfront, Act 450, p. 255.
- Chapter 28—**Berkeley**, p. 255.
freeholders' charter, Act 456, p. 255.
creating justice court, Act 457, p. 256.
grant of salt marsh and tide lands, Act 458, p. 256.
- Chapter 29—**Bird and Arbor Day**, p. 258.
conservation, bird and arbor day act, Act 471, p. 258.
- Chapter 29a—**Blind**, p. 258.
county relief fund, Act 472, p. 258.
- Chapter 29b—**Blue Book**, p. 260.
compilation, publishing and distribution, Act 473, p. 260.
- Chapter 30—**B'nai B'rith**, p. 261.
permission to incorporate, Act 477, p. 261.
- Chapter 31—**Bonds**, p. 262.
I. bonds, surety, p. 262.
cost of trust bonds, Act 485, p. 262.
cost of official bonds, Act 487, p. 263.
deposit of funds held by bonded fiduciaries, Act 488, p. 263.
- Chapter 31—**Bonds**—(Continued).
II. bonds, money securities, p. 263.
state bonds, Act 493, p. 264.
state funded debt, Act 494, p. 264.
loan commissioners state funded debt, Act 495, p. 265.
county bonds, Act 501, p. 265.
registration of bonds, Act 514, p. 266.
state fiscal agency, Act 515, p. 267.
state building bonds, Sacramento, Act 516, p. 269.
farm loan bonds, legal as investments, Act 518, p. 272.
commissions on sale of state bonds, Act 519, p. 273.
- Chapter 32—**Boundaries of State**, p. 274.
eastern boundary defined and established, Act 531, p. 274.
- Chapter 33—**Bridges**, p. 275.
drawbridges, Act 551, p. 275.
bridges across navigable streams, Act 552, p. 275.
bridge franchises across navigable streams, Act 553, p. 276.
bridges between counties, Act 554, p. 277.
bridge at Needles, Act 555, p. 278.
joint bridges, Act 556, p. 278.
- Chapter 34—**Building and Loan Associations**, p. 279.
"building and loan commission" act, Act 568, p. 279.
- Chapter 35—**Buildings**, p. 290.
building zone act, Act 570, p. 290.
building lines, Act 571, p. 292.
- Chapter 35a—**Buoys and Beacons**, p. 292.
protection of buoys and beacons, Act 575, p. 292.
- Chapter 36—**Burlingame**, p. 293.
tide land grant, act 578, p. 293.
- Chapter 37—**Burnt or Destroyed Records or Documents**, p. 295.
"burnt record act," Act 580, p. 295.
new trial act, Act 581, p. 297.
reproduction of registers of state boards, Act 583, p. 299.
restoration of assessment roll, Act 584, p. 299.
duplicate municipal securities, Act 585, p. 300.
duplicate public certificates, Act 586, p. 301.
copying public documents, Act 587, p. 301.
- Chapter 38—**Butte County**, p. 302.
"no fence law," Act 593, p. 302.
lawful fence, Act 596, p. 302.
hunting in private grounds, Act 597, p. 302.
transcribing records, Act 602, p. 303.
certified copies of records, Act 603, p. 303.
charter of Butte county, Act 613, p. 303.
- Chapter 39—**Butter**, p. 303.
marking packages, Act 617, p. 303.
renovated butter, Act 618, p. 303.
short weight butter, Act 620, p. 305.
imitation butter and cheese, Act 621, p. 305.
Imported butter, Act 624, p. 309.
- Chapter 40—**Calaveras County**, p. 310.
"no fence law," Act 630, p. 310.
redemption of bonded indebtedness, Act 631, p. 310.

TABLE OF CONTENTS.

- Chapter 41—**California Industrial Farm**, p. 310.
 "California industrial farm," Act 640, p. 310.
- Chapter 42—**California and Oregon Railroad Company**, p. 315.
 giving effect to act of congress, Act 648, p. 315.
- Chapter 43—**California Pacific Railroad Company**, p. 315.
 grant of rights and privileges, Act 653, p. 315.
- Chapter 44—**California Pioneers**, p. 315.
 memorial monument at Donner Lake, Act 658, p. 315.
- Chapter 45—**California Redwood Park**, p. 316.
 management, commission, Act 670, p. 316.
 enlargement of park, Act 672, p. 317.
- Chapter 46—**California School for Girls**, p. 317.
 state training school for girls, Act 676, p. 318.
- Chapter 47—**California State Reformatory**, p. 321.
 "California state reformatory" act, Act 681, p. 321.
 arrest of escaping inmates, Act 682, p. 325.
 control and management of Napa land, Act 683, p. 326.
- Chapter 48—**California Statutes, Index to**, p. 326.
 compilation, publication and distribution, Act 692, p. 326.
- Chapter 49—**California Volunteers**, p. 327.
 revision of records of, Act 696, p. 327.
- Chapter 50—**Canals**, p. 327.
 Sacramento irrigation and navigation canal company, Act 702, p. 327.
- Chapter 51—**Capitol**, p. 328.
 salary and duties of janitor, Act 709, p. 328.
 drinking fountains, Act 710, p. 328.
 state capitol bonds, Act 712, p. 328.
 permanent employees, Act 713, p. 328.
 repair of capitol building, Act 714, p. 328.
 decoration of rotunda, Act 715, p. 329.
 state capitol planning commission, Act 716, p. 329.
- Chapter 52—**Carquinez Straits**, p. 330.
 disposition of certain property, Act 717, p. 330.
- Chapter 53—**Cemeteries**, p. 330.
 protection of bodies of deceased persons, Act 720, p. 330.
 disinterment, Act 721, p. 330.
 removal from cemeteries in cities, Act 722, p. 332.
 public cemetery districts, Act 724, p. 332.
 execution of deeds by cemetery corporations, Act 725, p. 333.
 rural cemetery associations, Act 726, p. 334.
 rural cemetery associations, Act 727, p. 338.
- Chapter 54—**Central Pacific Railroad Company**, p. 339.
 relocation of route, Act 790, p. 339.
 state and bond act, Act 791, p. 339.
 franchise grant, Act 792, p. 339.
 incorporation validation, Act 793, p. 339.
- Chapter 55—**Charities and Corrections**, p. 340.
 creation of state board, Act 803, p. 340.
 homes for dependent children, Act 804, p. 342.
 records of county hospitals and almshouses, Act 805, p. 343.
 maternity hospitals, Act 805a, p. 344.
 registration and publicity of charities, Act 806, p. 344.
- Chapter 56—**Cheese**, p. 345.
 grades of cheese, Act 815, p. 345.
- Chapter 57—**Chinese**, p. 347.
 immigration, Act 825, p. 347.
 competition of Chinese labor, Act 826, p. 347.
 exclusion, registration, Act 827, p. 347.
 Chinese criminals, coolie slavery, Act 828, p. 347.
 kidnapping and importation of females, Act 829, p. 347.
 suppression of Chinese houses of ill-fame, Act 830, p. 348.
 removal outside cities and towns, Act 831, p. 348.
- Chapter 58—**City Attorney**, p. 348.
 assistants in cities and cities and counties of 100,000 and over, Act 836, p. 348.
- Chapter 59—**Civil Service Commission**, p. 349.
 general system of civil service and creation of commission, Act 846, p. 349.
- Chapter 60—**Coast Survey**, p. 361.
 enter lands and protect operations, Act 860, p. 362.
- Chapter 61—**Code Commission**, p. 362.
 creation of commission, Act 865, p. 362.
- Chapter 62—**Cold Storage**, p. 362.
 cold storage act, Act 870, p. 362.
 butter and eggs, Act 871, p. 365.
 fraudulent sale of butter and eggs, Act 872, p. 366.
- Chapter 63—**Colleges**, p. 366.
 incorporation of, Act 878, p. 366.
 endowment of agricultural colleges, Act 880, p. 367.
- Chapter 64—**Colton Hall**, p. 367.
 Colton Hall trustees, Act 890, p. 367.
- Chapter 65—**Colusa County**, p. 367.
 "no fence law," Act 895, p. 367.
 irrigation and navigation canal, Act 896, p. 368.
 Colusa and Yolo drainage district, Act 899, p. 368.
 partition fences, Act 900, p. 368.
 quiet title, Act 910, p. 368.
- Chapter 66—**Colusa, Town of**, p. 368.
 issue of road bonds authorized, Act 916, p. 368.
- Chapter 67—**Conservation**, p. 369.
 state conservation commission, Act 940, p. 369.
 "conservancy act of California," Act 941, p. 371.
- Chapter 68—**Conspiracy**, p. 410.
 union labor injunctions, Act 946, p. 410.
 crime against president and other officials, Act 947, p. 410.
- Chapter 69—**Constitution**, p. 411.
 dissemination of knowledge concerning proposed constitutional amendments, Act 960, p. 411.

TABLE OF CONTENTS.

Chapter 70—**Contra Costa County**, p. 412.
lawful fence law, Act 967, p. 412.
quiet title to marsh and tide lands, Act 977, p. 412.
additional judge of superior court, Act 981, p. 412.

Chapter 71—**Convicts**, p. 412.
photographs and marks of identification, Act 995, p. 412.
expenses and costs of trial of convicts, Act 996, p. 413.
indemnity for erroneous conviction, Act 997, p. 413.

Chapter 72—**Coroner**, p. 415.
assistant coroners in cities of 100,000, or more inhabitants, Act 1008, p. 415.
autopsy physician in counties of first class, Act 1009, p. 416.
official reporter in cities of 100,000, or more inhabitants, Act 1010, p. 416.

Chapter 73—**Corporations**, p. 417.
corporation license tax act, Act 1021, p. 418.

repayment of corporation license tax erroneously collected, Act 1021a, p. 423.

corporations to lend money on chattels, Act 1022, p. 424.

issue of shares without nominal or par value, Act 1033a, p. 424.

issue of shares of stock without nominal or par value by public utility corporations, Act 1033b, p. 425.

corporations as executor and trustee, Act 1034, p. 427.

for the protection of stockholders, etc., Act 1035, p. 432.

payment of employees of corporations, Act 1036, p. 433.

payment of wages of employees of corporations, Act 1037, p. 433.

foreign corporations act, Act 1041, p. 434.

"industrial loan companies," Act 1042, p. 442.

Chapter 74—**Costs**, p. 445.
service of summons and subpoenas in civil actions, Act 1051, p. 445.

Chapter 75—**Counties**, p. 446.
claims of counties against the state, Act 1071, p. 446.

formation, organization and classification of new counties, Act 1075, p. 446.

misappropriated school money, Act 1076, p. 458.

reports of financial transactions, Act 1077, p. 459.

Chapter 76—**County Boundaries**, p. 460.
Butte and Plumas, Act 1085, p. 460.
Butte and Yuba, Act 1086, p. 462.
Plumas and Lassen, Act 1087, p. 463.
Glenn and Colusa, Act 1088, p. 466.

commission to define boundaries between Humboldt, Mendocino, Trinity and Klamath counties, Act 1091, p. 467.

Shasta and Plumas, Act 1092, p. 469.

Mariposa and Fresno, Act 1093, p. 469.

Siskiyou and Lassen, Act 1094, p. 470.

northern boundary of Napa, Act 1095, p. 470.

San Luis Obispo and Kern, Act 1096, p. 471.

Fresno and Tulare, Act 1097, p. 472.

Chapter 76—**County Boundaries**—(Cont'd).
Lake and Yolo, Act 1098, p. 472.
Shasta and Lassen, Act 1099, p. 473.
Humboldt and Del Norte and Siskiyou, Act 1100, p. 473.

election to change boundary between Fresno and Kings, Act 1101, p. 474.

Fresno and Kings, Act 1102, p. 477.

Lake and Glenn, Mendocino, and Colusa counties, Act 1103, p. 479.

Mendocino and Glenn, Act 1104, p. 480.

Butte and Glenn, Act 1105, p. 481.

between Mendocino and Sonoma, Act 1106, p. 481.

Kern and San Bernardino, Act 1107, p. 482.

Lake and Mendocino, Act 1108, p. 483.

Riverside and San Bernardino, Act 1109, p. 486.

Chapter 77—**County Clerk**, p. 487.
deputies, etc., in counties of over 120,000, Act 1111, p. 487.

additional help in office, Act 1113, p. 487.

Chapter 78—**County Engineer**, p. 488.
"the county engineer act," Act 1115, p. 488.

Chapter 79—**Courts**, p. 492.
transfer of records, Act 1128, p. 492.
appointment of secretary, Act 1129, p. 492.
superior court jurisdiction, Act 1130, p. 492.

Chapter 80—**Crescent City**, p. 493.
location of townsite, Act 1146, p. 493.
tide land grant, Act 1147, p. 493.

Chapter 81—**Criminal Identification**, p. 493.
bureau of criminal identification, Act 1155, p. 493.

Chapter 82—**Cruelty to Animals**, p. 496.
use of bristle bur, etc., prohibited, Act 1162, p. 496.

Chapter 83—**Dairies**, p. 497.
dairy sanitation and inspection act of 1905, Act 1166, p. 497.
dairy sanitation and inspection act of 1911, Act 1167, p. 501.
standard for condensed and evaporated milk, Act 1168, p. 521.

use of chemicals to prevent fermentation, Act 1168a, p. 521.

certified milk, Act 1169, p. 523.

dairy inspection act of 1917, Act 1171, p. 524.

imitation milk, Act 1172, p. 529.

Chapter 84—**Deadly Weapons**, p. 531.
registration of purchasers, Act 1181, p. 532.

concealed weapons, Act 1182, p. 532.

Chapter 85—**Deaf, Dumb, and Blind Asylum**, p. 536.

bequests and donations of money and property, Act 1185, p. 536.

water supply, Act 1186, p. 536.

removal of fence to permit the use of the public highway, Act 1187, p. 536.

manual and industrial arts building, Act 1188, p. 536.

separation of deaf and blind departments, Act 1189, p. 536.

readers for blind students, attendance of students at national college for deaf, Act 1190, p. 537.

removal of fence, etc., Act 1191, p. 537.

TABLE OF CONTENTS.

- Chapter 86—Deeds, p. 538.**
conveyances by persons with changed names, Act 1206, p. 538.
- Chapter 87—Del Norte County, p. 539.**
fence and pound districts, Act 1211, p. 539.
- Chapter 88—Dentistry, p. 539.**
dental practice act of 1915, Act 1226, p. 539.
state dental surgeon, Act 1227, p. 549.
- Chapter 89—Detectives, p. 550.**
private detectives and detective agencies, Act 1235, p. 550.
- Chapter 90—District Court of Appeals, p. 552.**
accommodations for court and library of second appellate district, Act 1252, p. 552.
- Chapter 91—Dorris Bridge, p. 553.**
change of name to Alturas, Act 1275, p. 553.
- Chapter 92—Drainage Districts, p. 553.**
drainage commissioners, districts and fund, Act 1280, p. 554.
drainage of agricultural, swamp and overflowed lands, Act 1281, p. 554.
drainage district act of 1885, Act 1282, p. 555.
drainage district improvement act of 1919, Act 1283, p. 560.
drainage district act of 1903, Act 1284, p. 576.
Bellevue-Wilfred drainage district, Act 1285, p. 598.
Butte county drainage district No. 1, Act 1286, p. 599.
Butte county drainage district No. 100, Act 1287, p. 600.
Knights Landing ridge drainage district, Act 1288, p. 600.
boundaries of Knights Landing ridge drainage district, Act 1289, p. 600.
Los Angeles county district improvement No. 1, Act 1290, p. 601.
Los Angeles county drainage improvement No. 3, Act 1291, p. 601.
Merced county drainage improvement district No. 1, Act 1292, p. 602.
Merced county drainage improvement district No. 2, Act 1293, p. 602.
Sacramento river drainage district, Act 1294, p. 604.
Yolo basin drainage district, Act 1295, p. 604.
Yolo and Colusa drainage district, Act 1296, p. 604.
drainage district No. 100 Butte county-validation, Act 1296a, p. 604.
- Chapter 93—Dwelling Houses, p. 604.**
state dwelling house act, Act 1302, p. 604.
- Chapter 94—Eggs, p. 614.**
sale of imported eggs, Act 1303, p. 615.
sale of food and drink containing eggs, Act 1304, p. 616.
packing imported eggs, Act 1305, p. 616.
sale of eggs in transit more than thirty-one days, Act 1306, p. 617.
- Chapter 95—El Dorado County, p. 618.**
refunding of bonded indebtedness, Act 1307, p. 618.
lawful fences, Act 1308, p. 618.
trespassing animals in Mud Springs township, Act 1309, p. 618.
- Chapter 96—Elections, p. 619.**
purity of elections act of 1907, Act 1327, p. 619.
commission on voting or balloting machines, Act 1328, p. 624.
supplementary to previous act, Act 1329, p. 635.
special elections, Act 1332, p. 637.
"direct primary law of 1913," Act 1337, p. 637.
"presidential primary act," Act 1338, p. 672.
consolidation of elections, Act 1339, p. 678.
legalizing registrations, Act 1340, p. 679.
"piece clubs," Act 1341, p. 680.
special state election called, Act 1342, p. 681.
- Chapter 97—Electricity, p. 681.**
regulating electric poles, etc., Act 1350, p. 682.
regulating subways, manholes, etc., Act 1351, p. 686.
joint municipal public utilities, Act 1352, p. 688.
- Chapter 98—Elevators, p. 692.**
elevator construction, maintenance and operation, Act 1356, p. 692.
elevator inspection act, Act 1357, p. 693.
- Chapter 99—Embalmers, p. 695.**
practice of embalming, Act 1363, p. 696.
- Chapter 100—Emeryville, p. 700.**
tideland grant, Act 1365, p. 700.
- Chapter 101—Emigration, p. 701.**
promotion of emigration, Act 1366, p. 701.
- Chapter 102—Employment Agents, p. 701.**
regulating private employment agencies, Act 1373, p. 702.
free employment bureaus, Act 1374, p. 708.
- Chapter 103—Escheat, p. 708.**
payment of judgments under section 1272, C. C. P., Act 1385, p. 708.
- Chapter 104—Estates of Deceased Persons, p. 709.**
investment of moneys in estates of deceased persons fund, Act 1393, p. 709.
- Chapter 105—Estrays, p. 710.**
estrays law of 1901, Act 1401, p. 710.
local option estray law of 1919, Act 1402, p. 714.
- Chapter 106—Eureka, p. 716.**
freeholders' charter, Act 1425, p. 716.
legalizing the Murray survey, Act 1426, p. 716.
cession of water front to Eureka, Act 1427, p. 717.
creating a police court, Act 1429, p. 717.
tide and submerged land grant, Act 1430, p. 717.
- Chapter 107—Explosives, p. 720.**
protection of life and property against use of explosives, Act 1434, p. 720.
transportation, storage and sale of explosives, Act 1435, p. 722.
- Chapter 108—Expositions, p. 728.**
Panama-California International Exposition, use of Balboa Park, Act 1440, p. 729.
Panama-California International Exposition, state exhibit and building, Act 1441, p. 730.

TABLE OF CONTENTS.

Chapter 108—**Expositions**—(Continued).

Panama-California International Exposition, appropriation to complete exposition building, Act 1442, p. 731.

Panama-California International Exposition, maintenance of state building, Act 1443, p. 731.

Panama-Pacific International Exposition commission, powers and duties, Act 1444, p. 732.

Panama-Pacific International Exposition, disposition of state's share of returns, Act 1445, p. 737.

exposition building at Los Angeles, Act 1446, p. 737.

exposition at Los Angeles, furnishing and equipping building, Act 1447, p. 737.

exposition at Los Angeles, revolving fund for special expositions, Act 1448, p. 737.

Italian International Exposition, California exhibit, Act 1449, p. 738.

Ghent Universal and International Exposition, California exhibit, Act 1449a, p. 738.

Chapter 109—**Feeble-Minded Children**, p. 739.

California Home for Feeble-Minded Children, government and management, Act 1462, p. 739.

permanent home, Act 1463, p. 739.

sale of Santa Clara county property, Act 1464, p. 740.

grant of right of way for highway, Act 1465, p. 740.

supplementary act, admission to home, of idiots and epileptics, Act 1466, p. 740.

transfer and quitclaim Santa Clara property, Act 1467, p. 740.

improvement and repairs of home, Act 1468, p. 740.

completion of main buildings, Act 1469, p. 740.

authorizing conveyance of certain property, Act 1470, p. 740.

authorizing construction of two pavilions for epileptics, Act 1471, p. 741.

authorizing construction of dairy buildings, Act 1472, p. 741.

Chapter 110—**Fees**, p. 741.

fees and salaries of certain officers, Act 1475, p. 741.

fees, etc., in cities and counties of over 100,000 inhabitants, Act 1477, p. 743.

fees of county, township and other officers, Act 1479, p. 743.

payment of trial jurors' fees, Act 1480, p. 744.

payment of municipal officers, Act 1481, p. 745.

Chapter 111—**Fences**, p. 745.

concerning lawful fences and trespassing animals, Act 1492, p. 745.

concerning lawful fences, Act 1493, p. 745.

lawful fences in certain counties, Act 1494, p. 746.

lawful division fences, Act 1495, p. 746.

height of division and partition fences, Act 1496, p. 747.

spite fences, Act 1497, p. 747.

Chapter 111—**Fences**—(Continued).

entering, passing through, and hunting in inclosures, Act 1499, p. 748.

Chapter 112—**Ferries**, p. 749.

across navigable rivers between counties, Act 1505, p. 749.

across streams wholly within counties, Act 1506, p. 750.

Chapter 113—**Ferry Depot**, p. 750.

San Francisco ferry depot, act, Act 1511, p. 750.

Chapter 114—**Fertilizers**, p. 751.

sale of commercial fertilizers, Act 1516, p. 751.

Chapter 115—**Fiddletown**, p. 754.

hogs and goats running at large, Act 1521, p. 754.

name changed to Oleta, Act 1522, p. 754.

Chapter 116—**Fire**, p. 754.

destruction by fire of contiguous property, Act 1528, p. 754.

Chapter 117—**Fire Department**, p. 754.

firemen's relief, health, insurance and pension fund, Act 1533, p. 755.

fire departments in unincorporated towns, Act 1534, p. 758.

exempt firemen's relief fund, Act 1536, p. 763.

foreign insurance companies, payment of premiums for firemen's relief funds, Act 1537, p. 763.

pensions for aged, infirm and disabled firemen, Act 1538, p. 763.

yearly vacation for firemen, Act 1539, p. 764.

salaries of officers in cities of first class, Act 1541, p. 765.

increase of efficiency of fire departments, Act 1542, p. 765.

Chapter 118—**Flag**, p. 766.

adoption of bear flag as state flag, Act 1563, p. 766.

Chapter 119—**Folsom**, p. 767.

goats running at large, Act 1568, p. 767.

Chapter 120—**Foods**, p. 767.

destruction of food and food products, Act 1573, p. 767.

inspection of animals slaughtered for food, Act 1574, p. 768.

Chapter 121—**Foreclosure**, p. 770.

attorney's fees abolished, Act 1577, p. 770.

Chapter 122—**Forestry**, p. 771.

forestry act, Act 1578, p. 771.

prevention and suppression of forest fires, Act 1578a, p. 777.

salaries of forestry officers, Act 1579, p. 779.

state forestry fund, Act 1580, p. 779.

state forestry nursery, Act 1581, p. 780.

United States forest reserve fund, Act 1583, p. 780.

reforestation of San Bernardino forest reserve, Act, 1585, p. 781.

reforestation of the Angels national forest, Act 1586, p. 781.

prevention of destruction of game in Cleveland national forest, Act 1588, p. 782.

disincorporation of fire districts, Act 1589, p. 782.

Tamalpais forest fire district, Act 1590, p. 783.

TABLE OF CONTENTS.

Chapter 122—Forestry—(Continued).

- prevention of forest fires on public lands, Act 1591, p. 788.
- fighting forest fires in San Antonio canyon, Act 1592, p. 789.
- fighting forest fires in San Dimas canyon, Act 1593, p. 789.
- prevention of forest fires in San Antonio canyon, Act 1594, p. 790.

Chapter 123—Franchises, p. 791.

- cancellation of bonds to secure performance of conditions of, Act 1600, p. 791.
- "Broughton act," Act 1601, p. 792.
- railroads to parks beyond city limits, Act 1607, p. 798.
- resettlement act, Act 1608, p. 798.

Chapter 124—Fresno City, p. 802.

- freeholders' charter, Act 1629, p. 802.

Chapter 125—Fresno County, p. 802.

- courthouse and hospital improvement bonds, Act 1638, p. 802.
- increase of superior judges, Act 1642, p. 802.
- bonds for the construction of roads and bridges, Act 1644, p. 803.
- board of county water commissioners, Act 1649, p. 803.

Chapter 126—Fruit, p. 803.

- standard fruit act of 1915, Act 1652, p. 803.
- "the standard apple act of 1917," Act 1654, p. 806.
- standard fresh fruit packing act of 1917, Act 1654a, p. 812.
- sulphur standard for sulphuring fruits and foods, Act 1654b, p. 817.
- standard fruit and vegetable act of 1919, Act 1654c, p. 818.

Chapter 127—Funds, p. 823.

- conversion of balances of unexpended appropriation, Act 1656, p. 823.
- reversion of balances of unexpended appropriations, Act 1657, p. 824.
- San Francisco state normal, transfer of money from the salary to the printing fund, Act 1658, p. 824.
- transfer of money, certain funds to general fund, abolishing certain funds, Act 1659, p. 824.
- loan to general fund from school land fund, Act 1660, p. 824.
- transfer from state drainage construction fund to general fund, Act 1661, p. 824.
- transfer of money from construction fund drainage district number one to general fund, Act 1662, p. 824.
- transfer of money from general fund to other funds, Act 1663, p. 825.
- redemption of coupons of civil bonds of 1857, Act 1664, p. 825.
- redemption of coupons, railroad bonds of 1864, Act 1665, p. 825.
- requiring payment of state moneys into the treasury, Act 1666, p. 825.
- payments from the swamp land fund to the several counties, Act 1667, p. 826.
- return of payments under section 570, C. C. P., Act 1667a, p. 826.
- investment of county and municipal sinking funds, Act 1669, p. 827.
- investment of surplus funds of counties and municipalities, Act 1670, p. 827.

Chapter 127—Funds—(Continued).

- investment of surplus money of state, Act 1671, p. 828.
- deposit of state money in banks, Act 1673, p. 829.
- deposit of county and municipal money in banks, Act 1674, p. 831.

Chapter 128—Game Laws, p. 834.

- hunting license act of 1909, Act 1688, p. 835.
- vocational fishing license act of 1909, Act 1690, p. 837.
- dealers' license act of 1911, Act 1691, p. 838.
- canners' license act of 1917, Act 1691a, p. 840.
- fishing license act of 1913, Act 1692, p. 843.
- issuance for resale act of 1915, Act 1692a, p. 845.
- fish propagators' license act of 1911, Act 1693, p. 846.
- parasitic fish act, Act 1693a, p. 848.
- commercial fishery statistics, Act 1693b, p. 850.
- fish supply conservation, Act 1693c, p. 852.
- "fish and game preservation fund," Act 1694, p. 854.
- disposition of fines and forfeitures, Act 1694a, p. 855.
- fish and game district act of 1917, Act 1696, p. 855.
- "Mount Tamalpais game refuge," Act 1696a, p. 869.
- railway car for fish distribution, Act 1697, p. 871.
- purchase of fish hatcheries at Sisson, Act 1698, p. 871.
- purchase of additional land for fish hatchery at Sisson, Act 1699, p. 871.
- removal of obstructions in American river, Act 1700, p. 871.
- salmon hatchery, Act 1701 p. 871.
- removal of obstructions in Pitt river, Act 1702, p. 871.
- disposal of hatchery at Battle Creek, Act 1703, p. 871.
- fish repository on Stanislaus river, Act 1704, p. 872.
- authorizing construction of steam launch, Act 1705, p. 872.
- purchase of gasoline launch, Act 1706, p. 872.
- disposal of steam launch Governor Stone-man, Act 1707, p. 872.
- importation of game birds for propagation, Act 1708, p. 872.
- protection of game in Nevada county, Act 1709, p. 872.
- restricting hunting in Yolo county, Act 1710, p. 872.
- preservation of mocking birds, Act 1712, p. 872.
- prevention of destruction of fish and game in Lake Merritt, Act 1715, p. 873.
- protection of fish and game in Napa county, Act 1716, p. 873.
- destruction of fish prohibited in Alameda county, Act 1720, p. 873.
- prevention of destruction of fish in Bolinas bay, Act 1721, p. 873.

TABLE OF CONTENTS.

Chapter 128—Game Laws—(Continued).

- protection of fish in Butte creek, Act 1722, p. 874.
- regulating salmon fisheries on Eel river, Act 1723, p. 874.
- preservation of fish in Lake Bigler, Act 1724, p. 874.
- prevention of destruction of fish in King's river, Act 1725, p. 875.
- use of seines, etc., in Napa river prohibited, Act 1727, p. 875.
- use of seines, etc., in San Antonio creek prohibited, Act 1728, p. 876.
- preservation of fish in Siskiyou county, Act 1731, p. 876.
- protection of fish in False bay, Act 1733, p. 876.
- protection of fish in Mendocino county, Act 1735, p. 876.
- prevention of destruction of wild game in Pinnacles forest reserve, Act 1736, p. 877.
- use of weirs, etc., in Monterey bay, Act 1737, p. 877.
- use of nets, etc., in Cache slough prohibited, Act 1738, p. 878.
- restriction of fishing in district 19, Act 1738a, p. 878.
- expenses and costs of trial for violation of fish and game laws, Act 1739, p. 879.
- county fish hatcheries, Act 1740, p. 879.
- crab preserve in Eel river, Act 1741, p. 879.
- shellfish preserve in Monterey bay, Act 1742, p. 880.
- transfer of land for game preserve, Act 1743, p. 880.
- protection of fur-bearing animals, Act 1744, p. 881.
- contaminated sources of shellfish, Act 1745, p. 884.
- free camping grounds in Placer county, Act 1746, p. 884.
- Chapter 129—Gas, p. 885.
- grant of franchises by municipal corporations, Act 1759, p. 885.
- regulating use of illuminating gas, Act 1760, p. 886.
- standard of illuminating power act, Act 1761, p. 886.
- prohibiting wasting of natural gas, Act 1762, p. 888.
- Chapter 130—Gettysburg, p. 889.
- celebration of fiftieth anniversary, Act 1774, p. 889.
- Chapter 131—Gifts, p. 890.
- gifts to counties for pioneer monuments, Act 1781, p. 890.
- Chapter 132—Gilroy, p. 891.
- act of incorporation, Act 1783, p. 892.
- Chapter 133—Glenn County, p. 892.
- organization act, Act 1786, p. 892.
- Chapter 134—Goats, p. 892.
- protection of goats from dogs, Act 1788, p. 893.
- Chapter 135—Golden City Homestead Association, Act 1794, p. 893.
- conveyance of lands to the association, Act 1794, p. 893.

Chapter 136—Good Templars, p. 893.

- grant of corporate powers, Act 1799, p. 893.
- Chapter 137—Governor, p. 893.
- residence of governor, Act 1805, p. 893.
- employment of counsel, Act 1808, p. 894.
- Chapter 138—Grand Army of the Republic, p. 894.
- wearing badge of G. A. R. without right, Act 1815, p. 894.
- permanent headquarters in capitol, Act 1816, p. 894.
- national encampment of 1912, Act 1817, p. 895.
- G. A. R. memorial monument, Act 1818, p. 895.
- Chapter 139—Growing Timber, p. 896.
- protection of big tree groves, Act 1830, p. 896.
- Chapter 140—Guide Posts, p. 896.
- guide posts in desert sections, Act 1840, p. 896.
- Chapter 141—Harbor Commissioners, p. 897.
- repairs upon private wharves, Act 1852, p. 897.
- jurisdiction of commission, act of 1878, Act 1855, p. 898.
- warehouses, elevators, etc., Act 1856, p. 899.
- state railroad act of 1913, Act 1857, p. 900.
- state drydock act of 1913, Act 1858, p. 901.
- alignment of East street, Act 1860, p. 902.
- condemnation of certain property, Act 1861, p. 902.
- India basin act, Act 1862, p. 903.
- compromise of litigation, Act 1863, p. 903.
- free public market on waterfront, Act 1864, p. 904.
- insurance of state property, Act 1865, p. 905.
- reconstruction and repair of damaged property, Act 1866, p. 906.
- reconstruction and repair of wharves, etc., Act 1866a, p. 906.
- lease of certain waterfront blocks, Act 1867, p. 906.
- San Francisco harbor improvement act of 1909, Act 1869, p. 906.
- India basin act, Act 1870, p. 907.
- San Francisco harbor improvement act of 1913, Act 1871, p. 907.
- San Francisco seawall act, Act 1871a, p. 911.
- establishing disputed titles on bay of San Diego, Act 1872, p. 912.
- San Diego seawall act of 1909, Act 1873, p. 912.
- board of harbor commissioners of port of San Jose, Act 1874, p. 912.
- false returns to boards, Act 1875, p. 915.
- county harbor commission act, Act 1877, p. 916.
- payment of claim of Fidelity and Deposit Company of Maryland, Act 1878, p. 921.
- acquisition of Mission rock, Act 1879, p. 921.
- Chapter 142—Hay, p. 922.
- standard hay baling act, Act 1882, p. 922.
- Chapter 143—Hermosa Beach, p. 923.
- tide land grant, Act 1894, p. 923.

TABLE OF CONTENTS.

Chapter 144—Highways, p. 924.

good roads law of 1907, Act 1900, p. 925.
 joint highway districts, Act 1900a, p. 930.
 county joint highways, state co-operation, natural military highways, Act 1900b, p. 939.
 natural rural post roads, state co-operation, Act 1900c, p. 940.
 boulevard district act of 1911, Act 1902, p. 941.
 highway care, management and protection act of 1915, Act 1903, p. 952.
 road district improvement act of 1907, Act 1910, p. 954.
 work on state highways by local authorities, Act 1910a, p. 969.
 highway lighting districts, Act 1911, p. 969.
 lighting district validation act of 1915, Act 1911a, p. 976.
 shade and ornamental tree act of 1913, Act 1912, p. 977.
 county highway maintenance act of 1911, Act 1913, p. 979.
 payment by counties of interest on state highway bonds, Act 1914, p. 979.
 right of way over public lands, Act 1915, p. 980.
 state highways act, Act 1916, p. 980.
 state highways act of 1915, Act 1916a, p. 986.
 special election on highway amendment to constitution, Act 1916b, p. 993.
 acquisition of rights of way and rock quarries by counties, Act 1917, p. 994.
 openings and obstructions on state highways, Act 1917a, p. 995.
 abandonment act of 1915, Act 1917b, p. 996.
 convict labor on state highways, Act 1917d, p. 996.
 road division validation act of 1917, Act 1917e, p. 997.
 state aid highways in counties and towns, Act 1918, p. 998.
 purchase of "Big Oak flat" and "Yosemite and Wawona" roads, Act 1919, p. 1000.
 Lake Tahoe wagon road, Act 1920, p. 1000.
 bridge on Lake Tahoe wagon road, Act 1920a, p. 1000.
 Placerville and Lake Tahoe wagon road, Act 1920b, p. 1000.
 state highway from Meyer's station to McKinneys, Act 1921, p. 1001.
 Alpine state highway, Act 1922, p. 1001.
 state highway from Emigrant Gap to Donner lake, construction, Act 1923, p. 1001.
 state highway from Emigrant Gap to Donner lake, maintenance, Act 1924, p. 1001.
 Emigrant Gap state road, change of grade, Act 1925, p. 1001.
 Lassen county state highway, Act 1926, p. 1002.
 Alturas to Cedarville county road, Act 1927, p. 1002.
 state highway from Sacramento to Folsom, Act 1928, p. 1002.
 state highway from Mount Pleasant ranch to Downieville, Act 1929, p. 1002.

Chapter 144—Highways—(Continued).

declaring part of Sonora and Mono wagon road, a state highway, Act 1930, p. 1002.
 Sonora and Mono state highway, Act 1931, p. 1003.
 Trinity-Humboldt state highway, Act 1932, p. 1003.
 free wagon road from Mono lake basin to "Tioga road," Act 1933, p. 1003.
 Mono lake basin state road, extension, Act 1934, p. 1003.
 Trinity-Tehama-Shasta-Humboldt state highway, Act 1935, p. 1003.
 Trinity-Tehama-Shasta-Humboldt state highway, completion, Act 1936, p. 1003.
 Trinity-Tehama-Shasta-Humboldt state highway survey of extension, Act 1937, p. 1004.
 Kings river state highway, Act 1939, p. 1004.
 Bakersfield, Maricopa and Ventura state highway, Act 1940, p. 1004.
 wagon road from McKinney's to Donner lake declared a state highway, Act 1941, p. 1004.
 purchase of portion of great Sierra wagon road, or "Tioga road," Act 1941a, p. 1005.
 Big Oak flat and Yosemite toll road, a state highway, Act 1942, p. 1005.
 "Yolo and Lake highway," Act 1942a, p. 1006.
 Tahoe city and Crystal bay state highway, Act 1943, p. 1007.
 state highway from Kern county to Nordhoff, Act 1943a, p. 1007.
 highway from Surprise valley to the Nevada line, Act 1943b, p. 1007.
 highway from Pescadero to California redwood park, Act 1943c, p. 1008.
 Pasadena state highway, Act 1943d, p. 1008.
 state highway from Saratoga Gap to California redwood park, Act 1943e, p. 1009.
 state highway from San Bernardino to Redlands, Act 1944, p. 1009.
 taking over road in Boulder Creek township, Santa Cruz county, Act 1944a, p. 1010.
 highway between Susanville and Nevada line, Act 1944b, p. 1010.
 highway from Truckee to the Nevada line, Act 1945, p. 1011.
 highway from Butte county highway to Willows, Act 1945a, p. 1011.
 declaring highway from Long Barn to Sonora, a state highway, Act 1945b, p. 1011.
 report on road laws, Act 1946, p. 1012.
Chapter 145—Historic Property, p. 1012.
 acquisition, preservation, etc., of certain historic properties, Act 1950, p. 1012.
 California historical survey commission, Act 1951, p. 1013.
 board of trustees, Pio Pico mansion, Act 1952, p. 1014.
 record of California in great war, Act 1953, p. 1016.

TABLE OF CONTENTS.

- Chapter 146—Hogs**, p. 1016.
hogs running at large in certain counties, Act 1954, p. 1016.
- Chapter 147—Holidays**, p. 1017.
holidays declared by municipalities, Act 1955, p. 1017.
Lincoln's birthday declared a legal holiday, Act 1956, p. 1017.
Lincoln's 100th birthday declared a legal holiday, Act 1957, p. 1017.
- Chapter 148—Homesteads**, p. 1018.
formation and extension of homestead corporations, Act 1974, p. 1018.
- Chapter 149—Hops**, p. 1019.
fixing tare on baled hops, Act 1991, p. 1019.
- Chapter 150—Horticulture**, p. 1019.
horticultural nomenclature, Act 2001, p. 1019.
pear and walnut blight investigation, Act 2002, p. 1019.
horticultural act of 1912, Act 2009, p. 1020.
fraudulent sale of fruit trees, Act 2010, p. 1024.
destructive diseases of cultivated plants, Act 2011, p. 1024.
sale and shipment of frosted citrus fruits, Act 2012, p. 1025.
date palm distribution and quarantine, Act 2013, p. 1025.
- Chapter 151—Hospital**, p. 1026.
maternity hospitals, Act 2017, p. 1026.
endowment of hospitals, Act 2018, p. 1027.
- Chapter 152—Hotels**, p. 1029.
use of illuminating gas in hotels, Act 2023, p. 1029.
exit signs in hotels, etc., Act 2024, p. 1029.
"state hotel and lodging house act" of 1917, Act 2026, p. 1030.
hotel act of 1917, Act 2028, p. 1063.
- Chapter 153—Hours of Labor**, p. 1065.
women's eight-hour law, Act 2034, p. 1065.
- Chapter 154—Humboldt Bay**, p. 1067.
grant of tide lands to the United States, act of 1887, Act 2051, p. 1067.
grant of tide lands to the United States, act of 1889, Act 2052, p. 1067.
purchase of certain lands in Humboldt bay, Act 2053, p. 1068.
survey of Humboldt bay, Act 2054, p. 1068.
- Chapter 155—Humboldt County**, p. 1068.
additional superior judge for, Act 2062, p. 1068.
challenges to jurors in justice's courts, Act 2063, p. 1068.
log scaling, Act 2064, p. 1068.
disposal of town and village lots on public lands, Act 2071, p. 1068.
- Chapter 156—Hunting on Private Grounds**, p. 1069.
hunting and shooting on private grounds, Act 2078, p. 1069.
- Chapter 157—Immigration**, p. 1069.
immigration of persons incompetent to become citizens, Act 2089, p. 1070.
immigration and housing act of 1913, Act 2090, p. 1070.
immigration disembarking zones, Act 2091, p. 1074.
- Chapter 158—Imperial County**, p. 1075.
additional superior judge, Act 2093, p. 1075.
- Chapter 159—Indians**, p. 1076.
government and protection of Indians, Act 2095, p. 1076.
grant of lands in Indian reservations to the United States, Act 2097, p. 1076.
interference with Indian agents, Act 2098, p. 1076.
- Chapter 160—Industrial Accident Commission**, p. 1077.
abolishing industrial accident board and conferring powers on industrial accident commission, Act 2101, p. 1077.
establishing and defining jurisdiction of commission, Act 2101a, p. 1078.
"industrial accident fund," Act 2102, p. 1078.
"accident prevention fund," Act 2103, p. 1079.
statistics as to industrial accidents, Act 2104, p. 1079.
"state compensation insurance fund," appropriation, Act 2105, p. 1081.
"Boynton act," "workmen's compensation, insurance and safety act" of 1913, administrative, Act 2106, p. 1081.
actions against insurance carriers, Act 2106a, p. 1096.
protection of beneficiaries of workmen's compensation insurance policies, Act 2106b, p. 1097.
- Chapter 161—Industrial Welfare Commission**, p. 1100.
industrial welfare commission act, Act 2107, p. 1100.
- Chapter 162—Infants**, p. 1106.
attending prizefights and cockfights, Act 2110, p. 1106.
child labor law of 1905, Act 2113, p. 1107.
child labor law of 1919, Act 2113a, p. 1108.
minors engaged in business at night, Act 2115, p. 1112.
- Chapter 163—Insane Asylums**, p. 1113.
Stockton state hospital, armory site, Act 2134, p. 1113.
Stockton state hospital removal of bodies from the cemetery, Act 2134a, p. 1114.
Stockton state hospital, condemning certain streets for, Act 2138, p. 1114.
Napa state hospital, water supply for, Act 2139, p. 1114.
Napa state hospital, grant of railroad right of way, Act 2143a, p. 1114.
Agnews state hospital, erection of water towers and tanks, Act 2145, p. 1114.
Agnews state hospital, replacing buildings destroyed in 1906, Act 2146, p. 1114.
Agnews state hospital, conveyance of certain property to Western Distilleries, Act 2147, p. 1115.
Agnews state hospital, grant of right of way for spur track, Act 2147a, p. 1115.
Agnews state hospital, confirming sale of property to Western Distilleries Company, Act 2147b, p. 1115.
Agnews state hospital, cottage for female working patients, Act 2148, p. 1115.
Mendocino state hospital, change of name, Act 2150, p. 1115.

TABLE OF CONTENTS.

Chapter 163—**Insane Asylums**—(Continued).
 Southern California state hospital, railroad right of way, Act 2152, p. 1115.
 Southern California state hospital, conveyance of certain water rights, Act 2153, p. 1116.
 Southern California state hospital, right of way for electric railroad, Act 2154, p. 1116.
 Southern California state hospital, ratification of conveyance, Act 2155, p. 1116.
 Norwalk state hospital, establishment of, Act 2156, p. 1116.
 "Pacific colony" act, Act 2163, p. 1117.
 Chapter 164—**Insects**, p. 1125.
 mosquito abatement districts, Act 2168, p. 1125.
 prevention of importation of insects, Act 2169, p. 1131.
 Chapter 165—**Insurance**, p. 1132.
 borrowing money from insurance companies, Act 2181, p. 1132.
 printing notice of assessments on policy cover, Act 2182, p. 1133.
 county fire insurance companies act, Act 2183, p. 1133.
 non-insurance of state property, Act 2185, p. 1144.
 standard form of fire insurance policy, Act 2186, p. 1144.
 extending time for insurance statement, Act 2187, p. 1151.
 livestock insurance, Act 2189, p. 1151.
 standard form of accident and health policy, Act 2189a, p. 1154.
 mutual fire insurance companies, Act 2190, p. 1162.
 reciprocal indemnity insurance act of 1917, Act 2192a, p. 1166.
 mutual workmen's compensation insurance companies, Act 2193, p. 1170.
 misrepresenting terms of insurance policy, Act 2194, p. 1174.
 social insurance investigating commission, Act 2196, p. 1175.
 guaranty surplus and special reserve funds, Act 2197, p. 1176.
 liquidation of delinquent insurance companies, Act 2199, p. 1179.
 Chapter 166—**Interest**, p. 1182.
 rates of interest on laws on chattel mortgages, Act 2200, p. 1182.
 Chapter 167—**Intoxicating Liquors**, p. 1183.
 collections of accounts for liquor, Act 2213, p. 1183.
 sale to person inordinately addicted to use, Act 2214, p. 1184.
 Mendocino state hospital, sale of liquor near, Act 2222, p. 1184.
 sale within one mile of College City, Act 2223, p. 1184.
 sale near construction camp, Act 2224, p. 1184.
 public school house act, Act 2224a, p. 1185.
 "Wyllie local option law," Act 2225, p. 1185.
 building nuisance abatement act, Act 2227, p. 1197.

Chapter 168—**Investment Companies**, p. 1198.
 "blue sky law," Act 2235, p. 1199.
 "corporate securities act," Act 2236, p. 1208.
 Chapter 169—**Inyo County**, p. 1219.
 trespassing animals, Act 2242, p. 1219.
 Chapter 170—**Irrigation and Irrigation Districts**, p. 1219.
 irrigation district act of 1872, Act 2258, p. 1220.
 "Wright act," Act 2259, p. 1221.
 "California irrigation district act," "Bridgeford act," Act 2266, p. 1232.
 irrigation districts of over 500,000 acres, Act 2266a, p. 1280.
 "the California irrigation act, Act 2266b, p. 1282.
 district co-operation with federal reclamation service, Act 2266c, p. 1313.
 contracts with federal reclamation service, Act 2266d, p. 1316.
 defining "private irrigation plant," Act 2266e, p. 1317.
 district co-operation with adjoining districts in other states, Act 2266f, p. 1318.
 drainage by irrigation districts, Act 2266g, p. 1319.
 development of electric power, Act 2266h, p. 1319.
 assessment of state land, Act 2266j, p. 1320.
 county irrigation districts, Act 2267, p. 1320.
 validation of county irrigation districts, Act 2267a, p. 1321.
 "county power pumping district act," Act 2267b, p. 1321.
 dissolution of irrigation districts act of 1919, Act 2267c, p. 1327.
 dissolution of irrigation districts act of 1903, Act 2267d, p. 1329.
 finding act of 1897, Act 2268, p. 1333.
 legalizing irrigation bonds, Act 2268a, p. 1336.
 refunding act of 1919, Act 2268b, p. 1337.
 irrigation bonds as legal instruments, Act 2271, p. 1337.
 payment of assessments in installments, Act 2272, p. 1341.
 release of liens upon cancellation of bonds, Act 2273, p. 1342.
 redemption of property sold for delinquent assessments, Act 2274, p. 1343.
 leasing of water for power purposes, Act 2275, p. 1344.
 contracts for water for irrigation, Act 2276, p. 1345.
 declaring irrigation a public use, Act 2278, p. 1346.
 "Oakdale irrigation district," validation, Act 2279, p. 1347.
 "Westside irrigation district," Act 2280, p. 1347.
 "Westside irrigation district," validation, Act 2280a, p. 1347.
 "Modesto irrigation district," Act 2281, p. 1347.
 "Modesto irrigation district," validation, Act 2282, p. 1347.
 "Turlock irrigation district," validation, Act 2283, p. 1347.

TABLE OF CONTENTS.

Chapter 170— Irrigation and Irrigation Districts —(Continued).	Chapter 178— Kaweah River , p. 1389.
“South San Joaquin irrigation district,” validation, Act 2284, p. 1348.	Kaweah river commissioners, Act 2345, p. 1389.
“Imperial irrigation district,” validation, Act 2285, p. 1348.	Chapter 179— Kelp , p. 1389.
“Imperial irrigation district,” legalizing bonds, Act 2285a, p. 1349.	Kelp act, Act 2353, p. 1389.
“Imperial irrigation district,” purchase of bonds of California Development Company, Act 2285b, p. 1350.	Chapter 180— Kern County , p. 1393.
“San Ysidro irrigation district,” validation, Act 2286, p. 1351.	issue of bonds to pay county indebtedness, Act 2361, p. 1393.
“Anderson - Cottonwood irrigation district,” validation, Act 2287, p. 1351.	increase of superior judges, Act 2367, p. 1393.
“La Mesa, Lemon Grove and Spring Valley irrigation district,” validation, Act 2288, p. 1352.	salaries of superior judges, Act 2371, p. 1394.
“Waterford irrigation district,” validation, Act 2289, p. 1352.	Chapter 181— Kings County , p. 1394.
“Carmichael irrigation district,” validation, Act 2290, p. 1352.	organization act, Act 2380, p. 1394.
“Happy Valley irrigation district,” validation, Act 2291, p. 1353.	Chapter 182— Knight's Landing , p. 1395.
“Paradise irrigation district,” validation, Act 2292, p. 1353.	hogs and goats running at large, Act 2395, p. 1395.
“Stratford irrigation district,” validation, Act 2293, p. 1353.	Chapter 183— Labor Bureau , p. 1395.
“Terra Bella irrigation district,” validation, Act 2294, p. 1353.	bureau of labor statistics, Act 2401, p. 1396.
“Lindsay-Strathmore irrigation district,” validation, Act 2294a, p. 1354.	bureau of labor statistics, attorney, Act 2402, p. 1399.
“Baxter Creek irrigation district,” validation, Act 2294b, p. 1354.	enforcement of labor laws, Act 2403, p. 1400.
“Princeton-Codora-Glenn irrigation district,” validation, Act 2294c, p. 1354.	protection of wages of labor act of 1868, Act 2404, p. 1400.
“Red Rock irrigation district,” validation, Act 2294d, p. 1354.	Chapter 184— Labor Unions , p. 1400.
“Tranquillity irrigation district,” validation, Act 2294e, p. 1354.	unlawful wearing of button, Act 2412, p. 1400.
“Fair Oaks irrigation district,” validation, Act 2294f, p. 1355.	unlawful use of card, Act 2413, p. 1400.
“Jacinto irrigation district,” validation, Act 2294g, p. 1355.	Chapter 185— Lake Bigler , p. 1401.
Chapter 171— Japanese , p. 1355.	legalizing name, Act 2417, p. 1401.
Japanese statistics, Acts 2295, 2296, p. 1355.	Chapter 186— Lake County , p. 1401.
Chapter 172— Jewish Order of Keshar Shet Barseel , p. 1356.	issue of bonds to pay judgment, Act 2422, p. 1401.
conferring corporate powers, Act 2301, p. 1356.	transfer and loan of swamp land funds, Act 2424, p. 1401.
Chapter 173— Judges of the Plains , p. 1356.	restrict herding of sheep and goats, Act 2428, p. 1401.
judges of the plains, Act 2306, p. 1356.	Chapter 187— Lake Earl , p. 1402.
Chapter 174— Judgments , p. 1356.	permanently draining Lake Earl, Act 2434, p. 1402.
payment of judgments against counties and municipalities, Act 2311, p. 1356.	Chapter 188— Lakeport , p. 1402.
recovery of judgments against municipalities of over one hundred thousand population, Act 2312, p. 1357.	hogs running at large, Act 2439, p. 1402.
Chapter 175— Justice's Clerk , p. 1358.	Chapter 189— Lakes , p. 1402.
justice's clerk in cities and counties of over 100,000 population, Act 2324, p. 1358.	lowering certain lake levels by United States government, Act 2444, p. 1402.
clerk in township justice's court, Act 2325, p. 1359.	Chapter 190— Larceny , p. 1403.
Chapter 176— Jute Goods , p. 1360.	conversion of fixtures, Act 2465, p. 1403.
sale price of jute goods, Act 2331, p. 1360.	gold dust, amalgam, quicksilver, Act 2466, p. 1403.
insurance of jute goods, Act 2332, p. 1361.	Chapter 191— Leases , p. 1404.
permanent fund for purchase of jute, Act 2333, p. 1362.	certain leases confirmed and ratified, Act 2483, p. 1404.
Chapter 177— Juvenile Court , p. 1363.	Chapter 192— Legal Tender , p. 1405.
juvenile court law of 1915, Act 2341, p. 1363.	legal tender notes receivable at par for taxes, Act 2488, p. 1405.
	Chapter 193— Legislation , p. 1405.
	legislative counsel bureau, Act 2494, p. 1405.
	investigation of highway legislation, Act 2495, p. 1408.
	Chapter 194— Levee Districts , p. 1408.
	levee district act of 1905, Act 2508, p. 1409.
	validation act of 1915, Act 2509, p. 1415.
	Bear river district No. 1, Act 2510, p. 1416.
	levee district No. 1 of Sacramento county, Act 2511, p. 1416.
	levee district No. 1 of Sutter county, Act 2511a, p. 1416.

TABLE OF CONTENTS.

Chapter 194—Levee Districts—(Continued).
 levee district No. 1 of Sutter county, funding bonds, Act 2511b, p. 1417.
 levee district No. 2 of Sutter county, Act 2511c, p. 1417.
 levee district No. 2 of Sutter county, supplementary act, Act 2512, p. 1417.
 levee district No. 2 of Sutter county, funding act, Act 2512a, p. 1417.
 levee district No. 6 of Sutter county, Act 2513, p. 1417.
 levee district No. 6 of Sutter county, funding act, Act 2514, p. 1417.
 Palo Verde joint levee district, validation, Act 2515, p. 1417.
 levee and protection districts, refunding act of 1897, Act 2516, p. 1418.
 bond act of 1911, Act 2517, p. 1420.
 Sacramento river west side levee district, Act 2518, p. 1429.

Chapter 195—Libel, p. 1440.
 undertaking for costs, Act 2527, p. 1440.

Chapter 195a—Libraries, p. 1442.
 municipal public libraries, Act 2530, p. 1442.
 county free libraries, Act 2530a, p. 1445.
 public libraries in unincorporated towns, Act 2530b, p. 1450.
 deposit of newspaper files in public libraries, Act 2530c, p. 1458.

Chapter 196—Licenses, p. 1458.
 foreign miners' licenses, Act 2532, p. 1458.
 licenses to certain aliens prohibited, Act 2533, p. 1459.
 foreign miners' licenses fees granted to mining counties, Act 2534, p. 1459.
 enforcement of collection, Act 2535, p. 1459.
 legalizing payments of salaries of license collectors, Act 2536, p. 1459.
 licenses on sheep raising, herding, etc., Act 2537, p. 1459.
 itinerants vendor's license, Act 2538, p. 1459.
 bicycle license, Act 2539, p. 1461.

Chapter 197—Liens, p. 1463.
 lien on livestock for feeding, etc., Act 2545, p. 1463.
 loggers' lien, Act 2549, p. 1463.

Chapter 198—Livestock, p. 1466.
 tampering with animals, Act 2560, p. 1466.
 importation of diseased livestock, Act 2565, p. 1467.
 preventing introduction of rabies, Act 2566, p. 1469.
 preparation, inspection and sale of hog cholera serums, etc., Act 2568, p. 1472.
 prevention of spread of contagious animal diseases, Act 2568a, p. 1473.
 herding and grazing of livestock by non-residents, Act 2568b, p. 1474.
 extermination of boophilus annulatus tick, Act 2568c, p. 1475.
 combinations to obstruct sale of livestock, Act 2568d, p. 1477.
 cattle protection board, Act 2568e, p. 1478.

Chapter 199—Logs, p. 1483.
 standard of measurement, Act 2569, p. 1483.

Chapter 200—Long Beach, p. 1489.
 freeholders' charter, Act 2574, p. 1489.
 tideland grant, Act 2575, p. 1490.

Chapter 201—Los Angeles City, p. 1491.
 freeholders' charter, Act 2580, p. 1491.
 irrigation improvement fund bond act, Act 2582, p. 1496.
 main sewer fund bond act, Act 2583, p. 1496.
 "general irrigation fund" bond act, Act 2584, p. 1497.
 Los Angeles street bond act, Act 2585, p. 1497.
 ratifying deed to T. A. Sanchez, Act 2586, p. 1497.
 ratifying certain acts of city council, Act 2587, p. 1497.
 pollution of public zanjias, Act 2591, p. 1497.
 dedication of land for the widening of Vermont avenue, Act 2593, p. 1497.
 tideland grant, Act 2596, p. 1498.
 tidelands required for public purposes, Act 2597, p. 1499.
 protection of navigation act of 1917, Act 2598, p. 1499.
 protection of navigation act of 1919, Act 2600, p. 1500.

Chapter 202—Los Angeles County, p. 1500.
 protection of El Monte township from overflow, Act 2609, p. 1501.
 bridge across the Santa Ana river, Act 2622, p. 1501.
 county charter, Act 2626, p. 1501.
 "Los Angeles county flood control act," Act 2627, p. 1501.
 "Los Angeles county flood control district," bond validation, Act 2628, p. 1510.
 Los Nietos irrigation district, Act 2631, p. 1511.

Chapter 203—Los Nietos Collegiate Institute, p. 1511.
 trustees empowered to acquire land, Act 2636, p. 1511.

Chapter 204—Lost Warrants, p. 1512.
 payment of lost warrants authorized, Act 2646, p. 1512.

Chapter 205—Madera County, p. 1513.
 organization act, Act 2671, p. 1513.

Chapter 206—Mad River, p. 1513.
 improvement act of 1878, Act 2676, p. 1513.
 improvement act of 1911, Act 2677, p. 1513.

Chapter 207—Manufacturers, p. 1514.
 labeling articles made from shoddy, Act 2682, p. 1514.
 registration of factories, Act 2683, p. 1515.
 medical and surgical appliances in factories, Act 2684, p. 1515.
 sanitation of factories, Act 2685, p. 1516.

Chapter 208—Maps, p. 1516.
 recording maps of subdivisions, Act 2690, p. 1516.
 curative act of 1917, Act 2691, p. 1521.
 alteration or vacation of recorded maps, Act 2692, p. 1521.

Chapter 209—Marina County, p. 1523.
 coroner's fees in state prison cases, Act 2696, p. 1523.
 stock running at large, Act 2704, p. 1523.

Chapter 210—Mariposa County, p. 1523.

TABLE OF CONTENTS.

- Chapter 211—**Marks and Brands**, p. 1523.
marking citrus fruit containers, Act 2727,
p. 1523.
marking fresh and dried fruit containers,
Act 2728, p. 1524.
labeling articles manufactured in state
prisons, etc., Act 2729, p. 1524.
perpetuation of marks and brands, Act
2730, p. 1525.
- Chapter 212—**Marshall Monument**, p. 1526.
guardian of Marshall monument, Act 2746,
p. 1526.
- Chapter 213—**Martinez**, p. 1526.
release of land covered by Carquinez
straits, Act 2753, p. 1526.
- Chapter 214—**Marysville**, p. 1527.
board of city levee commissioners, Act
2759, p. 1527.
levee funding act of 1876, Act 2760, p.
1527.
- Chapter 215—**Master and Servant**, p. 1527.
day of rest from labor, Act 2770, p. 1527.
camp sanitation, Act 2772, p. 1528.
lunch hour in sawmills, Act 2773, p. 1530.
- Chapter 215—**Master and Servant**—(Cont'd).
misrepresentations as to conditions of
employment, Act 2774, p. 1530.
advertisements for employees during
strikes, Act 2774a, p. 1531.
interference with political activities of
employees, Act 2774b, p. 1531.
"tipping act," Act 2774c, p. 1532.
"spotter act," Act 2774d, p. 1533.
temporary floor act, Act 2775, p. 1533.
"scaffolding act," Act 2776, p. 1534.
payment of wages by negotiable order,
Act 2777, p. 1535.
payment of wages act of 1919, Act 2778, p.
1536.
seasonal labor wages, Act 2779, p. 1539.
enforced purchase act, Act 2779a, p. 1539.
service letters for employees, Act 2779b,
p. 1540.
cost of bonds and photographs, Act 2779c,
p. 1540.
semi-monthly paydays for county em-
ployees, Act 2779d, p. 1541.
"workmen's compensation insurance and
safety act of 1917," Act 2781, p. 1542.

CONSTITUTION OF THE UNITED STATES—1787.

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

§ 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

§ 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

[Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons.] The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

§ 3. The senate of the United States shall be composed of two senators from each state, elected by the people thereof for six years; and each senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. When vacancies happen in the representation of any state in the senate the executive authority of such state shall issue writs of election to fill such vacancy; provided that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election, as the legislature may direct. This amendment shall not be so construed to affect the election or term of any senator chosen before it becomes valid as part of the constitution.

[Ratified in 1913.]

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen

by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice-president of the United States shall be president of the senate, but shall have no vote unless they be equally divided.

The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

§ 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state, by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

§ 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

§ 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

§ 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

§ 8. The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriations of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

§ 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: And no person holding any office or profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

§ 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money, emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

§ 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.] [This paragraph is superseded by article XII of the Amendments to the Constitution, post p. xxvi.]

The congress may determine the time of choosing the electors and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural-born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect and defend the constitution of the United States."

§ 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardon for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointment are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such

inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

§ 3. He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

§ 4. The president, vice-president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

§ 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

§ 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers, and counsels;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states,—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crime shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

§ 3. Treason against the United States shall consist only in levying war against them or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted

ARTICLE IV.

§ 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

§ 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

§ 3. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

§ 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature can not be convened) against domestic violence.

ARTICLE V.

The congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

RATIFICATION OF CONSTITUTION.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEO. WASHINGTON,

President and Deputy from Virginia.

New Hampshire—John Langdon, Nicholas Gilman.

Massachusetts—Nathaniel Gorham, Rufus King.

Connecticut—William Samuel Johnson, Roger Sherman.

New York—Alexander Hamilton.

New Jersey—William Livingston, David Brearley, William Paterson, Jonathan Dayton.

Pennsylvania—Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons, Jared Ingersoll, James Wilson, Gouverneur Morris.

Delaware—George Read, Gunning Bedford, Jr., John Dickinson, Richard Bassett, Jacob Broom.

Maryland—Jame McHenry, Daniel St. Tho. Jenifer, Daniel Carroll.

Virginia—John Blair, James Madison, Jr.

North Carolina—William Blount, Richard Dobbs Spaight, Hugh Williamson.

South Carolina—John Rutledge, Charles C. Pinckney, Charles Pinckney, Pierce Butler.

Georgia—William Few, Abraham Baldwin.

Attest:—WILLIAM JACKSON, Secretary.

AMENDMENTS.

To the Constitution of the United States, Ratified According to the Provisions of the Fifth Article of the Foregoing Constitution.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. [Amendment, proposed 25th September, 1789; ratified 15th December, 1791.]

ARTICLE II.

A well-guarded militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. [Amendment, proposed 25th September, 1789; ratified 15th December, 1791.]

ARTICLE III.

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war but in a manner to be prescribed by law. [Amendment, proposed 25th September, 1789; ratified 15th December, 1791.]

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall

issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized. [Amendment, proposed 25th September, 1789; ratified 15th December, 1791.]

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. [Amendment, proposed 25th September, 1789; ratified 15th December, 1791.]

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. [Amendment, proposed 25th September, 1789; ratified 15th December, 1791.]

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law. [Amendment, proposed 25th September, 1789; ratified 15th December, 1791.]

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. [Amendment, proposed 25th September, 1789; ratified 15th December, 1791.]

ARTICLE IX.

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. [Amendment, proposed 25th September, 1789; ratified 15th September, 1791.]

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to these states respectively, or to the people. [Amendment, proposed 25th September, 1789; ratified 15th December, 1791.]

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state. [Amendment, proposed 5th March, 1794; ratified 8th January, 1798.]

ARTICLE XII.

The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with

themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the senate;— the president of the senate shall, in presence of the senate and house of representatives, open all the certificates and the votes shall then be counted;—the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

The person having the greatest number of votes as vice president, shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president; a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States. [Amendment, proposed 12th December, 1803; ratified 5th September, 1804.]

ARTICLE XIII.

§ 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

§ 2. Congress shall have power to enforce this article by appropriate legislation. [Proposed 1st February, 1865; ratification declared December 18, 1865.]

ARTICLE XIV.

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without a due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridge, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

§ 3. No person shall be a senator or representative in congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have been engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two thirds of each house, remove such disability.

§ 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

§ 5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article. [Proposed 16th June, 1866; ratification declared 21st July, 1868.]

ARTICLE XV.

§ 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

§ 2. The congress shall have power to enforce this article by appropriate legislation. [Proposed 27th February, 1869; declared ratified 30th March, 1870.]

ARTICLE XVI.

Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several states and without regard to census enumeration. [Ratified in 1913.]

ARTICLE XVII.

See paragraph one of Article I, § 3, ante.

ARTICLE XVIII.

§ 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

§ 2. The congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

§ 3. This article shall be inoperative unless it shall have been ratified as an amendment to the constitution by the legislatures of the several states as provided in the constitution, within seven years from the date of the submission hereof to the states by the congress. [Ratification proclaimed January 16, 1919.]

ARTICLE XIX.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or any state on account of sex. Congress shall have power to enforce this article by appropriate legislation. [Ratification proclaimed August 26, 1920.]

CONSTITUTION OF THE STATE OF CALIFORNIA

PREAMBLE AND DECLARATION OF RIGHTS.

PREAMBLE.

We, the people of the state of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.

ARTICLE I.

DECLARATION OF RIGHTS.

Section 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

Sec. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.

Sec. 3. The state of California is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land.

Sec. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be guaranteed in this state; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

Sec. 5. The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require its suspension.

Sec. 6. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor confined in any room where criminals are actually imprisoned.

Sec. 7. The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions three-fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony, by the consent of both parties, expressed in open court, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions and cases of misdemeanor, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court.

Sec. 8. Offenses heretofore required to be prosecuted by indictment shall be prosecuted by information, after examination and commitment by a magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law. A grand jury shall be drawn and summoned at least once a year in each county.

Sec. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right

CONSTITUTION OF THE STATE OF CALIFORNIA.

to determine the law and the fact. Indictments found, or information laid, for publications in newspapers, shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libeled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause.

Sec. 10. The people shall have the right to freely assemble together to consult for the common good, to instruct their representatives, and to petition the legislature for redress of grievances.

Sec. 11. All laws of a general nature shall have a uniform operation.

Sec. 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this state in time of peace, and no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

Sec. 13. In criminal prosecutions, in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. No person shall be twice put in jeopardy for the same offense; nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty or property without due process of law. The legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses, in criminal cases other than cases of homicide, when there is reason to believe that the witness, from inability or other cause, will not attend at the trial.

Sec. 14. Private property shall not be taken or damaged for public use without just compensation having first been made to, or paid into court for, the owner, and no right of way shall be appropriated to the use of any corporation, except a municipal corporation or a county, until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefits from any improvement composed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a court of record, as shall be prescribed by law; provided, that in an action in eminent domain brought by the state, or a county, or a municipal corporation, or a drainage, irrigation, levee, or reclamation district, the aforesaid state or political subdivision thereof or district may take immediate possession and use of any right of way required for a public use whether the fee thereof or an easement therefor be sought upon first commencing eminent domain proceedings according to law in a court of competent jurisdiction and thereupon giving such security in the way of money deposits as the court in which such proceedings are pending may direct, and in such amounts as the court may determine to be reasonably adequate to secure to the owner of the property sought to be taken immediate payment of just compensation for such taking and any damage incident thereto, including damages sustained by reason of an adjudication that there is no necessity for taking the property, as soon as the same can be ascertained according to law. The court may, upon motion of any party to said eminent domain proceedings, after such notice to the other parties as the court may prescribe, alter the amount of such security so required in such proceedings. The taking of private property for a railroad run by steam or electric power for logging or lumbering purposes shall be deemed a taking for a public use, and any person, firm, company or corporation taking private property under the law of eminent domain for such purposes shall thereupon and thereby become a common carrier. [Amendment adopted November 5, 1918.]

Sec. 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud, nor in civil actions for torts, except in cases of wilful injury to person or property; and no person shall be imprisoned for a militia fine in time of peace.

CONSTITUTION OF THE STATE OF CALIFORNIA.

Sec. 16. No bill of attainder, ex post facto law, or law impairing the obligations of contracts, shall ever be passed.

Sec. 17. Foreigners, of the white race, or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while bona fide residents of this state, shall have the same rights in respect to the acquisition, possession, enjoyment, transmission, and inheritance of all property, other than real estate, as native born citizens; provided, that such aliens owning real estate at the time of the adoption of this amendment may remain such owners; and provided, further, that the legislature may, by statute, provide for the disposition of real estate which shall hereafter be acquired by such aliens by descent or devise. [Amendment adopted November 6, 1894.]

Sec. 18. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

Sec. 19. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized.

Sec. 20. Treason against the state shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

Sec. 21. No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the legislature, nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

Sec. 22. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

Sec. 23. This enumeration of rights shall not be construed to impair or deny others retained by the people.

Sec. 24. No property qualification shall ever be required for any person to vote or hold office.

Sec. 25. The people shall have the right to fish upon and from public lands of the state and in the waters thereof, excepting upon lands set aside for fish hatcheries, and no land owned by the state shall ever be sold or transferred without reserving in the people the absolute right to fish thereupon; and no law shall ever be passed making it a crime for the people to enter upon the public lands within this state for the purpose of fishing in any water containing fish that have been planted therein by the state; provided, that the legislature may by statute, provide for the season when and the conditions under which the different species of fish may be taken. [New section adopted November 8, 1910.]

ARTICLE II.

RIGHT OF SUFFRAGE.

Section 1. Every native citizen of the United States, every person who shall have acquired the rights of citizenship under or by virtue of the treaty of Queretaro, and every naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been resident of the state one year next preceding the election, and of the county in which he or she claims his or her vote ninety days, and in the election precinct thirty days, shall be entitled to vote

CONSTITUTION OF THE STATE OF CALIFORNIA.

at all elections which are now or may hereafter be authorized by law; provided, no native of China, no idiot, no insane person, no person convicted of any infamous crime, no person hereafter convicted of the embezzlement or misappropriation of public money, and no person who shall not be able to read the Constitution in the English language and write his or her name, shall ever exercise the privileges of an elector in this state; provided, that the provisions of this amendment relative to an educational qualification shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any person who shall be sixty years of age and upwards at the time this amendment shall take effect. [Amendment adopted October 10, 1911.]

Sec. 2. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

Sec. 2½. The legislature shall have the power to enact laws relative to the election of delegates to conventions of political parties; and the legislature shall enact laws providing for the direct nomination of candidates for public office, by electors, political parties, or organizations of electors without conventions, at elections to be known and designated as primary elections; also to determine the tests and conditions upon which electors, political parties, or organizations of electors may participate in any such primary election. It shall also be lawful for the legislature to prescribe that any such primary election shall be mandatory and obligatory. The legislature shall also have the power to establish the rates of compensation for primary election officers serving at such primary elections in any city, or city and county, or county, or other subdivision of a designated population, without making such compensation uniform, and for such purpose such law may declare the population of any city, city and county, county or political subdivision; provided, however, that until the legislature shall enact a direct primary election law under the provisions of this section, the present primary election law shall remain in force and effect. [Amendment adopted November 3, 1911.]

Sec. 3. No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

Sec. 4. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States; nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student at any seminary of learning; nor while kept in any almshouse or other asylum, at public expense; nor while confined in any public prison.

Sec. 5. All elections by the people shall be by ballot or by such other method as may be prescribed by law; provided, that secrecy in voting be preserved. [Amendment adopted November 3, 1896.]

Sec. 6. The inhibitions of this constitution to the contrary notwithstanding, the legislature shall have power to provide that in different parts of the state different methods may be employed for receiving and registering the will of the people as expressed at elections, and may provide that mechanical devices may be used within designated subdivisions of the state at the option of the local authority indicated by the legislature for that purpose. [New section adopted November 4, 1902.]

ARTICLE III. DISTRIBUTION OF POWERS.

Section 1. The powers of the government of the state of California shall be divided into three separate departments—the legislative, executive, and judicial; and no person

charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the other, except as in this Constitution expressly directed or permitted.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

Section 1. The legislative power of this state shall be vested in a senate and assembly which shall be designated "The Legislature of the State of California," but the people reserve to themselves the power to propose laws and amendments to the Constitution, and to adopt or reject the same, at the polls independent of the legislature, and also reserve the power, at their own option, to so adopt or reject any act, or section or part of any act, passed by the legislature. The enacting clause of every law shall be "The People of the State of California do enact as follows:"

The first power reserved to the people shall be known as the initiative. Upon the presentation to the secretary of state of a petition certified as herein provided to have been signed by qualified electors, equal in number to eight per cent of all the votes cast for all candidates for governor at the last preceding general election, at which a governor was elected, proposing a law or amendment to the Constitution, set forth in full in said petition, the secretary of state shall submit the said proposed law or amendment to the Constitution to the electors at the next succeeding general election occurring subsequent to ninety days after the presentation aforesaid of said petition, or at any special election called by the governor in his discretion prior to such general election. All such initiative petitions shall have printed across the top thereof in twelve point black-face type the following: "Initiative measure to be submitted directly to the electors."

Upon the presentation to the secretary of state, at any time not less than ten days before the commencement of any regular session of the legislature, of a petition certified as herein provided to have been signed by qualified electors of the state equal in number to five per cent of all the votes cast for all candidates for governor at the last preceding general election, at which a governor was elected, proposing a law set forth in full in said petition, the secretary of state shall transmit the same to the legislature as soon as it convenes and organizes. The law proposed by such petition shall be either enacted or rejected without change or amendment by the legislature, within forty days from the time it is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided. If any law so petitioned for be rejected, or if no action is taken upon it by the legislature, within said forty days, the secretary of state shall submit it to the people for approval or rejection at the next ensuing general election. The legislature may reject any measure so proposed by initiative petition and propose a different one on the same subject by a yea and nay vote upon separate roll call, and in such event both measures shall be submitted by the secretary of state to the electors for approval or rejection at the next ensuing general election or at a prior special election called by the governor, in his discretion, for such purpose. All said initiative petitions last above described shall have printed in twelve point black-face type the following: "Initiative measure to be presented to the legislature."

The second power reserved to the people shall be known as the referendum. No act passed by the legislature shall go into effect until ninety days after the final adjournment of the session of the legislature which passed such act, except acts calling elections, acts providing for tax levies or appropriations for the usual current expenses of the state, and urgency measures necessary for the immediate preservation of the public peace, health or safety, passed by a two-thirds vote of all the members elected to each house. Whenever it is deemed necessary for the immediate preservation of the public

CONSTITUTION OF THE STATE OF CALIFORNIA.

peace, health or safety that a law shall go into immediate effect, a statement of the facts constituting such necessity shall be set forth in one section of the act, which section shall be passed only upon a yea and nay vote, upon a separate roll call thereon; provided, however, that no measure creating or abolishing any office or changing the salary, term or duties of any officer, or granting any franchise or special privilege, or creating any vested right or interest, shall be construed to be an urgency measure. Any law so passed by the legislature and declared to be an urgency measure shall go into immediate effect.

Upon the presentation to the secretary of state within ninety days after the final adjournment of the legislature of a petition certified as herein provided, to have been signed by qualified electors equal in number to five per cent of all the votes cast for all candidates for governor at the last preceding general election at which a governor was elected, asking that any act or section or part of any act of the legislature be submitted to the electors for their approval or rejection, the secretary of state shall submit to the electors for their approval or rejection, such act, or section or part of such act, at the next succeeding general election occurring at any time subsequent to thirty days after the filing of said petition or at any special election which may be called by the governor, in his discretion, prior to such regular election, and no such act or section or part of such act shall go into effect until and unless approved by a majority of the qualified electors voting thereon; but if a referendum petition is filed against any section or part of any act the remainder of such act shall not be delayed from going into effect.

Any act, law or amendment to the constitution submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon, at any election, shall take effect five days after the date of the official declaration of the vote by the secretary of state. No act, law or amendment to the constitution, initiated or adopted by the people, shall be subject to the veto power of the governor, and no act, law or amendment to the constitution, adopted by the people at the polls under the initiative provisions of this section, shall be amended or repealed except by a vote of the electors, unless otherwise provided in said initiative measure; but acts and laws adopted by the people under the referendum provisions of this section may be amended by the legislature at any subsequent session thereof. If any provision or provisions of two or more measures, approved by the electors at the same election, conflict, the provision or provisions of the measure receiving the highest affirmative vote shall prevail. Until otherwise provided by law, all measures submitted to a vote of the electors, under the provisions of this section, shall be printed, and together with arguments for and against each such measure by the proponents and opponents thereof, shall be mailed to each elector in the same manner as now provided by law as to amendments to the constitution, proposed by the legislature; and the persons to prepare and present such arguments shall, until otherwise provided by law, be selected by the presiding officer of the senate.

If for any reason any initiative or referendum measure, proposed by petition as herein provided, be not submitted at the election specified in this section, such failure shall not prevent its submission at a succeeding general election, and no law or amendment to the constitution, proposed by the legislature, shall be submitted at any election unless at the same election there shall be submitted all measures proposed by petition of the electors, if any be so proposed, as herein provided.

Any initiative or referendum petition may be presented in sections, but each section shall contain a full and correct copy of the title and text of the proposed measure. Each signer shall add to his signature his place of residence, giving the street and number if such exist. His election precinct shall also appear on the paper after his name. The number of signatures attached to each section shall be at the pleasure of the person soliciting signatures to the same. Any qualified elector of the state shall

CONSTITUTION OF THE STATE OF CALIFORNIA.

be competent to solicit said signatures within the county or city and county of which he is an elector. Each section of the petition shall bear the name of the county or city and county in which it is circulated, and only qualified electors of such county or city and county shall be competent to sign such section. Each section shall have attached thereto the affidavit of the person soliciting signatures to the same, stating his own qualifications and that all the signatures to the attached section were made in his presence and that to the best of his knowledge and belief each signature to the section is the genuine signature of the person whose name it purports to be, and no other affidavit thereto shall be required. The affidavit of any person soliciting signatures hereunder shall be verified free of charge by any officer authorized to administer oaths. Such petitions so verified shall be prima facie evidence that the signatures thereon are genuine and that the persons signing the same are qualified electors. Unless and until it be otherwise proven upon official investigation, it shall be presumed that the petition presented contains the signatures of the requisite number of qualified electors.

Each section of the petition shall be filed with the clerk or registrar of voters of the county or city and county in which it was circulated, but all said sections circulated in any county or city and county shall be filed at the same time. Within twenty days after the filing of such petition in his office the said clerk, or registrar of voters, shall determine from the records of registration what number of qualified electors have signed the same, and if necessary the board of supervisors shall allow said clerk or registrar additional assistants for the purpose of examining such petition and provide for their compensation. The said clerk or registrar, upon the completion of such examination, shall forthwith attach to said petition, except the signatures thereto appended, his certificate, properly dated, showing the result of said examination and shall forthwith transmit said petition, together with his said certificate, to the secretary of state and also file a copy of said certificate in his office. Within forty days from the transmission of the said petition and certificate by the clerk or registrar to the secretary of state, a supplemental petition identical with the original as to the body of the petition but containing supplemental names, may be filed with the clerk or registrar of voters, as aforesaid. The clerk or registrar of voters shall within ten days after the filing of such supplemental petition make like examination thereof, as of the original petition, and upon the completion of such examination shall forthwith attach to said petition his certificate, properly dated, showing the result of said examination, and shall forthwith transmit a copy of said supplemental petition, except the signatures thereto appended, together with his certificate, to the secretary of state.

When the secretary of state shall have received from one or more county clerks or registrars of voters a petition certified as herein provided to have been signed by the requisite number of qualified electors, he shall forthwith transmit to the county clerk or registrar of voters of every county or city and county in the state his certificate showing such fact. A petition shall be deemed to be filed with the secretary of state upon the date of the receipt by him of a certificate or certificates showing said petition to be signed by the requisite number of electors of the state. Any county clerk or registrar of voters shall, upon receipt of such copy, file the same for record in his office. The duties herein imposed upon the clerk or registrar of voters shall be performed by such registrar of voters in all cases where the office of registrar of voters exists.

The initiative and referendum powers of the people are hereby further reserved to the electors of each county, city and county, city and town of the state, to be exercised under such procedure as may be provided by law. Until otherwise provided by law, the legislative body of any such county, city and county, city or town may provide for the manner of exercising the initiative and referendum powers herein reserved to such counties, cities and counties, cities and towns, but shall not require more than fifteen per cent of the electors thereof to propose any initiative measure nor more than ten

CONSTITUTION OF THE STATE OF CALIFORNIA.

per cent of the electors thereof to order the referendum. Nothing contained in this section shall be construed as affecting or limiting the present or future powers of cities or cities and counties having charters adopted under the provisions of section eight of article eleven of this constitution. In the submission to the electors of any measure under this section, all officers shall be guided by the general laws of this state, except as is herein otherwise provided. This section is self-executing, but legislation may be enacted to facilitate its operation, but in no way limiting or restricting either the provisions of this section or the powers herein reserved. [Amendment adopted October 10, 1911.]

Sec. 2. The sessions of the legislature shall be biennial, unless the governor shall, in the interim, convene the legislature, by proclamation, in extraordinary session. All sessions, other than extraordinary, shall commence at twelve o'clock M., on the first Monday after the first day of January next succeeding the election of its members, and shall continue in session for a period not exceeding thirty days thereafter; whereupon a recess of both houses must be taken for not less than thirty days. On the reassembling of the legislature, no bill shall be introduced in either house without the consent of three-fourths of the members thereof, nor shall more than two bills be introduced by any one member after such reassembling. [Amendment adopted October 10, 1911.]

Sec. 3. Members of the assembly shall be elected in the year eighteen hundred and seventy-nine, at the time and in the manner now provided by law. The second election of members of the assembly, after the adoption of this constitution, shall be on the first Tuesday after the first Monday in November, eighteen hundred and eighty. Thereafter members of the assembly shall be chosen biennially, and their term of office shall be two years; and each election shall be on the first Tuesday after the first Monday in November, unless otherwise ordered by the legislature.

Sec. 4. Senators shall be chosen for the term of four years, at the same time and places as members of the assembly, and no person shall be a member of the senate or assembly who has not been a citizen and inhabitant of the state three years, and of the district for which he shall be chosen one year, next before his election.

Sec. 5. The senate shall consist of forty members, and the assembly of eighty members, to be elected by districts, numbered as hereinafter provided. The seats of the twenty senators elected in the year eighteen hundred and eighty-two from the odd-numbered districts shall be vacated at the expiration of the second year, so that one-half of the senators shall be elected every two years; provided, that all the senators elected at the first election under this constitution shall hold office for the term of three years.

Sec. 6. For the purpose of choosing members of the legislature, the state shall be divided into forty senatorial and eighty assembly districts, as nearly equal in population as may be, and composed of contiguous territory, to be called senatorial and assembly districts. Each senatorial district shall choose one senator and each assembly district shall choose one member of assembly. The senatorial districts shall be numbered from one to forty, inclusive, in numerical order, and the assembly districts shall be numbered from one to eighty in the same order, commencing at the northern boundary of the state and ending at the southern boundary thereof. In the formation of such districts no county, or city and county, shall be divided, unless it contains sufficient population within itself to form two or more districts, nor shall a part of any county, or of any city and county, be united with any other county, or city and county, in forming any district. The census taken under the direction of the congress of the United States in the year one thousand eight hundred and eighty, and every ten years thereafter, shall be the basis of fixing and adjusting the legislative districts; and the legislature shall, at its first session after each census, adjust such districts and reapportion

tion the representation so as to preserve them as near equal in population as may be. But in making such adjustment no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming a part of the population of any district. Until such districting as herein provided for shall be made, senators and assemblymen shall be elected by the districts according to the apportionment now provided for by law.

Sec. 7. Each house shall choose its officers, and judge of the qualifications, elections, and returns of its members.

Sec. 8. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

Sec. 9. Each house shall determine the rule of its proceeding, and may, with the concurrence of two-thirds of all the members elected, expel a member.

Sec. 10. Each house shall keep a journal of its proceedings, and publish the same: and the yeas and nays of the members of either house, on any question, shall, at the desire of any three members present, be entered on the journal.

Sec. 11. Members of the legislature shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the legislature, nor for fifteen days next before the commencement and after the termination of each session.

Sec. 12. When vacancies occur in either house, the governor, or the person exercising the functions of the governor, shall issue writs of election to fill such vacancies.

Sec. 13. The doors of each house shall be open, except on such occasion as, in the opinion of the house, may require secrecy.

Sec. 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which they may be sitting. Nor shall the members of either house draw pay for any recess of adjournment for a longer time than three days.

Sec. 15. No law shall be passed except by bill. Nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same be read on three several days in each house, unless, in case of urgency, two-thirds of the house where such bill may be pending, shall, by a vote of yeas and nays, dispense with this provision. Any bill may originate in either house, but may be amended or rejected by the other; and on the final passage of all bills they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the journal, and no bill shall become a law without the concurrence of a majority of the members elected to each house.

Sec. 16. Every bill which may have passed the legislature shall, before it becomes a law, be presented to the governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, which shall enter such objections upon the journal and proceed to reconsider it. If after such reconsideration, it again pass both houses, by yeas and nays, two-thirds of the members elected to each house voting therefor, it shall become a law, notwithstanding the governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the legislature, by adjournment, prevents such return, in which case it shall not become a law, unless the governor, within thirty days after such adjournment (Sundays excepted), shall sign and deposit the same in the office of the secretary of state, in which case it shall become a law in like manner as if it had been signed by him before adjournment. If any bill presented to the governor

CONSTITUTION OF THE STATE OF CALIFORNIA.

contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case he shall append to the bill at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriation so objected to shall not take effect unless passed over the governor's veto, as hereinbefore provided. If the legislature be in session, the governor shall transmit to the house in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the governor. [Amendment adopted November 3, 1908.]

Sec. 17. The assembly shall have the sole power of impeachment, and all impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members elected.

Sec. 18. The governor, lieutenant governor, secretary of state, controller, treasurer, attorney general, surveyor general, chief justice and associate justices of the supreme court, judges of the district court of appeal, and judges of the superior courts, shall be liable to impeachment for any misdemeanor in office but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit under the state; but the party convicted or acquitted shall nevertheless be liable to indictment, trial and punishment according to law. All other civil officers shall be tried for misdemeanor in office in such manner as the legislature may provide. [Amendment adopted October 10, 1911.]

Sec. 19. No senator or member of assembly shall, during the term for which he shall have been elected, hold or accept any office, trust, or employment under this state; provided, that this provision shall not apply to any office filled by election by the people. [Amendment adopted November 7, 1916.]

Sec. 20. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this state; provided, that officers in the militia who receive no annual salary, local officers, or postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed to hold lucrative offices.

Sec. 21. No person convicted of the embezzlement or defalcation of the public funds of the United States, or of any state, or of any county or municipality therein, shall ever be eligible to an office of honor, trust, or profit under this state, and the legislature shall provide, by law, for the punishment of embezzlement or defalcation as a felony.

Sec. 22. No money shall be drawn from the treasury but in consequence of appropriation made by law, and upon warrants duly drawn thereon by the controller; and no money shall ever be appropriated or drawn from the state treasury for the purpose or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the state as a state institution, nor shall any grant or donation of property ever be made thereto by the state; provided, that notwithstanding anything contained in this or any other section of the constitution, the legislature shall have the power to grant aid to the institutions conducted for the support and maintenance of minor orphans, or half-orphans, or abandoned children, or children of a father who is incapacitated for gainful work by permanent physical disability or is suffering from tuberculosis in such a stage that he can not pursue a gainful occupation, or aged persons in indigent circumstances—such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions; provided, further, that the state shall have at any time the right to inquire into the management of such institutions; provided, further, that whenever any county, or city and county, or city, or town, shall provide for the support of minor orphans, or

CONSTITUTION OF THE STATE OF CALIFORNIA.

half-orphans, or abandoned children, or children of a father who is incapacitated for gainful work by permanent physical disability or is suffering from tuberculosis in such a stage that he can not pursue a gainful occupation, or aged persons in indigent circumstances, such county, city and county, city, or town shall be entitled to receive the same pro rata appropriations as may be granted to such institutions under church, or other control. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the legislature; provided, however, that for the purpose of raising five million dollars, to be used in establishing, maintaining, and supporting in the city and county of San Francisco, state of California, an exposition in commemoration of the completion of the Panama canal, to be known as the Panama-Pacific international exposition, the state board of equalization shall, for the fiscal year beginning July 1, 1911, and for each fiscal year thereafter, to and including the fiscal year beginning July 1, 1914, fix, establish, and levy such an ad valorem rate of taxation, as when levied upon all the taxable property in the state, after making due allowance for delinquency, shall produce for each of such fiscal years a sum of one million two hundred fifty thousand dollars. The said taxes shall be levied, assessed, and collected upon every kind and character of property in the state of California not exempt from taxation under the law, and subject to taxation on the first day of July, 1910, and in the same manner, and by the same method, as other state taxes were levied, assessed, and collected under the law, as the same existed on the first day of July, 1910. The state board of equalization shall each year, at the time it determines the amount of revenue required for other state purposes, determine, fix, and include the rate of tax necessary to raise the revenue herein provided for.

There is hereby created in the state treasury a fund to be known as the Panama-Pacific international exposition fund, and all moneys collected pursuant to this provision, after deducting the proportionate share of the expense for the collection of the same, shall be paid into the state treasury, and credited to such fund. All moneys so paid into such fund are hereby appropriated, without reference to fiscal years, for the use, establishment, maintenance and support of said Panama-Pacific international exposition. No tax, license fee, or charge of any kind or character shall ever be levied or assessed or charged against any property of said Panama-Pacific international exposition, or against any property used as exhibit therein, while being used or exhibited in connection therewith.

There is hereby created a commission to be known as the Panama-Pacific international exposition commission of the state of California, which shall consist of the governor of said state and four other members to be appointed by the governor, by and with the advice and consent of the senate of said state. The governor shall have the power to fill all vacancies occurring at any time in said commission. The members of said commission shall receive no compensation and shall hold office until such exposition shall have been closed and its affairs settled. Said four members of said commission shall be selected from different sections of the state, and the appointment thereof shall be made by the governor of the state during the month of February, 1911. The commission hereby created shall have the exclusive charge and control of all moneys paid into the Panama-Pacific international exposition fund; and provided, further, that the legislature shall pass all laws necessary to carry out the provisions of this act, including the times and the manner in which and the terms and conditions upon which moneys shall be drawn from the state treasury by said commission; where contracts and vouchers shall be filed; to whom and how often reports shall be made; what disposition shall be made of any sum left unexpended or received from the sale of any property or buildings purchased or constructed by said commission for the use of said exposition,

or of any disposition of any building or improvement constructed by said commission out of said fund, and to provide for the transfer to the general fund of the state of California, of any portion of said Panama-Pacific international exposition fund unused.

The commission herein created is authorized and directed to make such proper contract with the Panama-Pacific International Exposition Company, a corporation organized under the laws of the state of California on the twenty-second day of March, 1910, as will entitle the state of California to share proportionately with the contributors to the said Panama-Pacific international exposition in the returns from the holding of said exposition at the city and county of San Francisco. [Amendment adopted November 2, 1920.]

Sec. 23. The members of the legislature shall receive for their services the sum of one thousand dollars each for each regular session, to be paid at such times during the session as may be provided by law, and the sum of ten dollars each for each day while in attendance at a special or extraordinary session, for a number of days not exceeding thirty; and mileage to be fixed by law, all paid out of the state treasury; such mileage shall not exceed ten cents per mile; and each member shall be allowed contingent expenses not exceeding twenty-five dollars per member for each regular biennial session. The legislature may also provide for additional help; but in no case shall the total expense for officers, employees and attaches exceed the sum of five hundred dollars per day for either house, at any regular or biennial session, nor the sum of two hundred dollars per day for either house at any special or extraordinary session, nor shall the pay of any officer, employee or attache be increased after he is elected or appointed. [Amendment adopted November 3, 1908.]

Sec. 23a. The legislature may also provide for the employment of help; but in no case shall the total expense for officers, employees and attaches exceed the sum of five hundred dollars per day for either house, at any regular or biennial session, nor the sum of two hundred dollars per day for either house at any special or extraordinary session, nor shall the pay of any officer, employee, or attache be increased after he is elected or appointed. [New section adopted November 3, 1908.]

Sec. 24. Every act shall embrace but one subject, which subject shall be expressed in its title. But if any subject shall be embraced in an act which shall not be expressed in its title, such act shall be void only as to so much thereof as shall not be expressed in its title. No law shall be revised or amended by reference to its title; but in such case the act revised or section amended shall be re-enacted and published at length as revised or amended; and all laws of the state of California, and all official writings, and the executive, legislative, and judicial proceedings, shall be conducted, preserved, and published in no other than the English language.

Sec. 25. The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

First—Regulating the jurisdiction and duties of justices of the peace, police judges, and of constables.

Second—For the punishment of crimes and misdemeanors.

Third—Regulating the practice of courts of justice.

Fourth—Providing for changing the venue in civil or criminal actions.

Fifth—Granting divorces.

Sixth—Changing the names of persons or places.

Seventh—Authorizing the laying out, opening, altering, maintaining or vacating roads, highways, streets, alleys, town plots, parks, cemeteries, graveyards, or public ground not owned by the state.

CONSTITUTION OF THE STATE OF CALIFORNIA.

Eighth—Summoning and impaneling grand and petit juries, and providing for their compensation.

Ninth—Regulating county and township business, or the election of county and township officers.

Tenth—For the assessment or collection of taxes.

Eleventh—Providing for conducting elections or designating the places of voting, except on the organization of new counties.

Twelfth—Affecting estates of deceased persons, minors, or other persons under legal disabilities.

Thirteenth—Extending the time for the collection of taxes.

Fourteenth—Giving effect to invalid deeds, wills, or other instruments.

Fifteenth—Refunding money paid into the state treasury.

Sixteenth—Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this state, or to any municipal corporation therein.

Seventeenth—Declaring any person of age, or authorizing any minor to sell, lease or incur his or her property.

Eighteenth—Legalizing, except as against the state, the unauthorized or invalid act of any officer.

Nineteenth—Granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.

Twentieth—Exempting property from taxation.

Twenty-first—Changing county seats.

Twenty-second—Restoring to citizenship persons convicted of infamous crimes.

Twenty-third—Regulating the rate of interest on money.

Twenty-fourth—Authorizing the creation, extension, or impairing of liens.

Twenty-fifth—Chartering or licensing ferries, bridges, or roads.

Twenty-sixth—Remitting fines, penalties, or forfeitures.

Twenty-seventh—Providing for the management of common schools.

Twenty-eighth—Creating offices, or prescribing the powers and duties of officers in counties, cities, cities and counties, township, election or school districts.

Twenty-ninth—Affecting the fees or salary of any officer.

Thirtieth—Changing the law of descent or succession.

Thirty-first—Authorizing the adoption or legitimation of children.

Thirty-second—For limitation of civil or criminal actions.

Thirty-third—In all other cases where a general law can be made applicable.

Sec. 25½. The legislature may provide for the division of the state into fish and game districts, and may enact such laws for the protection of fish and game therein as it may deem appropriate to the respective districts. [New section adopted November 4, 1902.]

Sec. 26. The legislature shall have no power to authorize lotteries or gift enterprises for any purpose and shall pass laws to prohibit the sale in this state of lottery or gift enterprise tickets or tickets in any scheme in the nature of a lottery. The legislature shall pass laws to prohibit the fictitious buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange or stock market under the control of any corporation or association. All contracts for the purchase or sale of shares of the capital stock of any corporation or association without any intention on the part of one party to deliver and of the other party to receive the shares, and contemplating merely the payment of differences between the contract and market prices on divers days, shall be void, and neither party to any such contract shall be

CONSTITUTION OF THE STATE OF CALIFORNIA.

entitled to recover any damages for failure to perform the same, or any money paid thereon, in any court of this state. [Amendment adopted November 3, 1908.]

Sec. 27. When a congressional district shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county, or city and county, shall be divided in forming a congressional district so as to attach one portion of a county, or city and county, to another county, or city and county, except in cases where one county, or city and county, has more population than the ratio required for one or more congressmen; but the legislature may divide any county, or city and county, into as many congressional districts as it may be entitled to by law. Any county, or city and county containing a population greater than the number required for one congressional district, shall be formed into one or more congressional districts, according to the population thereof, and any residue, after forming such district or districts, shall be attached, by compact adjoining assembly districts, to a contiguous county or counties, and form a congressional district. In dividing a county, or city and county, into congressional districts, no assembly district shall be divided so as to form a part of more than one congressional district, and every such congressional district shall be composed of compact contiguous assembly districts.

Sec. 28. In all elections by the legislature the members thereof shall vote viva voce, and the vote shall be entered on the journal.

Sec. 29. The general appropriation bill shall contain no item or items of appropriation other than such as are required to pay the salaries of the state officers, the expenses of the government, and of the institutions under the exclusive control and management of the state.

Sec. 30. Neither the legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the state, or any city, city and county, town, or other municipal corporation, for any religious creed, church, or sectarian purpose, whatever; provided, that nothing in this section shall prevent the legislature granting aid pursuant to section twenty-two of this article.

Sec. 31. The legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the state, or of any county, city and county, city, township, or other political corporation or subdivision of the state now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift, or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; provided, that nothing in this section (shall prevent the legislature granting aid pursuant to section twenty-two of this article; and it shall not have power to authorize the state or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation) shall prevent the legislature granting aid pursuant to section twenty-two of this article; and it shall not have power to authorize the state, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever; provided, further, that irrigation districts for the purpose of acquiring the control of any entire international water system necessary for its use and purposes, a part of which is situated in the United States, and a part thereof in a foreign country, may in the manner authorized by law,

CONSTITUTION OF THE STATE OF CALIFORNIA.

acquire the stock of any foreign corporation which is the owner of, or which holds the title to the part of such system situated in a foreign country. [Amendment adopted November 3, 1914.]

Note.—The repetition of the words indicated by parentheses in the above section occurred in the resolution by which the amendment of the above section was proposed to the people. As no change could be made thereafter, the section was voted on and adopted in the above form.

Sec. 32. The legislature shall have no power to grant, or authorize any county or municipal authority to grant, any extra compensation or allowance to any public officer, agent, servant, or contractor, after service has been rendered, or a contract has been entered into and performed, in whole or in part, nor to pay, or to authorize the payment of, any claim hereafter created against the state, or any county or municipality of the state, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void.

Sec. 33. The legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by telegraph and gas corporations, and the charges by corporations or individuals for storage and wharfage in which there is a public use; and where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation or individual interested in the business to be regulated, and no person shall be selected who is an officer or stockholder in any such corporation.

Sec. 34. No bill making an appropriation of money, except the general appropriation bill, shall contain more than one item of appropriation, and that for one single and certain purpose, to be therein expressed.

Sec. 35. Any person who seeks to influence the vote of a member of the legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying, which is hereby declared a felony; and it shall be the duty of the legislature to provide, by law, for the punishment of this crime. Any member of the legislature who shall be influenced, in his vote or action upon any matter pending before the legislature, by any reward, or promise of future reward, shall be deemed guilty of a felony, and upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised and forever disqualified from holding any office or public trust. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or with having been influenced in his vote or action, as a member of the legislature, by reward, or promise of future reward, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself, or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.

Sec. 36. The legislature shall have power to establish a system of state highways or to declare any road a state highway, and to pass all laws necessary or proper to construct and maintain the same, and to extend aid for the construction and maintenance in whole or in part of any county highway. [New section adopted November 4, 1902.]

ARTICLE V.

EXECUTIVE DEPARTMENT.

Section 1. The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of California.

Sec. 2. The governor shall be elected by the qualified electors at the time and places of voting for members of the assembly, and shall hold his office four years from and

CONSTITUTION OF THE STATE OF CALIFORNIA.

after the first Monday after the first day of January subsequent to his election, and until his successor is elected and qualified.

Sec. 3. No person shall be eligible to the office of governor who has not been a citizen of the United States and a resident of this state five years next preceding his election and attained the age of twenty-five years at the time of such election.

Sec. 4. The returns of every election for governor shall be sealed up and transmitted to the seat of government, directed to the speaker of the assembly, who shall, during the first week of the session, open and publish them in the presence of both houses of the legislature. The person having the highest number of votes shall be governor; but in case any two or more have an equal and the highest number of votes, the legislature shall, by joint vote of both houses, choose one of such persons so having an equal and the highest number of votes for governor.

Sec. 5. The governor shall be commander-in-chief of the militia, the army and navy of this state.

Sec. 6. He shall transact all executive business with the officers of government, civil and military, and may require information, in writing, from the officers of the executive department upon any subject relating to the duties of their respective offices.

Sec. 7. He shall see that the laws are faithfully executed.

Sec. 8. When any office shall, from any cause, become vacant, and no mode is provided by the constitution and law for filling such vacancy, the governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the legislature, or the next election by the people.

Sec. 9. He may, on extraordinary occasions, convene the legislature by proclamation, stating the purposes for which he has convened it, and when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session, and other matters incidental thereto.

Sec. 10. He shall communicate, by message to the legislature, at every session, the condition of the state, and recommend such matters as he shall deem expedient.

Sec. 11. In case of a disagreement between the two houses with respect to the time of adjournment, the governor shall have power to adjourn the legislature to such time as he may think proper; provided, it be not beyond the time fixed for the meeting of the next legislature.

Sec. 12. No person shall, while holding any office under the United States, or this state, exercise the office of governor, except as hereinafter expressly provided.

Sec. 13. There shall be a seal of this state, which shall be kept by the governor, and used by him officially, and shall be called "The Great Seal of the State of California."

Sec. 14. All grants and commissions shall be in the name and by the authority of the people of the state of California, sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state.

Sec. 15. A lieutenant governor shall be elected at the same time and place, and in the same manner, as the governor, and his term of office and his qualifications shall be the same. He shall be president of the senate, but shall only have a casting vote therein. [Amendment adopted November 8, 1898.]

Sec. 16. In case of the impeachment of the governor, or his removal from office, death, inability to discharge the powers and duties of his office, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor for the residue of the term, or until the disability shall cease. And should the lieutenant governor be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the state, the president pro tempore of the senate shall act as governor until the vacancy in the office of governor shall be

CONSTITUTION OF THE STATE OF CALIFORNIA.

filled at the next general election when members of the legislature shall be chosen, or until such disability of the lieutenant governor shall cease. In case of a vacancy in the office of governor for any of the reasons above named, and neither the lieutenant governor nor the president pro tempore of the senate succeed to the powers and duties of governor, then the powers and duties of such office shall devolve upon the speaker of the assembly, until the office of governor shall be filled at such general election. [Amendment adopted November 8, 1898.]

Sec. 17. A secretary of state, a controller, a treasurer, an attorney general, and a surveyor general shall be elected at the same time and places, and in the same manner, as the governor and lieutenant governor, and their terms of office shall be the same as that of the governor.

Sec. 18. The secretary of state shall keep a correct record of the official acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the legislature, and shall perform such other duties as may be assigned him by law.

Sec. 19. The governor, lieutenant governor, secretary of state, controller, treasurer, attorney general and surveyor general shall, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected, which compensation is hereby fixed for the following officers, as follows: Governor, ten thousand dollars per annum; lieutenant governor, four thousand dollars, the secretary of state, controller, treasurer, and surveyor general, five thousand dollars each per annum, and the attorney general, six thousand dollars per annum, such compensation to be in full for all services by them respectively rendered in any official capacity or employment whatsoever during their respective terms of office; provided, however, that the legislature may, by law, diminish the compensation of any or all of such officers, but in no case shall have the power to increase the same above the sums hereby fixed by this constitution. No salary shall be authorized by law for clerical service in any office provided for in this article, exceeding eighteen hundred dollars per annum for each clerk employed. The legislature may, in its discretion, abolish the office of surveyor general; and none of the officers hereinbefore named shall receive for their own use any fees or perquisites for the performance of any official duty. [Amendment adopted November 3, 1908.]

Sec. 20. United States senators shall be elected by the people of the state in the manner provided by law. [Amendment adopted November 3, 1914.]

ARTICLE VI.

JUDICIAL DEPARTMENT.

Section 1. The judicial power of the state shall be vested in the senate, sitting as a court of impeachment, in a supreme court, district courts of appeal, superior courts and such inferior courts as the legislature may establish in any incorporated city or town, township, county, or city and county. [Amendment adopted October 10, 1911.]

Sec. 2. The supreme court shall consist of a chief justice and six associate justices. The court may sit in departments and in bank, and shall always be open for the transaction of business. There shall be two departments, denominated, respectively, department one and department two. The chief justice shall assign three of the associate justices to each department, and such assignment may be changed by him from time to time. The associate justices shall be competent to sit in either department, and may interchange with each other by agreement among themselves, or as ordered by the chief justice. Each of the departments shall have the power to hear and determine causes, and all questions arising therein, subject to the provisions hereinafter contained in relation to the court in bank. The presence of three justices shall be necessary to

transact any business in either of the departments, except such as may be done at chambers, and the concurrence of three justices shall be necessary to pronounce a judgment. The chief justice shall apportion the business to departments, and may, in his discretion, order any cause pending before the court to be heard and decided by the court in bank. The order may be made before or after judgment pronounced by a department; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within thirty days after such judgment, and concurred in by two associate justices, and if so made it shall have the effect to vacate and set aside the judgment. Any four justices may, either before or after judgment by a department, order a case to be heard in bank. If the order be not made within the time above limited, the judgment shall be final. No judgment by a department shall become final until the expiration of the period of thirty days aforesaid, unless approved by the chief justice, in writing, with the concurrence of two associate justices. The chief justice may convene the court in bank at any time, and shall be the presiding justice of the court when so convened. The concurrence of four justices present at the argument shall be necessary to pronounce a judgment in bank; but if four justices, so present, do not concur in a judgment, then all the justices qualified to sit in the cause shall hear the argument; but to render a judgment a concurrence of four judges shall be necessary. In the determination of causes, all decisions of the court, in bank or in department, shall be given in writing, and the grounds of the decision shall be stated. The chief justice may sit in either department, and shall preside when so sitting, but the justices assigned to each department shall select one of their number as presiding justice. In case of the absence of the chief justice from the place at which the court is held, or his inability to act, the associate justices shall select one of their own number to perform the duties and exercise the powers of the chief justice during such absence or inability to act.

Sec. 3. The chief justice and the associate justices shall be elected by the qualified electors of the state at large at the general state elections, at the time and places at which state officers are elected; and the term of office shall be twelve years from and after the first Monday after the first day of January next succeeding their election; provided, that the six associate justices elected at the first election shall, at their first meeting, so classify themselves, by lot, that two of them shall go out of office at the end of four years, two of them at the end of eight years, and two of them at the end of twelve years, and an entry of such classification shall be made in the minutes of the court in bank, signed by them, and a duplicate thereof shall be filed in the office of the secretary of state. If a vacancy occur in the office of a justice, the governor shall appoint a person to hold the office until the election and qualification of a justice to fill the vacancy, which election shall take place at the next succeeding general election, and the justice so elected shall hold the office for the remainder of the unexpired term. The first election of the justices shall be the first general election after the adoption and ratification of this constitution.

Sec. 4. The supreme court shall have appellate jurisdiction on appeal from the superior courts in all cases in equity, except such as arise in justices' courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to two thousand dollars; also, in all such probate matters as may be provided by law; also, on questions of law alone, in all criminal cases, where judgment of death has been rendered; the said court shall also have appellate jurisdiction in all cases, matters and proceedings pending before a district court of appeal, which shall be ordered by the supreme court to be transferred to itself for hearing and decision, as hereinafter provided. The said court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and

CONSTITUTION OF THE STATE OF CALIFORNIA.

all other writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the supreme court, or before any district court of appeal, or before any judge thereof, or before any superior court in the state, or before any judge thereof.

The state is hereby divided into three appellate districts, in each of which there shall be a district court of appeal.

The courts of appeal for the first and second appellate districts shall each consist of two divisions of three justices each.

The court of the third appellate district shall consist of three justices.

The district courts of appeal as existing immediately prior to the general election of the year one thousand nine hundred eighteen shall not be affected as to the officers or terms of office of the justices thereof by the amendment of this section at that election; and the justices of the district courts of appeal of districts of the first and second districts at the time of said general election shall constitute division one of each of said districts respectively. Each of such divisions shall constitute and shall exercise all of the powers of a district court of appeal.

The first district shall embrace the following counties: San Francisco, Marin, Contra Costa, Alameda, San Mateo, Santa Clara, Fresno, Santa Cruz, Monterey and San Benito.

The second district shall embrace the following counties: Tulare, Kings, San Luis Obispo, Kern, Inyo, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego and Imperial.

The third district shall embrace the following counties: Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Tehama, Plumas, Mendocino, Lake, Colusa, Glenn, Butte, Sierra, Sutter, Yuba, Nevada, Sonoma, Napa, Yolo, Placer, Solano, Sacramento, El Dorado, San Joaquin, Amador, Calaveras, Stanislaus, Mariposa, Madera, Merced, Tuolumne, Alpine and Mono.

The supreme court by orders entered in its minutes, may from time to time remove one or more counties from one appellate district to another, but no county not contiguous to another county of a district shall be added to such district.

Said district courts of appeal shall hold their regular sessions respectively at San Francisco, Los Angeles and Sacramento, and they shall always be open for the transaction of business.

The district courts of appeal shall have appellate jurisdiction on appeal from the superior courts in all cases at law in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars, and does not amount to two thousand dollars; also, in all cases of forcible and unlawful entry and detainer (except such as arise in justices' courts), in proceedings in insolvency, and in actions to prevent or abate a nuisance; in proceedings of mandamus, certiorari and prohibition, usurpation of office, contesting elections and eminent domain, and in such other special proceedings as may be provided by law (excepting cases in which appellate jurisdiction is given to the supreme court); also, on questions of law alone, in all criminal cases prosecuted by indictment or information in a court of record, excepting criminal cases where judgment of death has been rendered. The said courts shall also have appellate jurisdiction in all cases, matters, and proceedings pending before the supreme court which shall be ordered by the supreme court to be transferred to a district court of appeal for hearing and decision. The said courts shall also have power to issue writs of mandamus, certiorari, prohibition and habeas corpus, and all other writs necessary or proper to the complete exercise of their appellate jurisdiction.

CONSTITUTION OF THE STATE OF CALIFORNIA.

Each of the justices thereof shall have power to issue writs of habeas corpus to any part of his appellate district upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the district court of appeal of his district, or before any superior court within his district, or before any judge thereof.

The supreme court shall have power to order any cause pending before the supreme court to be heard and determined by a district court of appeal, and to order any cause pending before a district court of appeal to be heard and determined by the supreme court. The order last mentioned may be made before judgment has been pronounced by a district court of appeal, or within thirty days after such judgment shall have become final therein. The judgments of the district courts of appeal shall become final therein upon the expiration of thirty days after the same shall have been pronounced.

The supreme court shall have power to order causes pending before a district court of appeal for one district to be transferred to the district court of appeal of another district, or from one division thereof to another, for hearing and decision.

The justices of the district courts of appeal shall be elected by the qualified electors within their respective districts at the general state elections; and the term of office of said justices shall be twelve years from and after the first day of January next succeeding their election.

Upon the adoption by the people of this section by amendment at the general election of the year one thousand nine hundred eighteen, the governor shall appoint six persons to serve as justices of the district courts of appeal—three as justices of division two of the first appellate district, and three as justices of division two of the second appellate district—from and after their qualification and until the next general election and qualification of their successors. The justices of divisions two of the first and second appellate districts elected as above provided, shall so classify themselves by lot that one of them shall go out of office at the end of four years, one of them at the end of eight years, and one of them at the end of twelve years, and entry of such classification shall be made in the minutes of said division, signed by the three justices thereof, and a duplicate thereof filed in the office of the secretary of state.

If any vacancy occur in the office of a justice of the district courts of appeal, the governor shall appoint a person to hold office until the election and qualification of a justice to fill the vacancy. Such election shall take place at the next succeeding general state election, as aforesaid; the justice then elected shall hold office for the unexpired term; provided, that whenever the term of office of the justice whose place is filled by appointment is fixed by law to expire on the first Monday of January after the next succeeding general election, then the person so appointed to fill the vacancy shall hold office for the remainder of such unexpired term.

One of the justices of each of the district courts of appeal, and of each division of said courts, shall be the presiding justice thereof, and as such shall be appointed or elected, as the case may be.

The presence of two justices shall be necessary for the transaction of any business by such court except such as may be done at chambers, and the concurrence of two justices shall be necessary to pronounce a judgment.

Whenever any justice of the supreme court is for any reason disqualified or unable to act in a cause pending before it, the remaining justices may select one of the justices of a district court of appeal or a judge of the superior court to act pro tempore in the place of the justice so disqualified or unable to act.

Whenever any justice of a district court of appeal, or any division thereof, is for any reason disqualified or unable to act in any cause pending before it, the other justices of said court or division may appoint a justice of a district court of appeal of

another district or division, or a judge of the superior court who has not acted in the cause in a court below, to act pro tempore in the place of the justice so disqualified or unable to act.

No appeal taken to the supreme court or to a district court of appeal shall be dismissed for the reason only that the same was not taken to the proper court, but the cause shall be transferred to the proper court upon such terms as to costs or otherwise as may be just, and shall be proceeded with therein as if regularly appealed thereto.

All statutes now in force allowing, providing for or regulating appeals to the supreme court shall apply to appeals to the district courts of appeal so far as such statutes are not inconsistent with this article and until the legislature shall otherwise provide.

The supreme court shall make and adopt rules not inconsistent with law for the government of the supreme court and of the district courts of appeal and of the officers thereof, and for regulating the practice in said courts, and for the distribution of causes between the divisions of said court. [Amendment adopted November 5, 1918.]

Sec. 4½. No judgment shall be set aside, or new trial granted, in any case, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice. [Amendment adopted November 3, 1914.]

Sec. 5. The superior court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy amounts to three hundred dollars, and in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of divorce and for annulment of marriage; and of all such special cases and proceedings as are not otherwise provided for, and said court shall have the power of naturalization, and to issue papers therefor. They shall have appellate jurisdiction in such cases arising in inferior courts in their respective counties as may be prescribed by law. They shall be always open (legal holidays and non-judicial days excepted), and their process shall extend to all parts of the State; provided, that all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate, shall be commenced in the county in which the real estate, or any part thereof, affected by such action or actions, is situated. Said courts, and their judges, shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on behalf of any person in actual custody, in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days. [Amendment adopted October 10, 1911.]

Sec. 6. There shall be in each of the organized counties, or cities and counties, of the state, a superior court, for each of which at least one judge shall be elected by the qualified electors of the county, or city and county, at the general state election; provided, that until otherwise ordered by the legislature, only one judge shall be elected for the counties of Yuba and Sutter, and that in the city and county of San Francisco there shall be elected twelve judges of the superior court, any one or more of whom may hold court. There may be as many sessions of said court, at the same time, as there are judges thereof. The said judges shall choose, from their own number, a presiding judge, who may be removed at their pleasure. He shall distribute the business of the

CONSTITUTION OF THE STATE OF CALIFORNIA.

court among the judges thereof, and prescribe the order of business. The judgments, orders, and proceedings of any session of the superior court held by any one or more of the judges of said courts, respectively, shall be equally effectual as if all the judges of said respective courts presided at such session. In each of the counties of Sacramento, San Joaquin, Los Angeles, Sonoma, Santa Clara, and Alameda there shall be elected two such judges. The term of office of judges of the superior courts shall be six years from and after the first Monday of January next succeeding their election; provided, that the twelve judges of the superior court elected in the city and county of San Francisco, at the first election held under this constitution, shall at their first meeting so classify themselves, by lot, that four of them shall go out of office at the end of two years, and four of them shall go out of office at the end of four years, and four of them shall go out of office at the end of six years, and an entry of such classification shall be made in the minutes of the court, signed by them, and a duplicate thereof filed in the office of the secretary of state. The first election of judges of the superior courts shall take place at the first general election held after the adoption and ratification of this constitution. If a vacancy occur in the office of judge of a superior court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term.

Sec. 7. In any county, or city and county, other than the city and county of San Francisco, in which there shall be more than one judge of the superior court, the judges of such court may hold as many sessions of said court at the same time as there are judges thereof, and shall apportion the business among themselves as equally as may be.

Sec. 8. A judge of any superior court may hold a superior court in any county, at the request of a judge of the superior court thereof, and upon the request of the governor it shall be his duty so to do. But a cause in the superior court may be tried by a judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, and sworn to try the cause, and the person so selected shall be empowered to act in such capacity in all further proceedings in any suit or proceedings tried before him until the final determination thereof. There may be as many sessions of a superior court at the same time as there are judges thereof, including any judge or judges acting upon request, or any judge or judges pro tempore. The judgments, orders, acts and proceedings of any session of any superior court held by one or more judges acting upon request, or judge or judges pro tempore, shall be equally effective as if the judge or all of the judges of such court presided at such session. [Amendment adopted November 8, 1910.]

Sec. 9. The legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office. The legislature of the state may, at any time, two-thirds of the members of the senate and two-thirds of the members of the assembly voting therefor, increase or diminish the number of judges of the superior court in any county, or city and county, in the state; provided, that no such reduction shall affect any judge who has been elected.

Sec. 10. Justices of the supreme court, and of the district courts of appeal, and judges of the superior courts may be removed by concurrent resolution of both houses of the legislature adopted by a two-thirds vote of each house. All other judicial officers, except justices of the peace, may be removed by the senate on the recommendation of the governor; but no removal shall be made by virtue of this section unless the cause thereof be entered on the journal, nor unless the party complained of has been served with a copy of the complaint against him and shall have had an opportunity of being

heard in his defense. On the question of removal the ayes and noes shall be entered on the journal. [Amendment adopted November 8, 1904.]

Sec. 11. The legislature shall determine the number of each of the inferior courts in incorporated cities or towns, and in townships, counties, or cities and counties, according to the population thereof and the number of judges or justices thereof, and shall fix by law the powers, duties and responsibilities of each of such courts and of the judges or justices thereof; provided, such powers shall not in any case trench upon the jurisdiction of the several courts of record, except that the legislature shall provide that said courts shall have concurrent jurisdiction with the superior courts in cases of forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damages claimed does not exceed two hundred dollars, and in cases to enforce and foreclose liens on personal property when neither the amount of liens nor the value of the property amounts to three hundred dollars. [Amendment adopted October 10, 1911.]

Sec. 12. The supreme court, the district courts of appeal, the superior courts, and such other courts as the legislature shall prescribe, shall be courts of record. [Amendment adopted November 8, 1904.]

Sec. 13. The legislature shall fix by law the jurisdiction of any inferior courts which may be established in pursuance of section one of this article, and shall fix by law the powers, duties, and responsibilities of the judges thereof.

Sec. 14. The county clerks shall be ex officio clerks of the courts of record in and for their respective counties, or cities and counties. The legislature may also provide for the appointment, by the several superior courts, of one or more commissioners in their respective counties, or cities and counties, with authority to perform chamber business of the judges of the superior courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law. [Amendment adopted October 10, 1911.]

Sec. 15. No judicial officer, except court commissioners, shall receive to his own use any fees or perquisites of office; provided, that justices of the peace now holding office shall receive to their own use such fees as are now allowed by law during the terms for which they have been elected. [Amendment adopted October 10, 1911.]

Sec. 16. The legislature shall provide for the speedy publication of such opinions of the supreme court and of the district courts of appeal as the supreme court may deem expedient, and all opinions shall be free for publication by any person. [Amendment adopted November 8, 1904.]

Sec. 17. The justices of the supreme court and of the district courts of appeal, and the judges of the superior courts, shall severally, at stated times during their continuance in office, receive for their service such compensation as is or shall be provided by law. The salaries of the judges of the superior court, in all counties having but one judge, and in all counties in which the terms of the judges of the superior court expire at the same time, shall not hereafter be increased or diminished after their election, nor during the term for which they shall have been elected. Upon the adoption of this amendment the salaries then established by law shall be paid uniformly to the justices and judges then in office. The salaries of the justices of the supreme court and of the district courts of appeal shall be paid by the state. One-half of the salary of each superior court judge shall be paid by the state; and the other half thereof shall be paid by the county for which he is elected. On and after the first day of January, A. D., one thousand nine hundred and seven, the justices of the supreme court shall each receive an annual salary of eight thousand dollars, and the justices of the several district courts of appeal shall receive an annual salary of seven thousand dollars; the said salaries to be payable monthly. [Amendment adopted November 6, 1906.]

CONSTITUTION OF THE STATE OF CALIFORNIA.

Sec. 18. The justices of the supreme court, and of the district courts of appeal, and the judges of the superior courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected. [Amendment adopted November 8, 1904.]

Sec. 19. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

Sec. 20. The style of process shall be "The People of the State of California," and all prosecutions shall be conducted in their names and by their authority.

Sec. 21. The supreme court shall appoint a clerk of the supreme court; provided, however, that any person elected to the office of clerk of the supreme court before the adoption hereof, shall continue to hold such office until the expiration of the term for which he may have been elected. Said court may also appoint a reporter and not more than three assistant reporters of the decisions of the supreme court and of the district courts of appeal. Each of the district courts of appeal shall appoint its own clerk. All the officers herein mentioned shall hold office and be removable at the pleasure of the courts by which they are severally appointed, and they shall receive such compensation as shall be prescribed by law, and discharge such duties as shall be prescribed by law, or by the rules or orders of the courts by which they are severally appointed. [Amendment adopted October 10, 1911.]

Sec. 22. No judge of a court of record shall practice law in any court of this state during his continuance in office.

Sec. 23. No one shall be eligible to the office of a justice of the supreme court, or of a district court of appeal, or of a judge of a superior court, unless he shall have been admitted to practice before the supreme court of the state. [Amendment adopted November 8, 1904.]

Sec. 24. No judge of the supreme court nor of a district court of appeal, nor of a superior court, shall draw or receive any monthly salary unless he shall make and subscribe an affidavit before an officer entitled to administer oaths, that no cause in his court remains pending and undecided, that has been submitted for decision for a period of ninety days. In the determination of causes all decisions of the supreme court and of the district courts of appeal shall be given in writing, and the grounds of the decisions shall be stated. When the justices of a district court of appeal are unable to concur in a judgment, they shall give their several opinions in writing and cause copies thereof to be forwarded to the supreme court. [Amendment adopted November 8, 1904.]

Sec. 25. The present supreme court commission shall be abolished at the expiration of its present term of office, and no supreme court commission shall be created or provided for after January 1, A. D. 1905. [New section adopted November 8, 1904.]

ARTICLE VII.

PARDONING POWER.

Section 1. The governor shall have the power to grant reprieves, pardons, and commutations of sentence, after conviction, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the governor shall have power to suspend the execution of the sentence until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. The governor shall communicate to the legislature, at the beginning of every session, every case of reprieve or pardon

CONSTITUTION OF THE STATE OF CALIFORNIA.

granted, stating the name of the convict, the crime for which he was convicted, the sentence, its date, the date of the pardon or reprieve, and the reasons for granting the same. Neither the governor nor the legislature shall have power to grant pardons, or commutations of sentence, in any case where the convict has been twice convicted of a felony, unless upon the written recommendation of a majority of the judges of the supreme court.

ARTICLE VIII.

MILITIA.

Section 1. The legislature shall provide, by law, for organizing and disciplining the militia, in such manner as it may deem expedient, not incompatible with the constitution and laws of the United States. Officers of the militia shall be elected or appointed in such manner as the legislature shall, from time to time, direct, and shall be commissioned by the governor. The governor shall have power to call forth the militia to execute the laws of the state, to suppress insurrections, and repel invasions.

Sec. 2. All military organizations provided for by this constitution, or any law of this state, and receiving state support, shall, while under arms, either for ceremony or duty, carry no device, banner, or flag of any state or nation, except that of the United States or the state of California.

ARTICLE IX.

EDUCATION.

Section 1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral and agricultural improvement.

Sec. 2. A superintendent of public instruction shall, at each gubernatorial election after the adoption of this constitution, be elected by the qualified electors of the state. He shall receive a salary equal to that of the secretary of state, and shall enter upon the duties of his office on the first Monday after the first day of January next succeeding his election.

Sec. 3. A superintendent of schools for each county shall be elected by the qualified electors thereof at each gubernatorial election; provided, that the legislature may authorize two or more counties to unite and elect one superintendent for the counties so uniting.

Sec. 4. The proceeds of all lands that have been or may be granted by the United States to this state for the support of common schools, which may be, or may have been, sold or disposed of, and the five hundred thousand acres of land granted to the new states under an act of congress distributing the proceeds of the public lands among the several states of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent as may be granted or may have been granted, by congress on the sale of lands in this state, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the legislature may provide, shall be inviolably appropriated to the support of common schools throughout the state.

Sec. 5. The legislature shall provide for a system of common schools, by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

CONSTITUTION OF THE STATE OF CALIFORNIA.

Sec. 6. The public school system shall include day and evening elementary schools, and such day and evening secondary schools, technical schools, kindergarten schools and normal schools or teachers' colleges, as may be established by the legislature, or by municipal or district authority.

The legislature shall add to the state school fund such other means from the revenues of the state as shall provide in said fund for distribution in each school year in such manner as the legislature shall provide an amount not less than thirty dollars per pupil in average daily attendance in the day and evening elementary schools in the public school system during the next preceding school year.

The legislature shall provide a state high school fund from the revenues of the state for the support of day and evening secondary and technical schools, which for each school year, shall provide for distribution in such manner as the legislature shall provide an amount not less than thirty dollars per pupil in average daily attendance in the day and evening secondary and technical schools in the public school system during the next preceding school year.

The legislature shall provide for the levying of a county, and city and county, elementary school tax, by the board of supervisors of each county, and city and county, sufficient in amount to produce a sum of money not less than the amount of money to be received during the current school year from the state for the support of the public day and evening elementary schools of the county, or city and county; provided that said elementary school tax levied by any board of supervisors shall produce not less than thirty dollars per pupil in average daily attendance in the public day and evening elementary schools of the county, or city and county, during the next preceding school year.

The legislature shall provide for the levying of a county, and city and county, high school tax by the board of supervisors of each county, and city and county sufficient in amount to produce a sum of money not less than twice the amount of money to be received during the current school year from the state for the support of the public day and evening secondary and technical schools of the county, or city and county; provided that the high school tax levied by the board of supervisors shall produce not less than sixty dollars per pupil in average daily attendance in the public day and evening secondary schools of the county, or city and county, during the next preceding school year.

The legislature shall provide for the levying of school district taxes by the board of supervisors of each county, and city and county, for the support of public elementary schools, secondary schools, technical schools, and kindergarten schools, or for any other public school purpose authorized by the legislature.

The entire amount of money provided by the state, and not less than sixty per cent of the amount of money provided by county, or city and county, school taxes shall be applied exclusively to the payment of public school teachers' salaries.

The revenues provided for the public school system for the school year ending June 30, 1921, shall not be affected by this amendment except as the legislature may provide. [Amendment adopted November 2, 1920.]

Sec. 7. The legislature shall provide for the appointment or election of a state board of education, and said board shall provide, compile, or cause to be compiled, and adopt, a uniform series of textbooks for use in the day and evening elementary schools throughout the state. The state board may cause such textbooks, when adopted, to be printed and published by the superintendent of state printing, at the state printing office; and wherever and however such textbooks may be printed and published, they shall be furnished and distributed by the state free of cost or any charge whatever, to all children attending the day and evening elementary schools of the state, under such

CONSTITUTION OF THE STATE OF CALIFORNIA.

conditions as the legislature shall prescribe. The textbooks, so adopted, shall continue in use not less than four years, without any change or alteration whatsoever which will require or necessitate the furnishing of new books to such pupils, and said state board shall perform such other duties as may be prescribed by law. The legislature shall provide for a board of education in each county in the state. The county superintendents and the county boards of education shall have control of the examination of teachers and the granting of teachers' certificates within their respective jurisdictions. [Amendment adopted November 5, 1912.]

Sec. 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this state.

Sec. 9. The University of California shall constitute a public trust, to be administered by the existing corporation known as "The regents of the University of California," with full powers of organization and government, subject only to such legislative control as may be necessary to insure compliance with the terms of the endowments of the university and the security of its funds. Said corporation shall be in form a board composed of eight ex officio members, to wit: the governor, the lieutenant governor, the speaker of the assembly, the superintendent of public instruction, the president of the state board of agriculture, the president of the Mechanics Institute of San Francisco, the president of the alumni association of the university and the acting president of the university, and sixteen appointive members appointed by the governor; provided, however, that the present appointive members shall hold office until the expiration of their present terms. The term of the appointive members shall be sixteen years; the terms of two appointive members to expire as heretofore on March first of every even-numbered calendar year, and in case of any vacancy the term of office of the appointee to fill such vacancy, who shall be appointed by the governor, to be for the balance of the term as to which such vacancy exists. Said corporation shall be vested with the legal title and the management and disposition of the property of the university and of property held for its benefit and shall have the power to take and hold, either by purchase or by donation, or gift, testamentary or otherwise, or in any other manner, without restriction, all real and personal property for the benefit of the university or incidentally to its conduct. Said corporation shall also have all the powers necessary or convenient for the effective administration of its trust, including the power to sue and to be sued, to use a seal, and to delegate to its committees or to the faculty of the university, or to other, such authority or functions as it may deem wise; provided, that all moneys derived from the sale of public lands donated to this state by act of congress approved July 2, 1862 (and the several acts amendatory thereof), shall be invested as provided by said acts of congress and the income from said moneys shall be inviolably appropriated to the endowment, support and maintenance of at least one college of agriculture, where the leading objects shall be (without excluding other scientific and classical studies, and including military tactics) to teach such branches of learning as are related to scientific and practical agriculture and mechanic arts, in accordance with the requirements and conditions of said acts of congress; and the legislature shall provide that if, through neglect, misappropriation, or any other contingency, any portion of the funds so set apart shall be diminished or lost, the state shall replace such portion so lost or misappropriated, so that the principal thereof shall remain forever undiminished. The university shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs, and no person shall be debarred admission to any department of the university on account of sex. [Amendment adopted November 5, 1918.]

CONSTITUTION OF THE STATE OF CALIFORNIA.

Sec. 10. The trusts and estates created for the founding, endowment, and maintenance of the Leland Stanford Junior University, under and in accordance with "An act to advance learning," etc., approved March ninth, eighteen hundred and eighty-five, by the endowment grant executed by Leland Stanford and Jane Lathrop Stanford on the eleventh day of November, A. D. eighteen hundred and eighty-five, and recorded in liber eighty-three of deeds, at page twenty-three et seq., records of Santa Clara county, and by the amendments of such grant, and by gifts, grants, bequests, and devises supplementary thereto, and by confirmatory grants, are permitted, approved, and confirmed. The board of trustees of the Leland Stanford Junior University (as such) or in the name of the institution, or by other intelligible designation of the trustees of the institution, may receive property, real or personal, and wherever situated, by gift, grant, devise, or bequest, for the benefit of the institution, or of any department thereof, and such property, unless otherwise provided, shall be held by the trustees of the Leland Stanford Junior University upon the trusts provided for in the grant founding the university, and amendments thereof, and grants, bequests, and devises supplementary thereto. The legislature, by special act, may grant to the trustees of the Leland Stanford Junior University corporate powers and privileges, but it shall not thereby alter their tenure, or limit their powers or obligations as trustees. All property now or hereafter held in trust for the founding, maintenance, or benefit of the Leland Stanford Junior University, or of any department thereof, may be exempted by special act from state taxation, and all personal property so held, the Palo Alto farm as described in the endowment grant to the trustees of the university, and all other real property so held and used by the university for educational purposes exclusively, may be similarly exempted from county and municipal taxation; provided, that residents of California shall be charged no fees for tuition unless such fees be authorized by act of the legislature. [New section adopted November 6, 1900.]

Sec. 11. All property now or hereafter belonging to "The California School of Mechanical Arts," an institution founded and endowed by the late James Lick to educate males and females in the practical arts of life, and incorporated under the laws of the state of California, November twenty-third, eighteen hundred and eighty-five, having its school buildings located in the city and county of San Francisco, shall be exempt from taxation. The trustees of said institution must annually report their proceedings and financial accounts to the governor. The legislature may modify, suspend, and revive at will the exemption from taxation herein given. [New section adopted November 6, 1900.]

Sec. 12. All property now or hereafter belonging to the "California Academy of Sciences," an institution for the advancement of science and maintenance of a free museum, and chiefly endowed by the late James Lick, and incorporated under the laws of the state of California, January sixteenth, eighteen hundred and seventy-one, having its buildings located in the city and county of San Francisco, shall be exempt from taxation. The trustees of said institution must annually report their proceedings and financial accounts to the governor. The legislature may modify, suspend, and revive at will the exemption from taxation herein given. [New section adopted November 8, 1904.]

Sec. 13. All property now or hereafter belonging to the Cogswell Polytechnical College, an institution for the advancement of learning, incorporated under the laws of the state of California, and having its buildings located in the city and county of San Francisco, shall be exempt from taxation. The trustees of said institution must annually report their proceedings and financial accounts to the governor. The legislature may modify, suspend, and revive at will the exemption from taxation herein given. [New section adopted November 6, 1906.]

CONSTITUTION OF THE STATE OF CALIFORNIA.

ARTICLE X.

STATE INSTITUTIONS AND PUBLIC BUILDINGS.

Section 1. There shall be a state board of prison directors, to consist of five persons, to be appointed by the governor, with the advice and consent of the senate, who shall hold office for ten years, except that the first appointed shall, in such manner as the legislature may direct, be so classified that the term of one person so appointed shall expire at the end of each two years during the first ten years, and vacancies occurring shall be filled in like manner. The appointee to a vacancy occurring before the expiration of a term shall hold office only for the unexpired term of his predecessor. The governor shall have the power to remove either of the directors for misconduct, incompetency, or neglect of duty, after an opportunity to be heard upon written charges.

Sec. 2. The board of directors shall have the charge and superintendence of the state prison, and shall possess such powers and perform such duties, in respect to other penal and reformatory institutions of the state, as the legislature may prescribe.

Sec. 3. The board shall appoint the warden and clerk, and determine the other necessary officers of the prisons. The board shall have power to remove the wardens and clerks for misconduct, incompetency, or neglect of duty. All other officers and employees of the prisons shall be appointed by the warden thereof, and be removed at his pleasure.

Sec. 4. The members of the board shall receive no compensation, other than reasonable traveling and other expenses incurred while engaged in the performance of official duties, to be audited as the legislature may direct.

Sec. 5. The legislature shall pass such laws as may be necessary to further define and regulate the powers and duties of the board, wardens, and clerks, and to carry into effect the provisions of this article.

Sec. 6. After the first day of January, eighteen hundred and eighty-two, the labor of convicts shall not be let out by contract to any person, copartnership, company, or corporation, and the legislature shall, by law, provide for the working of convicts for the benefit of the state.

ARTICLE XI.

COUNTIES, CITIES, AND TOWNS.

Section 1. The several counties, as they now exist, are hereby recognized as legal subdivisions of this state.

Sec. 2. No county seat shall be removed unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

Sec. 3. The legislature, by general and uniform laws, may provide for the alteration of county boundary lines, and for the formation of new counties; provided, however, that no new county shall be established which shall reduce any county to a population of less than twenty thousand; nor shall a new county be formed containing a less population than eight thousand; nor shall any line thereof pass within five miles of the exterior boundary of the city or town in which the county seat of any county proposed to be divided is situated. Every county which shall be enlarged or created from territory taken from any other county or counties, shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken. [Amendment adopted November 8, 1910.]

Sec. 4. The legislature shall establish a system of county governments, which shall be uniform throughout the state; and by general laws shall provide for township

CONSTITUTION OF THE STATE OF CALIFORNIA.

organizations, under which any county may organize whenever a majority of the qualified electors of such county, voting at a general election, shall so determine; and whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made, and the business of such county and the local affairs of the several townships therein shall be managed and transacted, in the manner prescribed by such general laws.

Sec. 5. The legislature, by general and uniform laws, shall provide for the election or appointment, in the several counties, of boards of supervisors, sheriffs, county clerks, district attorneys, and such other county, township, and municipal officers as public convenience may require, and shall prescribe their duties and fix their terms of office. It shall regulate the compensation of all such officers, in proportion to duties, and may also establish fees to be charged and collected by such officers for services performed in their respective offices, in the manner and for the uses provided by law, and for this purpose may classify the counties by population; and it shall provide for the strict accountability of county and township officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. It may regulate the compensation of grand and trial jurors in all courts within the classes of counties herein permitted to be made; such compensation, however, shall not, in any class, exceed the sum of three dollars per day and mileage. [Amendment adopted November 3, 1908.]

Sec. 6. Corporations for municipal purposes shall not be created by special laws; but the legislature shall, by general laws, provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed; and the legislature may, by general laws, provide for the performance by county officers of certain of the municipal functions of cities and towns so incorporated, whenever a majority of the electors of any such city or town voting at a general or special election shall so determine. Cities and towns heretofore organized or incorporated may become organized under the general laws passed for that purpose, whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith. Cities and towns hereafter organized under charters framed and adopted by authority of this constitution are hereby empowered, and cities and towns heretofore organized by authority of this constitution may amend their charters in the manner authorized by this constitution so as to become likewise empowered hereunder, to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters, and in respect to other matters they shall be subject to and controlled by general laws. Cities and towns heretofore or hereafter organized by authority of this constitution may, by charter provision or amendment, provide for the performance by county officers of certain of their municipal functions, whenever the discharge of such municipal functions by county officers is authorized by general laws or by the provisions of a county charter framed and adopted by authority of this constitution. [Amendment adopted November 3, 1914.]

Sec. 7. City and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes. The provisions of this constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or prohibited to cities, shall be applicable to such consolidated government. [Amendment adopted November 6, 1894.]

Sec. 7½. Any county may frame a charter for its own government consistent with and subject to the constitution (or, having framed such a charter, may frame a new one), and relating to matters authorized by provisions of the constitution, by caus-

ing a board of fifteen freeholders, who have been for at least five years qualified electors thereof, to be elected by the qualified electors of said county, at a general or special election. Said board of freeholders may be so elected in pursuance of an ordinance adopted by the vote of three-fifths of all the members of the board of supervisors of such county, declaring that the public interest requires the election of such board for the purpose of preparing and proposing a charter for said county, or in pursuance of a petition of qualified electors of said county as hereinafter provided. Such petition, signed by fifteen per centum of the qualified electors of said county, computed upon the total number of votes cast therein for all candidates for governor at the last preceding general election at which a governor was elected, praying for the election of a board of fifteen freeholders to prepare and propose a charter for said county, may be filed in the office of the county clerk. It shall be the duty of said county clerk, within twenty days after the filing of said petition, to examine the same, and to ascertain from the record of the registration of electors of the county, whether said petition is signed by the requisite number of qualified electors. If required by said clerk, the board of supervisors shall authorize him to employ persons specially to assist him in the work of examining such petition, and shall provide for their compensation. Upon the completion of such examination, said clerk shall forthwith attach to said petition his certificate, properly dated, showing the result thereof, and if, by said certificate, it shall appear that said petition is signed by the requisite number of qualified electors, said clerk shall immediately present said petition to the board of supervisors, if it be in session, otherwise at its next regular meeting after the date of such certificate. Upon the adoption of such ordinance, or the presentation of such petition, said board of supervisors shall order the holding of a special election for the purpose of electing such board of freeholders, which said special election shall be held not less than twenty days nor more than sixty days after the adoption of the ordinance aforesaid or the presentation of said petition to said board of supervisors; provided, that if a general election shall occur in said county not less than twenty days nor more than sixty days after the adoption of the ordinance aforesaid, or such presentation of said petition to said board of supervisors, said board of freeholders may be elected at such general election. Candidates for election as members of said board of freeholders shall be nominated by petition, substantially in the same manner as may be provided by general law for the nomination, by petition of electors, of candidates for county offices, to be voted for at general elections. It shall be the duty of said board of freeholders, within one hundred and twenty days after the result of such election shall have been declared by said board of supervisors, to prepare and propose a charter for said county, which shall be signed in duplicate by the members of said board of freeholders, or a majority of them, and be filed, one copy in the office of the county clerk of said county and the other in the office of the county recorder thereof. Said board of supervisors shall thereupon cause said proposed charter to be published for at least ten times in a daily newspaper of general circulation, printed, published and circulated in said county; provided, that in any county where no such daily newspaper is printed, published and circulated, such proposed charter shall be published for at least three times in at least one weekly newspaper, of general circulation, printed, published and circulated in such county; and provided, that in any county where neither such daily nor such weekly newspaper is printed, published and circulated, a copy of such proposed charter shall be posted by the county clerk in three public places in said county, and on or near the entrance to at least one public school-house in each school district in said county, and the first publication or the posting of such proposed charter shall be made within fifteen days after the filing of a copy thereof, as aforesaid, in the office of the county clerk. Said proposed charter shall be submitted by said board of supervisors to the qualified electors of said county at a special election held not less than thirty days nor more than sixty days after the com-

CONSTITUTION OF THE STATE OF CALIFORNIA.

pletion of such publication, or after such posting; provided, that if a general election shall occur in said county not less than thirty days nor more than sixty days after the completion of such publication, or after such posting, then such proposed charter may be so submitted at such general election. If a majority of said qualified electors, voting thereon at such general or special election, shall vote in favor of such proposed charter, it shall be deemed to be ratified, and shall be forthwith submitted to the legislature, if it be in regular session, otherwise at its next regular session, or it may be submitted to the legislature in extraordinary session, for its approval or rejection as a whole, without power of alteration or amendment. Such approval may be made by concurrent resolution, and if approved by a majority vote of the members elected to each house, such charter shall become the charter of such county and shall become the organic law thereof relative to the matters therein provided, and supersede any existing charter framed under the provisions of this section, and all amendments thereof, and shall supersede all laws inconsistent with such charter relative to the matters provided in such charter. A copy of such charter, certified and authenticated by the chairman and clerk of the board of supervisors under the seal of said board and attested by the county clerk of said county, setting forth the submission of such charter to the electors of said county, and its ratification by them, shall, after the approval of such charter by the legislature, be made in duplicate, and filed, one in the office of the secretary of state and the other, after being recorded in the office of the recorder of said county, shall be filed in the office of the county clerk thereof, and thereafter all courts shall take judicial notice of said charter.

The charter, so ratified, may be amended by proposals therefor submitted by the board of supervisors of the county to the qualified electors thereof at a general or special election held not less than thirty days nor more than sixty days after the publication of such proposals for ten times in a daily newspaper of general circulation, printed, published and circulated in said county; provided, that in any county where no such daily newspaper is printed, published and circulated, such proposed charter shall be published for at least three times in at least one weekly newspaper, of general circulation, printed, published and circulated in such county; provided, that in any county where neither such daily nor such weekly newspaper is printed, published and circulated, a copy of such proposed charter shall be posted by the county clerk in three public places in said county, and on or near the entrance to at least one public school-house in each school district in said county. If a majority of such qualified electors voting thereon, at such general or special election, shall vote in favor of any such proposed amendment or amendments, or any amendment or amendments proposed by petition as hereinafter provided, such amendment or amendments shall be deemed to be ratified, and shall be forthwith submitted to the legislature, if it be in regular session, otherwise at its next regular session, or may be submitted to the legislature in extraordinary session, for approval or rejection as a whole, without power of alteration or amendment, and if approved by the legislature, as herein provided for the approval of the charter, such charter shall be amended accordingly. A copy of such amendment or amendments shall, after the approval thereof by the legislature, be made in duplicate, and shall be authenticated, certified, recorded and filed as herein provided for the charter, and with like force and effect. Whenever a petition signed by ten per centum of the qualified electors of any county, computed upon the total number of votes cast in said county for all candidates for governor at the last general election, at which a governor was elected, is filed in the office of the county clerk of said county, petitioning the board of supervisors thereof to submit any proposed amendment or amendments to the charter of such county, which amendment or amendments shall be set forth in full in such petition, to the qualified electors thereof, such petition shall forthwith be examined and certified by the county clerk, and if signed by the requisite number of qualified electors of such county, shall be presented to the said board of

CONSTITUTION OF THE STATE OF CALIFORNIA.

supervisors, by the said county clerk, as hereinbefore provided for petitions for the election of boards of freeholders. Upon the presentation of said petition to said board of supervisors, said board must submit the amendment or amendments set forth therein to the qualified electors of said county at a general or special election held not less than thirty days nor more than sixty days after the publication or posting of such proposed amendment or amendments in the same manner as hereinbefore provided in the case of the submission of any proposed amendment or amendments to such charter, proposed and submitted by the board of supervisors. In submitting any such charter, or amendments thereto, any alternative article or proposition may be presented for the choice of the electors, and may be voted on separately without prejudice to others.

Every special election held under the provisions of this section, for the election of boards of freeholders or for the submission of proposed charters, or any amendment or amendments thereto, shall be called by the board of supervisors, by ordinance, which shall specify the purpose and time of such election and shall establish the election precincts and designate the polling places therein, and the names of the election officers of each such precinct. Such ordinance, prior to such election, shall be published five times in a daily newspaper, or twice in a weekly newspaper, if there be no such daily newspaper, printed, published and circulated in said county; provided, that if no such daily or weekly newspaper be printed or published in such county, then a copy of such ordinance shall be posted by the county clerk in three public places in such county and in or near the entrance to at least one public schoolhouse in each school district therein. In all other respects, every such election shall be held and conducted, the returns thereof canvassed and the result thereof declared by the board of supervisors in the same manner as provided by law for general elections. Whenever boards of freeholders shall be elected, or any such proposed charter, or amendment or amendments thereto, submitted, at a general election, the general laws applicable to the election of county officers and the submission of propositions to the vote of electors, shall be followed in so far as the same may be applicable thereto.

It shall be competent, in all charters, framed under the authority given by this section to provide, in addition to any other provisions allowable by this constitution, and the same shall provide, for the following matters:

1. For boards of supervisors and for the constitution, regulation and government thereof, for the times at which and the terms for which the members of said board shall be elected, for the number of members, not less than three, that shall constitute such boards, for their compensation and for their election, either by the electors of the counties at large or by districts; provided, that in any event said board shall consist of one member for each district, who must be a qualified elector thereof; and

2. For sheriffs, county clerks, treasurers, recorders, license collectors, tax collectors, public administrators, coroners, surveyors, district attorneys, auditors, assessors and superintendents of schools, for the election or appointment of said officers, or any of them, for the times at which and the terms for which, said officers shall be elected or appointed, and for their compensation, or for the fixing of such compensation by boards of supervisors, and, if appointed, for the manner of their appointment; and

3. For the number of justices of the peace and constables for each township, or for the number of such judges and other officers of such inferior courts as may be provided by the constitution or general law, for the election or appointment of said officers, for the times at which and the terms for which said officers shall be elected or appointed, and for their compensation, or for the fixing of such compensation by boards of supervisors, and if appointed, for the manner of their appointment; and

4. For the powers and duties of boards of supervisors and all other county officers, for their removal and for the consolidation and segregation of county officers, and for the manner of filling all vacancies occurring therein; provided, that the provisions of

CONSTITUTION OF THE STATE OF CALIFORNIA.

such charters relating to the powers and duties of boards of supervisors and all other county officers shall be subject to and controlled by general laws; and

4½. For the assumption and discharge by county officers of certain of the municipal functions of the cities and towns within the county, whenever, in the case of cities and towns incorporated under general laws, the discharge by county officers of such municipal functions is authorized by general law, or whenever, in the case of cities and towns organized under section eight of this article, the discharge by county officers of such municipal functions is authorized by provisions of the charters, or by amendments thereto, of such cities or towns.

5. For the fixing and regulation by boards of supervisors, by ordinance, of the appointment and number of assistants, deputies, clerks, attaches and other persons to be employed, from time to time, in the several offices of the county, and for the prescribing and regulating by such boards of the powers, duties, qualifications and compensation of such persons, the times at which, and terms for which they shall be appointed, and the manner of their appointment and removal; and

6. For the compensation of such fish and game wardens, probation and other officers as may be provided by general law, or for the fixing of such compensation by boards of supervisors.

All elective officers of counties, and of townships, of road districts and of highway construction divisions therein shall be nominated and elected in the manner provided by general laws for the nomination and election of such officers.

All charters framed under the authority given by this section, in addition to the matters hereinabove specified, may provide as follows:

For offices other than those required by the constitution and laws of the state, or for the creation of any or all of such offices by boards of supervisors, for the election or appointment of persons to fill such offices, for the manner of such appointment, for the times at which and the terms for which such persons shall be so elected or appointed, and for their compensation, or for the fixing of such compensation by boards of supervisors.

For offices hereafter created by this constitution or by general law, for the election or appointment of persons to fill such offices, for the manner of such appointment, for the times at which and the terms for which such persons shall be so elected or appointed, and for their compensation, or for the fixing of such compensation by boards of supervisors.

For the formation, in such counties, of road districts for the care, maintenance, repair, inspection and supervision only of roads, highways and bridges; and for the formation, in such counties, of highway construction divisions for the construction only of roads, highways and bridges; for the inclusion in any such district or division, of the whole or any part of any incorporated city or town, upon ordinance passed by such incorporated city or town authorizing the same, and upon the assent to such inclusion by a majority of the qualified electors of such incorporated city or town, or portion thereof, proposed to be so included, at an election held for that purpose; for the organization, government, powers and jurisdiction of such districts and divisions, and for raising revenue therein, for such purposes, by taxation, upon the assent of a majority of the qualified electors of such districts or divisions, voting at an election to be held for that purpose; for the incurring of indebtedness therefor by such counties, districts or divisions for such purposes respectively, by the issuance and sale, by the counties, of bonds of such counties, districts or divisions, and the expenditure of the proceeds of the sale of such bonds, and for levying and collecting taxes against the property of the counties, districts or divisions, as the case may be, for the payment of the principal and interest of such indebtedness at maturity; provided, that any such

CONSTITUTION OF THE STATE OF CALIFORNIA.

indebtedness shall not be incurred without the assent of two-thirds of the qualified electors of the county, district or division, as the case may be, voting at an election to be held for that purpose, nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also for a sinking fund for the payment of the principal thereof on or before maturity, which shall not exceed forty years from the time of contracting the same, and the procedure for voting, issuing and selling such bonds shall, except in so far as the same shall be prescribed in such charters, conform to general laws for the authorizing and incurring by counties of bonded indebtedness, so far as applicable; provided, further, that provisions in such charters for the construction, care, maintenance, repair, inspection and supervision of roads, highways and bridges for which aid from the state is granted, shall be subject to such regulations and conditions as may be imposed by the legislature.

Whenever any county has framed and adopted a charter, and the same shall have been approved by the legislature, as herein provided, the general laws adopted by the legislature in pursuance of sections four and five of this article, shall, as to such county, be superseded by said charter as to matters for which, under this sections it is competent to make provision in such charter, and for which provision is made therein, except as herein otherwise expressly provided; and except that any such charter shall not affect the tenure of office of the elective officers of the county, or of any district, township or division thereof, in office at the time such charter goes into effect, and such officers shall continue to hold their respective offices until the expiration of the term for which they shall have been elected, unless sooner removed in the manner provided by law.

The charter of any county, adopted under the authority of this section, may be surrendered and annulled with the assent of two-thirds of the qualified electors of such county, voting at a special election, held for that purpose, and to be ordered and called by the board of supervisors of the county upon receiving a written petition, signed and certified as hereinabove provided for the purposes of the adoption of charters, requesting said board to submit the question of the surrender and annulment of such charter to the qualified electors of such county, and, in the event of the surrender and annulment of any such charter, such county shall thereafter be governed under general laws in force for the government of counties.

The provisions of this section shall not be applicable to any county that is consolidated with any city. [Amendment adopted November 3, 1914.]

Sec. 7½a. Any county organized under the general law, and having, at the time this section takes effect, a population of two hundred thousand inhabitants or over, as ascertained by the last preceding census taken under the authority of the congress of the United States, and having within its territorial boundaries one or more incorporated cities or towns, may frame a charter for a consolidated city and county government, by causing a board of fifteen freeholders, who have been for at least five years qualified electors of the county, to be elected by the qualified electors of said county, at a special election. Said board of freeholders may be so elected in pursuance of an ordinance adopted by the vote of three-fifths of all of the members of the board of supervisors of such county, declaring that public interest requires the election of such board of freeholders for the purpose of preparing and proposing a charter for a consolidated city and county, with or without a system of boroughs, with combined powers of a city and county, as in this constitution provided for city and county government; or in pursuance of a petition of qualified electors of said county as hereinafter provided; which said petition must state the name and address of a person or persons to whom notice of the insufficiency of the petition shall be sent in the event that the petition shall not have the required number of signatures of the qualified

CONSTITUTION OF THE STATE OF CALIFORNIA.

electors signed thereto. Such petition, signed by fifteen per centum of the qualified electors of said county, computed upon the total number of votes cast therein for all candidates for governor at the last preceding general election at which a governor was elected, praying for the election of a board of fifteen freeholders to prepare and propose a charter for a consolidated city and county government, with or without a system of boroughs, with combined powers of a city and a county, as in this constitution provided, may be filed in the office of the county clerk. It shall be the duty of the said county clerk, within twenty days after the filing of said petition, to examine the same, and to ascertain from the record of the registration of the electors of the county, whether said petition is signed by the requisite number of qualified electors. If required by said clerk, the board of supervisors shall authorize him to employ persons to assist him in the work of examining such petition, and the board shall provide for their compensation. Upon the completion of such examination, said clerk shall forthwith attach to said petition his certificate, properly dated, showing the results of his examination, and if, by said certificate, it shall appear that said petition is signed by the requisite number of qualified electors, said clerk shall immediately present said petition to the board of supervisors, if it be in session, otherwise at its next regular meeting after the date of such certificate. If it appear by said certificate that said petition has not the required number of signatures of the qualified electors signed thereto, the said clerk shall so notify the person or persons whose name or names are mentioned therein, to whom the notification of the insufficiency of the petition shall be sent. Whereupon the petitioners shall have thirty days from and after the date of receiving the notice of insufficiency from the clerk, to present and file additional signatures. Upon the receipt of the additional signatures, the clerk shall proceed forthwith to examine the petition of additional signatures, so that such examination shall be completed within ten days from the date of his receiving same. If it appear that the number of additional signatures added to those who have not been legally rejected upon the original petition, shall total the requisite number of qualified electors necessary as provided in this section, the clerk shall forthwith attach to said petition his certificate, properly dated, showing that said petition has been signed by the requisite number of qualified electors, and said clerk shall immediately present said petition to the board of supervisors, if it be in session, otherwise at the next regular meeting after the date of such certificate. Upon the adoption of such ordinance, or the presentation of such petition, said board of supervisors shall order the holding of a special election for the purpose of electing such board of freeholders, which said special election shall be held not less than forty days nor more than ninety days after the adoption of the ordinance aforesaid or the presentation of said petition to said board of supervisors. Candidates for election as members of said board of freeholders shall be nominated by petition, substantially in the same manner as may be provided by general law for the nomination, by petition of electors, of candidates for county offices, to be voted at general elections. The election shall be conducted and the ballots canvassed and result declared substantially as are other elections for county offices, except that there shall be only one election, and the fifteen persons receiving the highest vote shall be declared the duly elected board of freeholders. All ties shall be broken by lot.

It shall be the duty of said board of freeholders within one hundred eighty days after the result of such election shall have been declared by the board of supervisors, to prepare and propose a charter for a consolidated city and county government, and it may prescribe the existing boundary lines of the county as the territorial limits of said proposed city and county, and propose the formation of all of the incorporated cities and towns and all of the unincorporated territory within the county into a consolidated city and county government, to be governed by said charter, and to have combined powers of a city and a county, as provided in this constitution for consolidated city and county government. Or said board of freeholders may propose, in the

CONSTITUTION OF THE STATE OF CALIFORNIA.

alternative, that a lesser area than that of the whole county, to consist of those incorporated cities and towns hereinafter required to be designated and named by the board of freeholders as necessary and essential to effect consolidation, also those incorporated cities and towns, which as hereinafter provided, may by a majority vote of the qualified electors voting thereon separately, vote in favor of such consolidation, together with any unincorporated territory within the county proposed to be added, may be formed into a consolidated city and county government, to be governed by said charter, and to have combined powers of a city and a county as provided in this constitution for consolidated city and county government.

When such proposal is submitted in the alternative, the board of freeholders must designate and name as necessary and essential to effect city and county consolidation, all of the incorporated cities within the county having a population of one hundred fifty thousand inhabitants or over, as ascertained by the last preceding census taken under the authority of the congress of the United States, and no consolidation shall be effected unless, as hereinafter provided, a majority of the qualified electors, voting separately thereon in each of said designated and named incorporated cities vote in favor of such proposal.

The charter proposed shall be signed by the members of the board of freeholders, or a majority of them, and be filed, one copy in the office of the county recorder, one in the office of the county clerk, and certified copies thereof duly attested by the president and secretary of the board of freeholders shall be filed in the clerk's office of each incorporated city and town in the county. The board of freeholders shall thereupon take a recess until called together by the board of supervisors as hereinafter provided. Thereupon the board of supervisors shall cause said proposed charter to be published in at least two daily newspapers of general circulation published, printed and circulated in the county, for at least six consecutive times, and shall also cause said proposed charter to be published for at least three consecutive times in a daily newspaper of general circulation, printed, published and circulated in each of the incorporated cities and towns within the county, and if there be no daily newspaper printed, published and circulated in any of such incorporated cities and towns then once in a weekly newspaper published, printed and circulated therein; provided, however, if there be no daily or weekly newspaper published, printed and circulated in any of such incorporated cities or towns, then said publication shall be made by posting in three public places in each of said incorporated cities or towns having no such newspaper, for at least three days. All of such publication shall be completed within fifty days of the filing of the proposed charter with the county clerk. The board of supervisors shall cause to be printed in pamphlet form, at least as many copies of such proposed charter, plus an additional fifteen per cent, as there are registered electors in the county. The county clerk shall forthwith deliver to the clerk of the legislative body of each and every incorporated city or town within the county, a number of the printed copies of the proposed charter, equal at least to the number of registered electors residing in any such incorporated city or town. The county clerk shall thereupon give notice, by advertising in one and not more than two daily newspapers of general circulation published, printed and circulated in the county, and if there be a newspaper published, printed and circulated in any of such incorporated cities and towns, in one such newspaper of each said city or town, that copies of the proposed charter can be had at his office or at the office of the several city or town clerks, designating them, upon application. Upon the completion of the publication of the proposed charter as above required, and not later than fifteen days thereafter, the board of supervisors must pass an ordinance or resolution calling a separate election in each of the incorporated cities and towns within the county, for submitting the proposal for consolidation to the electors thereof. Each incorporated city or town shall be considered one separate district, and the proposal for such consolidation shall be submitted separately

CONSTITUTION OF THE STATE OF CALIFORNIA.

to the electors thereof, as hereinafter provided. The date of such election shall be fixed in the resolution or ordinance adopted by the board of supervisors, which date shall not be less than forty days nor more than ninety days from the date of the passage of such resolution or ordinance calling the election for the submission of said proposal. The separate elections held in the several cities and towns must all be held on the same day. The resolution or ordinance calling such elections shall be published for five successive days in one daily newspaper of general circulation published, printed and circulated in the county, so that the last publication shall have been completed at least five days before the date of the election. The resolution or ordinance calling such elections, shall also be published for three successive days in one daily newspaper of general circulation, published, printed and circulated in each of the incorporated cities and towns, and if there be no daily newspaper published, printed and circulated in any of such incorporated cities and towns, then twice in a weekly newspaper; provided, however, that if there be no daily or weekly newspaper published, printed and circulated in any such incorporated city or town, such publication may be made by posting in three public places in said incorporated city or town for at least three days before the date of election.

The board of supervisors must appoint election officers in the same manner and give notice of such appointment by publication, as provided by the general law for the appointment of election officers at general elections; provided, however, that the board of supervisors shall not appoint more than four election officers to each election precinct; and provided, further, that the number of precincts in each city or town comprising an election district shall not be less than the number of precincts used at the last general election. In all other respects, every such election shall be held and conducted, the returns canvassed and the result thereof declared by the board of supervisors in the same manner as provided by law for general elections.

The proposal to be submitted to the electors of each of said incorporated cities and towns shall be substantially as follows: "Shall the (herein designate by name the incorporated city or town) join with the other incorporated cities and towns within the county of (herein insert name of county) together with the unincorporated territory within the said county, and form and establish a consolidated city and county (herein insert whether it is proposed to have a system of boroughs) to be known as the city and county of (herein insert the name proposed) to be governed by the charter proposed by the board of freeholders, which charter has been filed in the office of the county clerk and duly published, said charter to take effect on (herein insert date mentioned in charter when city and county consolidation shall take effect)?" If the board of freeholders have proposed an alternative proposition, the ballot shall, in addition to the above proposal, state substantially: that if said principal proposal does not receive a majority vote of the electors, voting thereon, in all of the incorporated cities and towns within the county, but receives a majority vote of the electors, voting thereon in each of the incorporated cities within the county (naming them) which have been designated and named as the cities necessary and essential in which a favorable vote must be had to effect consolidation of an area less than the whole of the county, then the proposition of the formation and establishment of a district into a consolidated city and county, which district shall include said named incorporated cities, also other contiguous incorporated cities and towns in which a favorable vote was had on the proposition, and certain unincorporated territory (which district shall be the area described in the proposed amended charter), shall be thereafter submitted to the qualified electors of such district for their approval. Also there must be stated in such proposal such reference to taxation and bonded indebtedness and the liability therefor as is provided in the proposed charter.

If after the canvass of the votes and the declaration of the result by the board of supervisors, it appear that a majority of the electors in each of the incorporated cities

CONSTITUTION OF THE STATE OF CALIFORNIA.

and towns in the county, voting separately thereon at said election, have **voted in favor** of said proposal, the board of supervisors shall so certify such fact to the board of freeholders and set a day for the reconvening of said board of freeholders which day shall not be later than ten days after the certification by the board of supervisors. The board of freeholders shall enter the certificate of the board of supervisors in its minutes and shall have no power to change or alter in any manner any of the provisions of the charter as heretofore prepared and published. It shall thereupon adjourn.

Whereupon the said proposed charter shall be submitted by said board of supervisors to the qualified electors of the whole of said county at a special election to be held not less than thirty nor more than sixty days after the adjournment of the board of freeholders, or if there be a general election held within ninety days **after the adjournment** of the said board of freeholders, then at such general election.

If a majority of the qualified electors voting thereon in the county, **at such special** or general election, shall vote in favor of such proposed charter, it shall be deemed to be ratified, and shall be forthwith submitted to the legislature, if it be in session, otherwise at its next regular or special session, for its approval or rejection as a whole, without power of alteration or amendment. Such approval may be by concurrent resolution, and if approved by a majority vote of the members elected to each house, such charter shall become the charter of such consolidated city and county and shall become the organic law thereof relative to matters therein provided, and shall supersede any existing municipal charter of the cities within the county and all amendments thereof and shall supersede all laws inconsistent with such charter relative to matters provided in such charter.

If it appear, after a canvass of the votes by the board of supervisors, that the proposal has not received a favorable vote in all of the incorporated cities and towns within the county, and the proposal submitted shall have provided in the alternative that a lesser territory than that of the whole, not less than the incorporated cities designated and set forth in the proposal as necessary and essential to effect consolidation, may form and establish a consolidated city and county government, and a majority of the electors in each of the said incorporated cities designated as necessary and essential to effect consolidation have voted in favor of such proposal, the board of supervisors shall so certify the fact to the board of freeholders, and also certify all other incorporated cities or towns in which a majority of the electors have voted in favor of such proposal. The board of freeholders shall, within fifteen days thereafter, reconvene and meet upon a day to be fixed by the board of supervisors, and shall proceed to rearrange and define the boundaries for the proposed new city and county, including therein all of the incorporated cities certified by the board of supervisors, in which a majority of the electors have voted in favor thereof, and which by the terms of the proposal were designated as necessary and essential to effect consolidation. The board of freeholders must also include in the boundaries for the new proposed city and county any incorporated city or town having a population of less than ten thousand inhabitants, as ascertained by the last preceding census taken under the authority of the congress of the United States, which, if such new proposed city and county is formed, would be surrounded by such area proposed to be formed into a city and county, or which is contiguous thereto and not contiguous to the largest area of the remainder of the original county from which the proposed city and county proposes to separate, notwithstanding that the result of the election in any such incorporated city or town as shown by the canvass of the votes of the board of supervisors, was unfavorable thereto. The board of freeholders may also include in the boundaries of the proposed new city and county, other incorporated cities or towns, not designated and named as necessary and essential to effect consolidation, but in each of which a majority of the electors have voted in favor of such proposal, together with such unincorporated

CONSTITUTION OF THE STATE OF CALIFORNIA.

rated territory within the county as it may desire, the whole to form one compact area, no part of which shall be disconnected from the remainder thereof.

No amendment or changes in the provisions or sections of the proposed charter as originally prepared, published and filed in the office of the county clerk, shall be made by the board of freeholders at its second session, except as herein provided. The board of freeholders at its second session, shall have power to change the territorial limits or boundaries in such charter as hereinbefore provided. It shall also have power to change the number, by reduction thereof, of boroughs and of the councilmanic or supervisorial districts and the number of councilmen or supervisors to be elected, and to rearrange and number said districts to conform to the area to be formed into a city and county, except that boroughs previously established by the charter, if their territory is within the area of the proposed city and county shall not be changed. It may also provide a lesser salary to be paid to any officer of the proposed city and county, if such salary is stated and fixed by the original proposed charter, and it may correct any mistake or clerical or typographical errors.

The board of freeholders shall complete its labors, as above required, within ten days after the date fixed by the board of supervisors for its second meeting unless given an additional ten days time by said board of supervisors. Within said ten days and not later than twenty days, if such time has been extended, the members of the board of freeholders, or a majority thereof, shall sign the proposed charter as amended, and file one copy thereof in the county recorder's office and two copies in the county clerk's office, one of which copies shall thereafter be filed by the county clerk, in the archives of the new city and county government, when the charter shall have been approved by the legislature.

The provisions of section two of this article, and also those provisions of section three of this article which refer to the passing of any county line within five miles of the exterior boundary of a city or town in which a county seat of any county proposed to be divided is situated, shall not apply to the formation of such consolidated cities and counties, nor to the formation of new counties or of any city and county as herein specified under any of the provisions of this section.

Within ten days after the filing of the proposed charter, as amended by the board of freeholders, with the county clerk, the whole area of the proposed new city and county shall, by resolution of the board of supervisors, be created into a district, for the purpose of submitting the proposed charter, as amended, to the electors thereof, for their approval. The question of the adoption of the proposed charter as amended, shall be submitted to the electors of the whole of the area proposed to be formed into a consolidated city and county as one proposal.

The board of supervisors shall forthwith, and not later than twenty days from the date of the resolution creating said district, pass an ordinance or resolution calling an election in the whole county, for the purpose of submitting the question of the consent of the electors of the whole county to the separation, of the district proposed in the charter, from the original county, and for the purpose of submitting the question of the adoption of the proposed charter to the electors residing within the district created, or the proposed territory described in the charter as amended, as the territorial boundaries of the proposed new city and county.

Both propositions or proposals shall be submitted at one election, as hereinafter provided. The date of such election shall be fixed in the resolution or ordinance calling such election, which date shall not be less than twenty days nor more than sixty days from the date of the passage of the resolution or ordinance calling such election.

The resolution or ordinance calling such election shall be published for five consecutive days in not less than two daily newspapers, if there be two, if not, in one daily newspaper of general circulation published, printed and circulated in the county; or

if there be no such daily newspapers, then twice in at least one weekly newspaper published, printed and circulated in the county. Such resolution or ordinance shall also be published for a like time in at least one daily newspaper of general circulation published, printed and circulated within the area or territory proposed to be formed into a consolidated city and county.

The amended sections of the charter shall also be published for three consecutive days in at least one daily newspaper published, printed and circulated in the county, and if there be no daily newspaper published, printed and circulated in the county, then twice in a weekly newspaper published, printed and circulated in the county. Such amended sections of the charter shall likewise be published in at least one daily newspaper published, printed and circulated within the area or district proposed to be formed into a city and county, and if there be no such daily newspaper then twice in a weekly newspaper published, printed and circulated in such area.

The board of supervisors must appoint election officers in the same manner, and give notice of such appointment by publication, as provided by the general law for the appointment of election officers at general elections, except that no more than four election officers shall be appointed to each election precinct. In all other respects, every such election shall be conducted, the returns canvassed and the result declared by the board of supervisors in the same manner as provided by law for general elections.

The proposal to be submitted to the electors of the whole of the county and the proposals to be submitted to the electors of the district or area described in the charter as the territorial boundaries of the proposed new city and county, shall be as follows:

In the county outside of the district or area described in the charter as the territorial boundaries of the new consolidated city and county, the only proposal to be submitted to the electors thereof shall be substantially as follows:

“Shall the incorporated cities and towns (herein name them) and the unincorporated territory (if any) herein describe the unincorporated territory) be permitted to separate from (herein name the county) and establish a consolidated city and county to be known as (herein insert name of new county) the separation to take effect on (herein name date fixed in the proposed charter for the taking effect of the new city and county government) ?”

In the district created by the resolution of the board of supervisors, which shall be the area described in the amended proposed charter, the same proposal as above shall be submitted to the electors, and also shall be submitted separately the question of the establishing of the area into a new consolidated city and county and the approval and ratification of such charter, substantially in the following form: “Shall the (herein describe the territory as described in the proposed amended charter) consolidate and be formed and established into a city and county government to be known as (herein state name of city and county) (herein state whether there shall be a system of boroughs) and shall the charter prepared, published and filed in the office of the county clerk on (herein state the date upon which the amended charter as to boundaries was filed) be adopted as the charter of the consolidated city and county, to take effect (herein state date mentioned in the charter when the consolidation shall take effect) ?” Also may be stated in this proposal such reference to taxation and bonded indebtedness and the liability therefor as provided in the proposed charter.

Upon consent to the separation of such district being given by a majority of the qualified electors, voting thereon, at such election, in the whole of the county, and upon the approval and ratification of such charter by a majority of the qualified electors voting thereon in the district or area which is to be formed into a consolidated city and county, and by the approval of said charter by the legislature, as hereinbefore provided in this section for the submission of the charter to the legislature when the whole of the county is to be formed into a consolidated city and county, said charter

CONSTITUTION OF THE STATE OF CALIFORNIA.

shall be deemed adopted, and upon the date fixed in said charter such district shall be and become one consolidated city and county, and the charter shall become the organic law thereof relative to matters therein provided, and shall supersede any existing municipal charter of the cities consolidated by it, and shall likewise supersede all laws inconsistent with such charter relative to matters provided in such charter.

It shall be competent, in any charter, or amendment thereof, framed under the authority given by this section, to provide in addition to those provisions allowable by the constitution and laws of the state as follows:

1. For the merging and consolidating the cities and county into one municipal government with one set of officers; for the establishment of a borough system of government for the whole or any part of the territory of said city and county, by which one or more districts may be created therein, which districts may be known as boroughs and shall exercise such municipal powers as may be granted by such charter, and for the organization, constitution, regulation, government and jurisdiction of such boroughs, which organization, constitution, regulation, government and jurisdiction may provide for rural districts, with different powers and organization, constitution, regulation, government and jurisdiction from other boroughs; provided, that in the event of such establishment or creation of a borough or boroughs, as hereinabove permitted, the boundaries thereof shall never afterwards be changed or altered, nor shall the governmental rights, powers or jurisdiction of any such borough or boroughs be thereafter limited, extended, modified or taken away, unless and until the borough or boroughs affected by such proposed change or alteration of boundaries, or by the proposed limitation, extension, modification or taking away of governmental rights, powers or jurisdiction, as the case may be, shall each have consented thereto, by the vote of a majority of the electors in each and every such borough voting at an election or elections called and held for such purpose in each of the boroughs so affected.

2. For the consolidation and merging of school and high school and union high school districts into one or more school, high school and union high school district within the city and county, to be governed by one board of education and one school superintendent, and may provide separate organization, constitution, regulation, government and jurisdiction and powers for rural school districts, if any are established.

3. For the constitution, regulation, government and jurisdiction of police courts, and for the manner in which, the times at which, and the terms for which the judges of such courts shall be elected or appointed, and for the qualifications and compensation of said judges and of their clerks and attaches; and for the establishment, constitution, regulation, government and jurisdiction of municipal courts with such civil and criminal jurisdiction as by law may be conferred upon inferior courts; and for the manner in which, the time at which, and the terms for which the judges of such courts shall be elected or appointed, and for the qualifications and compensation of said judges and of their clerks and attaches; provided, such municipal courts shall never be deprived of the jurisdiction given inferior courts created by general law; provided, that in any city and county, when such municipal court has been established, there shall be no other court inferior to the superior court; and pending actions, trials, and all pending business of inferior courts within the territory of such city or city and county, upon the establishment of any such municipal court, shall be and become pending in such municipal court, and all records of such inferior court shall thereupon be and become the records of such municipal court.

4. For the manner in which, the times at which, and the terms for which the members of the board of education or boards shall be elected or appointed, for the qualifications, compensation and removal, and for the number which shall constitute any one of such boards.

CONSTITUTION OF THE STATE OF CALIFORNIA.

5. For the manner in which, the times at which, and the terms for which the members of the board or boards of police commissioners shall be elected or appointed; and for the constitution, regulation, compensation, and government of such boards and of the municipal police force.

6. For the manner in which and the times at which any municipal election, or borough election shall be held and the result thereof determined; and for manner in which, the times at which, and the terms for which the members of all boards of election shall be elected or appointed, and for the constitution, regulation, compensation and government of such boards, and of their clerks and attaches, and for all expenses incident to the holding of any election.

It shall be competent in any charter framed in accordance with the provisions of this section, for any consolidated city and county, and plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, for the powers and duties of all county, city and county, municipal and borough officers; for the manner in which, the method by which, and the terms for which the several county, city and county, municipal and borough officers, except judges of the superior court shall be elected or appointed, and for their recall and removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the powers and duties, compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees.

7. It shall be competent in any charter, or amendment thereto, framed in accordance with the provisions of this section, to provide that the city and county may make and enforce all laws and regulations, and exercise all rights and powers in respect to municipal affairs and municipal officers, and shall have all powers and rights appropriate to a county, city, and city and county subject only to the restrictions and limitations provided in such charter.

Any charter framed under the provisions of this section, which charter provides for the formation of the whole territory of the county into a consolidated city and county, may provide for the termination of the tenure of office of all county officers elected after the adoption of such charter by the electors of such county and prior to the approval of such charter by the legislature.

8. No property in any city or town or territory hereinafter consolidated into a city and county shall be taxed for the payment of any indebtedness outstanding at the time the charter takes effect and for the payment of which indebtedness the property in such city or town or territory was not, prior to the taking effect of such charter, subject to such taxation, unless there shall have been submitted to the qualified electors of such city or town or territory, at the separate election submitting the proposal in the first instance to join, the proposition regarding the assumption of such indebtedness as hereinbefore set forth and the same shall have been approved by a majority of such electors voting thereon.

In all cases of consolidation of two or more incorporated cities and towns, or of one or more incorporated cities or towns within unincorporated territory, into a city and county, assumption of existing bonded indebtedness by such city or town or by such unincorporated territory or by either of the cities and towns so consolidating may be made by a majority of the qualified electors voting thereon in the territory or city or town which shall assume an existing bonded indebtedness, and the provisions of section eighteen of this article shall not be a prohibition thereof.

Every city and county which shall be formed, under the provisions of this section, of territory which shall have been taken from the original county, shall be liable for a just proportion of the debts and liabilities and be entitled to a just proportion of the property and assets of such county existing at the time of such separation.

CONSTITUTION OF THE STATE OF CALIFORNIA.

If the population in the territory formed into a city and county, by separation from the original county, is equal to or greater in number than two-thirds of the population of the whole of the original county at the time of the formation of such city and county, the city and county so formed and separating itself from the original county, shall be entitled to the original records and books of the original county, upon supplying to the original county certified copies of all records, documents and books properly bound and indexed, which affects or may affect the property of the remaining portion of the original county, or which it may in the future have occasion to refer to; and such certified copies so furnished and certified by the county clerk if the copies are issued from his office, and by the recorder if issued from his office, or by any other officer of the county if they be copies of records in his office, shall be competent evidence in any court proceeding or action which may thereafter be commenced.

The legislature of the state may enact such general laws as may be necessary to carry out the provisions of subdivision eight of this section.

If by the formation of a city and county, under the provisions of this section, any territory whether incorporated or unincorporated is separated from the original county, and by such separation, any of the elective officers of the original county, have by reason of such separation ceased to be residents or electors of the original county, such elective officers shall continue to serve, and be charged with all of the powers and duties of the office to which they were elected, until the expiration of the term for which they were elected, and their salaries shall be paid, by both the new city and county and the remaining portion of the original county, in proportion and in the ratio as the population of each bears to the whole population of the original county.

If under the provisions of this section, any city and county is formed which does not include the whole of the original county, and by reason of the separation of the territory comprising the new city and county, any incorporated city or town or any unincorporated territory is separated from the largest area of the remainder of the county, by reason of its exterior boundary not being contiguous thereto, the legislature shall provide for the transfer of such portion or portions to an adjoining county or counties whose exterior boundary or boundaries may be contiguous thereto, or it may transfer such portion or portions to the new consolidated city and county; *provided, however*, if there be formed and established under the provisions of this section, a consolidated city and county government of a lesser area than that of the whole county, and there be any incorporated city having a population of forty thousand inhabitants or over, within the county, as ascertained by the last preceding census taken under the authority of the congress of the United States, which is not included therein, or if by the formation and establishment of any lesser area than that of the whole county into a consolidated city and county, any such incorporated city having such population is separated and detached from the largest area of the remainder of the original county, by reason of its exterior boundaries not being contiguous thereto, then such incorporated city, together with all other incorporated cities or towns or unincorporated territory in such original county, which if said new city and county is formed and established would likewise be so separated and detached, and which are contiguous to each other and form one compact area, may organize and establish a consolidated city and county government for the whole of such detached territory under the provisions of section eight of this article, by adopting a freeholders charter in accordance with the provisions of said section, and to have all of the powers conferred by said section; except, that for the purpose of the election of the members of the board of freeholders, and the organization and establishment of such consolidated city and county government, the whole of such detached area proposed to be formed into such consolidated city and county, shall be treated and considered as a city, within the meaning of section eight of this article; and except that all elections thereunder and all proceedings for the adoption of such charter shall be initiated and conducted by the governing body of the incorporated city having the largest population in such detached area. Such charter may be submitted to the electors within the area of the detached territory, for their approval, at any time subsequent to the adoption of the charter prepared by the freeholders elected by the electors of the whole of the original

CONSTITUTION OF THE STATE OF CALIFORNIA.

county, but the same shall not be ratified by the legislature of this state until after the ratification by the legislature of the charter adopted in the first instance, which provided for the formation of a lesser territory than that of the whole county into a consolidated city and county government.

If under the provisions of this section any city and county is formed, which does not include the whole of the area of the original county from which it is permitted to separate, and any remainder of the county is not transferred to another county as in this section provided, but is to continue as a county, the governor of the state shall designate and assign, from among the judges of the superior court of the original county in office at the time of the taking effect of the new city and county government, as many judges as the ratio of the population contained in the area formed by the new city and county bears to the population of the whole of the original county at the time of the approval of the charter by the legislature, and the judges so assigned shall be and become the judges of the superior court of the new city and county, to hold office during the term for which each of them shall have been elected.

Upon the approval by the legislature of any charter framed under the provisions of this section, which charter provides for the separation of any new city and county from the original county, the board of supervisors of the original county, shall, at the time and in the manner set forth in such charter so approved, pass an ordinance calling an election in the area which is consolidated into a city and county, for the purpose of nominating and electing the first officers thereunder. Said board of supervisors shall canvass the votes and declare the result of such election. The county clerk or other officer having charge of registration of electors shall furnish to the district or city and county so consolidated, the voting list and precinct registers of all the electors residing in the area of the territory wherein the election is to be held.

The provisions of this constitution applicable to cities, and cities and counties, and also applicable to counties, so far as not inconsistent or prohibited to cities or cities and counties, except in the method of procedure of calling elections for the election of freeholders and the submission of the question of the formation of a consolidated city and county, shall be applicable to such consolidated city and county.

Any charter framed under the provisions of this section may be amended as provided in section eight of article eleven of this constitution.

Nothing in this section shall be construed to repeal or alter in any way the provisions of section eight and one-half of article eleven of this constitution, providing a different method and procedure for the formation of cities and counties, wherein the initiative is taken by a city or city and county. Nor shall the provisions of this section apply to any consolidated city and county, organized as such at the time this section takes effect; nor shall the provisions of this section apply to any county, which at the time this section takes effect, had adopted a freeholders charter, and was organized and operating under such freeholders charter. The legislature shall enact such general or special laws as may be necessary to carry out the provisions of this section and such general special laws, as may be necessary to effect city and county consolidation thereunder, or as may be necessary to provide for any period after such consolidation, by reason of the separation from the original county of such consolidated city and county, or to provide for the government of the remainder of the original county from which separation was had. [Amendment adopted November 5, 1918.]

SEC. 8. Any city or city and county containing a population of more than three thousand five hundred inhabitants, as ascertained by the last preceding census taken under the authority of the congress of the United States or of the legislature of California, may frame a charter for its own government, consistent with and subject to this constitution; and any city, or city and county having adopted a charter may adopt a new one. Any such charter shall be framed by a board of fifteen freeholders chosen by the electors of such city at any general or special election, but no person shall be eligible as a candidate for such board unless he shall have been, for the five years next preceding, an elector of said city. An election for choosing freeholders may be called by a two-thirds vote of the legislative body of such city, and, on presentation of a petition signed by not less than fifteen per cent of the registered electors of such city, the legislative body shall call such election at any time not less than thirty nor more than sixty days from date of the filing of the petition. Any such petition shall be verified by the authority having charge of the registration records of such city or city and

county and the expenses of such verification shall be provided by the legislative body thereof. Candidates for the office of freeholders shall be nominated either in such manner as may be provided for the nomination of officers of the municipal government or by petition, substantially in the same manner as may be provided by general laws for the nomination by petition of electors of candidates for public offices to be voted for at general elections. The board of freeholders shall, within one hundred and twenty days after the result of the election is declared, prepare and propose a charter for the government of such city; but the said period of one hundred and twenty days may with the consent of the legislative body of such city be extended by such board not exceeding a total of sixty days. The charter so prepared shall be signed by a majority of the board of freeholders and filed in the office of the clerk of the legislative body of said city. The legislative body of said city shall within fifteen days after such filing cause such charter to be published once in the official paper of said city; (or in case there be no such paper, in a paper of general circulation); and shall cause copies of such charter to be printed in convenient pamphlet form, and shall, until the date fixed for the election upon such charter, advertise in one or more papers of general circulation published in said city a notice that such copies may be had upon application therefor. Such charter shall be submitted to the electors of such city at a date to be fixed by the board of freeholders, before such filing and designated on such charter, either at a special election held not less than sixty days from the completion of the publication of such charter as above provided, or at the general election next following the expiration of said sixty days. If a majority of the qualified voters voting thereon at such general or special election shall vote in favor of such proposed charter, it shall be deemed to be ratified, and shall be submitted to the legislature, if then in session, or at the next regular or special session of the legislature. The legislature shall by concurrent resolution approve or reject such charter as a whole, without power of alteration or amendment; and if approved by a majority of the members elected to each house it shall become the organic law of such city or city and county, and supersede any existing charter and all laws inconsistent therewith. One copy of the charter so ratified and approved shall be filed with the secretary of state, one with the recorder of the county in which such city is located, and one in the archives of the city; and thereafter the court shall take judicial notice of the provisions of such charter. The charter of any city or city and county may be amended by proposals therefor submitted by the legislative body of the city on its own motion or in petition signed by fifteen per cent of the registered electors, or both. Such proposals shall be submitted to the electors only during the six months next preceding a regular session of the legislature or thereafter and before the final adjournment of that session and at either a special election called for that purpose or at any general or special election. Petitions for the submission of any amendment shall be filed with the legislative body of the city or city and county not less than sixty days prior to the general election next preceding a regular session of the legislature. The signatures on such petitions shall be verified by the authority having charge of the registration records of such city or city and county, and the expenses of such verification shall be provided by the legislative body thereof. If such petitions have a sufficient number of signatures the legislative body of the city or city and county shall so submit the amendment or amendments so proposed to the electors. Amendments proposed by the legislative body and amendments proposed by petition of the electors may be submitted at the same election. The amendments so submitted shall be advertised in the same manner as herein provided for the advertisement of a proposed charter, and the election thereon held at a date to be fixed by the legislative body of such city, not less than forty and not more than sixty days after the completion of the advertising in the official paper. If a majority of the qualified voters voting on any such amendment vote in favor thereof it shall be deemed ratified, and shall be submitted to the legislature at the regular session next following such election; and approved or rejected without power of alteration in the same manner as herein provided for the approval or rejection of a charter. In submitting any such charter or amendment separate propositions, whether alternative or conflicting, or one included within the other, may be submitted at the same time to be voted on by the electors separately, and, as between those so related, if more than one receive a majority of the votes, the proposition receiving the larger number of votes shall control as to all matters in conflict. It shall be competent in any charter framed under the authority of

this section to provide that the municipality governed thereunder may make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. It shall be competent in any charter to provide for the division of the city or city and county governed thereby into boroughs or districts, and to provide that each such borough or district may exercise such general or special municipal powers, and to be administered in such manner, as may be provided for each such borough or district in the charter of the city or city and county.

The percentages of the registered electors herein required for the election of freeholders or the submission of amendments to charters shall be calculated upon the total vote cast in the city or city and county at the last preceding general state election; and the qualified electors shall be those whose names appear upon the registration records of the same or preceding year. The election laws of such city or city and county shall, so far as practicable, govern all elections held under the authority of this section. [Amendment adopted November 3, 1914.]

SEC. 8a. The charter of the city and county of San Francisco may be amended, in addition to the method and the times provided in section eight of article XI of the Constitution, in the following particulars:

(a) Authorizing the city and county of San Francisco, a municipal corporation, by its legislative authority, to incur a bonded indebtedness in an amount not exceeding five million dollars, and to issue municipal bonds therefor, and to grant and turn over to the Panama-Pacific International Exposition Company (a corporation organized under the laws of the state of California March 22, 1910) the proceeds of said bonds, the same to be used and disbursed by said exposition company for the purpose of an exposition to be held in the city and county of San Francisco to celebrate the completion of the Panama canal; said bonds, so issued, to be of such form and to be redeemable, registered and converted in such manner and amounts, and at such times not later than forty years from the date of their issue, as such legislative authority shall determine; the interest on said bonds to not exceed five per centum per annum, and said bonds to be exempt from all taxes for state and municipal purposes, and to be sold for not less than par at such times and places, and in such manner, as shall be determined by said legislative authority; the proceeds of said bonds, when sold, to be payable immediately by the treasurer of said city and county to the treasurer of said Panama-Pacific International Exposition Company, upon the demand of said treasurer of said exposition company, without the necessity of the approval of such demand by other authority, the same to be used and disbursed by said Panama-Pacific International Exposition Company for the purposes of such exposition, under the direction and control of such exposition company;

(b) Providing that any bonded indebtedness incurred for the purposes aforesaid shall be exclusive of the bonded indebtedness of the said city and county limited by section nine of article XII of said charter;

(c) Granting to said Panama-Pacific International Exposition Company the exclusive possession and use, together with the management and control, of that portion of Golden Gate Park in the city and county of San Francisco westerly from Twentieth avenue, as extended, for such exposition purposes, such possession and use, also management and control, to terminate not later than one year after the closing of such exposition;

(d) Granting to said Panama-Pacific International Exposition Company the exclusive possession and use, together with the management and control, for such exposition purposes, of any lands held by the board of education of the city and county of San Francisco, and by the city and county of San Francisco, not in actual use, such possession and use, also management and control, to terminate not later than one year after the closing of such exposition;

(e) Authorizing said Panama-Pacific International Exposition Company to temporarily close streets in the city and county of San Francisco westerly from Twentieth avenue, for such exposition purposes, and to have the exclusive possession and use, together with the management and control, of said streets for such exposition purposes, such possession and use, also management and control of said streets, to terminate not later than one year after the closing of such exposition.

CONSTITUTION OF THE STATE OF CALIFORNIA.

Proposals to amend the charter of the city and county of San Francisco in the foregoing particulars may be submitted by the legislative authority of said city and county to the electors of said city and county, at any general or special election (and a special election may be called therefor) held in said city and county, after the publication of such proposals in a newspaper of general circulation in said city and county, for such time as shall be determined by said legislative authority. Upon the ratification of any such proposed amendment by a majority of the electors of said city and county voting at such election on such proposed amendment, said proposed amendment receiving such majority vote shall become operative immediately as an amendment to said charter, without the necessity of approval thereof by the legislature.

Any act of the legislative authority of the city and county of San Francisco, in submitting to the electors of said city and county, at any general or special election, proposals to amend the charter of said city and county in the foregoing particulars, including any notice by publication or otherwise of such proposals, and of such election, and the holding of such election, in accordance with the provisions hereof, before the adoption of this amendment, are hereby validated in all respects as if performed subsequent to the adoption of this amendment. The disbursement of all funds obtained from said bonds shall be accounted for by said Panama-Pacific International Exposition Company by an itemized statement thereof to be filed with the auditor of the city and county of San Francisco. [New section adopted November 8, 1910.]

SEC. 8½. It shall be competent, in all charters framed under the authority given by section eight of this article, to provide, in addition to those provisions allowable by this constitution, and by the laws of the state as follows:

1. For the constitution, regulation, government, and jurisdiction of police courts, and for the manner in which, the times at which, and the terms for which the judges of such courts shall be elected or appointed, and for the qualifications and compensation of said judges and of their clerks and attaches; and for the establishment, constitution, regulation, government and jurisdiction of municipal courts and judges thereof, with such civil, criminal, and magisterial jurisdiction as by law may be conferred upon inferior courts and judges thereof; and for the manner in which, the times at which and the terms for which the judges of such courts shall be elected or appointed, and for the qualifications and compensation of said judges and of their clerks and attaches; *provided*, such municipal courts shall never be deprived of the jurisdiction given inferior courts created by general law.

In any city or any city and county, when such municipal court has been established, there shall be no other court inferior to the superior court; and pending actions, trials, and all pending business of inferior courts within the territory of such city or city and county, upon the establishment of any such municipal court, shall be and become pending in such municipal court, and all records of such inferior courts shall thereupon be and become the records of such municipal court.

2. For the manner in which, the times at which, and the terms for which the members of boards of education shall be elected or appointed, for their qualifications, compensation and removal, and for the number which shall constitute any one of such boards.

3. For the manner in which, the times at which and the terms for which the members of the boards of police commissioners shall be elected or appointed; and for the constitution, regulation, compensation, and government of such boards and of the municipal police force.

4. For the manner in which and the times at which any municipal election shall be held and the result thereof determined; for the manner in which, the times at which, and the terms for which the members of all boards of election shall be elected or appointed, and for the constitution, regulation, compensation and government of such boards, and of their clerks and attaches, and for all expenses incident to the holding of any election.

It shall be competent in any charter framed in accordance with the provisions of this section, or section eight of this article, for any city or consolidated city and county, and plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several county and municipal officers and employees whose compensation is paid by such city or city and county, excepting judges of the superior court, shall be elected or appointed, and for their recall and removal, and for their compensation,

CONSTITUTION OF THE STATE OF CALIFORNIA.

and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees. All provisions of any charter of any such city or consolidated city and county, heretofore adopted, and amendments thereto, which are in accordance herewith, are hereby confirmed and declared valid.

5. It shall be competent in any charter or amendment thereof, which shall hereafter be framed under the authority given by section eight of this article, by any city having a population in excess of fifty thousand ascertained as prescribed by said section eight, to provide for the separation of said city from the county of which it has theretofore been a part and the formation of said city into a consolidated city and county to be governed by such charter, and to have combined powers of a city and county, as provided in this constitution for consolidated city and county government, and further to prescribe in said charter the date for the beginning of the official existence of said consolidated city and county.

It shall also be competent for any such city, not having already consolidated as a city and county to hereafter frame, in the manner prescribed in section eight of this article, a charter providing for a city and county government, in which charter there shall be prescribed territorial boundaries which may include contiguous territory not included in such city, which territory, however, must be included in the county within which such city is located.

If no additional territory is proposed to be added, then, upon the consent to the separation of any such city from the county in which it is located, being given by a majority of the qualified electors voting thereon in such county and upon the ratification of such charter by a majority of the qualified electors voting thereon in such city, and the approval thereof by the legislature, as prescribed in section eight of this article, said charter shall be deemed adopted and upon the date fixed therein said city shall be and become a consolidated city and county.

If additional territory which consists wholly of only one incorporated city or town, or which consists wholly of unincorporated territory, is proposed to be added, then, upon the consent to such separation of such territory and of the city initiating the consolidation proposal being given by a majority of the qualified electors voting thereon in the county in which the city proposing such separation is located, and upon the ratification of such charter by a majority of the qualified electors voting thereon in such city so proposing the separation, and also upon the approval of the proposal hereinafter set forth, by a majority of the qualified electors voting thereon in the whole of such additional territory, and the approval of said charter by the legislature, as prescribed in section eight of this article, said charter shall be deemed adopted, the indebtedness hereinafter referred to shall be deemed to have been assumed, and upon the date fixed in said charter such territory and such city shall be and become one consolidated city and county.

The proposal to be submitted to the territory proposed to be added shall be substantially in the following form and submitted as one indivisible question:

“Shall the territory (herein designate in general terms the territory to be added) consolidate with the city of (herein insert the name of the city initiating the proposition to form a city and county government) in a consolidated city and county government, and shall the charter as prepared by the city of (herein insert the name of the city initiating such proposition) be adopted as the charter of the consolidated city and county, and shall the said added territory become subject to taxation along with the entire territory of the proposed city and county, in accordance with the assessable valuation of the property of the said territory, for the following indebtedness of said city (herein insert name of the city initiating such proposition) to wit: (herein insert in general terms reference to any debts to be assumed, and if none insert ‘none’)?”

If additional territory is proposed to be added, which includes unincorporated territory and one or more incorporated cities or towns, or which includes more than one incorporated city or town, the consent of any such incorporated city or town shall be obtained by a majority vote of the qualified electors thereof voting upon a proposal substantially as follows:

“Shall (herein insert the name of the city or town to be included in such additional territory) be included in a district to be hereafter defined by the city of (herein insert the name of the city initiating the proposition to form a city and county government) which district shall, within two years from the date of this election, vote upon a proposal submitted as one

CONSTITUTION OF THE STATE OF CALIFORNIA.

indivisible question that such district to be then described and set forth shall consolidate with (herein insert name of the city initiating said consolidation proposition) in a consolidated city and county government, and also that a certain charter, to be prepared by the city of (herein insert name of the city initiating such proposition) be adopted as the charter of such consolidated city and county, and that such district become subject to taxation along with the entire territory of the proposed city and county in accordance with the assessable valuation of the property of said district for the following indebtedness of said city of (herein insert name of the city initiating such proposition) to wit: (herein insert in general terms, reference to any debts to be assumed and if none insert 'none')?"

Any and all incorporated cities or towns to which the foregoing proposal shall have been submitted and a majority of whose qualified electors voting thereon shall have voted in favor thereof, together with such unincorporated territory as the city initiating such consolidation proposal may desire to have included, the whole to form an area contiguous to said city, shall be created into a district by such city, and the proposal substantially as above prescribed to be used when the territory proposed to be added consists wholly of only one incorporated city or town, or wholly of unincorporated territory, shall, within two years, be submitted to the voters of said entire district as one indivisible question.

Upon consent to the separation of such district and of the city initiating the consolidation proposal being given by a majority of the qualified electors voting thereon in the county in which the city proposing such separation is located, and upon the ratification of such charter by a majority of the qualified electors voting thereon in such city, and upon the approval of the proposal hereinbefore set forth by a majority of the qualified electors voting thereon in the whole of said district so proposed to be added, and upon the approval of said charter by the legislature, as prescribed in section eight of this article, said charter shall be deemed adopted, the said indebtedness referred to in said proposal shall be deemed to have been assumed, and upon the date fixed in said charter, such district and such city shall be and become one consolidated city and county.

6. It shall be competent for any consolidated city and county now existing, or which shall hereafter be organized, to annex territory contiguous to such consolidated city and county, unincorporated or otherwise, whether situated wholly in one county, or parts thereof be situate in different counties, said annexed territory to be an integral part of such city and county; *provided*, that such annexation of territory shall only include any part of the territory which was at the time of the original consolidation of the annexing city and county, within the county from which such annexing city and county was formed, together with territory which was concurrently, or has since such consolidation been joined in a county government with the area of the original county not included in such consolidated city and county.

If additional territory, which consists wholly of only one incorporated city, city and county or town, or which consists wholly of unincorporated territory, is proposed to be annexed to any consolidated city and county now existing or which shall hereafter be organized, then, upon the consent to any such annexation being given by a majority of the qualified electors voting thereon in any county or counties in which any such additional territory is located, and upon the approval of such annexation proposal by a majority of the qualified electors voting thereon in such city and county, and also upon the approval of the proposal hereinafter set forth by a majority of the qualified electors voting thereon in the whole of such territory proposed to be annexed, the indebtedness hereinafter referred to shall be deemed to have been assumed, and at the time stated in such proposal, such additional territory and such city and county shall be and become one consolidated city and county, to be governed by the charter of the city and county proposing such annexation and any subsequent amendment thereto.

The proposal to be submitted to the territory proposed to be annexed, shall be substantially in the following form and submitted as one indivisible question:

"Shall the territory (herein designate in general terms the territory to be annexed) consolidate with the city and county of (herein insert the name of the city and county initiating the annexation proposal) in a consolidated city and county government, said consolidation to take effect (herein insert date when such consolidation shall take effect) and shall the said

CONSTITUTION OF THE STATE OF CALIFORNIA.

annexed territory become subject to taxation, as an integral part of the city and county so formed, in accordance with the assessable valuation of property of said territory for the following indebtedness of said city and county of (herein insert name of the city and county) to-wit: (herein insert in general terms, reference to any debts to be assumed and if none insert 'none')?"

If additional territory including unincorporated territory and one or more incorporated cities, cities and counties, or towns, or including more than one incorporated city, city and county, or town, is proposed to be annexed to any consolidated city and county now existing or which shall hereafter be organized, the consent of each such incorporated city, city and county, or town, shall be obtained by a majority vote of the qualified electors of any such incorporated city, city and county, or town, voting upon a proposal substantially as follows:

"Shall (herein insert name of the city, city and county, or town, to be included in such annexed territory) be included in a district to be hereafter defined by the city and county of (herein insert the name of the city and county initiating the annexation proposal) which district shall within two years from the date of this election vote upon a proposal submitted as one indivisible question, that such district to be then described and set forth shall consolidate with (herein insert name of the city and county initiating the annexation proposal) in a consolidated city and county government, and that such district become subject to taxation, along with the entire territory of the proposed city and county in accordance with the assessable valuation of the property of said district for the following indebtedness of said city and county of (herein insert name of the city and county initiating the annexation proposal) to wit: (herein insert in general terms, reference to any debts to be assumed and if none insert 'none')?"

Any and all incorporated cities, cities and counties, or towns, to which the foregoing proposal shall have been submitted, and a majority of whose qualified electors voting thereon shall have voted in favor thereof, together with such unincorporated territory as the city and county initiating such annexation proposal may desire to have included, the whole to form an area contiguous to said city and county, shall be created into a district by said city and county, and the proposal substantially in the form above set forth to be used when the territory proposed to be added consists wholly of only one incorporated city, city and county, or town, or wholly of unincorporated territory, shall, within said two years, be submitted to the voters of said entire district as one indivisible question.

Upon consent to any such annexation being given by a majority of the qualified electors voting thereon in any county or counties in which any such territory proposed to be annexed to said city and county is located, and upon the approval of any such annexation proposal by a majority of the qualified electors voting thereon in such city and county proposing such annexation, and also upon the approval of the proposal hereinbefore set forth by a majority of the qualified electors voting thereon in the whole of the district so proposed to be annexed, then, the said indebtedness referred to in said proposal shall be deemed to have been assumed, and upon the date stated in such annexation proposal such district and such city and county shall be and become one consolidated city and county, to be governed by the charter of the city and county proposing such annexation, and any subsequent amendment thereto.

Whenever any proposal is submitted to the electors of any county, territory, district, city, city and county, or town, as above provided, there shall be published, for at least five successive publications, in a newspaper of general circulation printed and published in any such county, territory, district, city, city and county, or town, the last publication to be not less than twenty days prior to any such election, a particular description of any territory or district to be separated, added, or annexed, together with a particular description of any debts to be assumed, as above referred to, unless such particular description is contained in the said proposal so submitted. In addition to said description, such territory shall also be designated in such notice by some appropriate name or other words of identification, by which such territory may be referred to and indicated upon the ballots to be used at any election at which the question of annexation or consolidation of additional territory is submitted as herein provided. If there be no such newspaper so printed and published in any such county, territory, district, city, city and county, or town, then such publication may be made in any

CONSTITUTION OF THE STATE OF CALIFORNIA.

newspaper of general circulation printed and published in the nearest county, city, city and county, or town where there may be such a newspaper so printed and published.

If, by the adoption of any charter, or by annexation, any incorporated municipality becomes a portion of a city and county, its property, debts and liabilities of every description shall be and become the property, debts and liabilities of such city and county.

Every city and county which shall be formed, or the territory of which shall be enlarged as herein provided from territory taken from any county or counties, shall be liable for a just proportion of the debts and liabilities and be entitled to a just proportion of the property and assets of such county or counties, existing at the time such territory is so taken.

The provisions of this constitution applicable to cities, and cities and counties, and also those applicable to counties, so far as not inconsistent or prohibited to cities, or cities and counties, shall be applicable to such consolidated city and county government; and no provision of subdivision five or six of this section shall be construed as a restriction upon the plenary authority of any city or city and county having a freeholders' charter, as provided for in this constitution, to determine in said charter any and all matters elsewhere in this constitution authorized and not inconsistent herewith.

The legislature shall provide for the formation of one or more counties from the portion or portions of a county or counties remaining after the formation of or annexation to a consolidated city and county, or for the transfer of such portion or portions of such original county or counties to adjoining counties. But such transfer to an adjoining county shall only be made after approval by a majority vote of the qualified electors voting thereon in such territory proposed to be so transferred.

The provisions of section two of this article, and also those provisions of section three of this article which refer to the passing of any county line within five miles of the exterior boundary of a city or town in which a county seat of any county proposed to be divided is situated, and to the reducing of the population of any county upon the establishment of a new county, and to the minimum population on the forming of a new county, shall not apply to the formation of, nor to the extension of the territory of such consolidated cities and counties, nor to the formation of new counties, nor to the annexation of existing counties, as herein specified.

Any city and county formed under this section shall have the right, if it so desires, to be designated by the official name of the city initiating the consolidation as it existed immediately prior to its adoption of a charter providing for a consolidated city and county government, except that such city and county shall be known under the style of a city and county.

It shall be competent in any charter framed for a consolidated city and county, or by amendment thereof, to provide for the establishment of a borough system of government for the whole or any part of the territory of said city and county, by which one or more districts may be created therein, which districts shall be known as boroughs and which shall exercise such municipal powers as may be granted thereto by such charter, and for the organization, regulation, government and jurisdiction of such boroughs; *provided*, that in the event of such establishment or creation of a borough or boroughs, as hereinabove permitted, the boundaries thereof shall never afterwards be changed or altered, nor shall the governmental rights, powers or jurisdiction of any such borough or boroughs be thereafter limited, extended, modified or taken away, unless and until the borough or boroughs affected by such proposed change or alteration of boundaries, or by the proposed limitation, extension, modification or taking away of governmental rights, powers or jurisdiction, as the case may be, shall each have consented thereto, by the vote of a majority of the voters in each and every such borough, voting at an election or elections called and held for such purpose in each of the boroughs so affected.

No property in any territory hereafter consolidated with or annexed to any city or city and county shall be taxed for the payment of any indebtedness of such city or city and county outstanding at the date of such consolidation or annexation and for the payment of which the property in such territory was not, prior to such consolidation or annexation, subject to such taxation, unless there shall have been submitted to the qualified electors of such territory the proposition regarding the assumption of indebtedness as hereinbefore set forth and the same shall have been approved by a majority of such electors voting thereon.

CONSTITUTION OF THE STATE OF CALIFORNIA.

7. In all cases of annexation of unincorporated territory to an incorporated city, or the consolidation of two or more incorporated cities, assumption of existing bonded indebtedness by such unincorporated territory or by either of the cities so consolidating may be made by a majority vote of the qualified electors voting thereon in the territory or city which shall assume an existing bonded indebtedness. This provision shall apply whether annexation or consolidation is effected under this section or any other section of this constitution, and the provisions of section eighteen of this article shall not be a prohibition thereof.

The legislature shall enact such general laws as may be necessary to carry out the provisions of this section and such general or special laws as may be necessary to carry out the provisions of subdivisions five and six of this section, including any such general or special act as may be necessary to permit a consolidated city and county to submit a new charter or charter amendment to take effect at the time that any consolidation, by reason of annexation to such consolidated city and county, takes effect, and, also, any such general law or special act as may be necessary to provide for any period after such consolidation, by reason of such annexation, takes effect, and prior to the adoption and approval of any such new charter or charter amendment. [Amendment adopted November 5, 1918.]

SEC. 9. The compensation of any county, city, town, or municipal officer shall not be increased after his election or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed.

SEC. 10. [Repealed November 8, 1910.]

SEC. 11. Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.

SEC. 12. The legislature shall have no power to impose taxes upon counties, cities, towns or other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

SEC. 13. The legislature shall not delegate to any special commission, private corporation, company, association or individual any power to make, control, appropriate, supervise or in any way interfere with any county, city, town or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments or perform any municipal function whatever, except that the legislature shall have power to provide for the supervision, regulation and conduct, in such manner as it may determine, of the affairs of irrigation districts, reclamation districts or drainage districts, organized or existing under any law of this state. [Amendment adopted November 3, 1914.]

SEC. 13½. Any county, city and county, city, town, municipality, irrigation district, or other public corporation, issuing bonds under the laws of the state, is hereby authorized and empowered to make said bonds and the interest thereon payable at any place or places within or outside of the United States, and in any money, domestic or foreign, designated in said bonds. [Amendment adopted November 3, 1914.]

SEC. 14. The legislature may by general and uniform laws provide for the inspection, measurement and graduation of merchandise, manufactured articles and commodities, and may provide for the appointment of such officers as may be necessary for such inspection, measurement and graduation. [Amendment adopted October 10, 1911.]

SEC. 15. Private property shall not be taken or sold for the payment of the corporate debt of any political or municipal corporation.

SEC. 16. All moneys, assessments, and taxes belonging to or collected for the use of any county, city, town, or other public or municipal corporation, coming into the hands of any officer thereof, shall immediately be deposited with the treasurer, or other legal depository, to the credit of such city, town, or other corporation, respectively, for the benefit of the funds to which they respectively belong.

SEC. 16½. All moneys belonging to the state or to any county or municipality within this state may be deposited in any national bank or banks within this state, or in any bank or banks organized under the laws of this state, in such manner and under such conditions as may be provided by any law adopted by the people under the initiative or by a two-thirds vote

CONSTITUTION OF THE STATE OF CALIFORNIA.

of each house of the legislature and approved by the governor and subject to the referendum; *provided*, that the laws now governing the deposit of such moneys shall continue in force until such laws shall be amended, changed or repealed as in this section authorized; *and provided*, *further*, that the state or any county, city and county, city, town or municipality, issuing bonds under the laws of this state, may deposit moneys in any bank or banks outside this state for the payment of the principal or interest of such bonds at the place or places at which the same are payable. [Amendment adopted November 5, 1918.]

SEC. 17. The making of profit out of county, city, town, or other public money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

SEC. 18. No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose, nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to constitute a sinking fund for the payment of the principal thereof on or before maturity, which shall not exceed forty years from the time of contracting the same; *provided*, *however*, that the city and county of San Francisco may at any time pay the unpaid claims, with interest thereon at the rate of five per cent per annum, for materials furnished to and work done for said city and county during the forty-first, forty-second, forty-third, forty-fourth and fiftieth fiscal years, and for unpaid teachers' salaries for the fiftieth fiscal year, out of the income and revenue of any succeeding year or years, the amount to be paid in full of said claims not to exceed in the aggregate the sum of five hundred thousand dollars, and that no statute of limitations shall apply in any manner to these claims; *and provided*, *further*, that the city of Vallejo, of Solano county, may pay its existing indebtedness, incurred in the construction of its waterworks, whenever two-thirds of the electors thereof, voting at an election held for that purpose, shall so decide, and that no statute of limitations shall apply in any manner; *provided*, *further*, that the city of Venice may pay all of its indebtedness incurred during the years nineteen hundred fourteen, nineteen hundred fifteen and nineteen hundred sixteen in excess of the income and revenue for said years, the amount to be paid in full of said indebtedness not to exceed in the aggregate the sum of sixty thousand dollars, whenever two-thirds of the voters thereof voting at an election held for that purpose shall so decide, and that no statute of limitations shall apply in any manner. Any indebtedness or liability incurred contrary to this provision, with the exceptions hereinbefore recited, shall be void. The city and county of San Francisco, the city of San Jose, and the town of Santa Clara may make provision for a sinking fund, to pay the principal of any indebtedness incurred, or to be hereafter incurred by it, to commence at a time after the incurring of such indebtedness of no more than a period of one-fourth of the time of maturity of such indebtedness, which shall not exceed seventy-five years from the time of contracting the same. Any indebtedness incurred contrary to any provision of this section shall be void; *and*, *provided*, *further*, that the county of Alameda may, upon the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, incur a bonded indebtedness of not to exceed one million dollars, and the legislative authority of said county of Alameda shall issue bonds therefor and grant and turn over to the Panama-Pacific International Exposition Company, a corporation organized under the laws of the state of California, March 22, 1910, the proceeds of said bonds for stock in said company or under such other terms and conditions as said legislative authority may determine, the same to be used and disbursed by said exposition company for the purposes of an exposition to be held in the city and county of San Francisco to celebrate the completion of the Panama canal; said bonds, so issued, to be of such form and to be redeemable, registered and converted in such manner and amounts, and at such times not later than forty years from the date of their issue as the legislative authority of said county of Alameda shall determine; the interest on said bonds not to exceed five per centum per annum, and said bonds to be exempt from all taxes for state, county and municipal purposes, and to be sold for not less than par at such times and places, and in such manner, as shall be determined by said legislative authority; the proceeds of said bonds,

CONSTITUTION OF THE STATE OF CALIFORNIA.

when sold, to be payable immediately upon such terms or conditions as said legislative body may determine, to the treasurer of said Panama-Pacific International Exposition Company, upon demands of said treasurer of said exposition company, without the necessity of the approval of such demands by other authority, than said legislative authority of Alameda county, the same to be used and disbursed by said Panama-Pacific International Exposition Company for the purposes of such exposition, under the direction and control of said exposition company; and the legislative authority of said county of Alameda is hereby empowered and directed to levy a special tax on all taxable property in said county each year after the issue of said bonds to raise an amount to pay the interest on said bonds as the same become due, and to create a sinking fund to pay the principal thereof when the same shall become due. [Amendment adopted November 5, 1918.]

SEC. 18½. Anything in this constitution to the contrary notwithstanding, the county of Los Angeles may, out of succeeding years' revenue or income, reimburse any funds officially held by the treasurer of Los Angeles county which have been heretofore diminished by payment therefrom, during the sixty-fourth, sixty-fifth, sixty-sixth, sixty-seventh or sixty-eighth fiscal years, of claims or demands representing indebtedness or liability of said county in excess of the income and revenue provided for the year in which such indebtedness or liability was incurred, whenever a majority of the qualified electors of said county voting at an election held for that purpose shall so decide; and such an election may be called by the board of supervisors of said county and held in accordance with the election laws of this state applicable thereto. [Amendment adopted November 5, 1918.]

SEC. 19. Any municipal corporation may establish and operate public works for supplying its inhabitants with light, water, power, heat, transportation, telephone service or other means of communication. Such works may be acquired by original construction or by the purchase of existing works, including their franchises, or both. Persons or corporations may establish and operate works for supplying the inhabitants with such services upon such conditions and under such regulations as the municipality may prescribe under its organic law, on condition that the municipal government shall have the right to regulate the charges thereof. A municipal corporation may furnish such services to inhabitants outside its boundaries; *provided*, that it shall not furnish any service to the inhabitants of any other municipality owning or operating works supplying the same service to such inhabitants, without the consent of such other municipality, expressed by ordinance. [Amendment adopted October 10, 1911.]

ARTICLE XII.

CORPORATIONS.

SECTION 1. Corporations may be formed under general laws, but shall not be created by special act. All laws now in force in the state concerning corporations, and all laws that may be hereafter passed pursuant to this section, may be altered from time to time or repealed.

SEC. 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

SEC. 3. Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred, during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock, or shares of the corporation or association. The directors or trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint-stock association, during the term of office of such director or trustee.

Nothing in the preceding paragraph of this section shall be held to apply to any exposition company organized to promote and carry on any international exposition or world's fair within the state of California, and the liability of stockholders in any such exposition company shall be and the same is hereby limited to an amount not exceeding the par value of the stock of said corporation subscribed for by such stockholders. [Amendment adopted November 3, 1908.]

CONSTITUTION OF THE STATE OF CALIFORNIA.

SEC. 4. The term corporations, as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships, and all corporations shall have the right to sue and be subject to be sued, in all courts, in like cases as natural persons.

SEC. 5. The legislature shall have no power to pass any act granting any charter for banking purposes, but corporations or associations may be formed for such purposes under general laws, and the legislature shall provide for the classification of cities and towns by population for the purpose of regulating the business of banking. No corporation, association, or individual shall issue or put in circulation, as money, anything but the lawful money of the United States. [Amendment adopted November 8, 1910.]

SEC. 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this constitution, shall thereafter have no validity.

SEC. 7. The legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter of any quasi-public corporation now existing or which shall hereafter exist under the laws of this state. The term of existence of any other corporation now or hereafter existing under the laws of this state, may be extended at any time prior to the expiration of its corporate existence, for a period not exceeding fifty years from the date of such extension, by the vote or written consent of stockholders representing two-thirds of its capital stock or of two-thirds of the members thereof. A certificate of such vote or consent shall be signed and sworn to by the president and secretary, and by a majority of the directors of the corporation and filed and certified in the manner and upon payment of fees required by law for filing and certifying articles of incorporation, and thereupon the term of the corporation shall be extended for the period specified in such certificate, and such corporation shall thereafter pay all annual or other fees required by law to be paid by corporations. [Amendment adopted November 3, 1908.]

SEC. 8. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the legislature from taking the property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals, and the exercise of the police power of the state shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general well-being of the state.

SEC. 9. No corporation shall engage in any business other than that expressly authorized in its charter or the law under which it may have been or may hereafter be organized; nor shall it hold for a longer period than five years any real estate except such as may be necessary for carrying on its business.

SEC. 10. The legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise or any of its privileges.

SEC. 11. No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock, at a meeting called for that purpose, giving sixty days' public notice, as may be provided by law.

SEC. 12. In all elections for directors or managers of corporations every stockholder shall have the right to vote, in person or by proxy, the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall ~~think fit~~ ~~and~~ and such directors or managers shall not be elected

CONSTITUTION OF THE STATE OF CALIFORNIA.

in any other manner, except that members of co-operative societies formed for agricultural, mercantile, and manufacturing purposes may vote on all questions affecting such societies in manner prescribed by law.

SEC. 13. The state shall not, in any manner, loan its credit, nor shall it subscribe to or be interested in the stock of any company, association, or corporation.

SEC. 14. Every corporation other than religious, educational, or benevolent, organized or doing business in this state, shall have and maintain an office or place in this state for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for inspection by every person having an interest therein, and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them, respectively; the amount of stock paid in, and by whom; the transfer of stock; the amount of its assets and liabilities, and the names and places of residence of its officers.

SEC. 15. No corporation organized outside the limits of this state shall be allowed to transact business within this state on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this state.

SEC. 16. A corporation or association may be sued in the county where the contract is made or is to be performed, or where the obligation or liability arises or the breach occurs; or in the county where the principal place of business of such corporation is situated, subject to the power of the court to change the place of trial as in other cases.

SEC. 17. All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control. Any association or corporation, organized for the purpose under the laws of this state, shall have the right to connect at the state line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars, without delay or discrimination.

SEC. 18. No president, director, officer, agent, or employee of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, nor in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company, except such interest in the business of transportation as lawfully flows from the ownership of stock therein.

SEC. 19. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this state; and the acceptance of any such pass or ticket by a member of the legislature, or any public officer, other than railroad commissioner, shall work a forfeiture of his office.

SEC. 20. No railroad or other transportation company shall raise any rate of charge for the transportation of freight or passengers or any charge connected therewith or incidental thereto, under any circumstances whatsoever, except upon a showing before the railroad commission provided for in this constitution, that such increase is justified, and the decision of the said commission upon the showing so made shall not be subject to review by any court except upon the question whether such decision of the commission will result in confiscation of property. [Amendment adopted October 10, 1911.]

SEC. 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this state. It shall be unlawful for any railroad or other transportation company to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates; *provided, however,* that upon application to the railroad commission provided for in this constitution such company may, in special cases, after investigation, be authorized by such commission to charge less for longer than for shorter distances for the transportation of persons or property and the railroad commission may from time to time prescribe the extent to which such

CONSTITUTION OF THE STATE OF CALIFORNIA.

company may be relieved from the prohibition to charge less for the longer than for the shorter haul. The railroad commission shall have power to authorize the issuance of excursion and commutation tickets at special rates. Nothing herein contained shall be construed to prevent the railroad commission from ordering and compelling any railroad or other transportation company to make reparation to any shipper on account of the rates charged to said shipper being excessive or discriminatory, provided no discrimination will result from such reparation. [Amendment adopted October 10, 1911.]

SEC. 22. There is hereby created a railroad commission which shall consist of five members and which shall be known as the railroad commission of the state of California. The commission shall be appointed by the governor from the state at large; *provided*, that the legislature, in its discretion, may divide the state into districts for the purpose of such appointments, said districts to be as nearly equal in population as practicable; *and provided, further*, that the three commissioners in office at the time this section takes effect shall serve out the term for which they were elected, and that two additional commissioners shall be appointed by the governor immediately after the adoption of this section, to hold office during the same term. Upon the expiration of said term, the term of office of each commissioner thereafter shall be six years, except the commissioners first appointed hereunder after such expiration, one of whom shall be appointed to hold office until January 1, 1917, two until January 1, 1919, and two until January 1, 1921. Whenever a vacancy in the office of commissioner shall occur the governor shall forthwith appoint a qualified person to fill the same for the unexpired term. Commissioners appointed for regular terms shall at the beginning of the term for which they are appointed, and those appointed to fill vacancies, shall immediately upon their appointment, enter upon the duties of their offices. The legislature shall fix the salaries of the commissioners, but pending such action the salaries of the commissioners, their officers and employees shall remain as now fixed by law. The legislature shall have the power, by a two-thirds vote of all members elected to each house, to remove any one or more of said commissioners from office for dereliction of duty or corruption or incompetency. All of said commissioners shall be qualified electors of this state, and no person in the employ of or holding any official relation to any person, firm or corporation, which said person, firm or corporation is subject to regulation by said railroad commission and no person owning stock or bonds of any such corporation or who is in any manner pecuniarily interested therein, shall be appointed to or hold the office of railroad commissioner. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. The act of a majority of the commissioners when in session as a board shall be deemed to be the act of the commission; but any investigation, inquiry or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner designated for the purpose by the commission, and every order made by a commissioner so designated, pursuant to such inquiry, investigation or hearing, when approved or confirmed by the commission ordered filed in its office, shall be deemed to be the order of the commission.

Said commission shall have the power to establish rates of charges for the transportation of passengers and freight by railroads and other transportation companies, and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or freight, or for any service in connection therewith, between the points named in any tariff of rates, established by said commission, than the rates, fares and charges which are specified in such tariff. The commission shall have the further power to examine books, records and papers of all railroad and other transportation companies; to hear and determine complaints against railroad and other transportation companies; to issue subpoenas and all necessary process and send for persons and papers; and the commission and each of the commissioners shall have the power to administer oaths, take testimony and punish for contempt in the same manner and to the same extent as courts of record; the commission may prescribe a uniform system of accounts to be kept by all railroad and other transportation companies.

No provision of this constitution shall be construed as a limitation upon the authority of the legislature to confer upon the railroad commission additional powers of the same kind

CONSTITUTION OF THE STATE OF CALIFORNIA.

or different from those conferred herein which are not inconsistent with the powers conferred upon the railroad commission in this constitution, and the authority of the legislature to confer such additional powers is expressly declared to be plenary and unlimited by any provision of this constitution.

The provisions of this section shall not be construed to repeal in whole or in part any existing law not inconsistent herewith, and the "Railroad Commission Act" of this state approved February 10, 1911, shall be construed with reference to this constitutional provision and any other constitutional provision becoming operative concurrently herewith. And the said act shall have the same force and effect as if the same had been passed after the adoption of this provision of the constitution and of all other provisions adopted concurrently herewith, except that the three commissioners referred to in said act shall be held and construed to be the five commissioners provided for herein. [Amendment adopted October 10, 1911.]

SEC. 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe line, plant, or equipment, or any part of such railroad, canal, pipe line, plant, or equipment within this state, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil, or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the railroad commission as may be provided by the legislature, and every class of private corporations, individuals, or associations of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation. The railroad commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the state of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the railroad commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution. From and after the passage by the legislature of laws conferring powers upon the railroad commission, respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this state, or in any commission created by law and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the railroad commission; *provided, however*, that this section shall not affect such powers of control over public utilities as relate to the making and enforcement of local, police, sanitary and other regulations, other than the fixing of rates, vested in any city and county or incorporated city or town as, at an election to be held pursuant to law, a majority of the qualified electors of such city and county, or incorporated city or town, voting thereon, shall vote to retain, and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the railroad commission as provided by law; *and provided, further*, that where any such city and county, or incorporated city or town, shall have elected to continue any of its powers to make and enforce such local, police, sanitary and other regulations, other than the fixing of rates, it may, by a vote of a majority of its qualified electors voting thereon, thereafter surrender such powers to the railroad commission in the manner prescribed by the legislature; *and provided, further*, that this section shall not affect the right of any city and county or incorporated city or town, to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law. Nothing in this section shall be construed as a limitation upon any power conferred upon the railroad commission by any provision of this constitution now existing or adopted concurrently herewith. [Amendment adopted November 3, 1914.]

SEC. 23a. The railroad commission shall have and exercise such power and jurisdiction as shall be conferred upon it by the legislature to fix the just compensation to be paid for the taking of any property of a public utility in eminent domain proceedings by the state or

CONSTITUTION OF THE STATE OF CALIFORNIA.

any county, city and county, incorporated city or town, or municipal water district, and the right of the legislature to confer such powers upon the railroad commission is hereby declared to be plenary and to be unlimited by any provision of this constitution. All acts of the legislature heretofore adopted, which are in accordance herewith, are hereby confirmed and declared valid. [New section adopted November 3, 1914.]

SEC. 24. The legislature shall pass all laws necessary for the enforcement of the provisions of this article.

ARTICLE XIII.

REVENUE AND TAXATION.

SECTION 1. All property in the state except as otherwise in this constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided. The word "property," as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal and mixed, capable of private ownership; *provided*, that a mortgage, deed of trust, contract, or other obligation by which a debt is secured when land is pledged as security for the payment thereof, together with the money represented by such debt, shall not be considered property subject to taxation; *and further provided*, that property used for free public libraries and free museums, growing crops, property used exclusively for public schools, and such as may belong to the United States, this state, or to any county, city and county, or municipal corporation within the state shall be exempt from taxation, except such lands and the improvements thereon located outside of the county, city and county, or municipal corporation owning the same as were subject to taxation at the time of the acquisition of the same by said county, city and county, or municipal corporation, *provided*, that no improvements of any character whatever constructed by any county, city and county, or municipal corporation shall be subject to taxation. All lands or improvements thereon, belonging to any county, city and county, or municipal corporation, not exempt from taxation, shall be assessed by the assessor of the county, city and county, or municipal corporation in which said lands or improvements are located, and said assessment shall be subject to review, equalization and adjustment by the state board of equalization. The legislature may provide, except in the case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to bona fide residents of this state. [Amendment adopted November 3, 1914.]

SEC. 1¼. The property to the amount of one thousand dollars of every resident in this state who has served in the army, navy, marine corps, or revenue marine service of the United States in time of war, and received an honorable discharge therefrom; or lacking such amount of property in his own name, so much of the property of the wife of any such person as shall be necessary to equal said amount; and property to the amount of one thousand dollars of the widow resident in this state, or if there be no such widow, of the widowed mother resident in this state, of every person who has so served and has died either during his term of service or after receiving honorable discharge from said service; and the property to the amount of one thousand dollars of pensioned widows, fathers, and mothers, resident in this state, of soldiers, sailors, and marines who served in the army, navy, or marine corps, or revenue marine service of the United States, shall be exempt from taxation; *provided*, that this exemption shall not apply to any person named herein owning property of the value of five thousand dollars or more, or where the wife of such soldier or sailor owns property of the value of five thousand dollars or more. No exemption shall be made under the provisions of this act of the property of a person who is not a legal resident of this state. [New section adopted October 10, 1911.]

SEC. 1½. All buildings, and so much of the real property on which they are situated as may be required for the convenient use and occupation of said buildings, when the same are used solely and exclusively for religious worship shall be free from taxation; *provided*, that no building so used which may be rented for religious purposes and rent received by the owner therefor, shall be exempt from taxation. [New section adopted November 6, 1900.]

SEC. 1½a. All buildings, and so much of the real property connected therewith as may be required for the occupation of institutions sheltering more than twenty orphan or half-

CONSTITUTION OF THE STATE OF CALIFORNIA.

orphan children receiving state aid shall be free from taxation; provided, that no building or real or personal property so used which may be rented and the rent received by the owner therefor shall be exempt from taxation under the terms of this act. [New section adopted November 2, 1920.]

SEC. 1¾. All bonds hereafter issued by the state of California, or by any county, city and county, municipal corporation, or district (including school, reclamation, and irrigation districts) within said state, shall be free and exempt from taxation. [New section adopted November 4, 1902.]

SEC. 1a. Any educational institution of collegiate grade, within the state of California, not conducted for profit, shall hold exempt from taxation its buildings and equipment, its grounds within which its buildings are located, not exceeding one hundred acres in area, its securities and income used exclusively for the purposes of education. [New section adopted November 3, 1914.]

SEC. 2. Land, and the improvements thereon, shall be separately assessed. Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value.

SEC. 3. Every tract of land containing more than six hundred and forty acres, and which has been sectionized by the United States government, shall be assessed, for the purposes of taxation, by sections or fractions of sections. The legislature shall provide by law for the assessment, in small tracts, of all lands not sectionized by the United States government.

SEC. 4. All vessels of more than fifty tons burden registered at any port in this state and engaged in the transportation of freight or passengers, shall be exempt from taxation except for state purposes, until and including the first day of January, nineteen hundred thirty-five. [New section adopted November 3, 1914.]

SEC. 5. [Repealed November 6, 1906.]

SEC. 6. The power of taxation shall never be surrendered or suspended by any grant or contract to which the state shall be a party.

SEC. 7. The legislature shall have the power to provide by law for the payment of all taxes on real property by installments.

SEC. 8. The legislature shall by law require each taxpayer in this state to make and deliver to the county assessor, annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian on the first Monday of March.

SEC. 9. A state board of equalization, consisting of one member from each congressional district in this state, as the same existed in eighteen hundred and seventy-nine, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year one thousand eight hundred and eighty-six, and at each gubernatorial election thereafter, whose term of office shall be for four years; whose duty it shall be to equalize the valuation of the taxable property in the several counties of the state for the purposes of taxation. The controller of state shall be ex officio a member of the board. The boards of supervisors of the several counties of the state shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; *provided*, such state and county boards of equalization are hereby authorized and empowered, under such rules of notice as the county boards may prescribe as to county assessments, and under such rules of notice as the state board may prescribe as to the action of the state board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll; *provided*, that no board of equalization shall raise any mortgage, deed of trust, contract or other obligation by which a debt is secured, money, or solvent credits, above its face value. The present state board of equalization shall continue in office until their successors, as herein provided for, shall be elected and shall qualify. The legislature shall have power to redistrict the state into four districts, as nearly equal in population as

CONSTITUTION OF THE STATE OF CALIFORNIA.

practical, and to provide for the elections of members of said board of equalization. [Amendment adopted November 4, 1884.]

SEC. 10. All property, except as otherwise in this constitution provided, shall be assessed in the county, city, city and county, town or township, or district in which it is situated, in the manner prescribed by law. [Amendment adopted November 8, 1910.]

SEC. 10½. The personal property of every householder to the amount of one hundred dollars, the articles to be selected by each householder, shall be exempt from taxation. [New section adopted November 8, 1904.]

SEC. 11. Income taxes may be assessed to and collected from persons, corporations, joint-stock associations, or companies resident or doing business in this state, or any one or more of them, in such cases and amounts, and in such manner, as shall be prescribed by law.

SEC. 12. The legislature shall provide for the levy of an annual poll tax, and the collection thereof by assessors, or not less than four dollars on every alien male inhabitant of this state over twenty-one and under sixty years of age, except paupers, idiots and insane persons. Said tax shall be paid into the county school fund in which county it is collected. [Amendment adopted November 2, 1920.]

SEC. 12¾. Fruit and nut bearing trees under the age of four years from the time of planting in orchard form, and grapevines under the age of three years from the time of planting in vineyard form, shall be exempt from taxation, and nothing in this article shall be construed as subjecting such trees and grapevines to taxation. [New section adopted November 6, 1894.]

SEC. 13. The legislature shall pass all laws necessary to carry out the provisions of this article.

SEC. 14. Taxes levied, assessed and collected as hereinafter provided upon railroads, including street railways, whether operated in one or more counties; sleeping car, dining car, drawingroom car and palace car companies, refrigerator, oil, stock, fruit, and other car-loaning and other car companies operating upon railroads in this state; companies doing express business on any railroad, steamboat, vessel or stage line in this state; telegraph companies; telephone companies; companies engaged in the transmission or sale of gas or electricity; insurance companies; banks, banking associations, savings and loan societies, and trust companies; and taxes upon all franchises of every kind and nature, shall be entirely and exclusively for state purposes, and shall be levied, assessed and collected in the manner hereinafter provided. The word "companies" as used in this section shall include persons, partnerships, joint stock associations, companies and corporations.

(a) All railroad companies, including street railways, whether operated in one or more counties; all sleeping car, dining car, drawingroom car, and palace car companies, all refrigerator, oil, stock, fruit and other car-loaning and other car companies, operating upon the railroads in this state; all companies doing express business on any railroad, steamboat, vessel or stage line in this state; all telegraph and telephone companies; and all companies engaged in the transmission or sale of gas or electricity shall annually pay to the state a tax upon their franchises, roadways, roadbeds, rails, rolling stock, poles, wires, pipes, canals, conduits, rights of way, and other property, or any part thereof used exclusively in the operation of their business in this state, computed as follows: Said tax shall be equal to the percentages hereinafter fixed upon the gross receipts from operation of such companies, and each thereof within this state. When such companies are operating partly within and partly without this state, the gross receipts within this state shall be deemed to be all receipts on business beginning and ending within this state, and a proportion, based upon the proportion of the mileage within this state to the entire mileage over which such business is done, of receipts on all business passing through, into, or out of this state.

The percentages above mentioned shall be as follows: On all railroad companies, including street railways, four per cent; on all sleeping car, dining car, drawingroom car, palace car companies, refrigerator, oil, stock, fruit and other car-loaning and other car companies, three per cent; on all companies doing express business on any railroad, steamboat, vessel or stage

CONSTITUTION OF THE STATE OF CALIFORNIA.

line, two per cent; on all telegraph and telephone companies, three and one-half per cent; on all companies engaged in the transmission or sale of gas or electricity, four per cent. Such taxes shall be in lieu of all other taxes and licenses, state, county and municipal, upon the property above enumerated of such companies except as otherwise in this section provided; *provided*, that nothing herein shall be construed to release any such company from the payment of any amount agreed to be paid or required by law to be paid for any special privilege or franchise granted by any of the municipal authorities of this state.

(b) Every insurance company or association doing business in this state shall annually pay to the state a tax of one and one-half per cent upon the amount of the gross premiums received upon its business done in this state, less return premiums and reinsurance in companies or associations authorized to do business in this state; *provided*, that there shall be deducted from said one and one-half per cent upon the gross premiums the amount of any county and municipal taxes paid by such companies on real estate owned by them in this state. This tax shall be in lieu of all other taxes and licenses, state, county and municipal, upon the property of such companies, except county and municipal taxes on real estate, and except as otherwise in this section provided; *provided*, that when by the laws of any other state or country, any taxes, fines, penalties, licenses, fees, deposits of money, or of securities, or other obligations or prohibitions, are imposed on insurance companies of this state, doing business in such other state or country, or upon their agents therein, in excess of such taxes, fines, penalties, licenses, fees, deposits of money, or of securities, or other obligations or prohibitions, imposed upon insurance companies of such other state or country, so long as such laws continue in force, the same obligations and prohibitions of whatsoever kind may be imposed by the legislature upon insurance companies of such other state or country doing business in this state.

(c) The shares of capital stock of all banks, organized under the laws of this state, or of the United States, or of any other state and located in this state, shall be assessed and taxed to the owners or holders thereof by the state board of equalization, in the manner to be prescribed by law, in the city or town where the bank is located and not elsewhere. There shall be levied and assessed upon such shares of capital stock an annual tax, payable to the state, of one per centum upon the value thereof. The value of each share of stock in each bank, except such as are in liquidation, shall be taken to be the amount paid in thereon, together with its pro rata of the accumulated surplus and undivided profits. The value of each share of stock in each bank which is in liquidation shall be taken to be its pro rata of the actual assets of such bank. This tax shall be in lieu of all other taxes and licenses, state, county and municipal, upon such shares of stock and upon the property of such banks, except county and municipal taxes on real estate and except as otherwise in this section provided. In determining the value of the capital stock of any bank there shall be deducted from the value, as defined above, the value, as assessed for county taxes, of any real estate, other than mortgage interests therein, owned by such bank and taxed for county purposes. The banks shall be liable to the state for this tax and the same shall be paid to the state by them on behalf of the stockholders in the manner and at the time prescribed by law, and they shall have a lien upon the shares of stock and upon any dividends declared thereon to secure the amount so paid.

The moneyed capital, reserve, surplus, undivided profits and all other property belonging to unincorporated banks or bankers of this state, or held by any bank located in this state which has no shares of capital stock, or employed in this state by any branches, agencies, or other representatives of any banks doing business outside of the state of California, shall be likewise assessed and taxed to such banks or bankers by the said board of equalization, in the manner to be provided by law and taxed at the same rate that is levied upon the shares of capital stock of incorporated banks, as provided in the first paragraph of this subdivision. The value of said property shall be determined by taking the entire property invested in such business, together with all the reserve, surplus, and undivided profits at their full cash value, and deducting therefrom the value as assessed for county taxes of any real estate, other than mortgage interests therein, owned by such bank and taxed for county purposes. Such taxes shall be in lieu of all other taxes and licenses, state, county and municipal, upon the property of the banks and bankers, mentioned in this paragraph, except county and municipal taxes on real estate and except as otherwise in this section provided. It is the intention of this paragraph

CONSTITUTION OF THE STATE OF CALIFORNIA.

that all moneyed capital and property of the banks and bankers mentioned in this paragraph shall be assessed and taxed at the same rate as an incorporated bank, provided for in the first paragraph of this subdivision. In determining the value of the moneyed capital and property of the banks and bankers mentioned in this subdivision, the said state board of equalization shall include and assess to such banks all property and everything of value owned or held by them, which go to make up the value of the capital stock of such banks and bankers, if the same were incorporated and had shares of capital stock.

The word "banks" as used in this subdivision shall include banking associations, savings and loan societies and trust companies, but shall not include building and loan associations.

(d) All franchises, other than those expressly provided for in this section, shall be assessed at their actual cash value, in the manner to be provided by law, and shall be taxed at the rate of one per centum each year, and the taxes collected thereon shall be exclusively for the benefit of the state.

(e) Out of the revenues from the taxes provided for in this section, together with all other state revenues, there shall be first set apart the moneys to be applied by the state to the support of the public school system and the state university. In the event that the above named revenues are at any time deemed insufficient to meet the annual expenditures of the state, including the above named expenditures for educational purposes, there may be levied, in the manner to be provided by law, a tax, for state purposes, on all the property in the state including the classes of property enumerated in this section, sufficient to meet the deficiency. All property enumerated in subdivisions *a*, *b*, and *d* of this section shall be subject to taxation, in the manner provided by law, to pay the principal and interest of any bonded indebtedness created and outstanding by any city, city and county, county, town, township or district, before the adoption of this section. The taxes so paid for principal and interest on such bonded indebtedness shall be deducted from the total amount paid in taxes for state purposes.

(f) All the provisions of this section shall be self-executing, and the legislature shall pass all laws necessary to carry this section into effect, and shall provide for a valuation and assessment of the property enumerated in this section, and shall prescribe the duties of the state board of equalization and any other officers in connection with the administration thereof. The rates of taxation fixed in this section shall remain in force until changed by the legislature, two-thirds of all the members elected to each of the two houses voting in favor thereof. The taxes herein provided for shall become a lien on the first Monday in March of each year after the adoption of this section and shall become due and payable on the first Monday in July thereafter. The gross receipts and gross premiums herein mentioned shall be computed for the year ending the thirty-first day of December prior to the levy of such taxes and the value of any property mentioned herein shall be fixed as of the first Monday in March. Nothing herein contained shall affect any tax levied or assessed prior to the adoption of this section; and all laws in relation to such taxes in force at the time of the adoption of this section shall remain in force until changed by the legislature. Until the year 1918 the state shall reimburse any and all counties which sustain loss of revenue by the withdrawal of railroad property from county taxation for the net loss in county revenue occasioned by the withdrawal of railroad property from county taxation. The legislature shall provide for reimbursement from the general funds of any county to districts therein where loss is occasioned in such districts by the withdrawal from local taxation of property taxed for state purposes only.

(g) No injunction shall ever issue in any suit, action or proceeding in any court against this state or against any officer thereof to prevent or enjoin the collection of any tax levied under the provisions of this section; but after payment action may be maintained to recover any tax illegally collected in such manner and at such time as may now or hereafter be provided by law. [New section adopted November 8, 1910.]

NOTE.—The rates fixed in the above section were changed by the legislature in 1913 (act approved February 3, 1913), in 1915 (act approved January 28, 1915), and in 1917 (act approved May 11, 1917).

CONSTITUTION OF THE STATE OF CALIFORNIA.

ARTICLE XIV.

WATER AND WATER RIGHTS.

SECTION 1. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the state, in the manner to be prescribed by law; *provided*, that the rates or compensation to be collected by any person, company, or corporation in this state for the use of water supplied to any city and county, or city, or town, or the inhabitants thereof, shall be fixed, annually, by the board of supervisors, or city and county, or city, or town council, or other governing body of such city and county, or city, or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Any board or body failing to pass the necessary ordinances or resolutions fixing water rates, where necessary, within such time, shall be subject to peremptory process to compel action, at the suit of any party interested, and shall be liable to such further processes and penalties as the legislature may prescribe. Any person, company, or corporation collecting water rates in any city and county, or city, or town in this state, otherwise than as so established, shall forfeit the franchises and waterworks of such person, company, or corporation to the city and county, or city, or town, where the same are collected, for the public use.

SEC. 2. The right to collect rates or compensation for the use of water supplied to any county, city and county, or town, or the inhabitants thereof, is a franchise, and can not be exercised except by authority of and in the manner prescribed by law.

ARTICLE XV.

HARBOR FRONTAGE, ETC.

SECTION 1. The right of eminent domain is hereby declared to exist in the state to all frontages on the navigable waters of this state.

SEC. 2. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this state, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this state shall be always attainable for the people thereof.

SEC. 3. All tide lands within two miles of any incorporated city or town in this state, and fronting on the waters of any harbor, estuary, bay, or inlet, used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations.

ARTICLE XVI.

STATE INDEBTEDNESS.

SECTION 1. The legislature shall not, in any manner, create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars, except in case of war to repel invasion or suppress insurrection, unless the same shall be authorized by law for some single object or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within seventy-five years of the time of the contracting thereof, and shall be irrevocable until the principal and interest thereon shall be paid and discharged and such law may make provision for a sinking fund to pay the principal of such debt or liability to commence at a time after the incurring of such debt or liability of not more than a period of one-fourth of the time of maturity of such debt or liability; but no such law shall take effect until, at a general election, it shall have been submitted to the people and shall have received a majority of all the votes cast for and against it at such election: and all moneys raised by authority of such law shall be applied only to the specific object therein stated or to the payment of the debt thereby created, and such law shall be

CONSTITUTION OF THE STATE OF CALIFORNIA.

published in at least one newspaper in each county, or city and county, if one be published therein, throughout the state, for three months next preceding the election at which it is submitted to the people. The legislature may, at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same. [Amendment adopted November 3, 1908.]

HIGHWAY BOND ISSUE.

Sec. 2. Immediately upon the adoption of this section the state treasurer shall prepare forty thousand suitable bonds of the state of California in the denomination of one thousand dollars each, to be numbered from one to forty thousand inclusive, to bear a date not later than thirty days after said adoption and to bear interest at the rate of four and one-half per cent per annum from the date of said bonds, said interest to be payable on the third day of January and the third day of July of each and every year after the sale of said bonds, and said bonds to become due and payable in annual parcels of one thousand bonds, commencing July 3, 1926, and ending July 3, 1965.

PROCEDURE.

The provisions of the act of the legislature approved May 20, 1915, known at the "state highways act of 1915," relative to the signing, countersigning, endorsing and sealing of the bonds therein provided for and the interest coupons thereon, the place and method of payment of principal and interest thereon, the procedure for initiating, advertising and holding sales thereof, and the performance by the several state boards and officers of their respective duties in connection therewith as therein stated, and all other provisions, terms and conditions in said last-named act relating to the bonds therein mentioned, so far as the same shall be pertinent, shall be applicable to the preparation, issuance and sale of the bonds herein provided for, as herein contemplated.

"THIRD STATE HIGHWAY" FUNDS.

Funds corresponding to those provided for in said act are hereby created, and payments into and out of the same shall be made as in said act provided, said funds to be designated respectively, "third state highway fund," "third state highway interest and sinking fund," "third state highway revolving fund," and "third state highway sinking fund"; and the state treasurer shall on the first day of January, 1920, and on the first day of each July and the first day of each January thereafter transfer from the general fund to the "third state highway interest and sinking fund," and on the first day of July, 1926, and on the first day of July of each year thereafter, from the general fund to the "third state highway sinking fund," the required moneys as provided in section five of said act for the purposes therein stated but as applicable only to the bonds herein provided for and the interest thereon.

USE OF FUNDS.

The moneys in said "third state highway fund" shall be used by the state department of engineering for the acquisition of rights of way for and the acquisition, construction and improvement of uncompleted portions of the system of state highways prescribed by the act of the legislature approved May 22, 1909, known as the "state highways act," and the act of the legislature approved May 20, 1915, and known as the "state highways act of 1915," and certain extensions thereof described in said last-named act, and also for the acquisition of the rights of way for and the acquisition, construction and improvement of the following additional highways as state highways: Barstow to Needles; Oxnard to San Juan Capistrano; Barstow to Mojave; Santa Maria to Bakersfield; Skyline boulevard San Francisco to Santa Cruz; Rio Vista to Fairfield; Auburn to Verdi; Ukiah to Tahoe City; Crescent City to Oregon line; Santa Rosa to Shellville; Big Pine to Oasis; Placerville to Sportsman's Hall; Feather river route Oroville to Quincy; General Grant National Park to Kings river canyon; Calistoga to Lower Lake; Mecca to Blythe; Rumsey to Lower Lake; Azusa to Pine Flats in San Gabriel canyon; La Canada via Arroyo Seco to Mount Wilson road; Lancaster to Bailey's; Bakersfield via Walker's pass to Freeman; McDonald's to the mouth of the Navarro river; Carmel to San Simeon; Klamath river state highway bridge to coast state highway; Susanville to Nevada state line; Pacheco pass road into Hollister; Visalia to Sequoia Park line; Deep creek easterly via Bear Valley dam to the county road at Metcalf creek in the Angeles national forest; Orland to Chico; Tiburon to Alto; and county line near Michigan Bar via Huot's ranch to Drytown.

CONSTITUTION OF THE STATE OF CALIFORNIA.

Said additional highways to be located on the most direct and practical routes; *provided, however,* that twenty million dollars of the moneys in said "third state highway fund," or so much of said twenty million dollars as shall be necessary, shall be used for the completion of all of the system of state highways contemplated and provided for in said "state highways act" and in said "state highways act of 1915," and the extensions thereof specified in said last-named act.

COST TO BE BORNE BY STATE.

The cost of acquisition and construction of the several extensions described in said "state highways act of 1915" shall hereafter be entirely borne by the state of California, it being the intention hereof to relieve the several counties from any further co-operation as contemplated by said "state highway act of 1915," but nothing herein shall prevent any county from contributing towards the cost of said extensions or of any other state highways at its option to such extent as it may desire under the provisions of any existing laws.

APPLICATION OF STATE HIGHWAYS ACT.

All provisions of section eight of said "state highways act of 1915," and of any amendment thereof, and any provisions of said act or of any amendment thereof, relating to the selection of routes, character of construction of highways, manner of conducting work thereon, powers and duties of officers in connection therewith, adoption of public highways as state highways, payment of principal and interest on any bonds and appropriation of money for payment thereof, and the keeping of records and making of statements and reports, and all provisions of section eight of the "state highways act," as amended May 19, 1915, and of section eight of the "state highways act of 1915," and of any amendment of either thereof, relating to the payment by counties of money for interest upon any bonds and the relief of counties from such payment, shall, so far as applicable, apply to the bonds herein authorized and all highways constructed hereunder.

SECTION TO BE SELF-EXECUTING.

All provisions of this section shall be self-executing and shall not require any legislative action in furtherance thereof, but this shall not prevent such legislative action; and all expenses that shall be incurred by the state treasurer in the preparation of bonds herein provided for and in the advertising and sale thereof and all expenses incurred by any officer in reference thereto shall be paid from the general fund of the state. Nothing in this constitution contained shall be a limitation upon the provisions of this section. [New section adopted July 1, 1919.]

SEC. 3. There is hereby created a state highway finance board composed of the governor, state controller, state treasurer, chairman of the state board of control and chairman of the California highway commission, all of whom shall serve thereon without compensation and a majority of whom shall be empowered to act for said board. All of the forty thousand bonds authorized by section two of article sixteen of this constitution which shall have heretofore been sold shall be and constitute valid obligations of this state. All of said forty thousand bonds which shall remain unsold at the time of the adoption of this section shall be cancelled and destroyed by the state treasurer, and in lieu thereof bonds in the same amount shall be prepared and sold as hereinafter stated. Said state highway finance board shall from time to time, so long as the bonds herein authorized remain unsold, determine when the same or any part thereof shall be sold, the number to be sold, the dates which the bonds so to be sold shall bear, and the interest rate thereon, which rate shall be fixed by said board according to the then prevailing market conditions but shall at no time exceed six per cent per annum, and the determination of said board as to the rate of interest shall be conclusive as to the then prevailing market conditions. When requested by said board the state treasurer shall prepare such number of bonds, so dated and bearing such interest rate thereon, all as so determined by said board, said bonds as to maturity dates thereof, form, place and method of payment of principal and interest thereon, and in all other particulars, being the same as authorized by said section two of article sixteen, and as though the bonds herein authorized were the balance of said forty thousand bonds remaining unsold, and when so prepared said bonds shall be signed, countersigned, endorsed, sealed, sold and delivered, all as provided with respect to the bonds authorized by said section two of article sixteen, but by the respective officers in office at the time such acts are required to be done. In the event that any bonds prepared as herein pro-

CONSTITUTION OF THE STATE OF CALIFORNIA.

vided can not in the judgment of said state highway finance board be sold at the time fixed for the sale thereof or thereafter, said board may withdraw said bonds from sale and direct the state treasurer to cancel and destroy the same, and may at said time or thereafter, at its option, direct the preparation and sale as hereinbefore provided, of the same or a different number of bonds, but not to exceed in all the amount herein authorized, and at the same or a different rate of interest but not to exceed six per cent per annum. All of the provisions of said section two of article sixteen, except those relating to the number of the bonds therein authorized, the date thereof and interest rate thereon, and except as herein otherwise provided, shall apply to and govern the bonds herein authorized, the use of the proceeds therefrom, and the several funds to be created and payments to be made into and out of the same, and in all respects said bonds herein authorized and the moneys derived from the sale thereof shall be governed and dealt with in the same manner, except as herein otherwise provided, as though the bonds herein authorized were the unsold portion of the forty thousand bonds authorized by said section two of article sixteen.

Section eight of the "state highways act" of 1909 as amended and approved by the electors November 7, 1916, section eight of the "state highways act" of 1915, section two of article sixteen of the constitution, and this section, to the extent that the provisions of any of said sections require the payment into the state treasury by the several counties of sums of money equal to the interest upon any money expended from the proceeds of the bonds issued under said acts and constitutional provisions respectively within those counties in the construction of state highways, shall on and after July 1, 1921, have no further force or effect; it being the intent of this provision that on and after said date the interest upon all bonds issued by the state for highway construction shall be paid exclusively by the state and that the counties shall thereafter be relieved from any obligation now or heretofore imposed to pay into the state treasury any money by reason of any expenditures for previous or subsequent highway construction in said counties; but nothing in this section contained shall be construed to exempt or relieve any county from the payment into the state treasury of any money due from it prior to said date under any of said provisions of any of said sections.

All provisions of this section shall be self-executing and shall not require any legislative action in furtherance thereof, but this shall not prevent such legislative action; and all expenses that shall be incurred by the state treasurer in the preparation of bonds herein provided for and in the advertising and sale thereof and all expenses incurred by any officer in reference thereto shall be paid from the general fund of the state. Nothing in this constitution contained, except as in this section provided, shall be a limitation upon the provisions of this section. [New section adopted November 2, 1920.]

ARTICLE XVII.

LAND AND HOMESTEAD EXEMPTION.

SECTION 1. The legislature shall protect, by law, from forced sale, a certain portion of the homestead and other property of all heads of families.

SEC. 2. The holding of large tracts of land, uncultivated and unimproved, by individuals or corporations, is against the public interest, and should be discouraged by all means not inconsistent with the rights of private property.

SEC. 3. Lands belonging to this state, which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law.

ARTICLE XVIII.

AMENDING AND REVISING THE CONSTITUTION.

SECTION 1. Any amendment or amendments to this constitution may be proposed in the senate or assembly, and if two-thirds of all the members elected to each of the two houses shall vote in favor thereof, such proposed amendment or amendments shall be entered in their journals, with the yeas and nays taken thereon; and it shall be the duty of the legislature to submit such proposed amendment or amendments to the people in such manner, and at such time, and after such publication as may be deemed expedient. Should more amendments than one be

CONSTITUTION OF THE STATE OF CALIFORNIA.

submitted at the same election, they shall be so prepared and distinguished, by numbers or otherwise, that each can be voted on separately. If the people shall approve and ratify such amendment or amendments, or any of them, by a majority of the qualified electors voting thereon, such amendment or amendments shall become a part of this constitution.

NOTE.—*Time when constitutional amendment takes effect.*—"The amendment (article XIII, section 14), which is by its own terms declared to be self-executing, was adopted at an election held on November 8, 1910, and became a part of the organic law on that date": 166 Cal. 252. See also, 148 Cal. 69.

SEC. 2. Whenever two-thirds of the members elected to each branch of the legislature shall deem it necessary to revise this constitution, they shall recommend to the electors to vote, at the next general election, for or against a convention for that purpose, and if a majority of the electors voting at such election on the proposition for a convention shall vote in favor thereof, the legislature shall, at its next session, provide by law for calling the same. The convention shall consist of a number of delegates not to exceed that of both branches of the legislature, who shall be chosen in the same manner, and have the same qualifications, as members of the legislature. The delegates so elected shall meet within three months after their election, at such place as the legislature may direct. At a special election to be provided for by law, the constitution that may be agreed upon by such convention shall be submitted to the people for their ratification or rejection, in such manner as the convention may determine. The returns of such election shall, in such manner as the convention shall direct, be certified to the executive of the state, who shall call to his assistance the controller, treasurer, and secretary of state, and compare the returns so certified to him; and it shall be the duty of the executive to declare, by his proclamation, such constitution as may have been ratified by a majority of all the votes cast at such special election, to be the constitution of the state of California.

ARTICLE XIX.

CHINESE.

SECTION 1. The legislature shall prescribe all necessary regulations for the protection of the state, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens who are or may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and from aliens otherwise dangerous or detrimental to the well-being or peace of the state, and to impose conditions upon which such persons may reside in the state, and to provide the means and mode of their removal from the state, upon failure or refusal to comply with such conditions; *provided*, that nothing contained in this section shall be construed to impair or limit the power of the legislature to pass such police laws or other regulations at it may deem necessary.

SEC. 2. No corporation now existing or hereafter formed under the laws of this state shall, after the adoption of this constitution, employ, directly or indirectly, in any capacity, any Chinese or Mongolian. The legislature shall pass such laws as may be necessary to enforce this provision.

NOTE.—The provisions of this section held to be in conflict with the United States constitution and therefore void: *In re Parrott*, 1 Fed. 481.

SEC. 3. No Chinese shall be employed on any state, county, municipal, or other public work, except in punishment for crime.

SEC. 4. The presence of foreigners ineligible to become citizens of the United States is declared to be dangerous to the well-being of the state, and the legislature shall discourage their immigration by all the means within its power. Asiatic coolieism is a form of human slavery, and is forever prohibited in this state, and all contracts for coolie labor shall be void. All companies or corporations, whether formed in this country or any foreign country, for the importation of such labor, shall be subject to such penalties as the legislature may prescribe. The legislature shall delegate all necessary power to the incorporated cities and towns of this state for the removal of Chinese without the limits of such cities and towns, or for their location within prescribed portions of those limits, and it shall also provide the necessary legislation to prohibit the introduction into this state of Chinese after the adoption of this constitution. This section shall be enforced by appropriate legislation.

CONSTITUTION OF THE STATE OF CALIFORNIA.

ARTICLE XX.

MISCELLANEOUS SUBJECTS.

SECTION 1. The city of Sacramento is hereby declared to be the seat of government of this state, and shall so remain until changed by law; but no law changing the seat of government shall be valid or binding unless the same be approved and ratified by a majority of the qualified electors of the state voting therefor at a general state election, under such regulations and provisions as the legislature, by a two-thirds vote of each house, may provide, submitting the question of change to the people.

SEC. 2. Any citizen of this state who shall, after the adoption of this constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons either within this state or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office or profit, or to enjoy the right of suffrage under this constitution.

SEC. 3. Members of the legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of the state of California, and that I will faithfully discharge the duties of the office of _____ according to the best of my ability."

And no other oath, declaration, or test shall be required as a qualification for any office or public trust.

SEC. 4. All officers or commissioners whose election or appointment is not provided for by this constitution, and all officers or commissioners whose offices or duties may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may direct.

SEC. 5. The fiscal year shall commence on the first day of July.

SEC. 6. Suits may be brought against the state in such manner and in such courts as shall be directed by law.

SEC. 7. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

SEC. 8. All property, real and personal, owned by either husband or wife, before marriage, and that acquired by either of them afterwards by gift, devise, or descent, shall be their separate property.

SEC. 9. No perpetuities shall be allowed except for eleemosynary purposes.

SEC. 10. Every person shall be disqualified from holding any office of profit in this state who shall have been convicted of having given or offered a bribe to procure his election or appointment.

SEC. 11. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SEC. 12. Absence from this state, on business of the state or of the United States, shall not affect the question of residence of any person.

SEC. 13. A plurality of the votes given at any election shall constitute a choice where not otherwise directed in this constitution; *provided*, that it shall be competent in all charters of cities, counties or cities and counties framed under the authority of this constitution to provide the manner in which their respective elective officers may be elected and to prescribe a higher proportion of the vote therefor; *and provided, also*, that it shall be competent for the legislature by general law to provide the manner in which officers of municipalities organized or incorporated under general laws may be elected and to prescribe a higher proportion of the vote therefor. [Amendment adopted October 10, 1911.]

CONSTITUTION OF THE STATE OF CALIFORNIA.

SEC. 14. The legislature shall provide, by law, for the maintenance and efficiency of a state board of health.

SEC. 15. Mechanics, materialmen, artisans, and laborers of every class shall have a lien upon the property upon which they have bestowed labor or furnished material, for the value of such labor done and material furnished; and the legislature shall provide, by law, for the speedy and efficient enforcement of such liens.

SEC. 16. When the term of any officer or commissioner is not provided for in this constitution, the term of such officer or commissioner may be declared by law; and if not so declared, such officer or commissioner shall hold his position as such officer or commissioner during the pleasure of the authority making the appointment; but in no case shall such term exceed four years; *provided, however*, that in the case of any officer or employee of any municipality governed under a legally adopted charter, the provisions of such charter with reference to the tenure of office or the dismissal from office of any such officer or employee, shall control; *and provided, further*, that the term of office of any person heretofore or hereafter appointed to hold office or employment during good behavior under civil service laws of the state or of any political division thereof shall not be limited by this section. [Amendment adopted October 10, 1911.]

SEC. 17. The time of service of all laborers or workmen or mechanics employed upon any public works of the state of California, or of any county, city and county, city, town, district, township, or any other political subdivision thereof, whether said work is done by contract or otherwise, shall be limited and restricted to eight hours in any one calendar day, except in cases of extraordinary emergency caused by fire, flood, or danger to life and property, or except to work upon public, military, or naval works or defenses in time of war, and the legislature shall provide by law that a stipulation to this effect shall be incorporated in all contracts for public work, and prescribe proper penalties for the speedy and efficient enforcement of said law. [Amendment adopted November 4, 1902.]

SEC. 17½. The legislature may, by appropriate legislation, provide for the establishment of a minimum wage for women and minors and may provide for the comfort, health, safety and general welfare of any and all employees. No provision of this constitution shall be construed as a limitation upon the authority of the legislature to confer upon any commission now or hereafter created, such power and authority as the legislature may deem requisite to carry out the provisions of this section. [New section adopted November 3, 1914.]

SEC. 18. No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation, or profession.

SEC. 19. Nothing in this constitution shall prevent the legislature from providing, by law, for the payment of the expenses of the convention framing this constitution, including the per diem of the delegates for the full term thereof.

SEC. 20. Elections of the officers provided by this constitution, except at the election in the year eighteen hundred and seventy-nine, shall be held on the even-numbered years next before the expiration of their respective terms. The terms of such officers shall commence on the first Monday after the first day of January next following their election.

SEC. 21. The legislature is hereby expressly vested with plenary power, unlimited by any provision of this constitution, to create and enforce a complete system of workmen's compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workmen for injury or disability, and their dependents for death incurred or sustained by the said workmen in the course of their employment, irrespective of the fault of any party. A complete system of workmen's compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workmen and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workmen in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; a full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establish-

CONSTITUTION OF THE STATE OF CALIFORNIA.

ment and management of a state compensation insurance fund; full provision for otherwise securing the payment of compensation; and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character; all of which matters are expressly declared to be the social public policy of this state, binding upon all departments of the state government.

The legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; *provided*, that all decisions of any such tribunal shall be subject to review by the appellate courts of this state. The legislature may combine in one statute all the provisions for a complete system of workmen's compensation, as herein defined.

Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this state or the state compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed. [Amendment adopted November 5, 1918.]

ARTICLE XXI.

BOUNDARY.

SECTION 1. The Boundary of the state of California shall be as follows: Commencing at the point of intersection of the forty-second degree of north latitude with the one hundred and twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred and twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude; thence running in a straight line, in a southeasterly direction to the River Colorado, at a point where it intersects the thirty-fifth degree of north latitude; hence down the middle of the channel of said river to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one thousand eight hundred and forty-eight; thence running west and along said boundary line to the Pacific Ocean, and extending therein three English miles; thence running in a northwesterly direction and following the direction of the Pacific coast to the forty-second degree of north latitude; thence on the line of said forty-second degree of north latitude to the place of beginning. Also, including all the islands, harbors, and bays along and adjacent to the coast.

ARTICLE XXII.

SCHEDULE.

That no inconvenience may arise from the alterations and amendments in the constitution of this state, and to carry the same into complete effect, it is hereby ordained and declared:

SECTION 1. That all laws in force at the adoption of this constitution, not inconsistent therewith, shall remain in full force and effect until altered or repealed by the legislature; and all rights, actions, prosecutions, claims, and contracts of the state, counties, individuals, or bodies corporate, not inconsistent therewith, shall continue to be as valid as if this constitution had not been adopted. The provisions of all laws which are inconsistent with this constitution shall cease upon the adoption thereof, except that all laws which are inconsistent with such provisions of this constitution as require legislation to enforce them shall remain in full force until the first day of July, eighteen hundred and eighty, unless sooner altered or repealed by the legislature.

SEC. 2. That all recognizances, obligations, and all other instruments entered into or executed before the adoption of this constitution, to this state, or to any subdivision thereof, or any municipality therein, and all fines, taxes, penalties, and forfeitures due or owing to this state, or any subdivision or municipality thereof, and all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this constitution. All indictments or informations which shall have been found, or may hereafter be found, for any crime or offense committed before this constitution

CONSTITUTION OF THE STATE OF CALIFORNIA.

takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in this constitution.

SEC. 3. All courts now existing, save justices' and police courts, are hereby abolished, and all records, books, papers, and proceedings from such courts, as are abolished by this constitution, shall be transferred, on the first day of January, eighteen hundred and eighty, to the courts provided for in this constitution; and the courts to which the same are thus transferred shall have the same power and jurisdiction over them as if they had been in the first instance commenced, filed, or lodged therein.

SEC. 4. The superintendent of printing of the state of California shall, at least thirty days before the first Wednesday in May, A. D. eighteen hundred and seventy-nine, cause to be printed at the state printing office, in pamphlet form, simply stitched, as many copies of this constitution as there are registered voters in this state, and mail one copy thereof to the post-office address of each registered voter; *provided*, any copies not called for ten days after reaching their delivery office, shall be subject to general distribution by the several postmasters of the state. The governor shall issue his proclamation, giving notice of the election for the adoption or rejection of this constitution, at least thirty days before the said first Wednesday of May, eighteen hundred and seventy-nine, and the boards of supervisors of the several counties shall cause said proclamation to be made public in their respective counties, and general notice of said election to be given at least fifteen days next before said election.

SEC. 5. The superintendent of printing of the state of California shall, at least twenty days before said election, cause to be printed and delivered to the clerk of each county in this state five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon: "For the New Constitution." He shall likewise cause to be so printed and delivered to said clerks five times the number of properly prepared ballots for said election that there are voters in said respective counties with the words printed thereon: "Against the New Constitution." The secretary of state is hereby authorized and required to furnish the superintendent of state printing a sufficient quantity of legal ballot paper, now on hand, to carry out the provisions of this section.

SEC. 6. The clerks of the several counties in the state shall, at least five days before said election, cause to be delivered to the inspectors of elections, at each election precinct or polling place, in their respective counties, suitable registers, poll books, forms of return, and an equal number of the aforesaid ballots, which number, in the aggregate, must be ten times greater than the number of voters in the said election precincts or polling places. The returns of the number of votes cast at the presidential election in the year eighteen hundred and seventy-six shall serve as a basis of calculation for this and the preceding section; *provided*, that the duties in this and the preceding section imposed upon the clerks of the respective counties shall, in the city and county of San Francisco, be performed by the registrar of voters, for said city and county.

SEC. 7. Every citizen of the United States, entitled by law to vote for members of the assembly in this state, shall be entitled to vote for the adoption or rejection of this constitution.

SEC. 8. The officers of the several counties of this state, whose duty it is, under the law, to receive and canvass the returns from the several precincts of their respective counties, as well as of the city and county of San Francisco, shall meet at the usual places of meeting for such purposes on the first Monday after said election. If, at the time of meeting, the returns from each precinct in the county in which the polls were opened have been received, the board must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from time to time until all the returns are received, or until the second Monday after said election, when they shall proceed to make out returns of the votes cast for and against the new constitution; and the proceedings of said board shall be the same as those prescribed for like boards in the case of an election for governor. Upon the completion of said canvass and returns, the said boards shall immediately certify the same, in the usual form, to the governor of the state of California.

SEC. 9. The governor of the state of California shall, as soon as the returns of said election shall be received by him, or within thirty days after said election, in the presence and with the assistance of the controller, treasurer, and secretary of state, open and compute

CONSTITUTION OF THE STATE OF CALIFORNIA.

all the returns received of votes cast for and against the new constitution. If, by such examination and computation, it is ascertained that a majority of the whole number of votes cast at such election is in favor of such new constitution, the executive of this state shall, by his proclamation, declare such new constitution to be the constitution of the state of California, and that it shall take effect and be in force on the days hereinafter specified.

SEC. 10. In order that future elections in this state shall conform to the requirements of this constitution, the terms of all officers elected at the first election under the same shall be, respectively, one year shorter than the terms as fixed by law or by this constitution; and the successors of all such officers shall be elected at the last election before the expiration of the terms as in this section provided. The first officers chosen after the adoption of this constitution shall be elected at the time and in the manner now provided by law. Judicial officers and the superintendent of public instruction shall be elected at the time and in the manner that state officers are elected.

SEC. 11. All laws relative to the present judicial system of the state shall be applicable to the judicial system created by this constitution until changed by legislation.

SEC. 12. This constitution shall take effect and be in force on and after the fourth day of July, eighteen hundred and seventy-nine, at twelve o'clock meridian, so far as the same relates to the election of all officers, the commencement of their terms of office, and the meeting of the legislature. In all other respects, and for all other purposes, this constitution shall take effect on the first day of January, eighteen hundred and eighty, at twelve o'clock meridian.

ARTICLE XXIII.

RECALL OF PUBLIC OFFICIALS.

SECTION 1. Every elective public officer of the state of California may be removed from office at any time by the electors entitled to vote for a successor of such incumbent, through the procedure and in the manner herein provided for, which procedure shall be known as the recall, and is in addition to any other method of removal provided by law.

The procedure hereunder to effect the removal of an incumbent of an elective public office shall be as follows: A petition signed by electors entitled to vote for a successor of the incumbent sought to be removed, equal in number to at least twelve per cent of the entire vote cast at the last preceding election for all candidates for the office, which the incumbent sought to be removed occupies (provided that if the officer sought to be removed is a state officer who is elected in any political subdivision of the state, said petition shall be signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty per cent of the entire vote cast at the last preceding election for all candidates for the office which the incumbent sought to be removed occupies) demanding an election of a successor to the officer named in said petition, shall be addressed to the secretary of state and filed with the clerk, or registrar of voters of the county or city and county in which the petition was circulated; *provided*, that if the officer sought to be removed was elected in the state at large such petition shall be circulated in not less than five counties of the state, and shall be signed in each of such counties by electors equal in number to not less than one per cent of the entire vote cast, in each of said counties, at said election, as above estimated. Such petition shall contain a general statement of the grounds on which the removal is sought, which statement is intended solely for the information of the electors, and the sufficiency of which shall not be open to review.

When such petition is certified as is herein provided to the secretary of state, he shall forthwith submit the said petition, together with a certificate of its sufficiency, to the governor, who shall thereupon order and fix a date for holding the election, not less than sixty days nor more than eighty days from the date of such certificate of the secretary of state.

The governor shall make or cause to be made publication of notice for the holding of such election, and officers charged by law with duties concerning elections shall make all arrangements for such election and the same shall be conducted, returned, and the result thereof declared, in all respects as are other state elections. On the official ballot at such election shall be printed, in not more than two hundred words, the reasons set forth in the petition for demanding his recall. And in not more than three hundred words there shall also be printed, if

CONSTITUTION OF THE STATE OF CALIFORNIA.

desired by him, the officer's justification of his course in office. Proceedings for the recall of any officer shall be deemed to be pending from the date of the filing with any county, or city and county clerk, or registrar of voters, of any recall petition against such officer; and if such officer shall resign at any time subsequent to the filing thereof, the recall election shall be held notwithstanding such resignation, and the vacancy caused by such resignation, or from any other cause, shall be filled as provided by law, but the person appointed to fill such vacancy shall hold his office only until the person elected at the said recall election shall qualify.

Any person may be nominated for the office which is to be filled at any recall election by a petition signed by electors, qualified to vote at such recall election, equal in number to at least one per cent of the total number of votes cast at the last preceding election for all candidates for the office which the incumbent sought to be removed occupies. Each such nominating petition shall be filed with the secretary of state not less than twenty-five days before such recall election.

There shall be printed on the recall ballot, as to every officer whose recall is to be voted on thereat, the following question: "Shall (name of person against whom the recall petition is filed) be recalled from the office of (title of office)?" following which question shall be the words "Yes" and "No" on separate lines, with a blank space at the right of each, in which the voter shall indicate, by stamping a cross (X), his vote for or against such recall. On such ballots, under each such question, there shall also be printed the names of those persons who have been nominated as candidates to succeed the person recalled, in case he shall be removed from office by said recall election; but no vote cast shall be counted for any candidate for said office unless the voter also voted on said question of the recall of the person sought to be recalled from said office. The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for the office. If a majority of those voting on said question of the recall of any incumbent from office shall vote "No," said incumbent shall continue in said office. If a majority shall vote "Yes," said incumbent shall thereupon be deemed removed from such office upon the qualification of his successor. The canvassers shall canvass all votes for candidates for said office and declare the result in like manner as in a regular election. If the vote at any such recall election shall recall the officer, then the candidate who has received the highest number of votes for the office shall be thereby declared elected for the remainder of the term. In case the person who received the highest number of votes shall fail to qualify within ten days after receiving the certificate of election, the office shall be deemed vacant and shall be filled according to law.

Any recall petition may be presented in sections, but each section shall contain a full and accurate copy of the title and text of the petition. Each signer shall add to his signature his place of residence, giving the street and number, if such exist. His election precinct shall also appear on the paper after his name. The number of signatures appended to each section shall be at the pleasure of the person soliciting signatures to the same. Any qualified elector of the state shall be competent to solicit such signatures within the county, or city and county, of which he is an elector. Each section of the petition shall bear the name of the county, or city and county in which it is circulated, and only qualified electors of such county or city and county shall be competent to sign such section. Each section shall have attached thereto the affidavit of the person soliciting signatures to the same stating his qualifications and that all the signatures to the attached section were made in his presence and that to the best of his knowledge and belief each signature to the section is the genuine signature of the person whose name it purports to be; and no other affidavit thereto shall be required. The affidavit of any person soliciting signatures hereunder shall be verified free of charge by any officer authorized to administer an oath. Such petition so verified shall be prima facie evidence that the signatures thereto appended are genuine and that the persons signing the same are qualified electors. Unless and until it is otherwise proven upon official investigation, it shall be presumed that the petition presented contains the signatures of the requisite number of electors. Each section of the petition shall be filed with the clerk, or registrar of voters, of the county or city and county in which it was circulated; but all such sections circulated in any county or city and county shall be filed at the same time. Within twenty days after the date of filing such petition, the clerk, or registrar of voters, shall finally determine from the records of registration what number of qualified voters have signed the same; and, if necessary, the board of supervisors shall allow such clerk or registrar additional assistants for the purpose of examining such

CONSTITUTION OF THE STATE OF CALIFORNIA.

petition and provide for their compensation. The said clerk or registrar, upon the completion of such examination, shall forthwith attach to such petition his certificate, properly dated, showing the result of such examination, and submit said petition, except as to the signatures appended thereto, to the secretary of state and file a copy of said certificate in his office. Within forty days from the transmission of the said petition and certificate by the clerk or registrar of voters to the secretary of state, a supplemental petition, identical with the original as to the body of the petition but containing supplemental names, may be filed with the clerk or registrar of voters, as aforesaid. The clerk or registrar of voters shall within ten days after the filing of such supplemental petition make like examination thereof as of the original petition, and upon the conclusion of such examination shall forthwith attach to such petition his certificate, properly dated, showing the result of such examination, and shall forthwith transmit such supplemental petition, except as to the signatures thereon, together with his said certificate, to the secretary of state.

When the secretary of state shall have received from one or more county clerks, or registrars of voters, a petition certified as herein provided to have been signed by the requisite number of qualified electors, he shall forthwith transmit to the county clerk or registrar of voters of every county or city and county in the state a certificate showing such fact; and such clerk or registrar of voters shall thereupon file said certificate for record in his office.

A petition shall be deemed to be filed with the secretary of state upon the date of the receipt by him of a certificate or certificates showing the said petition to be signed by the requisite number of electors of the state.

No recall petition shall be circulated or filed against any officer until he has actually held his office for at least six months; save and except it may be filed against any member of the state legislature at any time after five days from the convening and organizing of the legislature after his election.

If at any recall election the incumbent whose removal is sought is not recalled, he shall be repaid from the state treasury any amount legally expended by him as expenses of such election, and the legislature shall provide appropriation for such purpose, and no proceedings for another recall election of said incumbent shall be initiated within six months after such election.

If the governor is sought to be removed under the provisions of this article, the duties herein imposed upon him shall be performed by the lieutenant governor; and if the secretary of state is sought to be removed, the duties herein imposed upon him shall be performed by the state controller; and the duties herein imposed upon the clerk or registrar of voters, shall be performed by such registrar of voters in all cases where the office of registrar of voters exists.

The recall shall also be exercised by the electors of each county, city and county, city and town of the state, with reference to the elective officers thereof, under such procedure as shall be provided by law.

Until otherwise provided by law, the legislative body of any such county, city and county, city or town may provide for the manner of exercising such recall powers in such counties, cities and counties, cities and towns, but shall not require any such recall petition to be signed by electors more in number than twenty-five per cent of the entire vote cast at the last preceding election for all candidates for the office which the incumbent sought to be removed occupies. Nothing herein contained shall be construed as affecting or limiting the present or future powers of cities or counties or cities and counties having charters adopted under the authority given by the constitution.

In the submission to the electors of any petition proposed under this article all officers shall be guided by the general laws of the state, except as otherwise herein provided.

This article is self-executing, but legislation may be enacted to facilitate its operation, but in no way limiting or restricting the provisions of this article or the powers herein reserved. [New article; adopted October 10, 1911.]

J. P. HOGE, President.

Attest: EDWIN F. SMITH, Secretary.

MEMBERS OF THE CONSTITUTIONAL CONVENTION OF 1879.

A. R. ANDREWS,	CONRAD HEROLD,	JAMES MARTIN PORTER,
JAMES J. AYRES,	D. W. HERRINGTON,	WILLIAM H. PROUTY,
CLITUS BARBOUR,	S. G. HILBORN,	M. R. C. PULLIAM,
EDWARD BARRY,	J. R. W. HITCHCOCK,	PATRICK REDDY,
JAMES N. BARTON,	SAM A. HOLMES,	CHAS. F. REED,
C. J. BEERSTECHEER,	VOLNEY E. HOWARD,	JAS. S. REYNOLDS,
ISAAC S. BELCHER,	W. J. HOWARD,	JNO. M. RHODES,
PETER BELL,	W. F. HUESTIS,	CHAS. S. RINGGOLD,
MARION BIGGS,	WM. PROCTOR HUGHEY,	HORACE C. ROLFE,
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JOSIAH BOUCHER,	DANIEL INMAN,	J. SCHOMP,
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SAML. B. BURT,	L. F. JONES,	RUFUS SHOEMAKER,
JAMES CAPLES,	PETER J. JOYCE,	BENJ. SHURTLEFF,
AUG. H. CHAPMAN,	JOHN J. KENNY,	E. O. SMITH,
J. M. CHARLES,	J. M. KELLEY,	H. W. SMITH,
JOHN D. CONDON,	JAMES H. KEYES,	GEO. VENABLE SMITH,
C. W. CROSS,	C. R. KLEINE,	E. P. SOULE,
HAMLET DAVIS,	T. H. LAINE,	JOHN C. STEDMAN,
JAS. E. DEAN,	R. M. LAMPSON,	GEO. STEELE,
P. T. DOWLING,	H. W. LARUE,	D. C. STEVENSON,
LUKE D. DOYLE,	HENRY LARKIN,	CHAS. V. STUART,
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JONATHAN M. DUDLEY,	R. LAVIGNE,	CHARLES SWENSON,
PRESLEY DUNLAP,	J. F. LINDOW,	R. S. SWING,
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M. M. ESTEE,	JOHN G. McCALLUM,	F. O. TOWNSEND,
EDWARD EVEY,	RUSH McCOMAS,	P. B. TULLY,
SIMON J. FARRELL,	THOMAS McCONNELL,	H. K. TURNER,
J. A. FILCER,	JOHN McCOY,	DANIEL TUTTLE,
JACOB RICHARD FREUD,	THOMAS B. McFARLAND,	A. P. VACQUEREL,
ABRAHAM CLARK FREE-	JOHN FLEMING McNUTT,	WALTER VAN DYKE,
MAN,	WM. S. MOFFATT,	WM. VAN VOORHIES,
J. B. GARVEY,	L. D. MORSE,	JNO. WALKER,
B. B. GLASCOCK,	HIRAM MILLS,	HUGH WALKER,
JOSEPH C. GORMAN,	W. W. MORELAND,	BYRON WATERS,
W. P. GRACE,	JAMES E. MURPHY,	J. V. WEBSTER,
WILLIAM J. GRAVES,	EDMUND NASON,	JOSEPH R. WELLER,
V. A. GREGG,	THORWALD CLAUDIUS	PATRICK M. WELLIN,
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JOHN B. HALL,	HENRY NEUNABER,	WM. F. WHITE,
J. E. HALE,	CHAS. C. O'DONNELL,	JOHN T. WICKES,
THOMAS HARRISON,	GEORGE OHLEYER,	H. C. WILSON,
JOEL A. HARVEY,	JAMES O'SULLIVAN,	JOS. W. WINANS,
T. D. HEISKELL,	A. P. OVERTON,	N. G. WYATT.

NOTE.—The following were also members of the convention but did not sign the constitution, being absent on the day when it was adopted: Barnes, Wm. H. L.; Berry, J.; Boggs, H. C.; Campbell, A., Jr.; Casserly, Eugene; Cowden, D. H.; Crouch, Robert; Fawcett, Eugene; Finney, Chas. G., Jr.; Miller, John F.; Noel, Alonzo E.; Wilson, Samuel M.

GENERAL LAWS

OF THE

STATE OF CALIFORNIA

ABORTION.

See tit. "Advertisements."

ACCORD AND SATISFACTION.

See Kerr's Cyc. Civil Code, §§ 1521-1524.

CHAPTER 1.

ACCOUNTANCY.

References: Department of accounting, under board of control, see Kerr's Cyc. Political Code, § 686.

Officers and employees of state, accounts of, see Kerr's Cyc. Political Code, § 424.

CONTENTS OF CHAPTER.

ACT 9. STATE BOARD OF ACCOUNTANCY.

STATE BOARD OF ACCOUNTANCY.

ACT 9—An act to create a state board of accountancy and prescribe its powers and duties; to provide for the examination of and issuance of certificates to qualified applicants, with the designation of certified public accountant; and to provide the grade of penalty for violations of the provisions hereof.

History: Approved March 23, 1901, Stats. 1901, p. 645. Amended June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 949.

State board of accountancy created.

§ 1. Within thirty days after the passage of this act the governor shall appoint five persons, at least three of whom shall be competent and skilled public accountants who shall have been in practice as such in this state for not less than five consecutive years, to constitute and serve as a state board of accountancy. The members of such board shall, within thirty days after their appointment, take and subscribe to the oath of office as prescribed by the Political Code, and file the same with the secretary of state. They shall hold office for four years, and until their successors are appointed and qualified; save and except that one of the members of the board first to be appointed under this act shall hold office for one year; one for two years; one for three years, and two for four years. Any vacancies that may occur, from any cause, shall be filled by the governor for the unexpired term; provided, that all appointments made after the first year must be made from the roll of certificates issued and on file in the office of the governor.

Office, powers, and duties of board. Fees. Certificates. Reports. Examination.

§ 2. The state board of accountancy shall have its office in the city and county of San Francisco, and its powers and duties shall be as follows:

1. To formulate rules for the government of the board and for the examination of and granting of certificates of qualification to persons applying therefor;

2. To hold written examinations of applicants for such certificates, at least semi-annually, at such places as circumstances and applications may warrant;

3. To grant certificates of qualification to such applicants as may, upon examination, be found qualified in "theory of accounts," "practical accounting," "auditing," and "commercial law," to practice as certified public accountants;

4. To charge and collect from all applicants such fee, not exceeding twenty-five dollars, as may be necessary to meet the expenses of examination, issuance of certificates and conducting its office; provided, that all such expenses, including not exceeding five dollars per day for each member while attending the sessions of the board or conducting examinations, must be paid from the current receipts, and no portion thereof shall ever be paid from the state treasury;

5. To require the annual renewal of all such certificates, and to collect therefor a renewal fee of not exceeding one dollar;

6. To revoke for cause any such certificate, after written notice to the holder, and a hearing being had thereon; provided, that such revocation must receive the affirmative vote of at least four members of the board;

7. To report annually to the governor, on or before the first day of December, all such certificates issued or renewed, together with a detailed statement of receipts and disbursements; provided, that any balance remaining in excess of the expenses incurred may be retained by the board and used in defraying the future expenses thereof;

8. The board may, in its discretion, under regulations provided by its rules, waive the examination of applicants possessing the qualifications mentioned in section three, who shall have been for more than three years prior to the passage of this act practising in this state as public accountants on their own account, and who shall, in writing, apply for such certificates within one year thereafter,

Eligibility of certified public accountant.

§ 3. Any citizen of the United States, or any person who has duly declared his intention of becoming such citizen, residing and doing business in this state, being over the age of twenty-one years and of good moral character, may apply to the state board of accountancy for examination under its rules, and for the issuance to him of a certificate of qualification to practise as a certified public accountant, and upon the issuance and receipt of such certificate, and during the period of its existence, or of any renewal thereof, he shall be styled and known as a certified public accountant or expert of accounts, and no other person shall be permitted to assume and use such title or to use any words, letters or figures to indicate that the person using the same is a certified public accountant.

Certified accountants from other states permitted to practise.

§ 3a. Any citizen of the United States, or any person who has declared his intention of becoming such citizen, being over the age of twenty-one years and of good moral character, who has complied with the rules and regulations of the board appertaining to such cases, and who holds a valid and unrevoked certificate as a certified public accountant, or the equivalent thereof, issued by or under the authority of any other state of the United States, or the District of Columbia, or any territory of the United States, or by or under the authority of a foreign nation, when the board shall be satisfied that their standards and requirements for a certificate as a certified public accountant are substantially equivalent to those established by the act of which this act is

an amendment, may at the discretion of the board receive a certificate as a certified public accountant, and such person may thereafter practise as a certified public accountant and assume and use the name, title, and style of "certified public accountant" or any abbreviation or abbreviations thereof, in the state of California; provided, however, that such other state, territory, or nation, extends similar privileges to certified public accountants of the state of California. [New section added June 16, 1913, Stats. 1913, p. 949.]

Violation of statute a misdemeanor.

- § 4. Any violation of the provisions of this act shall be deemed a misdemeanor.
 § 5. This act shall take effect from and after its passage.

CHAPTER 2.

ACKNOWLEDGMENTS.

CONTENTS OF CHAPTER.

ACT 12. LEGALIZING CERTAIN ACKNOWLEDGMENTS.

LEGALIZING CERTAIN ACKNOWLEDGMENTS.

ACT 12—An act to legalize certain acknowledgments.

History: Approved February 25, 1897, Stats. 1897, p. 29. Prior act superseded Act of March 2, 1891, Stats. 1891, p. 20.

§ 1. All acknowledgments of deeds and other instruments of writing, whereby real estate, or any interest therein, is conveyed or may be affected, heretofore taken before court commissioners or a county clerk, and by them or him certified in the usual form, shall, from and after the passage of this act, have the same force and effect for all purposes, as though such acknowledgments had been taken before and certified by a clerk of a court of record, or a county recorder, or a notary public; and the record of such deeds or instruments, if the same shall have been admitted to record, shall hereafter impart notice to the same extent as though such acknowledgments had been taken before and certified by any one of the above-named officers, and said records and duly certified copies thereof shall have the same effect in evidence as though said deeds or instruments had been originally acknowledged and certified before and by duly authorized officers; provided, nothing in this act shall be so construed as in any manner to affect the rights of any subsequent purchaser in good faith and for value.

§ 2. This act shall take effect from and after its passage.

Acknowledgments, admissibility as evidence.—See Kerr's Cyc. Code Civil Procedure, §§ 1948, 1951.

Same—Certificate as evidence of requisite facts.—If it is in due form, and not impeached for fraud, duress or mistake, the certificate of acknowledgment of a married woman is conclusive of the facts stated therein, and can not be impeached by evidence or findings that it was taken over the telephone, the married woman being at the time three miles distant from the notary.—Banning v. Banning, 80 Cal. 271, 13 Am. St. Rep. 156, 22 Pac. 210; cited in Langenbeck v. Lewis, 140 Cal. 406, 409, 73 Pac. 1086.

See, also, De Arnaz v. Escandon, 59 Cal. 486.

Same—Certificate when not conclusive.—When a married woman, whose acknowledgment to a mortgage appears in the certificate, never in fact appeared before the

notary making the certificate, and did not acknowledge the instrument, and did not know anything about its delivery to the grantees, the certificate is not conclusive, and it is error to refuse to admit evidence of the facts.—Le Mesnager v. Hamilton, 101 Cal. 532-534, 40 Am. St. Rep. 81, 35 Pac. 1054.

Same—Same.—When a married woman, whose acknowledgment to a mortgage is essential to its validity, never in fact appeared before the notary certifying to her acknowledgment, did not acknowledge the mortgage, and did not know anything about its delivery, the certificate is not conclusive, it may be impeached by parol evidence, and is a mere fabrication and is void.—Le Mesnager v. Hamilton, 101 Cal. 532-534, 40 Am. St. Rep. 81, 35 Pac. 1054.

Acknowledgment of articles of incorporation.—See Kerr's Cyc. Civil Code, §§ 292, 605, 653o, 653v.

Acknowledgment by attorney in fact.—See Kerr's Cyc. Civil Code, §§ 1192-1193.

Acknowledgment by court commissioners.—See Kerr's Cyc. Code Civil Procedure, § 259.

Acknowledgments by commissioner of deeds.—See Kerr's Cyc. Political Code, §§ 812, 813.

Acknowledgment by convicts.—See Kerr's Cyc. Penal Code, § 675.

Acknowledgment, false personation in making.—See Kerr's Cyc. Penal Code, § 529.

Acknowledgments relating to homesteads.—See Kerr's Cyc. Civil Code, §§ 1242, 1243, 1244, 1262, 1266.

Acknowledgment by justice of the peace.—See Kerr's Cyc. Code Civil Procedure, § 179.

Acknowledgments by superior judge.—See Kerr's Cyc. Code Civil Procedure, § 179.

Acknowledgment by justices of the supreme court.—See Kerr's Cyc. Code Civil Procedure, § 179.

Acknowledgments by police judges.—See Kerr's Cyc. Code Civil Procedure, § 179.

Acknowledgment of married woman, form of.—See Kerr's Cyc. Civil Code, §§ 1093, 1187.

Acknowledgment of mortgages.—See Kerr's Cyc. Civil Code, § 2952.

Acknowledgment of satisfaction of judg-

ment.—See Kerr's Cyc. Code Civil Procedure, § 675.

Acknowledgment of wills and other writings.—See Kerr's Cyc. Code Civil Procedure, § 1948.

Correction of acknowledgments.—See Kerr's Cyc. Civil Code, § 1202.

Curing defective acknowledgments.—See Kerr's Cyc. Civil Code, § 1207.

Foreign acknowledgments.—See Kerr's Cyc. Civil Code, §§ 1182, 1183, 1189.

Legalizing acknowledgments taken before recorders.—Stats. 1852, p. 166.

Legalizing acknowledgments taken before deputy recorders.—Stats. 1859, p. 212.

Legalizing acknowledgments of married women taken before county clerks.—Stats. 1867-8, p. 203.

Legalizing certain acknowledgments required by the Act of 1866, formation of boards of trade, chambers of commerce, etc.—Stats. 1885, p. 55.

Power of attorney to execute mortgage.—See Kerr's Cyc. Civil Code, § 2933.

Proof and acknowledgment of instruments in general.—See Kerr's Cyc. Civil Code, §§ 1180, et seq.

Validation of acknowledgments of state prisoners, with witnesses.—Stats. 1862, p. 496.

ACTIONS AGAINST STATE.

See tit. "State."

ADOPTION.

See Kerr's Cyc. Civil Code, §§ 221, et seq.

CHAPTER 3.

ADULTERATION.

References: See tits. "Butter"; "Cheese"; "Dairies."

CONTENTS OF CHAPTER.

- ACT 25. FOOD AND DRUG ADULTERATION.
- 26. FOOD AND LIQUOR ACT.
- 27. DRUG ACT.
- 29. PAINTS, OILS, VARNISHES, AND PIGMENTS.
- 36. DAIRY PRODUCTS.
- 38. HONEY.
- 39. SYRUP.
- 41. ANALYSIS FOR ADULTERATION.
- 45. INSECTICIDE AND FUNGICIDE ACT.

FOOD AND DRUG ADULTERATION.

ACT 25—An act to provide against the adulteration of food and drugs.

History: Approved March 26, 1895, Stats. 1895, p. 71.

Adulterated drugs or food.

§ 1. No person shall, within this state, manufacture for sale, offer for sale, or sell any drug or article of food which is adulterated within the meaning of this act.

"Drug" defined. "Food" defined.

§ 2. The term "drug," as used in this act, shall include all medicine for internal or external use, antiseptics, disinfectants, and cosmetics. The term "food," as used

herein, shall include all articles used for food or drink by man, whether simple, mixed, or compound.

Drug adulteration defined. Food adulteration defined. Exceptions.

§ 3. Any article shall be deemed to be adulterated within the meaning of this act:

(a) In the case of drugs: (1) If, when sold under or by a name recognized in the United States Pharmacopoeia, it differs from the standard of strength, quality, or purity laid down therein. (2) If, when sold under or by a name not recognized in the United States Pharmacopoeia, but in which is found in some other pharmacopoeia or other standard work on materia medica, it differs materially from the standard of strength, quality, or purity laid down in such work. (3) If its strength, quality, or purity falls below the professed standard under which it is sold.

(b) In the case of food: (1) If any substance or substances have been mixed with it, so as to lower or depreciate, or injuriously affect its quality, strength, or purity. (2) If any inferior or cheaper substance or substances have been substituted wholly or in part for it. (3) If any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it. (4) If it is an imitation of, or is sold under the name of, another article. (5) If it consists wholly, or in part, of a diseased, decomposed, putrid, infected, tainted, or rotten animal or vegetable substance or article, whether manufactured or not; or in the case of milk, if it is the produce of a diseased animal. (6) If it is colored, coated, polished, or powdered, whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is. (7) If it contains any added substance or ingredient which is poisonous or injurious to health.

Proviso.

Provided, that the provisions of this act shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food, if each and every package sold or offered for sale be distinctly labeled as mixtures or compounds, with the name and percent of each ingredient therein, and are not injurious to health.

Must furnish samples for analysis.

§ 4. Every person manufacturing, exposing or offering for sale, or delivering to a purchaser, any drug or article of food included in the provisions of this act, shall furnish to any person interested, or demanding the same, who shall apply to him for the purpose, and shall tender him the value of the same, a sample sufficient for the analysis of any such drug or article or food which is in his possession.

Penalty.

§ 5. Whoever refuses to comply, upon demand, with the requirements of section four, and whoever violates any of the provisions of this act, shall be guilty of a misdemeanor, and shall be fined not exceeding one hundred nor less than twenty-five dollars, or imprisoned in the county jail not exceeding one hundred nor less than thirty days, or both. And any person found guilty of manufacturing, offering for sale, or selling, an adulterated article of food or drug under the provisions of this act shall be adjudged to pay, in addition to the penalties hereinbefore provided for, all the necessary costs and expenses incurred in inspecting and analyzing such adulterated articles of which said person may have been found guilty of manufacturing, selling, or offering for sale.

Act takes effect when.

§ 6. This act shall be in force and take effect from and after its passage.

Adulteration of dairy products.—See, post, Act 36.

Adulteration of particular foods and other products.—See particular title.

Analysis to determine adulteration.—See, post, Act. 41.

Codified and superseded.—Sections 1, 2, and 3, with the exception of the proviso of

section 3, were codified by section 383, Penal Code.—See Kerr's Cyc. Penal Code, § 383.

Aside from this the act is believed to have been entirely superseded by later acts.—See Acts 26, 27.

Constitutionality—Delegation of legislative power.—It was perfectly competent for the California food and drug act to adopt as a standard of purity for the enforcement of its regulations the determinations of the U. S. Department of Agriculture, and such enactment involves no obnoxious delegation of legislative power.—Cleveland, etc., Co. v. State Board of Health, 256 Fed. 376.

Same—Goods in interstate commerce.—Food or drugs, shipped in interstate commerce, are removed from the domain of interstate commerce, and are subject to the provisions of the state food and drugs act, when they are sold by a wholesaler to a retailer, in the state, and placed on sale to consumers.—Cleveland, etc., Co. v. State Board of Health, 256 Fed. 376.

Same—The federal food and drugs act does not prevent the state from prohibiting the adulteration and misbranding of food

or drugs, after they have become a part of the local retail commerce.—Cleveland, etc., Co. v. State Board of Health, 256 Cal. 376.

Constitutionality of statute making possession of criminal.—See note, 51 Am. Rep. 347.

For comparison, see Kerr's Cyc. Penal Code, § 382.

Imitation butter, or oleomargarine.—See, post, tits. "Butter," "Dairies."

Liability for selling noxious and unwholesome foods and drugs.—See note, 73 Am. Dec. 165.

Manufacture, sale and transportation of adulterated foods and liquors.—See, post, Act 26.

Manufacture, sale or transportation of adulterated drugs.—See, post, Act. 27.

Power of state to regulate and prohibit the manufacture and sale of.—See note, 10 Am. St. Rep. 423.

Power of state to prevent importation and sale.—See note, 90 Am. St. Rep. 607.

Power of state to establish a standard.—See note, 41 L. R. A. (N. S.) 149.

FOOD AND LIQUOR ACT.

ACT 26—An act for preventing the manufacture, sale or transportation of adulterated, mislabeled or misbranded foods and liquors and regulating the traffic therein, providing penalties, establishing a state laboratory for foods, liquors and drugs and making an appropriation therefor.

History: Approved March 11, 1907, Stats. 1907, p. 208. Amended February 22, 1909, Stats. 1909, p. 51; March 13, 1909, Stats. 1909, p. 353; April 26, 1911, Stats. 1911, p. 1114; April 23, 1915, Stats. 1915, p. 170; June 1, 1917, Stats. 1917, p. 1641; April 30, 1919, Stats. 1919, p. 241.

Manufacture and sale of adulterated food prohibited.

§ 1. The manufacture, production, preparation, compounding, packing, selling, offering for sale or keeping for sale within the state of California, or the introduction into this state from any other state, territory, or the District of Columbia, or from any foreign country, of any article of food or liquor which is adulterated, mislabeled or misbranded within the meaning of this act is hereby prohibited. Any person, firm, company, or corporation who shall import or receive from any other state or territory or the District of Columbia or from any foreign country, or who having so received shall deliver for pay or otherwise, or offer to deliver to any other person, any article of food or liquor adulterated, mislabeled or misbranded within the meaning of this act, or any person who shall manufacture or produce, prepare or compound, or pack or sell, or offer for sale, or keep for sale, in the state of California any such adulterated, mislabeled or misbranded food, or liquor shall be guilty of a misdemeanor, provided that no article of food shall be deemed adulterated, mislabeled or misbranded within the provisions of this act, when prepared for export beyond the jurisdiction of the United States and prepared or packed according to specifications or directions of the foreign purchaser, when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; but if such foods shall be in fact sold, or kept or offered for sale for domestic uses and consumption, then this proviso shall not exempt said article from the operation of any provisions of this act.

Definition of term "food."

§ 2. The term "food" as used in this act shall include all articles used for food, drink, liquor, confectionery or condiment by man or other animals, whether simple, mixed or compound.

Standard of purity.

§ 3. The standard of purity of food and liquor shall be that published in circular number nineteen, the food inspection decisions and the service and regulatory announcements of the bureau of chemistry of the United States department of agriculture. Nothing in this section contained shall authorize or permit any adulteration of any food or liquor because the standard of purity of such food or liquor shall not be proclaimed by the secretary of the United States department of agriculture. [Amendment of April 30, 1919. In effect July 22, 1919. Stats. 1919, p. 241.]

This section was also amended June 1, 1917, Stats. 1917, p. 1641.

What constitutes adulteration of food.

§ 4. Food shall be deemed adulterated within the meaning of this act, in any of the following cases:

First: If any substance has been mixed or packed, or mixed and packed with the food so as to reduce or lower or injuriously affect its quality, purity, strength, or food value.

Second: If any substance has been substituted wholly or in part for the article of food.

Third: If any essential or any valuable constituent or ingredient of the article of food has been wholly or in part abstracted.

Fourth: If it be mixed, colored, powdered, coated or stained in any manner whereby damage or inferiority is concealed.

Fifth: If it contain any added poisonous or other added deleterious ingredient.

Sixth: If it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal or vegetable unfit for food whether manufactured or not, or if it is the product of a diseased animal or one that has died otherwise than by slaughter; provided that an article of liquor shall not be deemed adulterated, mislabeled or misbranded if it be blended or mixed with like substances so as not to injuriously reduce or injuriously lower or injuriously affect its quality, purity or strength.

Seventh: In the case of confectionery: If it contains terra-alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound or narcotic drug.

Eighth: In the case of vinegar: If it be artificially colored.

Ninth: If it does not conform to the standard of purity therefor as proclaimed by the secretary of the United States department of agriculture. [Amendment of March 13, 1909; Stats. 1909, p. 353.]

To what the term "misbranded" applies.

§ 5. That the term "misbranded" as used herein shall apply to all articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food product which is falsely branded as to the county, city and county, city, town, state, territory, District of Columbia or foreign country in which it is manufactured, or produced.

Food, mislabeled or misbranded, what shall be deemed as.

§ 6. Food and liquor shall be deemed mislabeled or misbranded within the meaning of this act in any of the following cases:

First—If it be an imitation of or offered for sale under the distinctive name of another article of food.

Second—If it be labeled or branded or colored so as to deceive or mislead, or tend to deceive or mislead the purchaser; or if it be falsely labeled in any respect, or if it purport to be a foreign product tend to mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package.

Third—If in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

Fourth—If the package containing it or its label shall bear any statement, design or device regarding the ingredients or the substance contained therein, which statement, design or device shall be false or misleading in any particular.

Fifth—When any package bears the name of the manufacturers, jobbers or sellers, or the grade or the class of the product, it must bear the name of the real manufacturers, jobbers or sellers and the true grade or class of the product, the same to be expressed in clear and distinct English words in legible type; provided, that an article of food shall not be deemed misbranded, if it be a well-known food product of a nature, quality and appearance, and so exposed to public inspection as not to deceive or mislead nor tend to deceive or mislead a purchaser, and not misbranded and not of the character included within the definitions one to four of this section.

Sixth—If, having no label, it is an imitation or adulteration, or is sold or offered for sale under a name, designation, description or representation which is false or misleading in any particular whatever; and in case of eggs and poultry: if they have been kept or packed in cold storage, or otherwise preserved, they must be so indicated by written or printed label or placard plainly designating such fact when offered or exposed for sale. [Amendment of February 22, 1909; Stats. 1909, p. 51.]

Definition of the term "package."

§ 7. The term "package" as used in this act shall be construed to include any phial, bottle, jar, demijohn, carton, bag, case, can, box or barrel or any receptacle, vessel or container of whatsoever material or nature which may be used by a manufacturer, producer, jobber, packer or dealer, for inclosing any article of food.

Possession of adulterated food.

§ 8. The possession of any adulterated, mislabeled or misbranded article of food or liquor by any manufacturer, producer, jobber, packer, or dealer in food, or broker, commission merchant, agent, employee or servant of any such manufacturer, producer, jobber, packer, or dealer, shall be prima facie evidence of the violation of this act.

State laboratory established. Director of laboratory. Salary. Clerical assistants.

§ 9. For the purpose of this act there is hereby established a state laboratory for the analysis and examination of foods and drugs, which shall be under the supervision of the state board of health, which laboratory shall be located at such place as the state board of health may select. The state board of health shall appoint a director of said laboratory, consulting nutrition expert, and an assistant to such director, all of whom shall be skilled pharmaceutical chemists and analysts of foods and drugs. Said director shall perform all duties required by this act and which shall be required by the state board of health. Said consulting nutrition expert shall at all times be ready for consultation with, give advice to, and perform duties in connection with the

director of said laboratory, and shall at all times be under the supervision of and perform such duties under this act as are required by the state board of health. As a part of his duties he shall consult and advise with the state board of control concerning standards of purity and other matters relating to foods and drugs purchased by the state of California for any or all of its institutions. The assistant shall be under the supervision of the director and shall perform all duties required of him by the director and by the state board of health.

The director shall receive an annual salary of three thousand six hundred dollars, the consulting nutrition expert shall receive an annual salary of one thousand two hundred dollars and the assistant to the director shall receive an annual salary of one thousand eight hundred dollars. All such salaries shall be paid in the same manner and at the same time as the salaries of state officers.

The state board of health, out of the appropriation hereinafter provided, and out of the funds derived from the operation of this act, may employ and fix the compensation of other and additional clerical and professional assistants. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1641.]

This section was also amended April 23, 1915, Stats. 1915, p. 171.

Suspected food to be analyzed. Duty of sheriffs. Powers of inspectors.

§ 10. The state board of health or its secretary, shall cause to be made by the said director of the state laboratory, or under his supervision, examinations and analyses of food and liquor on sale in California, suspected of being adulterated, mislabeled or misbranded at such times and places and to such extent as said board or its secretary may determine, and may appoint such agent or agents, as it may deem necessary, and the sheriffs of the respective counties of the state are hereby appointed and constituted agents for the enforcement of this act, and any agent or sheriff shall have free access, at all reasonable hours, for the purpose of examining any place where it is suspected that any article of adulterated, mislabeled or misbranded foods exist, and such agent or sheriff upon tendering the market price of said articles, if a sale be refused, may take, from any person, firm or corporation samples of any articles suspected of being adulterated, mislabeled or misbranded, and shall deliver or forward such samples to the said director of the state laboratory for examination and analysis. The director of the state laboratory, the agents and inspectors of the state board of health shall have the same powers as are possessed by peace officers in this state. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1642.]

Evidence to be reported to district attorney.

§ 11. It shall be the duty of the state board of health whenever it has satisfactory evidence of the violation of any of the provisions of this act respecting the adulteration or misbranding of foods to report such facts to the district attorney of the county where the law is violated, after the hearing provided in section sixteen of this act.

Unlawful to conceal food.

§ 12. It shall be a misdemeanor for any person to refuse to sell to any sheriff or other agent of the state board of health, any sample of food or liquor upon tender of the market price therefor, or to conceal any such food from such officer, or to withhold from him information where such food is kept or stored. Any such person so refusing to sell, or concealing such food, or withholding such information from said officer shall, upon conviction, be punished as provided in section nineteen of the Penal Code of the state of California.

Report to state board of health.

§ 13. Whenever said director shall find from his examination and analysis that adulterated, mislabeled or misbranded food has been on sale in this state, he shall forthwith report to the secretary of the state board of health.

Certificate of director.

§ 14. Every certificate signed by the said director of the state laboratory shall be prima facie evidence of the facts therein stated.

Annual report of director of state laboratory.

§ 15. The said director of the state laboratory shall make an annual report to the state board of health, on or before August first of each year, upon adulterated or misbranded foods and liquors, in which report shall be included the list of cases examined by him in which adulterants were found, and the list of articles found mislabeled or misbranded, and the names of the manufacturers, producers, jobbers and sellers. Said report, or any part thereof, may, in the discretion of the state board of health, be included in the report which the state board of health is already authorized by law to make to the governor. The state board of health may, in its discretion publish any part of said report in any issue of its monthly bulletin.

Hearings for violation of act. Conduct of hearings.

§ 16. When an examination or analysis of the directors of the state laboratory shows that any provisions of this act have been violated, notice of that fact, together with a copy of the certificate of the findings, shall be furnished to the party or parties from whom the sample was obtained, or who executed the guarantee, as provided in this act, and a day shall be fixed by the secretary of the state board of health, at which said parties may be heard before the state board of health, or before any two members thereof and the secretary. The hearing shall be held at such place as the state board of health or its secretary may designate, and at least fifteen days notice thereof shall be served upon the party complained of. These hearings shall be private and confined to questions of fact. Parties interested therein may appear in person or by attorney and may propound interrogatories and submit oral or written evidence to show any fault or error in the findings made by the director of the state laboratory. If the examination or analysis be found correct, or if the party or parties fail to appear at such hearing, after notice duly given as provided herein, the secretary of the state board of health shall forthwith transmit a certificate of the facts so found to the district attorney of the county in which said adulterated, mislabeled or misbranded food was found. No publication as in this act provided shall be made until after said hearing is concluded. [Amendment of April 30, 1919. In effect July 22, 1919. Stats. 1919, p. 241.]

Sheriff to purchase samples of alleged adulterated food.

§ 17. It is hereby made the duty of the sheriff of any county of this state, on presentation to him of a verified complaint of the violation of any provisions of this act, at once to obtain by purchase a sample of the adulterated, mislabeled or misbranded food complained of, and divide said article into three parts, and each part shall be sealed by the sheriff with a seal provided for that purpose. If the package be less than four pounds or in volume less than two quarts, three packages of approximately the same size shall be purchased and the marks and tags upon each package noted as above. One sample shall be delivered to the party from whom procured, or to the party guaranteeing such merchandise, one sample shall be sent to the director of the state laboratory and the third sample shall be sent to and held under seal by the state board of health.

Fees of sheriff.

§ 18. For his services hereunder the said sheriff shall be allowed the same fees for travel allowed by law to sheriffs on service of criminal process, together with such compensation as by the board of supervisors of his county may be deemed reasonable, and all amounts expended by him in procuring and transmitting the said samples,

which fees and amount expended shall be audited and allowed by the said supervisors and paid by his said county as other bills of said sheriff.

Duty of district attorney.

§ 19. It shall be the duty of the district attorney of each county to prosecute all violations of the provisions of this act occurring within his county.

Penalty. Adulterated food seized. Adulterated food destroyed.

§ 20. Any person, firm, company or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars nor more than five hundred dollars, or shall be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment. Whenever the director of the state laboratory shall find after investigation and examination that any article of food found in the possession of any person, firm, company or corporation is adulterated, misbranded or mislabeled within the meaning of this act, he may seize such article of food and tag the same "quarantined," and said article of food shall not thereafter be sold, offered for sale, removed or otherwise disposed of pending hearing and final disposition as in this act provided.

Whenever the director of the state laboratory or any agent or inspector of the state board of health shall find any article of food adulterated within the meaning of the sixth subdivision of section four of this act, he may seize such article of food and tag the same "quarantined" and said article of food shall not thereafter be sold, offered for sale, removed or otherwise disposed of until further notice in writing from said director of the state laboratory. Food found to be adulterated, mislabeled, or misbranded within the meaning of this act may, by order of any court or judge, be seized and destroyed. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1642.]

This section was also amended April 26, 1911, Stats. 1911, p. 1114.

Disposition of fines.

§ 21. One half of all fines collected by any court or judge, for the violations of the provisions of this act shall be paid to the state treasurer and the state treasurer shall deposit such money to the credit of the fund for the maintenance of the state laboratory, to be drawn against by warrants of the state controller upon claims which shall be approved by the state board of health and by the state board of examiners.

Dealer may establish guaranty. General guaranty. Special guaranty. When wholesalers are without state.

§ 22. No dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party residing in the United States from whom he purchased such article, to the effect that the same is not adulterated, mislabeled or misbranded within the meaning of this act, and can also establish by satisfactory evidence that the article sold by him was mislabeled and that at the time of making such sale he was not aware of that fact; such guaranty may be either general or special. A general guaranty shall guarantee without condition or restriction all of the products or articles produced, prepared, compounded, packed, distributed, or sold by the guarantor as not adulterated within the meaning of this act. A special guaranty shall guarantee in the same manner the particular articles listed in an invoice of the same, and shall be attached to or shall fully identify such invoice. Both said guaranties to afford protection must contain the name and address of the party or parties making the sales of such article to said dealer. If the guaranty be to the effect that such article is not adulterated, mislabeled or misbranded within the meaning of the national pure food act, approved June 30, 1906, it shall be sufficient for the purposes of this act and have the same force and

effect as though it referred to this act, except that a guaranty referring to the said national pure food act alone shall not be sufficient for the purposes of this act in any case where at any time the standard for the article concerned under this act is higher than the standard for a like article under said national pure food act. In case the wholesaler, jobber, manufacturer or other party making such guaranty to said dealer resides without this state and it appears from the certificate of the director of the state laboratory that such article or articles were adulterated, mislabeled or misbranded, within the meaning of this act or the national pure food act approved June 30, 1906, the district attorney must forthwith notify the attorney general of the United States of such violation. [Amendment of April 23, 1915. In effect—See § 3 of amending act. Stats. 1915, p. 171.]

This section was also amended April 26, 1911, Stats. 1911, p. 1114.

Appropriation.

§ 23. The sum of twenty thousand dollars (\$20,000.00) is hereby appropriated out of any money in the state treasury not otherwise appropriated for the purchase of equipment, apparatus, chemicals and supplies of said laboratory and of the office expenses, in connection with the same and for the compensation of additional assistants and other necessary help. The state controller is hereby authorized to draw his warrants for the sums herein appropriated in favor of the secretary of the state board of health and the state treasurer is hereby directed to pay the same.

Act prohibits manufacture after what date.

§ 24. No article of food as herein defined shall be manufactured or produced in violation of this act from and after the first day of July, nineteen hundred and seven.

Repeal of conflicting acts.

§ 25. All acts and parts of acts in conflict or inconsistent with this act are hereby repealed.

Act takes effect when.

§ 26. This act shall be in force and effect from and after the first day of January, nineteen hundred and eight.

The amending act of 1915 contained the following section:

Provisions in effect, when.

§ 3. The provisions of section two of this act shall be in force and effect from and after May 1, 1916; provided, that as to products packed and labeled prior to May 1, 1916, in accordance with said national pure food act, and with the regulations thereunder in force prior to May 5, 1914, the provisions of section two of this act shall be in force and effect from and after November 1, 1916.

For comparison, see Kerr's Cyc. Penal Code, § 382.

Adulteration of dairy products.—See, post, Act 36.

Adulteration of particular foods and other products.—See particular title.

Manufacture, sale and transportation of adulterated drugs.—See, post, Act 27.

Punishment of adulteration of food and

other products, and other crimes relating to the preservation of the public health and safety.—See Kerr's Cyc. Penal Code, §§ 382, et seq.

State board of health, duties of, as to prevention and detection of adulteration of food and other products.—See Kerr's Cyc. Political Code, § 2979.

DRUG ACT.

ACT 27—An act for the prevention of the manufacture, sale or transportation of adulterated, mislabeled or misbranded drugs, regulating the traffic in drugs and providing penalties for violation thereof.

History: Approved March 11, 1907, Stats. 1907, p. 230. Amended June 13, 1913, Stats. 1913, p. 767; April 23, 1915, Stats. 1915, p. 172.

Sale of adulterated drugs prohibited. Goods intended for export.

§ 1. The manufacture, production, preparation, compounding, packing, selling, offering for sale or keeping for sale within the state of California, or the introduction into this state from any other state, territory, or the District of Columbia, or from any foreign country, of any drug which is adulterated, mislabeled or misbranded within the meaning of this act is hereby prohibited. Any person, firm, company, or corporation who shall import or receive from any other state or territory or the District of Columbia or from any foreign country, or who having so received shall deliver for pay or otherwise, or offer to deliver to any other person, any drug adulterated, mislabeled or misbranded within the meaning of this act, or any person who shall manufacture or produce, prepare or compound, or pack or sell, or offer for sale, or keep for sale, in the state of California, any such adulterated, mislabeled, or misbranded drug, shall be guilty of a misdemeanor; provided, that no article shall be deemed misbranded, mislabeled or adulterated within the provisions of this act when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; but if said article shall be in fact sold or offered for sale for domestic use or consumption, then this proviso shall not exempt said article from the operation of any of the other provisions of this act.

Definition of term "drug."

§ 2. That the term "drug" as used in this act, shall include all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals.

Standard of purity.

§ 3. The standard of purity of drugs shall be the United States Pharmacopoeia and National Formulary, and the regulations and definitions adopted for the enforcement of the food and drugs act of June 30, 1906, shall be adopted by the state board of health for the enforcement of this act.

What constitutes adulteration.

§ 4. Drugs shall be deemed adulterated within the meaning of this act in any of the following cases:

First. If, when a drug is sold under or by a name recognized in the United States Pharmacopoeia or National Formulary, it differs from the standard of strength, quality or purity, as determined by the test laid down in the United States Pharmacopoeia or National Formulary official at the time of investigation; provided, that no drug defined in the United States Pharmacopoeia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the package thereof although the standard may differ from that determined by the test laid down in the United States Pharmacopoeia or National Formulary.

Second. If the strength or purity fall below the professed standard or quality under which it is sold.

Definition of term "misbranded."

§ 5. That the term "misbranded" as used herein shall apply to all drugs, the package or label of which shall bear any statement, design, or device, regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any drug which is falsely branded or labeled as to

the county, city and county, city, town, state, territory, District of Columbia or foreign country in which it is manufactured or produced.

Drugs deemed mislabeled.

§ 6. Drugs shall be deemed mislabeled or misbranded under the meaning of this act in either of the following cases:

Imitations.

First—If it be an imitation of or offered for sale under the name of another article.

Original contents displaced.

Second—If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package as offered for sale at retail or wholesale, fail to bear a statement on the label of the per cent of volume of alcohol, or the quantity of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, acetanilide, or any derivative or preparation of any such substances contained therein, except when prescribed by a licensed physician, licensed dentist, or licensed veterinary surgeon.

False statements.

Third—If its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article, or any of the ingredients or substances contained therein, which is false and fraudulent. [Amendment approved June 13, 1913; Stats. 1913, p. 767.]

Definition of term "package."

§ 7. The term "package" as used in this act shall be construed to include any phial, bottle, jar, demijohn, carton, bag, case, can, box or barrel or any receptacle, vessel or container of whatsoever material or nature which may be used by a manufacturer, producer, jobber, packer or dealer, for inclosing any drug.

Evidence of violation of act.

§ 8. The sale or offering for sale of any adulterated, mislabeled or misbranded drug by any manufacturer, producer, jobber, packer or dealer in drugs, or broker, commission merchant, agent, employee or servant of any such manufacturer, producer, jobber, packer or dealer, shall be prima facie evidence of the violation of this act.

State laboratory to analyze suspected drugs. Right of sheriff to purchase or seize.

§ 9. Whenever required by the state board of health or its secretary, examinations and analyses of drugs on sale in California suspected of being adulterated, mislabeled or misbranded, shall be made by the director of the state laboratory for the examination and analysis of foods and drugs. Said state board of health or the secretary may appoint such agent or agents as it may deem necessary for the enforcement of this act, and the sheriffs of the respective counties of the state are hereby appointed and constituted such agents. Any agent or sheriff shall have the right to purchase at the place of business of any manufacturer or dealer, any drug suspected of being adulterated, mislabeled or misbranded within the meaning of this act, tendering the market price of said articles, if a sale be refused, he may take from any person, firm or corporation samples of any articles suspected of being adulterated, mislabeled and misbranded, and shall deliver or forward such samples to the said director of the state laboratory for examination and analysis.

Report to district attorney.

§ 10. It shall be the duty of the state board of health whenever it has satisfactory evidence of the violation of any of the provisions of this act respecting the adultera-

tion, mislabeling or misbranding of drugs, to report such facts to the district attorney of the county where the law is violated.

Unlawful to refuse to sell to sheriff.

§ 11. It shall be a misdemeanor for any person to refuse to sell to any sheriff or other agent of the state board of health, any sample of drug upon tender of the market price therefor, or to conceal any such drug from such officer, or to withhold from him information where such drug is kept or stored. Any such person so refusing to sell, or concealing such drug, or withholding such information from said officer, shall upon conviction, be punished as provided in section nineteen of the Penal Code of the state of California.

When analysis shows adulteration, report.

§ 12. Whenever said director shall find from his examination and analysis that adulterated, mislabeled or misbranded drugs have been on sale in this state, he shall forthwith report to the secretary of the state board of health, and shall promptly transmit a certificate of the facts so found to the district attorney of the county in which said adulterated, mislabeled or misbranded drug was found.

Evidence of facts.

§ 13. Every certificate signed by the said director of the state laboratory shall be prima facie evidence of the facts therein stated.

Annual report of director of state laboratory.

§ 14. The said director of the state laboratory shall make an annual report to the state board of health, on or before August first of each year, upon adulterated, mislabeled or misbranded drugs, in which report shall be included the list of cases examined by him in which adulterants were found, and the list of articles found mislabeled or misbranded, and the names of the manufacturers, producers, jobbers and sellers. Said report, or any part thereof, may, in the discretion of the state board of health, be included in the report which the state board of health is already authorized by law to make to the governor. The state board of health may, in its discretion publish any part of said report in any issue of its monthly bulletin.

Notice of violation furnished guarantor. Hearing. Certificate of facts to district attorney.

§ 15. When the examination or analysis of the director of the state laboratory shows that any of the provisions of this act have been violated, notice of that fact together with a copy of the certificate of the findings, shall be furnished to the party or parties from whom the sample was obtained or who executed the guaranty as provided in this act, and a date shall be fixed by the secretary of the board of health at which time said party or parties may be heard before the state board of health or any two members thereof, and the secretary. The hearing shall be held at such times and places as may be designated by the state board of health and at least fifteen days' notice thereof shall be first served upon the party complained of. These hearings shall be private and confined to questions of fact. The parties interested therein may appear in person or by attorneys and may propound the interrogatories and submit oral or written evidence to show any fault or error in the findings made by the director of the state laboratory. If the examination or analysis be found correct, or if the party or parties fail to appear at such hearing, after notice duly served as provided herein, the secretary of the state board of health shall forthwith transmit a certificate of the facts so found to the district attorney of the county in which said adulterated, mislabeled or misbranded drug was found. No publication thereof shall be made until after said hearing is concluded. [Amendment approved June 13, 1913; Stats. 1913, p. 767.]

Duty of sheriff.

§ 16. It is hereby made the duty of the sheriff of any county of this state, on presentation to him of a verified complaint of the violation of any provisions of this act, at once to obtain by purchase a sample of the adulterated, mislabeled or misbranded drug complained of and divide said article into three parts, and each part shall be sealed by the sheriff with a seal provided for that purpose. If the package be less than four pounds, or in volume less than two quarts, three packages of approximately the same size shall be purchased and the marks and tags upon each package noted as above. One sample shall be delivered to the party from whom procured, or to the party guaranteeing said drug. One sample shall be sent to the director of the state laboratory, and the third sample shall be sent to and held under seal by the state board of health.

Fees of sheriff.

§ 17. For his services hereunder the said sheriff shall be allowed the same fees for travel allowed by law to sheriffs on service of criminal process, together with such compensation as by the board of supervisors of his county may be deemed reasonable, and all accounts expended by him in procuring and transmitting the said samples, which fees and amount expended shall be audited and allowed by the said supervisors and paid by his said county as other bills of said sheriff.

Duty of district attorney.

§ 18. It shall be the duty of the district attorney of each county to prosecute all violations of the provisions of this act occurring within his county.

Penalty for violation of act.

§ 19. Any person, firm, company or corporation violating any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or shall be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment. Drugs found to be adulterated or misbranded within the meaning of this act may, by order of any court or judge, be seized and destroyed.

Disposition of fines.

§ 20. One half of all fines collected by any court or judge for the violations of the provisions of this act shall be paid to the state treasurer and the state treasurer shall deposit such money to the credit of the fund for the maintenance of the state laboratory, to be drawn against by warrants of the state controller upon claims which shall be approved by the state board of examiners.

Dealer may establish guaranty regarding mislabeled drugs. General guaranty. Special guaranty. When wholesalers are without state.

§ 21. No dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party residing in the United States from whom he purchased such article, to the effect that the same is not adulterated or misbranded within the meaning of this act. Such guaranty may be either general or special. A general guaranty shall guarantee without condition or restriction all of the products or articles produced, prepared, compounded, packed, distributed, or sold by the guarantor as not adulterated within the meaning of this act. A special guaranty shall guarantee in the same manner the particular articles listed in an invoice of the same, and shall be attached to or shall fully identify such invoice. Both said guaranties to afford protection must contain the name and address of the party or parties making the sales of such article to said dealer. If the guaranty be to the effect that such article is not adulterated or misbranded within

the meaning of the national pure food act, approved June 30, 1906, it shall be sufficient for all the purposes of this act, and have the same force and effect as though it referred to this act, except that a guaranty referring to the said national pure food act alone shall not be sufficient for the purpose of this act in any case where at any time the standard for the article concerned under this act is higher than the standard for a like article under said national pure food act. In case the wholesaler, jobber, manufacturer or other party making such guaranty to said dealer resides without this state and it appears from the certificate of the director of the state laboratory that such article or articles were adulterated or misbranded, within the meaning of this act or the national pure food act approved June 30, 1906, the district attorney must forthwith notify the attorney general of the United States of such violation. [Amendment of April 23, 1915. In effect—See § 2, amending act. Stats. 1915, p. 173.]

Act takes effect when.

§ 22. This act shall be in force and effect from and after the first day of January, nineteen hundred and eight.

The amending act of 1915 contained the following section:

Provisions in effect, when.

§ 2. This act shall be in force and effect from and after May 1, 1916; provided, that as to products packed and labeled prior to May 1, 1916, in accordance with said national pure food act and with the regulations thereunder in force prior to May 5, 1914, this act shall be in force and effect from and after November 1, 1916.

Adulteration of dairy products.—See, post, Act 36.

Analysis to determine adulteration.—See, post, Act 41.

Food and liquor adulteration.—See Act 26.

Food and drug adulteration.—See Act 25.

For comparison, see Kerr's Cyc. Penal Code, § 382.

PAINTS, OILS, VARNISHES AND PIGMENTS.

ACT 29—An act to prevent the adulteration of paints, oils, varnishes and pigments.

History: Approved March 22, 1907, Stats. 1907, p. 852

Adulteration of paints prohibited.

§ 1. No person shall within this state manufacture for sale, offer for sale or sell any article, mixture, compound or substance, used in making paints, oils, varnishes or pigments, which is adulterated within the meaning of this act.

What shall be deemed adulterated.

§ 2. Any article shall be deemed adulterated within the meaning of this act:

1. In case of oils, turpentine, alcohol or other vehicles:

(a) If it contains any other substance or substances, ingredient or ingredients, different from the article under the name of which it is offered for sale or sold;

(b) If any substance has been mixed with it so as to lower, depreciate or injuriously affect the quality, strength or purity of the article;

(c) If any inferior or cheaper substance or substances have been substituted wholly or in part for it;

(d) If it is an imitation, or is sold under the name of any other article.

2. In case of lead, zinc, ochre or other metal, mineral or chemical paints, or any or other pigments in paste form and labeled pure, used in the painting or decorating industry:

(a) If any substance which lowers, depreciates or injuriously affects the quality, strength or purity of the article has been mixed with it, or substituted wholly or in part for it;

(b) If it is an imitation of any other article.

Misdemeanor.

§ 3. Every person who adulterates or dilutes any article mentioned in this act and sells or offers for sale the same so diluted or adulterated, as undiluted and unadulterated, and every person who sells or offers for sale a different article without informing the purchaser of such difference, and every person who violates any of the provisions of this act is guilty of a misdemeanor.

Adulteration of dairy products.—See, post, Act 36.

Adulteration of food and drugs.—See, ante, Act 25.

Analysis to determine adulteration.—See, post, Act 41.

For comparison, see Kerr's Cyc. Penal Code, § 382.

Manufacture, sale and transportation of adulterated foods, liquors and drugs.—See, ante, Acts 26, 27.

DAIRY PRODUCTS.

ACT 36—An act to prohibit adulteration and deception in the sale of dairy products, defining adulteration in dairy products, to establish standards of quality in dairy products and to provide for enforcing its provisions.

History: Approved March 15, 1907, Stats. 1907, p. 265. Amended April 22, 1909, Stats. 1909, p. 1038.

Sale of adulterated milk prohibited.

§ 1. It shall be unlawful for any person to produce, manufacture or prepare for sale or to sell or offer for sale, or have on hand for sale, any milk, or product of milk, that is adulterated within the meaning of this act. The word "person" as used in this act shall be construed to import both the singular and plural, as the case demands, and shall include individuals, corporations, companies, societies and associations. When construing and enforcing the provisions of this act, the act, omission or failure of any employee, officer, agent or other person, acting for or employed by any individual, corporation, company, society or association, within the scope of his employment or office, shall in every case also be deemed to be the act, omission or failure of such individual, corporation, company, society or association, as well as that of the person. The provisions of this act shall be construed to apply to hotel-keepers, restaurant-keepers and boarding-house keepers or any person who shall serve meals and accept money therefor. The words "product of milk" as used in this act, shall not apply to any product into which milk, or a product of milk, may enter as an ingredient or component of a food product that does not consist of milk, or milk products alone, such as pastry, confectionery and ice-cream, and excepting in case of condensed milk or evaporated milk or cream in which case the provisions of this act shall apply, provided, that this section shall not be construed to prevent the use of common salt (chloride of sodium) in dairy products. Any label, printed matter, or advertising or descriptive matter appearing upon, or in connection with any package, parcel or quantity of milk or milk products when being sold, offered for sale, or having on hand for sale, and having reference to the article being sold, offered for sale, or on hand for sale, shall conform with the provisions of this act, and if it fails to conform with the provisions of this act, such article shall be deemed adulterated under this act. It shall be unlawful for any person under this act, when selling or offering for sale, or having on hand for sale, milk or any product of milk to use the words "milk," "condensed milk," "sweetened condensed milk," "condensed skimmed milk," "evaporated cream," "cream" or "butter," either verbally or printed or written on any label or printed matter used in connection with the sale, or offering for sale, or having on hand for sale, of milk or any product of milk, or upon any bill of fare used in any hotel, restaurant or other places where meals are served when the article shall not conform with the provisions of section two of this act.

Definitions and standards.

§ 2. Milk and the products of milk enumerated in this section shall be deemed adulterated within the meaning of this act if it or they shall not conform with the following definitions and standards:

1. Milk is the fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within fifteen (15) days before and five (5) days after calving, and containing not less than three (3.0) per cent of milk-fat, and not less than eight and five-tenths (8.5) per cent of solids—not fat, and from which no cream or fat or other solid component has been removed.

2. Skim-milk is milk from which a part or all of the cream has been removed and contains not less than nine and twenty-five hundredths (9.25) per cent of milk solids.

3. Condensed milk or evaporated milk is whole milk from which a considerable portion of water has been evaporated and contains not less than twenty-four and five-tenths (24.5) per cent of milk solids, including not less than seven and seven-tenths (7.7) per cent milk-fat.

4. Sweetened condensed milk is whole milk from which a considerable portion of water has been evaporated and to which sugar (sucrose) has been added, and contains not less than twenty-four and five-tenths (24.5) per cent of milk solids, including not less than seven and seven-tenths (7.7) per cent milk-fat.

5. Condensed skim-milk is skim-milk from which a considerable portion of water has been evaporated.

6. Cream is that portion of milk, rich in milk-fat, which rises to the surface of milk on standing, or is separated from it by centrifugal force, is fresh and clean, and contains not less than eighteen (18) per cent of milk-fat.

7. Evaporated cream, clotted cream, is cream from which a considerable portion of water has been evaporated.

8. Milk-fat, butter-fat, is the fat of milk and has a Reichert-Meissel number not less than .905 (40 degrees C.)

9. Butter is the clean, non-rancid product made by gathering in any manner the fat or fresh or ripened milk or cream into a mass, which also contains a small portion of the other milk constituents, with or without salt, and contains not less than 80 per cent of milk-fat. [Amendment. Approved April 22, 1909; Stats. 1909, p. 1088.]

Duty of state dairy bureau.

§ 3. It shall be the duty of the state dairy bureau, now existing under the laws of this state, to enforce the provisions of this act; provided, that nothing in this act shall be construed to prevent any city or county board of health or other city or county official from enforcing the provisions of this act.

Penalty for violation of act. Fines.

§ 4. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five (\$25.00) dollars, nor more than two hundred (\$200.00) dollars, or by imprisonment in the county jail for not less than ten nor more than sixty days. Provided that no conviction shall be had where a conviction is sought upon any alleged sample of milk, or product of milk, unless such sample has been taken in duplicate, sealed and marked for identification, and one of such samples left with the person accused. All fines collected under this act shall be paid to the state dairy bureau when the complaint is made through the state dairy bureau and the state dairy bureau shall pay the same to the state treasurer and the amount paid by the state dairy bureau to the state treasurer is hereby appropriated to the use of the state dairy bureau in enforcing this act for the fiscal year in which the amount was paid to the state treasurer.

Interference with inspectors.

§ 5. It shall be unlawful for any person to prevent or interfere with the duly authorized inspectors or agents of the state dairy bureau, or any city or county board of health, from entering any place or premises where milk or products of milk are produced or manufactured or prepared or to prevent or interfere with such inspectors or agents in the event they deem it advisable to secure samples of milk or milk products from any person producing or selling milk or products of milk for the purposing [sic] of analyzing the same to ascertain whether this act is being violated.

Duty of district attorney.

§ 6. It shall be the duty of the district attorney, upon application of the state dairy bureau or any city or county board of health to attend to the prosecution, in the name of the people, of any complaint entered for violation of any of the provisions of this act within his district.

Inconsistent acts repealed.

§ 7. All acts, or parts of acts, inconsistent with this act are hereby repealed.

Act takes effect when.

§ 8. This act shall take effect and be in force sixty days after its passage.

Adulteration of food and drugs.—See, ante, Act 25.

Analysis to determine adulteration.—See, post, Act 41.

For comparison, see Kerr's Cyc. Penal Code, § 382.

Imitation milk, producing, buying, selling, adulterating.—See, post, Act 1172.

Impure and unwholesome milk.—See, post, Act 1171.

Superseded.—Portions of this act, at least, if not the entire act, were superseded by Act 1167.

Municipal ordinance—Higher percentage of solid content.—A municipal ordinance of Los Angeles requiring vended milk to have a larger percentage of solid content than that required by the act, does not for that reason conflict therewith.—In *re Hoffman*, 155 Cal. 114, 132 Am. St. Rep. 75, 99 Pac. 517.

Same—Municipal ordinance not in conflict with this act where it merely exacts additional requirements.—In *re Hoffman*, 155 Cal. 114, 132 Am. St. Rep. 75, 99 Pac. 517. But see in *re Desanta*, 8 Cal. App. 295, 96 Pac. 1027.

HONEY.

ACT 38—An act to prohibit the adulteration of honey, and to provide a punishment therefor.

History: Approved February 23, 1897, Stats. 1897, p. 12. Prior act superseded Act approved March 26, 1895, stats. 1895, p. 94.

Manufacture of adulterated honey prohibited.

§ 1. No person shall, within this state, manufacture for sale, offer for sale, or sell any extracted honey which is adulterated by the admixture therewith of either refined or commercial glucose, or any other substance or substances, article or articles which may in any manner affect the purity of the honey.

Sample for analysis.

§ 2. Every person manufacturing, exposing, or offering for sale, or delivering to a purchaser any extracted honey, shall furnish to any person interested, or demanding the same, who shall apply to him for the purpose, and tender him the value of the same, a sample sufficient for the analysis of any such extracted honey which is in his possession.

Extracted honey.

§ 3. For the purposes of this act, "extracted honey" is the transformed nectar of flowers, which nectar is gathered by the bee from natural sources, and is extracted from the comb after it has been stored by the bee.

Penalties.

§ 4. Whoever violates any of the provisions of this act is guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five nor more than four hundred dollars, or imprisoned in the county jail not less than twenty-five days nor more than six months, or both such fine and imprisonment. And any person found guilty of manufacturing, offering for sale, or selling any adulterated honey under the provisions of this act may, in the discretion of the court, be adjudged to pay, in addition to the penalties hereinbefore provided for, all necessary costs and expenses, not to exceed fifty dollars, incurred in analyzing such adulterated honey of which such person may have been found guilty of manufacturing, selling, or offering for sale.

Act takes effect when.

§ 5. This act shall be in force and take effect from and after its passage.

Adulteration of other food products.—See, ante, Acts 25, 26.

Adulteration of syrup.—See, ante, Act 36.

Analysis to determine adulteration.—See, post, Act 41.

Adulteration of imitation milk.—See, post, Act 1172.

For comparison, see Kerr's Cyc. Penal Code, § 382.

SYRUP.

ACT 39—An act to prohibit and punish the sale of adulterated syrup.

History: Approved March 29, 1878, Stats. 1877-78, p. 695.

Selling adulterated syrup.

§ 1. Any person who shall knowingly sell, or keep, or offer for sale, or otherwise dispose of any syrup, or golden-drips syrup, silver-drips syrup, or molasses, containing muriatic or sulphuric acids, or glucose, or adulterated with any other substance to improve the color thereof, shall be guilty of a misdemeanor.

Penalty.

§ 2. Any person violating the provisions of section one of this act shall be punished, and imprisoned in the county jail of the county in which the offense is committed for a period not exceeding six months, or by a fine not exceeding five hundred dollars, or both.

Act takes effect when.

§ 3. This act shall take effect from and after its passage.

Adulteration of honey.—See, ante, Act 38.

Adulteration of other food products.—See, ante, Acts 25, 26.

Adulteration of imitation milk.—See, post, Act 1172.

For comparison, see Kerr's Cyc. Penal Code, § 382.

Analysis to determine adulteration.—See, post, Act 41.

ANALYSIS, FOR ADULTERATION.

ACT 41—An act to provide for analyzing the minerals, mineral waters, and other liquids, and the medicinal plants of the state of California, and of foods and drugs, to prevent the adulteration of the same.

History: Approved March 9, 1885, Stats. 1885, p. 43.

Governor to appoint state analyst.

§ 1. The governor of the state of California shall appoint one of the professors of the state university of California of sufficient competence, knowledge, skill, and experience, as state analyst, whose duty it shall be to analyze all articles of food, drugs, medicines, medicinal plants, minerals, and mineral waters, and other liquids or solids which shall be manufactured, sold, or used within this state, when submitted to him, as hereinafter provided.

State board of health, etc., may submit food, etc., for analysis. Duty of analyst. Certificate of analyst, when prima facie evidence.

§ 2. The state board of health and vital statistics, or medical officers of health of any city, town, or of any city and county, or county, may, at the cost of their respective boards or corporations, purchase a sample of any food, drugs, medicines, medicinal plants, mineral waters, or other liquids offered for sale in any town, village, or city in this state, and submit the same to the state analyst as hereinafter provided; and said analyst shall, upon receiving such article duly submitted to him, forthwith analyze the same, and give a certified certificate to the secretary of the state board of health submitting the same, wherein he shall fully specify the result of the analysis; and the certificate of the state analyst shall be held in all the courts of this state as prima facie evidence of the properties of the articles analyzed by him.

Any person may submit food, etc., for analysis.

§ 3. Any person desiring an analysis of any food, drug, medicine, medicinal plant, soil, mineral water, or other liquid, shall submit the same to the secretary of the state board of health, together with a written statement of the circumstances under which he procured the article to be analyzed, which statement must, if required by him, be verified by oath, and it shall be the duty of the secretary of the state board of health to transmit the same to the state analyst, the expenses hereof to be defrayed by the said board.

State analyst to report.

§ 4. The state analyst shall report to the state board of health the number of all the articles analyzed, and shall specify the results thereof to said board annually, with full statement of all the articles analyzed, and by whom submitted.

State board of health may submit food, etc., for analysis.

§ 5. The state board of health may submit to the state analyst any samples of food, drugs, medicines, medicinal plants, mineral waters, or other liquids, for analysis, as hereinbefore provided.

Mineralogist to submit minerals for analysis.

§ 6. It shall be competent for the mineralogist of the state of California to submit to the state analyst any minerals of which he desires an analysis to be made; provided, that the cost of the same shall be defrayed by the mineralogical bureau.

Viticultural commissioners may submit wines and spirits for analysis.

§ 7. The board of state viticultural commissioners shall have the same privileges as are provided for the state board of health under this act, with respect to samples of wines and grape-spirits, and of all liquids and compounds in imitation thereof, and any person or persons desiring analyses of such products, shall submit the same to the secretary of the said board of state viticultural commissioners, and the same shall be transmitted to the state analyst, in the manner prescribed in section three of this act. The analyses shall be made, and the certificates of the state analyst shall be forwarded to the secretary of the said board of state viticultural commissioners, and shall have the same force and effect as provided for in section two of this act, with respect to analyses made for the state board of health.

Samples for analysis.—Demand, refusal, and penalty.—See, ante, Acts 25, 26, 27, and acts under titles "Butter"; "Cheese"; "Dairies."

Superseded.—It is believed that this act

has been superseded, at least as to the analysis of food and drugs, as to which the various food and drug acts make ample provision, and as to dairy products, which fully provide for tests to determine analysis.

INSECTICIDE AND FUNGICIDE ACT.

ACT 45—An act to regulate the manufacture, sale, adulteration and misbranding of insecticides or fungicides or materials used for insecticidal or fungicidal purposes, and to provide penalties for the infraction thereof, and to appropriate money therefor.

History: Approved May 1, 1911, Stats. 1911, p. 1248. Amended June 2, 1913, Stats. 1913, p. 363; June 16, 1913, p. 1141. Former act, Act of February 28, 1901, Stats. 1901, p. 69.

Unlawful to manufacture adulterated insecticide. Penalty. Fines paid into school fund.

§ 1. That it shall be unlawful for any person to manufacture within this state any insecticide, paris green, lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this act; and any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not to exceed two hundred dollars for the first offense, and upon conviction for each subsequent offense to be fined not to exceed three hundred dollars, or sentenced to imprisonment for not to exceed one year, or both such fine and imprisonment, in the discretion of the court. Said fines and those specified in section 2 of this act to be paid into the school fund of the county in which conviction is had.

Unlawful to sell adulterated insecticide. Penalty. Article for export.

§ 2. Any person who shall offer to deliver to any other person or any person who shall sell or offer for sale in this state any such adulterated or misbranded insecticide or paris green or lead arsenate or fungicide which is adulterated or misbranded within the meaning of this act, or export or offer to export the same to any foreign country shall be guilty of a misdemeanor, and for such offense be fined not exceeding two hundred dollars for the first offense, and upon conviction for each subsequent offense not exceeding three hundred dollars, or to be imprisoned not exceeding one year, or both, in the discretion of the court; provided, that no article shall be deemed misbranded or adulterated within the provisions of this act when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser; but if said article shall be in fact sold or offered for sale for domestic use or consumption, then this proviso shall not exempt said article from the operation of any of the provisions of this act.

Examination of specimens.

§ 3. The examination of specimens of insecticides, paris greens, lead arsenates and fungicides shall be made by the director of the agricultural experiment station of the University of California in person or by deputy, for the purpose of determining from such examination whether such articles are adulterated or misbranded within the meaning of this act; and if it shall appear from any such examination that any of such specimens are adulterated or misbranded within the meaning of this act, the said director shall cause notice thereof to be given to the party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard under the rules and regulations adopted by the United States government for the enforcement of the national insecticide act of 1910, and if it appears that any of the provisions of this act have been violated by such party, then the said director shall at once certify the facts to the proper district attorney, with a copy of the results of the analysis or the examination of such article duly authenticated by the analyst or officer making such examination, under the oath of such officer. After judgment of the court, notice shall be given by publication in such manner as the said director may determine.

Duty of district attorney to prosecute.

§ 4. That it shall be the duty of each district attorney to whom the said director shall report any violation of this act or present satisfactory evidences of any such violation, to cause appropriate proceedings to be commenced and prosecuted in the proper

courts of the state of California without delay, for the enforcement of the penalties as in such case herein provided.

Evidence of proper analysis.

§ 5. In any action, civil or criminal, in any court in this state, a certificate, under the head of said director, and the seal of said university, stating the results of any analysis purporting to have been made under the provisions of this act, shall be prima facie evidence of the fact that the sample or samples mentioned in said analysis or certificate were properly analyzed as in this act provided; that the substances analyzed contained the component parts stated in such certificate and analysis; and that the samples were taken from the parcels or packages or lots mentioned or described in said certificate.

Definitions: "Insecticide." Paris green. "Lead arsenate." "Fungicide."

§ 6. That the term "insecticide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any insects which may infest vegetation, man or other animals, or households, or be present in any environment whatsoever. The term paris green as used in this act shall include the product sold in commerce as paris green and chemically known as the aceto-arsenite of copper. The term "lead arsenate" as used in this act shall include the product or products sold in commerce as lead arsenate and consisting chemically of products derived from arsenic acid (H_3AsO_4) by replacing one or more hydrogen atoms by lead. That the term "fungicide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any and all fungi that may infest vegetation or be present in any environment whatsoever.

Adulterated paris green. Adulterated lead arsenic. Other insecticides.

§ 7. That for the purpose of this act an article shall be deemed to be adulterated—
In the case of paris green: First, if it does not contain at least fifty per centum of arsenious oxide; second, if it contains arsenic in water-soluble forms equivalent to more than three and one-half per centum of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength. In the case of lead arsenate: First, if it contains more than fifty per centum of water; second, if it contains total arsenic equivalent to less than twelve and one-half per centum of arsenic oxide (As_2O_5); third, if it contains arsenic in water-soluble forms equivalent to more than seventy-five one hundredths per centum of arsenic oxide (As_2O_5); fourth, if any substances have been mixed and packed with it so as to reduce, lower, or injuriously affect its quality or strength; provided, however, that extra water may be added to lead arsenate (as described in this paragraph) if the resulting mixture is labeled lead arsenate and water, the percentage of extra water being plainly and correctly stated on the label.

In the case of insecticides or fungicides, other than paris green and lead arsenate: First, if its strength or purity fall below the professed standard or quality under which it is sold; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended for use on vegetation and shall contain any substance or substances which, although preventing, destroying, repelling, or mitigating insects, shall be injurious to such vegetation when used.

"Misbranded" defined. Misbranded insecticides. Names of ingredients.

§ 8. That the term "misbranded," as used herein, shall apply to all insecticides, paris green, lead arsenate, or fungicides or articles which enter into the composition of insecticides or fungicides, the package or label of which shall bear any statement,

design or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular, and to all insecticides, paris green, lead arsenate, or fungicides which are falsely branded as to the state, territory, or country, in which they are manufactured or produced. That for the purpose of this act an article shall be deemed to be misbranded: In the case of insecticides, paris green, lead arsenate, and fungicides: first, if it be an imitation or offered for sale under the name of another article; second, if it be labeled or branded so as to deceive or mislead the purchaser, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package; third, if in package form, and the contents are stated in terms of weight or measure they are not plainly and correctly stated on the outside of the package. In the case of insecticides (other than paris green and lead arsenates) and fungicides; first, if it contains arsenic in any of its combinations or in the elemental form and the total amount of arsenic present (expressed as per centum of metallic arsenic) is not stated on the label; second, if it contains arsenic in any of its combinations or in the elemental form and the amount of arsenic in water-soluble forms (expressed as per centum of metallic arsenic) is not stated on the label; third, if it consists partially or completely of any inert substance or substances which do not prevent, destroy, repel or mitigate insects or fungi and does not have the names and percentage amounts of each and every one of such inert ingredients plainly and correctly stated on the label; provided, however, that in lieu of naming and stating the percentage amount of each and every inert ingredient the producer may at his discretion state plainly upon the label the correct names of each and every ingredient of the insecticide or fungicide having insecticidal or fungicidal properties, and make no mention of the inert ingredients, except in so far as to state the total percentage of inert ingredients present. [Amendment approved June 16, 1913. Stats. 1913, p. 1141.]

Wholesaler's guaranty.

§ 9. That no dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party from whom he purchased such articles, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating it; or a general guaranty may be filed with the secretary of the United States department of agriculture by the manufacturer, wholesaler, jobber or other party in the United States and be given a serial number, which number shall appear on every package of insecticide or fungicide sold under such guaranty with the words "guaranteed by" (the name of the guarantor) under the insecticide act of 1910; and in such cases said party or parties shall be amenable to the prosecutions, fines, or other penalties which would attach in due course to the dealer under the provisions of this act. [Amendment approved June 16, 1913. Stats. 1913, p. 1141.]

"Person" defined. Act of agent deemed act of corporation.

§ 10. That the word "person" as used in this act shall be construed to mean both the plural and the singular, as the case depends, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this act, the act, omission or failure of any officer, agent, or other person acting for or employed by any corporation, company, society or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association, as well as that of the other person.

Label.

§ 11. Every lot, parcel or package of commercial insecticides or fungicides or materials to be used for insecticidal or fungicidal purposes, sold, offered or exposed for

sale, within this state, shall be accompanied by a plainly printed label stating the name, brand and trade-mark, if any there be, under which the insecticide or fungicide is sold, the name and address of the manufacturer, importer, or dealer, the place of manufacture, and giving a correct general statement of the nature and composition, together with the name, of the insecticide or fungicide it accompanies, and the total percentage claimed to be therein of the substance or substances alleged to have insecticidal or fungicidal properties. [Amendment approved June 16, 1913; Stats. 1913, p. 1141.]

Insecticide deemed adulterated.

§ 12. No commercial insecticide, paris, green, lead arsenate or fungicide shall be deemed to be adulterated under the provisions of this act, if the standard of strength, quality or purity thereof be plainly stated upon the bottle, box or container thereof, although the standard may differ from that determined by the provisions of section 7 hereof. [New section, approved June 16, 1913. Stats. 1913, p. 1141. The original section 12 was repealed by this act.]

Not applicable to certain drugs.

§ 12½. The provisions of this act shall not apply to the sale of any of the preparations, drugs and chemicals of the United States Pharmacopoeia or National Formulary, which conforms to the standard and tests prescribed in the latest edition of the United States Pharmacopoeia or National Formulary, nor shall the provisions of this act apply to the sale of any medicinal or toilet preparations or substances guaranteed under the United States pure food and drugs act of June 30th, 1906, and the California pure food and drugs act, Statutes of California for 1907, chapter 187. [New section, approved June 16, 1913. Stats. 1913, p. 1141.]

Analysis of insecticides.

§ 13. The directory of the agricultural experiment station of the University of California shall, upon receipt of a sample of insecticide or fungicide, accompanied with a nominal fee of one dollar, furnish to the user of said commercial insecticide or fungicide, such examination or analysis of the sample as will substantially establish the conformity or non-conformity of the said insecticide or fungicide to the guarantee under which it is sold. [Amendment approved June 16, 1913; Stats. 1913, p. 1141.]

Purchase of samples.

§ 14. The directory of the agricultural experiment station of the University of California, in person or by deputy, is hereby authorized to purchase a sample, not exceeding one pound in weight, for analysis by the said director or his deputies, from any lot, parcel or package of insecticide or fungicide, or material, or mixture of materials used for insecticidal or fungicidal purposes, which may be in the possession of any manufacturer, importer, agent or dealer; but said sample shall be drawn in the presence of said party or parties in interest or their representatives. In lots of five tons or less, samples shall be drawn from at least ten packages, or, if less than ten packages are present, all shall be sampled; in lots of over five tons, not less than twenty packages shall be sampled. The samples so drawn shall be thoroughly mixed, and from it two equal samples shall be drawn and placed in glass vessels, carefully sealed, and a label placed on each, stating the name or brand of the insecticide or material sampled, the name of the party from whose stock the sample was drawn, and the time and place of drawing; and said label shall also be signed by the said director or his deputy making such inspection, and by the party or parties in interest or their representatives, present at the drawing and sealing of said samples. One of said duplicate samples shall be retained by the party whose stock was sampled, and the other by the director of the agricultural experiment station of the University of California. [Amendment approved June 16, 1913. Stats. 1913, p. 1141.]

Insecticides sold without notice.

§ 14a. The following insecticides and fungicides or materials to be used for insecticidal or fungicidal purposes may be sold by grocers and dealers generally without restriction and the registration fee, permit or license being required of them, viz: Insect powders, poison fly paper, sticky fly paper, borax, moth balls, gum camphor, spirits of camphor, blue ointment, oil of eucalyptus, castor oil, ant poison, sheep dip, lice killer, sulphur, blue-stone. [New section added June 2, 1913. Stats. 1913, p. 363.]

Publication of results of analyses.

§ 15. The director of the agricultural experiment station of the University of California shall publish in bulletin form, from time to time, at least annually, the results of the analyses hereinbefore provided with such additional information as circumstances may advise.

Appropriation.

§ 16. There is hereby provided for carrying out the purposes of this act, out of any moneys in the state treasury not otherwise appropriated, the sum of five thousand dollars for each fiscal year hereafter, beginning with the first day of July, 1911.

Persons who may not be interested in sale, etc.

§ 17. All persons charged with the enforcement or execution of any of the provisions of this act shall not directly or indirectly be interested in the sale, manufacture or distribution of any insecticide or fungicide affected by this act.

Disposition of fees.

§ 18. All moneys received from analytical fees shall be paid to the secretary of the board of regents of the University of California for the use of said board in carrying out the provisions of this act. [Amendment approved June 16, 1913. Stats. 1913, p. 1141.]

Repealed.

§ 19. An act to prevent fraud in the sale of paris green used as an insecticide, chapter LIII, page 69, Statutes of 1901, is hereby repealed.

§ 20. This act shall take effect and be in force from and after July 1, 1911.

Administration and enforcement, power of, given the director of the department of agriculture.—See § 9, Act 96.

Repealed or superseded act.—This act purports to repeal the prior act of February 28, 1901 (Stats. 1901, p. 69). See § 19. But the title of the act contains no reference to such repeal, and the body of the act contains no

express repeal provision. Whether repealed or not, it was superseded by the present act.

Scope of section 14a—Construed with "Poison Act."—This section does not, in view of the provisions of section 7 of the "Poison Act," authorize grocers and dealers generally to sell an ant poison containing arsenic or its compounds.—In re Potter, 26 Cal. App. 45, 146 Pac. 62.

ADULTERY.

See Kerr's Cyc. Penal Code, §§ 269a, 269b.

CHAPTER 4.

ADVERTISEMENTS.

References: Abortion, advertisements to procure, see Kerr's Cyc. Penal Code, § 317.

Advertisements on state highways, see tit. "Highways," Act. 1903.

Banking, false advertising in, see Act 409.

Bear flag, use of for advertising, see Kerr's Cyc. Penal Code, § 310a.

Bonds as legal investments, false advertising of, see Act 409.

Divorce, advertisements to procure, see Kerr's Cyc. Penal Code, § 159a.

Lotteries, advertising, see Kerr's Cyc. Penal Code, § 323.

"No hunting" signs, tearing down, etc., see Kerr's Cyc. Penal Code, § 602.

Official advertisements, in general, see Kerr's Cyc. Political Code, § 4458, et seq.

Official advertisements, in particular, see particular title in the several codes.

Practice law, false advertisement, see Kerr's Cyc. Penal Code, § 161a.

Property in signs, see Kerr's Cyc. Civil Code, § 655.

Real estate, false advertisement concerning, see Kerr's Cyc. Penal Code, § 654b.

Tearing down, damaging, etc., signs, etc., see Kerr's Cyc. Penal Code, § 602.

CONTENTS OF CHAPTER.

ACT 60. LAWFUL AND UNLAWFUL SIGNS, ETC.

61. VENEREAL DISEASE REMEDIES.

62. FRAUDULENT.

LAWFUL AND UNLAWFUL SIGNS, ETC.

ACT 60—An act prohibiting the placing or maintaining of signs, mechanical devices, transparencies, pictures or advertisements on or upon property of the state of California, or on or upon property of any city, city and county or county in the state of California, and prohibiting the placing or maintaining of any signs, mechanical devices, transparencies, pictures or advertisements upon property of any person or private corporation without consent in writing therefor having been first obtained, and providing a penalty for the violation of the provisions of this act, and declaring such signs, mechanical devices, transparencies, pictures and advertisements to be a public nuisance.

History: Approved April 21, 1911, Stats. 1911, p. 957.

Unlawful to place signs without permission.

§ 1. It shall be unlawful for any person, persons or corporation to place, cause to be placed or to maintain, or cause to be maintained without lawful permission on or upon any property, either real or personal, belonging to the state of California, or to any city, city and county or county in the state of California, any sign, picture, transparency, advertisement or mechanical device which is used for the purpose of or which does advertise or bring to notice any person or persons or article or articles of merchandise or any business or profession or anything that is to be or has been sold, bartered or given away.

Consent of owners of property.

§ 2. It shall be unlawful for any person, persons or corporation to place, cause to be placed, maintain, or cause to be maintained on or upon any property, either real or personal, within the state of California, in which said person, persons or corporations have no estate or right of possession, any sign, picture, transparency, advertisement or mechanical device which is used for the purpose of, or which does advertise or bring to notice any person or persons, or article or articles of merchandise or any business or profession or anything that is to be or has been sold, bartered or given away, unless such person, persons or corporation obtain the consent of the owner or owners, lessee or lessees of said property, or person or persons in lawful possession of said property before such sign, picture, transparency, advertisement or mechanical device is placed on or upon said property.

Lawful notices. Road signs.

§ 3. Nothing herein shall be so construed as to prevent the posting of any notice required by law or order of any court, to be posted, nor to prevent the posting or placing of any notice, particularly pertaining to the grounds or premises upon which the same is so posted or placed, or to prevent the posting or placing of any notice, sign, or device used exclusively for giving public notice of the name, direction or condition of any highway, street, lane, road or alley.

Nuisance.

§ 4. Any such sign, picture, transparency, advertisement or mechanical device so placed on any property, contrary to the provisions of this act, is and shall be a public nuisance.

Penalty.

§ 5. Any person violating any of the provisions of this act shall be guilty of a misdemeanor.

Advertisements as to articles for sale.—
See, post, Act 62.

Police power to prevent.—See 34 L. R. A. (N. S.) 998; 39 L. R. A. (N. S.) 350.

Advertisements of remedies for venereal diseases.—See, post, Act 61.

VENEREAL DISEASE REMEDIES.

ACT 61—An act to prohibit the advertising of venereal disease remedies and providing a penalty for the violation of the provisions of this act.

History: Approved May 11, 1919. In effect July 22, 1919. Stats. 1919, p. 477.

Advertising unlawful.

§ 1. From and after the passage of this act it shall be unlawful for any person, firm, corporation or association, except boards of health or agencies approved by the state board of health, to post or otherwise exhibit or distribute in any manner whatsoever in any place, any advertising or other printed matter concerning venereal diseases, lost manhood, lost vitality, impotency, seminal emissions, self-abuse, varicocele, or excessive sexual indulgence, and calling attention to any medicine, device, compound, treatment or preparation that may be used therefor.

Penalty for violation.

§ 2. Any person violating the provisions of this act shall upon conviction therefor be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than one year or by both such fine and imprisonment.

FRAUDULENT.

ACT 62—An act to prevent false and incorrect representations and advertisements concerning articles offered for sale and prescribing a punishment for the violation thereof.

History: Approved April 22, 1909, Stats. 1909, p. 1078.

Misleading advertisements.

§ 1. Any firm, person, corporation or association of persons, or any employee of such or any of such, who in the newspapers or other periodicals of this state, or in public advertisements, or in communications intended for a large number of persons knowingly makes or disseminates any statements or assertions of facts with respect to his, its or their business affairs concerning the quantity, the quality, the value, the price, the method of production or manufacture, or the fixing of the price of his, its or their merchandise or professional work; or the manner or source of purchase of

such merchandise, or the possession of awards, prizes or distinctions; or the motive or purpose of a sale, intended to have the appearance of an advantageous offer, which is or are untrue or calculated to mislead, shall be guilty of a misdemeanor.

Superseded.—This act was probably superseded by the 1915 amendment to § 654a, Penal Code.—See Kerr's Cyc. Penal Code, § 654a.

AGED PERSONS.

See tits. "Home of Adult Blind," "Paupers," "Veterans' Home Association."

AGENTS.

See tits. "Employment Agencies," "Insurance Companies," "Investment Companies," "Real Estate Brokers."

AGRICULTURAL BUILDINGS.

See tit. "Agriculture."

AGRICULTURAL DISTRICTS.

See tit. "Agriculture."

AGRICULTURAL FAIRS.

See tit. "Agriculture."

AGRICULTURAL PARK.

See tit. "Agriculture."

AGRICULTURAL SOCIETIES.

See tit. "Agriculture."

CHAPTER 5.

AGRICULTURE.

References: Farm loan bonds, a lawful investment, see, post, Act 518.

Fruit and vegetables, see title.

Horticulture, see title.

Land settlement and rural credits, see tit. State.

"Land Settlement Board."

Potatoes, see title.

Predatory animals, protection against, see, post, Act 251.

Protection of agriculture, see tits. "Estrays," "Trespassing Animals."

Protection of agriculture in certain counties, see particular county.

Protection of agriculture, see particular acts in chapters under tits. "Conservation," "Drainage Districts," "Irrigation," "Protection Districts," "Storm Water Districts."

Silk culture, see title.

Squirrels and gophers, destruction of in certain counties, see post Acts 249, 250.

Trespassing animals, see title.

Trespassing animals in certain counties, see particular county.

Viticulture, see title.

CONTENTS OF CHAPTER.

- I. AGRICULTURAL BUILDINGS AND PARK.
- II. STATE AGRICULTURAL SOCIETY.
- III. COUNTY AND DISTRICT AGRICULTURAL SOCIETIES AND ASSOCIATIONS.
- IV. AGRICULTURAL DISTRICTS.
- V. MISCELLANEOUS. DEPARTMENT OF AGRICULTURE.

I. AGRICULTURAL BUILDINGS AND PARK.

- ACT 65. STATE FAIR BUILDINGS.
 66. WOMAN'S BUILDING.
 67. MACHINERY HALL.
 68. DAIRY BUILDINGS.
 69. MEMORIAL BUILDINGS.
 70. EXTENSION OF FAIR GROUNDS.
 70a. IMPROVEMENT OF PARK BY DAY'S WORK.
 70b. IMPROVEMENT OF PARK.
 70c. RELIEF OF DIRECTORS OF SOCIETY.

STATE FAIR BUILDINGS.

ACT 65—An act making an appropriation for the erection and construction of buildings and equipping the fair grounds owned by or under the jurisdiction and control of the California State Agricultural Society, for exposition and state fair purposes and for the payment of other expenses incidental and relating thereto, prohibiting gambling of all kinds upon the grounds and premises under the control of said California State Agricultural Society, and providing a penalty for gambling or gaming thereon, and providing that certain moneys now in the state treasury may be used in connection with this appropriation for such purposes.

History: Approved March 22, 1905, Stats. 1905, p. 793.

State agricultural society—appropriation for fair grounds.

§ 1. The sum of sixty thousand dollars is hereby appropriated out of any money in the state treasury, not otherwise appropriated, to be paid to the board of directors of the California State Agricultural Society and to be expended on, in and about the fair grounds owned by or under the jurisdiction and control of the California State Agricultural Society for the purpose of equipping the said fair grounds for exposition and state fair uses for the purposes hereinafter specified: For the construction of a swine exhibit building; the construction of a sheep building; the construction of cattle exhibit barns; the construction of exhibit buildings for mules, horses and ponies; the construction of a poultry building; the construction of a dairy building; the construction of carriage sheds; the construction of a main fence around the grounds; the purchase of decomposed granite for roads; the grading of roads; the grading and filling around barns; the installation of a water system and piping the grounds; the construction of a steel tower and of a barrel tank; the installation of a sewerage system; the construction of an implement exhibit building; painting such structures; necessary fees of architects and superintendents, foremen and workmen and for the payment of all other expenses appurtenant to the carrying out of this act. The state controller is hereby ordered and directed to draw the necessary warrant or warrants therefor, and the state treasurer is hereby directed to pay the same. Provided that, if the appropriation made by this act shall be insufficient to provide for the erection and construction of all the buildings hereinbefore enumerated, the board of directors of the said California State Agricultural Society, in their discretion, may erect and construct such buildings named herein as in their discretion can be erected and constructed by the appropriations provided for by this act.

Bids, advertising for.

§ 2. No contract for lumber, iron, machinery or material to be used for the purposes mentioned in section one of this act shall be entered into by the California State Agricultural Society until publication shall be made in at least three daily newspapers, two of said newspapers to be published in the city and county of San Francisco, and one in the city of Sacramento, for at least twenty days prior thereto, inviting bids for the supplying of such material. Such bids may be in the form of sealed proposals, shall be opened at a meeting of the directors of such society, and the contract shall be awarded to the lowest responsible bidder for supplying of such material.

Bills, how audited and approved.

§ 3. All bids for material and for the construction and equipment of said works shall be audited by the said board of directors of the California State Agricultural Society and approved by the state board of examiners before being paid.

Plans, specifications, etc., how and by whom approved.

§ 4. All plans, descriptions, bills of material, specifications and estimates necessary, requisite, proper or convenient for any of the purposes aforesaid, shall receive the sanction of a majority of the directors of the California State Agricultural Society and of the state board of examiners. The directors of the California State Agricultural Society shall cause an entry to be made in their minutes that such plans, descriptions, bills of material, specifications and estimates have been approved. It shall not be necessary to obtain the approval or sanction of any other board, officer or person to said plans.

Present funds, how used.

§ 5. In addition to the appropriation made by this act, the board of directors of the said California State Agricultural Society are hereby authorized, and empowered to use, for the purpose of improving the said fair grounds, any moneys now in the state treasury of the state of California consisting of the residue remaining after the sale by the California State Agricultural Society of its real estate, or any portion thereof, conformably to the terms and provisions of an act entitled "An act to authorize state agricultural societies under the control of the state, to sell property held by them in fee, or held by trustees for their use, or in which they may have any interest, to prescribe a course of procedure therefor, to indemnify purchasers at such sale, and to direct how the proceeds shall be applied," approved February twenty-fifth, eighteen hundred and ninety-seven, and any other act amendatory thereof or supplemental thereto, and paid into said state treasury pursuant to the terms of said act or acts. The said residue shall be paid to the directors of the California State Agricultural Society in the same manner as in section one of this act provided, and the state controller is hereby ordered and directed to draw the necessary warrants therefor, and the state treasurer is hereby directed to pay the same.

Pools, betting and gambling prohibited. Penalty.

§ 6. The board of directors, officers and employees of the California State Agricultural Society are hereby prohibited from permitting any person or persons, or any corporation, within the grounds or premises owned by or under the control of the said California State Agricultural Society, to sell, or offer for sale, buy, or offer to buy, issue, or offer to issue, or in any manner dispose of, purchase, or acquire any interest in any pool, or in any pool ticket, certificate, writing, or other evidence of payment, acceptance or deposit of money, or other thing of value, staked upon the result of any running, pacing or trotting race or contest between horses, mares or geldings, or to make any bet or hazard on the result of such race or contest, or to act as a stakeholder of any bet or hazard laid on the result of any such race or contest, or to receive or pay over any money or article or thing of value, the ownership or right to possession of which has been, is, or is to be determined by any such race or contest, or to permit any gambling or gaming prohibited by section three hundred and thirty of the Penal Code of the state of California. And every person, officer and employee of said board of directors of the California State Agricultural Society permitting any of the acts herein prohibited, and every person who shall, within the confines of the land and premises of the said California State Agricultural Society, sell, or offer to sell, buy, or offer to buy, issue, or offer to issue, or in any manner dispose of, purchase or acquire any interest in any pool, or in any pool ticket, certificate, writing, or other evidence

of payment, acceptance or deposit of money, or other thing of value, staked upon the result of any running, pacing or trotting race or contest between horses, mares or geldings, or to make any bet or hazard on the result of such race or contest, or to act as a stakeholder of any bet or hazard laid on the result of any such race or contest, or receive or pay over any money or article or thing of value, the ownership or right to possession of which has been, is, or is to be determined by any such race or contest, or to permit any gambling or gaming prohibited by section three hundred and thirty of the Penal Code of the state of California, is guilty of a misdemeanor, and shall be punishable by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not exceeding six months.

Appropriation, when payable.

§ 7. Of the sum of money appropriated by section one of this act, the sum of sixty thousand dollars shall not be payable to the said directors of the California State Agricultural Society, and the appropriation therefor shall not be available until the first day of July, nineteen hundred and five.

Repeal of conflicting acts.

§ 8. All acts and parts of acts, in conflict with this act, are hereby repealed.

§ 9. This act shall take effect and be in force from and after its passage.

Agricultural park and buildings.— See, post, Act 70, note.

WOMAN'S BUILDING.

ACT 66—An act authorizing and directing the directors of the State Agricultural Society to erect a new building and to furnish and equip the same, at Agricultural Park in the city of Sacramento, state of California, to be known as the woman's building, and making an appropriation therefor.

History: Approved May 17, 1915. In effect August 8, 1915. Stats. 1915, p. 441.

Woman's building, State Agricultural Park.

§ 1. The directors of the state agricultural society are hereby authorized and directed to erect, furnish and equip, pursuant to plans prepared by the state department of engineering, at Agricultural Park in the city of Sacramento, woman's building so arranged and equipped as to be suitable for the display of women's handiwork; also for the display of fine arts, and also for demonstrating in a practical way the science of domestic economy; the said building to be constructed of such material as will render it practically fireproof.

Direction of department of engineering.

§ 2. The building herein provided for shall be erected under the direction and supervision of the state department of engineering in accordance with the laws governing the erection of state buildings.

Appropriation.

§ 3. For the purpose of carrying out the provisions of this act, the sum of thirty thousand dollars is hereby appropriated, out of any money in the state treasury not otherwise appropriated, and the state controller is hereby directed to draw his warrants from time to time as the work progresses up to full amount of this appropriation in favor of the person authorized by law to receive the same, and the state treasurer is hereby directed to pay the same.

Agricultural park and buildings.— See, post, Act 70, note.
Gen. Laws—3

MACHINERY HALL.

ACT 67—An act authorizing and directing the directors of the State Agricultural Society to erect a new building at Agricultural Park, near the city of Sacramento, state of California, to be known and designated machinery hall; fixing the requirements thereof and making an appropriation therefor.

History: Approved February 26, 1909, Stats. 1909, p. 83.

This act appropriated \$30,000 for the purpose indicated.

DAIRY BUILDINGS.

ACT 68—An act authorizing and directing the directors of the State Agricultural Society to construct on the state fair grounds at Agricultural Park, near the city of Sacramento, state of California, a dairy building and dairy barns, providing for their equipment and making an appropriation therefor.

History: Approved April 21, 1911, Stats. 1911, p. 1062.

This act appropriated \$30,000 for the purpose indicated.

MEMORIAL BUILDINGS.

ACT 69—An act authorizing and empowering the directors of the state board of agriculture to set aside a site and to grant to any person or persons the right and privilege to erect in the state fair grounds at agricultural park in the city of Sacramento a building or other structure as a memorial, providing for the approval of the plans and specifications therefor and for the acceptance and maintenance thereof.

History: Approved June 2, 1913. In effect August 10, 1913. Stats. 1913, p. 364.

Memorial buildings in agricultural park.

§ 1. The directors of the state board of agriculture are hereby authorized and empowered to set aside a suitable site and to grant to any person or persons the right and privilege to erect in the state fair grounds at agricultural park in the city of Sacramento a suitable building or other structure as a memorial to any person, who during life, was identified with the work of advancing and promoting the interests of the state of California. The plans and specifications for such memorial building or other structure shall be approved by the state engineering department as to strength of design and materials and by the directors of the state board of agriculture before the right or privilege to erect the same shall be granted, and when erected and accepted by the directors of the state board of agriculture, such building or other structure shall be under the sole control and direction of the directors of the state board of agriculture the same as other buildings in said state fair grounds, and shall be maintained by the state of California as an integral portion of the said state fair grounds.

EXTENSION OF FAIR GROUNDS.

ACT 70—An act appropriating money for the purchase of additional land for the state fair grounds in the city of Sacramento.

History: Approved June 6, 1913. In effect August 10, 1913. Stats. 1913, p. 907.

Appropriation: additional land, Agricultural Park, Sacramento. **Title.** Deeds.

§ 1. The sum of nine thousand three hundred dollars or so much thereof as may be necessary, is hereby appropriated out of any money in the state treasury not otherwise appropriated to be used by the directors of the State Agricultural Society to purchase additional land to become a part of Agricultural Park in the city of Sacramento, said additional land comprising eight and one-half acres, more or less, of land adjoining the present agricultural park on the south side. Title of the land so purchased shall be taken in the name of the state of California and shall have the approval of the attor-

ney general. The deed or deeds to the land shall be delivered by the owner or owners to said directors upon payment of the purchase price. Said deed or deeds shall be filed in the office of the secretary of state.

§ 2. The state controller is hereby authorized and directed to draw his warrant in favor of the directors of the State Agricultural Society for the moneys herein appropriated at such times and in such manner as the expenditure of the same shall be required and the state treasurer is hereby directed to pay said warrants.

Editor's note: The first step in the acquisition of land for state fair purposes was taken by the legislature of 1859. An act was approved February 10, 1859 (Stats. 1859, p. 20), submitting to the people of Sacramento a proposition to appropriate money for the purchase of suitable ground and the erection of appropriate buildings for the use of the State Agricultural Society and other purposes. This was followed April 24, 1861, by an act (Stats. 1861, p. 228) authorizing the condemnation of certain streets in Sacramento for the same purpose. On May 2, 1861 (Stats. 1861, p. 272), an appropriation of \$15,000 was made for buildings. Another sum of \$15,000 was appropriated March 26, 1874 (Stats. 1873-74, p. 619), for the purpose of erecting a grandstand. On March 9, 1883 (Stats. 1883, p. 64), the sum of \$40,000 was appropriated to be used with a like amount

to be contributed by Sacramento in the erection of a building, to be known as the State Agricultural and Industrial Exhibition building, on a site in the Capitol grounds east of the Capitol. On March 14, 1907 (Stats. 1907, p. 264), two buildings were authorized, the "Agricultural Pavilion" and "Manufacturer's Pavilion."

The legislature of 1913, by an act approved June 7, 1913 (Stats. 1913, p. 929), submitted to the people a proposition to issue \$750,000 bonds for the extension of the state fair grounds, the erection of new buildings, and of additions to old buildings, and for the equipment of the same, and the general improvement and beautification of the grounds; but this act failed of ratification.

Minor appropriations have been made from time to time for minor improvements.

IMPROVEMENT OF PARK BY DAY'S WORK.

ACT 70a—An act authorizing and directing the directors of the State Agricultural Society to make arrangements by day's work or by contract, for leveling and planting the grounds, and painting and repairing the buildings, at the State Agricultural Park, near the city of Sacramento, state of California, and making an appropriation therefor.

History: Approved February 6, 1909, Stats. 1909, p. 82.

This act appropriated \$10,000 for the purpose indicated.

IMPROVEMENT OF PARK.

ACT 70b—An act authorizing and directing the directors of the State Agricultural Society to plow, check and plant the infield, grade and gravel walks and drives, park the grounds, improve the system of fire protection, and construct public conveniences on the state fair grounds, at Agricultural Park, near the city of Sacramento, state of California, and making an appropriation therefor.

History: Approved April 21, 1911, Stats. 1911, p. 1061.

This act appropriated \$10,000 for the purpose indicated.

RELIEF OF DIRECTORS OF SOCIETY.

ACT 70c—An act to reimburse the directors of the State Agricultural Society for money advanced to meet the deficiency in the funds of the State Agricultural Society during the sixty-third and sixty-fourth fiscal years and for the maintenance of the state fair grounds during said fiscal years.

History: Approved June 8, 1913. In effect August 10, 1913. Stats. 1913, p. 878.

This act appropriated \$15,337.26 for the purpose indicated.

II. STATE AGRICULTURAL SOCIETY.

ACT 71. INCORPORATION OF SOCIETY.

72. MANAGEMENT AND CONTROL OF SOCIETY.

INCORPORATION OF STATE AGRICULTURAL SOCIETY.

ACT 71—An act to incorporate the state agricultural society, and appropriate money for its support.

History: Passed May 13, 1854, Stats. 1854, p. 163. Amended March 20, 1858, Stats. 1858, p. 80; March 12, 1863, Stats. 1863, p. 50. Supplemented March 12, 1863, Stats. 1863, p. 49; April 13, 1863, Stats. 1863, p. 259. These acts were continued in force by the Political Code: See Kerr's Cyc. Political Code, § 2326.

MANAGEMENT AND CONTROL OF STATE AGRICULTURAL SOCIETY.

ACT 72—An act to provide for the management and control of the State Agricultural Society of the state.

History: Approved April 15, 1880, Stats. 1880, p. 49. Amended June 11, 1913. In effect August 10, 1913. Stats 1913, p. 571; May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 949.

Rights of State Agricultural Society continued.

§ 1. The State Agricultural Society is hereby declared to be a state institution; provided, that all rights and privileges which have heretofore accrued to members of said society under its rules, either through payments made or by services rendered, are hereby recognized and continued. [Amendment of May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 949.]

Board, how appointed. Term of office. Vacancies.

§ 2. Within ten days after the passage of this act, the governor shall appoint twelve resident citizens of the state who shall, when organized, constitute a state board of agriculture, who shall, except as hereinafter provided, hold office for the term of four years, and until their successors are appointed and qualified. Vacancies occurring from any cause in the board shall be filled by appointment of the governor for the unexpired term of the office vacated.

Qualification and organization. Officers.

§ 3. Within ten days after their appointment, the persons so appointed shall qualify, as required by the constitution, and shall meet at the office of the State Agricultural Society and organize by the election of one of their number as president of the board and said society, who shall hold said office of president for the term of one year, and until his successor is elected and qualified. The board shall also elect a secretary and treasurer, not of their number, who shall each hold office at the discretion of the board.

Terms of office. Fiscal year.

§ 4. At the same meeting the members of the board shall, by lot or otherwise, classify themselves into four classes of three members each. The terms of office of the first class shall expire at the end of the first fiscal year; of the second class, of the second year; of the third class, of the third year; of the fourth class, at the end of the full term of four years. The fiscal year shall be from the first of February to the first of February.

Duties of state board of agriculture. Annual fair. May be suspended during year of international exposition.

§ 5. The state board of agriculture shall be charged with the exclusive management and control of the state agricultural society as a state institution; shall have possession

and care of its property and be intrusted with the direction of its entire business and financial affairs. It shall define the duties of the secretary and treasurer, fix their bonds and compensation, and shall have power to make all necessary changes in the constitution and rules for the society, to adapt the same to the provisions of this act and to the management of the society, its meetings and exhibitions. It shall provide for an annual fair or exposition by said society of the industries and industrial products of this state and commercial products exported and imported through the ports of this state at the city of Sacramento each year; provided, that in any year during which an international exposition conducted in whole or in part under the auspices of the state of California and endorsed by the United States government, is held within the state of California and the state board of agriculture deems it inexpedient to hold a state fair, the funds of the State Agricultural Society for that year only may be expended in co-operation with the management of said exposition to provide for a proper exploitation of the industries of California at such exposition; provided, further, that in no event shall the state be liable for any premium awarded or debt created by the said state board of agriculture; provided, further that the collections and receipts from sources other than state appropriations, shall be reported monthly by the secretary to the controller of state, and shall be paid to the state treasury. Such receipts shall be credited to the State Agricultural Society contingent fund, which is hereby created, and shall be solely for the use of the society. [Amendment of May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 949.]

This section was also amended June 11 1913, Stats. 1913, p. 571.

Same.

§ 6. The board shall have power to appoint all necessary marshals and police to keep order and preserve peace at the annual fairs of the society, and the officers so appointed shall be vested with the same authority for the preservation of order and peace, on the grounds and in the buildings of the society, that executive peace officers are vested with by law.

Collection and dissemination of knowledge. Report to governor.

§ 7. Said board shall use all suitable means to collect and disseminate all kinds of information calculated to educate and benefit the industrial classes, develop the resources, and advance the material interests of the state, and shall, on or before the first day of February of each year, report to the governor a full and detailed account of their transactions, statistics, and information gained, and also a full financial statement of all funds received and disbursed. They shall also make such suggestions and recommendations as experience and good policy may dictate for the improvement and advancement of the agricultural and kindred industries.

Printing reports.

§ 8. The superintendent of state printing shall, each year, print and bind in cloth four thousand volumes of said transactions, and deliver the same to said board of agriculture for distribution and exchange. He shall also do such job printing as said board may require to carry out the provisions of this act.

County and district agricultural societies. Reports of.

§ 9. The directors or boards of managers of each county and district agricultural society or association, and of each county, district, or state horticultural and stock-breeding association or society, organized and acting under the laws of this state, shall report annually, on or before the first day of April, to the state board of agriculture, the name and post-office address of each officer of such society or association; and on or before the first day of December shall report to said board of agriculture the transactions of said society, including the premiums offered, the list of stock and

articles exhibited, and the premiums paid; the amount of receipts and expenditures for the year, the new industries inaugurated, and any and all facts and statistics showing the development and extent of the industries, products, and resources of the county or district embraced within the management of such society or association; provided, that the provisions of this act shall not apply to any board of commissioners or other body organized under the laws of this state the object of which is to promote viticultural industries, unless such board or body shall voluntarily request the privilege of making such reports as are called for by this act, in which case such board or body shall enjoy equal privileges as are accorded to other institutions devoted to agriculture.

State board to furnish blanks.

§ 10. To facilitate such reports, the state board of agriculture shall have prepared and shall furnish such societies with necessary schedules and blanks for such reports, and said state board shall include such reports from societies and associations, or so, much thereof as they may deem advisable, in their report to the governor.

Secretary to report organization and classification and to report vacancies.

§ 11. When said state board of agriculture shall have been organized and classified as provided herein, the secretary of the board shall report such organization and classification to the governor. He shall also report any vacancy that may occur in said board at any time.

§ 12. All laws and parts of laws in conflict with this act are hereby repealed.

Evidence—Report of State Agricultural Society constitutes legal evidence, but not conclusive, of the facts stated therein as to the products of the state and its subdivisions.—Vallejo, etc., Co. v. Reed Orchard Co., 169 Cal. 545, 572, 147 Pac. 238.

Same—Same—Public document.—The report of the State Agricultural Society, when printed by order of the board of examiners is a public document, and admissible in evidence as such.—Vallejo, etc., Co. v. Reed Orchard Co., 169 Cal. 545, 571, 147 Pac. 238.

Same—State institution.—The State Agricultural Society became and remained a state institution upon and after the enactment of the act of 1880 (Stats. 1880, p. 49).—Melvin v. State, 121 Cal. 16, 53 Pac. 416.

Same—Same—Liability of state.—The act of 1880 (Stats. 1880, p. 49) is construed as intended to hold the state free from liability for obligations incurred by the state board of agriculture for debt calling directly or indirectly for the payment of money.—Melvin v. State, 121 Cal. 16, 53 Pac. 416.

Same—Same—Report.—The State Agricultural Society is a state institution, and among its duties, prescribed by law, is that of collecting information and statistics relating to the agricultural resources and material interests of the state, and making a report of the same to the governor.—Vallejo,

etc., Co. v. Reed Orchard Co., 169 Cal. 545, 571, 147 Pac. 238.

State fair—Admission fee.—Power of state board of agriculture to charge an admission fee is implied from the power to provide an annual fair, and make needful rules, given to the state board of agriculture, and it does not follow that the society is organized for gain, or for pecuniary profit to the state.—Melvin v. State, 121 Cal. 16, 53 Pac. 416.

Same—Horse races.—No provision has been made for horse races, and the state has discouraged them by failing to appropriate for them.—Melvin v. State, 121 Cal. 16, 53 Pac. 416.

Same—As agency of state.—See 17 L. R. A. 383.

Same—As private corporation.—See 12 L. R. A. 664.

Same—Gaming on.—See Act 65.

Same—Public character.—See 29 L. R. A. 708.

Same—Public institution.—The "California State Agricultural Society" formed under the act of 1854 (Stats. 1854, p. 56), was not a public institution.—People ex rel. Post v. San Joaquin, etc., Association, 151 Cal. 797, 91 Pac. 740.

See, also, Melvin v. State, 121 Cal. 16, 53 Pac. 416.

III. COUNTY AND DISTRICT AGRICULTURAL SOCIETIES AND ASSOCIATIONS.

ACT 73. INCORPORATION OF SOCIETIES.

74. SALE OF SOCIETY LANDS.

INCORPORATION OF COUNTY AND DISTRICT SOCIETIES.

ACT 73—An act concerning agricultural societies.

History: Approved March 12, 1859, Stats. 1859, p. 104. Amended March 5, 1862, Stats. 1862, p. 37; January 31, 1870, Stats. 1869-70, p. 31; February 15, 1878, Stats. 1877-78, p. 84.

This act provided for the formation of agricultural societies by any seven or more persons and for their powers and government.—See *Denike v. Santa Clara V. A. Soc.*, 9 Cal. App. 228, 98 Pac. 687, 689.

Agricultural fair association.—See *Kerr's Cyc. Civil Code*, §§ 620, et seq.

District agricultural societies—Not public agencies.—Agricultural societies formed under the act of 1859 were not state institutions.—*People ex rel. Post v. San Joaquin, etc., Association*, 151 Cal. 797, 91 Pac. 740.

Same—Not public corporations—Power to sell lands.—A district agricultural society organized under the act of 1859 is not a

public corporation such as are societies organized under the act of 1880, and its lands may be sold under execution.—*Denike v. Santa Clara, etc., Soc.*, 9 Cal. App. 228, 98 Pac. 687.

Encouragement of agriculture.—The legislature made appropriations from time to time to a number of societies formed under this act for the payment of premiums.—See act of April 25, 1862, Stats. 1862, p. 415; of March 21, 1872, Stats. 1871-72, p. 442; March 18, 1878, Stats. 1877-78, p. 332.

Non-profit agricultural associations.—See *Kerr's Cyc. Civil Code*, §§ 653m, et seq.

SALE OF SOCIETY LANDS.

ACT 74—An act to authorize state agricultural societies under the control of the state to sell property held by them in fee, or held by trustees for their use, or in which they may have any interest; to prescribe a course of procedure therefor; to indemnify purchasers at such sale, and to direct how the proceeds shall be applied.

History: Approved February 25, 1897, Stats. 1897, p. 30. Amended March 16, 1899, Stats. 1899, p. 106.

State agricultural societies may sell real estate; manner of procedure.

§ 1. Whenever any State Agricultural Society under state control shall desire to sell the whole or any portion of its real estate held by it in fee, or by a trustee for its use, or in which it may have any title, interest, or claim, it shall be lawful for such society or association to file its complaint in the superior court of the county in which such lands are situated, setting forth the nature of the title under which the land to be affected by the decree of the court is held, and what claim such society or association has therein; and that it is the desire of such society or association to sell such real estate, and praying for judgment authorizing it to sell the same. In such action the trustee or trustees holding title in trust for such society or association, or their successors, or the survivor or survivors of them, or such other persons deriving title from the trustees, as the case shall require, shall be made parties defendant; and upon the service of the summons upon such defendants personally or by publication, or upon their appearance, the court shall have full jurisdiction in the premises. Such society or association may include as defendants in such action in addition to such persons or parties as appear of record to have, and other persons or parties who are known to have, some claim in or lien on the lands described in the complaint; also all other persons or parties unknown, claiming any right, interest, or lien in such land, and the plaintiff may describe such defendants in the complaint as follows:

“Also all other persons or parties, unknown, claiming any right, title, estate, lien or interest in the real estate described in the complaint herein.” Service of the summons may be had upon all such unknown persons or parties defendant by publication, as provided by law in case of nonresident defendants. All such unknown persons or parties so served shall have the same rights as are provided by law in case of all the other defendants upon whom service is made by publication or personally and the action shall

proceed against such unknown persons or parties in the same manner as against the defendants who are named, upon whom service is made by publication, and with like effect; and any such unknown persons or parties who have or claim any right, estate, lien, or interest in the said property in controversy at the time of the commencement of the action, duly served as aforesaid, shall be bound and concluded by the judgment in such action as effectually as if the action was brought against such defendant by his or her name, and personal service of the summons obtained, notwithstanding any such unknown person may be under legal disability. The court shall have full power and authority to order the property sold. In case of a sale, the court shall appoint a commissioner to make the sale, and shall direct the manner in which the sale shall be conducted; provided, that when any property is held in trust by any such agricultural society or association, such property held in trust shall be sold separately from any that may be held in fee. The commissioner shall make a report of sale to the court, which, after such notice as it may deem proper, shall proceed to hear the same, and if it finds that the sale was fairly conducted, and the price bid was proportionate to the value of the land sold, it shall make and enter a decree confirming the sale, and directing the commissioner to execute a deed to the purchaser. The deed executed by said commissioner, under and in pursuance of the decree of the court, shall be valid and effectual to convey to the purchaser an absolute title in fee simple to the premises; provided, however, that before the filing of any such complaint in the superior or any other court, it shall be necessary for such agricultural society, or any person or corporation claiming the title to such land, to prepare, sign, and properly acknowledge a good and sufficient deed or deeds sufficient to vest in the state all title, interest, or claim which such society may have in and to any land to be affected by the proceedings hereby authorized to be instituted; such deed or deeds to be conditioned that the title, claim, or interest of such society embraced in such deed or deeds shall be held by the state of California in trust for the benefit of such society; which said deed or deeds shall be deposited with the state treasurer, to be by him held in escrow pending the final conclusion of such proceedings in such court. If the court in which such proceedings are had shall order such land to be sold, as herein provided for, the state treasurer shall forthwith file such deed or deeds with the county recorder of the county, or city and county, in which such land is located. If there be any liens upon or claims against the property, the court shall order them paid out of the proceeds of sale. The residue remaining, after paying the costs and expenses of sale and such liens and claims against the property as the court may order paid, shall be paid into the state treasury, where it shall remain until required for the purchase of other property for the use of such society or association, upon the order of the state controller; and it shall be drawn therefrom only upon authorization passed by the board of directors or trustees of such society or association, by and with the approval of the state board of examiners, and upon warrants duly drawn by the state controller. If, through any defects in the proceedings, or otherwise, the title should not pass, the state will indemnify the purchaser by repaying to him the amount paid by him; provided, such purchaser or purchasers shall file their claim or claims for the repayment of such purchase price with the state board of examiners within five years after the payment of such purchase price to the state treasurer in the first instance. The surplus of proceeds of sale, paid into the state treasury, shall be drawn out on certificate, signed by a majority of the directors, or governing body of such society or association, and also of the state board of examiners, stating that it is desired for the payment for other property for the use of such agricultural society; and upon receipt of such certificate, the treasurer shall pay to the said directors, or governing body, or person designated by them, all or such part of such surplus as may be required for the purchase of other property; provided, however, that if all or any portion of the real estate, and the improvements thereon held by any state agricultural society under state control, shall have been acquired in the name of such

society, or of any person, association, or corporation, in trust, for the use of said, or any other agricultural society, originally, or at any time, by the use of money derived from taxation of the taxable property of any city and county, county, or city, then, and in that event, the surplus proceeds of any sale of such property shall be invested in other real estate, within the same county, or city and county, for the same purpose, and not otherwise, or elsewhere. It is expressly provided that in no event shall the state be liable for the payment of any expense, interest, or attorneys' fees, incurred by any one, on any account, by or on behalf of any such agricultural society in their behalf; and it shall be incumbent on such society to make provision for the payment of the expenses, costs, attorneys' fees, and any interest that may be necessary to be paid any purchaser, by reason of repayment of any purchase money on account of failure of title to such lands; such provision for the payment of expenses, attorneys' fees, costs, and anticipated interest to be provided for prior to the issue of any summons, or order of publication in any action contemplated by this act. [Amended March 16, 1899. Stats. 1899, p. 106.]

Exchange of real estate by state agricultural societies.

§ 2. If any real estate contemplated in the preceding section, purchased by the proceeds of taxes levied upon and collected from the taxable property of any city and county, county, or city, shall have been ordered sold, as in said section provided, and shall have been offered for sale in the mode therein specified, for a period of sixty days or more, and not all sold for want of an adequate price, the board of directors, or governing body of such society or association, shall be, and they are hereby authorized and empowered to exchange all or any part of such real estate for other land suitable for the use of such society, or association, within the same county, or city and county, upon such terms as may be reasonable and just, and the deed or deeds executed for the conveyance of such real estate in exchange shall be executed by the board of directors of such society or association, or a majority thereof, and by the commissioner appointed in the proceedings provided for in the preceding section for the sale of such property, and such exchange of property shall be subject to, and with the approval of a judge of the superior court of the county, or city and county, in which the proceedings provided for were had. [New section added March 16, 1899. Stats. 1899, p. 108.]

Same.

§ 3. In case of the exchange of any portion such property, as provided for in section 2 thereof, the real estate received in such exchange shall be subject to the indemnification of any person who shall receive any of the said real estate of said agricultural society in such exchange in case of any defect in the proceedings, or otherwise, whereby the title to such real estate of such society should not pass, and in such case of exchange the state of California shall be absolved from any obligation to pay any part of any purchase price, or value of exchanged property; provided, further, that no claims for failure of title for any reason shall be entertained after five years from the date of such exchange. [New section added March 16, 1899. Stats. 1899, p. 109.]

§ 4. This act shall take effect immediately from and after its passage.

IV. AGRICULTURAL DISTRICTS.

ACT 74a. DISTRICT ACT OF 1909.

74b. LAND LEASING ACT.

DISTRICT ACT OF 1909.

ACT 74a—An act to form agricultural districts, to provide for the formation, organization and powers, of agricultural associations therein and for the management and control of the same by the state, and repealing all acts and portions of acts in conflict with this act.

History: Approved April 17, 1909, Stats. 1909, p. 979. Former acts superseded or repealed: Act of April 15, 1880, Stats. 1880, p. 62; March 20, 1891, Stats. 1891, p. 138; March 31, 1897, Stats. 1897, p. 304.

Agricultural districts, numbers of.

§ 1. The several counties of this state are divided and classified into agricultural districts, and numbered as follows, to wit:

The counties of San Francisco and Alameda shall constitute agricultural district No. 1.

The county of San Joaquin shall constitute agricultural district No. 2.

The county of Butte shall constitute agricultural district No. 3.

The counties of Sonoma and Marin shall constitute agricultural district No. 4.

The counties of San Mateo and Santa Clara shall constitute agricultural district No. 5.

The county of Los Angeles shall constitute agricultural district No. 6.

The county of Monterey shall constitute agricultural district No. 7.

The county of El Dorado shall constitute agricultural district No. 8.

The county of Humboldt shall constitute agricultural district No. 9.

The county of Siskiyou shall constitute agricultural district No. 10.

The counties of Plumas and Sierra shall constitute agricultural district No. 11; provided, that the first fair held in the eleventh agricultural district after the passage of this act shall be held in Sierra county; the next fair in Plumas county, and thereafter said counties shall so alternate in holding such fairs.

The counties of Lake and Mendocino shall constitute agricultural district No. 12.

The counties of Sutter and Yuba shall constitute agricultural district No. 13.

The county of Santa Cruz shall constitute agricultural district No. 14.

The county of Kern shall constitute agricultural district No. 15.

The county of San Luis Obispo shall constitute agricultural district No. 16.

The county of Nevada shall constitute agricultural district No. 17.

The counties of Mono, Inyo, and Alpine shall constitute agricultural district No. 18.

All that portion of Santa Barbara county lying east of the Gaviota and south of the Santa Ynez mountains, shall constitute agricultural district No. 19.

The county of Placer shall constitute agricultural district No. 20.

The counties of Fresno and Madera shall constitute agricultural district No. 21.

The county of San Diego shall constitute agricultural district No. 22.

The county of Contra Costa shall constitute agricultural district No. 23.

The counties of Tulare and Kings shall constitute agricultural district No. 24.

The county of Napa shall constitute agricultural district No. 25.

The county of Amador shall constitute agricultural district No. 26.

The counties of Shasta and Trinity shall constitute agricultural district No. 27.

The counties of San Bernardino and Riverside shall constitute agricultural district No. 28.

The county of Tuolumne shall constitute agricultural district No. 29.

The county of Tehama shall constitute agricultural district No. 30.

The county of Ventura shall constitute agricultural district No. 31.

The county of Orange shall constitute agricultural district No. 32.

The county of San Benito shall constitute agricultural district No. 33.

The county of Modoc shall constitute agricultural district No. 34.

The counties of Merced and Mariposa shall constitute agricultural district No. 35.

The county of Solano shall constitute agricultural district No. 36.

All that portion of Santa Barbara county not included in agricultural district No. 19 shall constitute agricultural district No. 37.

The county of Stanislaus shall constitute agricultural district No. 38.

The county of Calaveras shall constitute agricultural district No. 39.

The county of Yolo shall constitute agricultural district No. 40.

The county of Del Norte shall constitute agricultural district No. 41.

The county of Glenn shall constitute agricultural district No. 42.

The county of Lassen shall constitute agricultural district No. 43.

The county of Colusa shall constitute agricultural district No. 44.

The county of Imperial shall constitute agricultural district No. 45.

Formation of associations.

§ 2. Any fifty or more persons residents of a majority of the counties embraced within any of the above districts may form an association for the purpose of holding fairs, expositions and exhibitions of all of the industries and industrial enterprises, resources and products of every kind or nature of the state with a view of improving, exploiting, encouraging and stimulating the same.

Officers.

§ 3. The officers of such association shall consist of eight directors to be appointed by the governor of the state of California who shall constitute a district board of agriculture for said district; provided, however, where two or more counties shall constitute an agricultural district, each county shall be represented in the district board of directors by at least two resident citizens, as directors in said board; provided, that when by reason of the formation of a new agricultural district, a director of one district becomes a resident of another, his term of office as director will expire in sixty days after the formation of the new agricultural district.

Appointment of directors.

§ 4. After the formation of an agricultural association within any of the districts above constituted in accordance with the provisions of this act, and notice of such formation to the governor, the governor shall appoint eight resident citizens of such district as members of a district board of agriculture for said district whose term of office shall be four years, except as hereinafter provided; and thereafter there shall be two members of said board appointed in the same manner every year whose term of office shall continue four years, and until their successors are appointed and qualified.

Terms of office.

§ 5. Within ten days after their appointment the members of the board shall, by lot or otherwise, classify themselves into four classes of two members each. The term of office of the first class shall expire at the end of the first fiscal year, the second class at the end of the second fiscal year, the third class at the end of the third fiscal year and the fourth class at the end of the fourth fiscal year; provided that all officers of agricultural districts now in office, under any law heretofore passed, shall hold office for the term for which they were appointed, except in cases specified in section 3 of this act. And the agricultural associations heretofore established shall be continued in force, and are made agricultural associations under this act.

Organization.

§ 6. The fiscal year shall be from December 1st to December 1st, and the persons so appointed shall qualify as required by the constitution, and shall meet at a place within the district and organize by the election of one of their number as president of the board, who shall hold said office of president one year and until his successor is elected; they shall also elect a secretary and treasurer not of their number.

Name of association, and powers.

§ 7. Each association so formed and organized is hereby declared and shall be recognized as a state institution, and shall be known and designated by the name of _____ district agricultural association, and by such name and style shall have perpetual succession and shall have power to contract, to sue and to be sued, to have a seal, to purchase, to hold and lease real estate and personal property, and may sell, lease, beautify, improve and dispose of the same, and do any and all acts and things necessary to carry out the objects and purposes for which said associations are formed; and the board so appointed and qualified shall have the exclusive control and management of such institution, for and in the name of the state, and shall have possession and care of all the property of the association and shall fix the term of office and the bonds of the secretary and treasurer and determine their salaries and duties. They shall have the power to make all necessary by-laws, rules and regulations for the government of the association and the management of its prudential and financial affairs. They may provide for a fair, exposition or exhibition by the association of all industries and industrial products in the district or state, at such time and place as they deem advisable; provided, that the state, shall in no event, be liable for any premium offered or award made, or on account of any premium offered or award made, or on account of any contract made by any district board of agriculture or agricultural association; provided however, that any such agricultural association having a speedway or race course upon any lands owned by it, or under its control, shall maintain the same for the purpose of holding speed contests and training and speeding horses thereon.

Advances from state association.

§ 8. Whenever such association shall have been formed within any of the districts provided for, and it is proposed to hold an agricultural fair in said district, the secretary of the board of directors of the district, shall notify the state board of agriculture of the said intention, and shall also forward to the board of agriculture a list of the articles upon which premiums are to be paid and the amount upon each item, and the said board shall have the power to advance to said association a sum not exceeding five thousand dollars (5,000) to pay said premiums out of any money that may have been appropriated to the said State Agricultural Society for that purpose, and which may at the time be available; provided, however, that no one district shall receive such aid for more than one fair in any one year.

State aid.

§ 9. The fairs or exhibitions to be given by the district agricultural association shall be held at such place or places within such districts, as the board of directors of the said district may select. But only one of such district fairs shall receive state aid in any district during any given year, and the money provided by the state as premium money shall be applied to exhibits at this one fair; provided however, whenever the board of directors of two or more agricultural districts shall, by a majority vote of each board, elect to unite, the several districts may associate and combine as one district, and hold a fair in any of said districts that may be agreed on by the board of directors of said associations so combining, and may for such purpose draw the appropriation for all the said districts, and expend the same for said fair.

Reports to state association.

§ 10. The directors of such agricultural district herein created shall each year make a full and complete report of all transactions of the said association to the state board of agriculture.

§ 11. All acts or parts of acts in conflict with this act are hereby repealed.

§ 12. This act shall take effect immediately from and after its passage.

Constitutionality — Section 11 — Gift of property to private individuals.—Section 11 of the act of 1897 (Stats. 1897, p. 304) carried from § 10½ of the act of 1891 (Stats. 1891, p. 138), authorizing the organization of a private corporation within an association, and the transfer to it of property of the association is unconstitutional, as in violation of § 31, article IV, of the state constitution.—Sixth District, etc., Association v. Wright, 154 Cal. 119, 97 Pac. 144.

District agricultural associations—Capital stock—Interest of members.—No provision is made under the act of 1880 (Stats. 1880, p. 62), or the act of 1891 (Stats. 1891, p. 138), for a capital stock, or the issue of certificates of stock to the members, or which contemplates the retention by them of an interest in or control of the property of such association.—Sixth District, etc., Association v. Wright, 154 Cal. 119, 97 Pac. 144.

Same—Conveyances to—Misnomer.—Deeds to "District Agricultural Association Number Six of California" and Agricultural District Number Six of the State of California, passed title to the "Sixth District Agricultural Association."—Sixth District, etc., Association v. Wright, 154 Cal. 119, 97 Pac. 144.

Same—Name—Designation by number.—Under the act of 1880 (Stats. 1880, p. 62), and subsequent acts, a district agricultural association was contemplated, to be designated as "—— Agricultural Association," the blank for the insertion of a number or name to distinguish it from others of other districts.—Sixth District, etc., Association v. Wright, 154 Cal. 119, 97 Pac. 144.

Same—Same—Supplied by law.—Associations were not authorized to select any name except that contemplated by the act of 1880 and subsequent acts, and the words necessary to distinguish it from other district associations would be supplied by law, if the association omitted to do so.—Sixth District, etc., Association v. Wright, 154 Cal. 119, 97 Pac. 144.

Same—Property exempt from execution.—Property of such association is so far property of the state as to be exempt from execution.—People ex rel. Post v. San Joaquin, etc., Association, 151 Cal. 797, 91 Pac. 740.

Same—Same.—The fact that the act of 1880 (Stats. 1880, p. 62) provides that such an association may be sued, does not imply the state assents to the sale of the association's property under execution.—People ex rel. Post v. San Joaquin, etc., Association, 151 Cal. 797, 91 Pac. 740.

Same—Not public corporation—Power to sell lands.—A district agricultural society organized under the act of 1859 (p. 104) is not a public corporation such as are societies organized under the act of 1880 (p. 62), and its lands may be sold under execution.—Denike v. Santa Clara, etc., Soc., 9 Cal. App. 228, 98 Pac. 687.

District agricultural association — Public agency.—Such an association, organized under the act of April 15, 1880 (Stats. 1880, p. 62), for the purposes specified therein, is a public agency of the state, is within the state's exclusive management and control, and is charged with the performance of a part of the functions of the state government.—People ex rel. Post v. San Joaquin, etc., Association, 151 Cal. 797, 91 Pac. 740; Sixth District, etc., Association v. Wright, 154 Cal. 119, 97 Pac. 144.

Expositions.—Creation of revolving fund to maintain a special exposition at Exposition Park, Los Angeles, by the Sixth District Agricultural Association.—See, post, Act 1448.

Repealed act subsequently amended.—The act of 1897 was amended two days after it was repealed by the present act (Stats. 1909, p. 994). District 12, composed of Lake and Mendocino counties, was divided, a new district was created, District 46, and Mendocino County took the place of Imperial County in District 45, and Imperial County was transferred to the new district.

LAND LEASING ACT.

ACT 74b—An act authorizing district agricultural associations organized under the laws of the state of California, to lease lands owned, managed or controlled, in trust or otherwise, to municipal corporations, counties or cities and counties, in which such lands are situated, and repealing all acts and parts of acts in conflict herewith.

History: Approved April 22, 1909, Stats. 1909, p. 1082.

May lease lands not needed.

§ 1. Any district agricultural association organized, or hereafter organized under the laws of the state of California, is hereby authorized and empowered to lease lands owned, managed or controlled by said association, whether in trust or otherwise, not needed for the permanent use of said association, to any municipal corporation, county, or city and county, in which said lands are located, for a period not to exceed fifty

years, for purposes not inconsistent with the objects and purposes for which said association is formed and for which said lands are held, owned, or controlled by it.

Repeal of conflicting acts.

- § 2. All acts and parts of acts in conflict with this act are hereby repealed.
- § 3. This act shall take effect immediately.

V. MISCELLANEOUS. DEPARTMENT OF AGRICULTURE.

- ACT 75. IMPROVEMENT OF CEREAL CROPS.
- 77. JOHNSON GRASS, PREVENTION OF PROPAGATION OF.
- 78. INVESTIGATION OF PLANT DISEASES.
- 93. AGRICULTURAL EXPERT IN IRRIGATION, RECLAMATION, AND DRAINAGE.
- 94. DELEGATES ON COMMISSION TO INVESTIGATE RURAL CREDITS AND AGRICULTURAL FINANCE.
- 95. COUNTY FUNDS FOR AGRICULTURAL EXTENSION WORK.
- 96. DEPARTMENT OF AGRICULTURE.

IMPROVEMENT OF CEREAL CROPS.

ACT 75—An act to provide for the improvement of cereal crops of California, and appropriate money therefor.

History: Approved April 21, 1911, Stats. 1911, p. 1051. Former acts: Act of March 18, 1905, Stats. 1905, p. 128; March 11, 1907, Stats. 1907, p. 204; March 6, 1909, Stats. 1909, p. 190; all of which are identical with present act except in the amount of appropriation.

University to make experiments for improvement of cereals. Results to be published.

§ 1. The governor of the state of California is hereby directed, and it is hereby made his duty to cause to be made under the supervision and direction of the director of the agricultural experiment station of the University of California, such investigations and experiments as he may deem best for the purpose of discovering and making known such improved methods of cereal culture in the state of California as will increase the yield of cereals in said state, and increase the percentage of gluten in said cereals, or otherwise improve the quality thereof. The said governor shall have the exclusive charge and control of all moneys appropriated hereby, to be used in employing such expert and scientific assistants as he may deem necessary, and for the paying of the expenses of carrying on the experiments herein provided for. He shall from time to time publish the results of such experimental and investigational work as may have been done, for general distribution.

Appropriation.

§ 2. [This section appropriated \$15,000 for the purpose indicated; one half to be expended during the sixty-third, and one-half, during the sixty-fourth, fiscal year.]

Exempt from Code provisions.

§ 3. This act is exempted from the provisions of section six hundred and seventy two of the Political Code.

In force.

§ 4. This act shall take effect and be in force from and after the date of its passage.

PROPAGATION OF JOHNSON GRASS.

ACT 77—An act to prevent the propagation by the production of seed, of that certain plant known as Sorghum halepense, otherwise known as Johnson grass.

History: Approved March 20, 1903, Stats. 1903, p. 337. Amended March 22, 1907, Stats. 1907, p. 876.

Unlawful to permit noxious weeds to mature.

§ 1. It shall be unlawful for any person owning, controlling, leasing, or possessing land in the state of California to knowingly permit that certain grass known as Sor-

ghum halepense, otherwise known as Johnson grass, *Cnicus arvensis*, otherwise known as Canadian thistle, *Salsoli kali*, otherwise known as Russian thistle, and *Onopordon acanthium*, otherwise known as Scotch thistle, and *Cnicus lanceolatus*, otherwise known as bull thistle, to mature and disseminate its seed on land so owned, leased or possessed by such person. [Amendment approved March 22, 1907. Stats. 1907, p. 876.]

Seed must not be sown on land.

§ 2. It shall be unlawful for any person knowingly to sow or disseminate or cause to be sown or disseminated, any seed of *Sorghum halepense*, otherwise known as Johnson grass, *Cnicus arvensis*, otherwise known as Canadian thistle, *Salsoli kali*, otherwise known as Russian thistle, and *Onopordon acanthium*, otherwise known as Scotch thistle, and *Cnicus lanceolatus*, otherwise known as bull thistle, upon any land owned or possessed by another. [Amendment approved March 22, 1907. Stats. 1907, p. 877.]

Same as to roadways and ditches.

§ 3. It shall be unlawful for any person to knowingly sow, disseminate, or cause or permit to be disseminated any seed of *Sorghum halepense*, otherwise known as Johnson grass, *Cnicus arvensis*, otherwise known as Canadian thistle, *Salsoli kali*, otherwise known as Russian thistle, and *Onopordon acanthium*, otherwise known as Scotch thistle, and *Cnicus lanceolatus*, otherwise known as bull thistle, over or along any roadway, highway, or right of way for ditch purposes, adjacent to premises owned or possessed by him. [Amendment approved March 22, 1907. Stats. 1907, p. 877.]

Penalty.

§ 4. Any person upon being duly convicted of a violation of any of the preceding sections of this act, shall be deemed guilty of a misdemeanor, and may be fined in a sum not exceeding one hundred dollars, or by imprisonment in the county jail, for a term not exceeding three months.

Time of taking effect of act.

§ 5. This act shall take effect immediately from and after its passage.

Administering and enforcing act, power agriculture.— See § 9, act of 1919; post.
of, conferred on director of department of Act 96.

INVESTIGATION OF PLANT DISEASES.

ACT 78—An act providing for the investigation of the nature and means of control of destructive diseases of cultivated plants in those portions of the state not benefited by the Southern California Pathological Laboratory, and making an appropriation therefor.

History: Approved April 21, 1911, Stats. 1911, p. 1052.

University to maintain laboratory for investigating diseases of trees and plants.

§ 1. The regents and the president of the University of California are hereby directed to maintain, in connection with the agricultural experiment work of the university in those portions of the state not benefited by the Southern California Pathological Laboratory, a scientific station or laboratory with the necessary equipment for the investigation of the nature and means of control of injurious and destructive diseases of cultivated trees, plants and crops.

Pear blight, etc. Information to growers.

§ 2. They are directed to make or cause to be made investigations of such troubles as pear blight, peach blight, olive knot, apricot failures, pear scab, apple diseases, root rot, root knot, diseases of tomatoes, potatoes, asparagus, onions, and other vegetables, and such other plant diseases as may be called to their attention. They shall also furnish information and practical demonstration to the growers of these crops as to the best means of control of such diseases.

Appropriation.

§ 3. The sum of fifteen thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated to be expended by the regents of the University of California in carrying out the purposes of this act and the state controller is hereby authorized and directed to draw his warrant for the same, payable to the regents of the University of California, and the treasurer of the state is hereby directed to pay such warrant.

§ 4. This act is hereby exempted from the provisions of section 672 of the Political Code.

AGRICULTURAL EXPERT.

ACT 93—An act to provide for the employment of an expert in agricultural and matters relating thereto by the governing boards of irrigation, reclamation and drainage districts.

History: Approved April 3, 1913. In effect August 10, 1913. Stats. 1913, p. 75.

Expert in agriculture for irrigation districts.

§ 1. The board of directors, board of trustees or other governing body of any irrigation, reclamation or drainage district organized and existing under the laws of the State of California is hereby authorized to employ an expert in agricultural and matters relating thereto, and such assistants as may be deemed necessary to supervise the construction of works for the irrigation or protection of lands within the district to advise with the owners of lands within the district, or any other persons engaged in farming such lands, as to methods of increasing the productiveness of such lands as to the kinds of crops to be raised or as to any matters of husbandry, and to conduct such experiments and perform such other duties for the general welfare of the people of their district as the board may prescribe.

DELEGATES ON RURAL CREDITS AND AGRICULTURAL FINANCE COMMISSION.

ACT 94—An act authorizing the appointment of two delegates from California as members of a commission which is to investigate European systems of rural credits and report thereon, and making an appropriation therefor.

History: Approved April 18, 1913. In effect August 10, 1913. Stats. 1913, p. 36.

Rural credits.

Whereas, Under the auspices of the southern commercial congress a commission composed of two delegates from each state is to be sent to Europe, during 1913, to study systems of rural credit and co-operative agricultural societies, and

Whereas, Said commission is to embody the result of its investigations in a report with a view of establishing in this country a system of agricultural finance and rural credits, and

Whereas, The congress of the United States has duly approved the project of sending said commission to Europe, and

Whereas, It is eminently fitting that delegates should be sent from California to take part in the work of the commission with a view to aiding the farmers of our state, therefore,

The people of the State of California do enact as follows:

Delegates.

§ 1. The governor is authorized to appoint two delegates from California who shall take part in the commission which, under the auspices of the southern commercial

congress, is to visit, during 1913, the various countries of Europe and there investigate the different systems of co-operative agricultural societies and rural credits and to report thereon with a view to establishing in this country a sound system of rural credits and agricultural finance.

Appropriation.

§ 2. The sum of three thousand dollars, or so much thereof as may be necessary, is hereby appropriated to pay the expenses, traveling and otherwise, of said delegates while serving as members of the said commission, and the state controller is hereby authorized to draw his warrant for the same in favor of the commission hereunder appointed and the state treasurer is directed to pay the same.

AGRICULTURAL EXTENSION WORK.

ACT 95—An act empowering county boards of supervisors to appropriate and use county funds for the support and maintenance of extension work in agriculture in co-operation with the United States department of agriculture and the University of California.

History: Approved May 18, 1915. In effect August 8, 1915. Stats. 1915, p. 572.

Supervisors may support university extension work.

§ 1. The boards of supervisors of the respective counties within the state are hereby empowered to appropriate and use county funds in not to exceed the amount of ten thousand dollars for any one year, for the support and maintenance within their respective counties of extension work in agriculture under the approval of the United States department of agriculture and in co-operation with the University of California.

DEPARTMENT OF AGRICULTURE.

ACT 96—An act creating a department of agriculture, providing for its organization and declaring its functions; transferring to said department the powers and duties of various state agencies and the unexpended balances of their appropriations and funds; prohibiting certain acts, and prescribing penalties for violation of the provisions hereof.

History: Approved May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 542.

Department of agriculture created. Director.

§ 1. A department of the government of the state of California to be known as the department of agriculture is hereby created. The department shall be conducted under the control of an executive officer to be known as director of agriculture, which office is hereby created. The director shall be appointed by and hold office at the pleasure of the governor, and shall receive a salary of five thousand dollars per annum. Before entering upon the duties of his office, the director shall execute an official bond to the state of California in the penal sum of twenty-five thousand dollars, conditioned upon the faithful performance of his duties. He shall maintain his office at Sacramento, and shall adopt and keep an official seal. He shall act as chief of one of the divisions herein created.

Divisions.

§ 2. For the purpose of administration, the department shall be organized by the director in such manner as, with the approval of the governor, shall be deemed necessary to properly segregate and conduct the work of the department. The work of the department shall be divided into at least two divisions: One to be known as the division of plant industry and one as the division of animal industry. The director shall adopt such rules and regulations not inconsistent with law as may be necessary to

govern the activities of the department. He shall have the power to arrange and classify the work of the department and to assign to each of the officers thereof such duties and labors as he may see fit.

Appointments by director. Civil service exemptions.

§ 3. The director shall have power, except as otherwise provided herein, to appoint heads of divisions and such assistants, agents, experts, and other employees as are necessary for the administration of the affairs of the department to prescribe their duties and, subject to the approval of the governor, to fix the salaries; provided, that the director or other officer of the department shall have no authority on the part of the state to incur obligations exceeding the amount of moneys made available by law for the support of the department. The heads of divisions, assistants, agents, experts and other employees appointed by the director shall execute to the state such official bonds as the director may determine and require. The head of each division and one position under him of a confidential nature shall be exempt from the provisions of the civil service law. The director and all officers, assistants and agents of the department shall be civil executive officers.

Traveling expenses.

§ 4. All heads of divisions, assistants, agents, experts and other employees of the department shall be entitled to receive in addition to their salaries, their actual necessary traveling expenses when away from their headquarters on state business. The salaries and expenses of all heads of divisions, assistants, agents, experts and other employees of the department shall be paid at the same time and in the same manner as the salaries and expenses of other state officers are paid.

Powers and duties of director.

§ 5. The director of agriculture may make investigations and prosecute actions concerning all matters relating to the business activities and subjects under the jurisdiction of the department as well as relating to the acts and the statistics referred to in section nine of this act. In connection therewith he shall have the right to inspect books and records and to hear complaints, administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding pertinent or material thereto in any part of the state.

Power of subpoena.

In the event of the failure or the refusal of any witness to attend or testify or produce such papers, books, accounts or documents or give such testimony or in the event of any disobedience of said subpoena, the superior court in and for the county, or city and county, in which any inquiry, investigation or proceeding may be held by the director of agriculture, shall have power to compel the attendance of said witness, the giving of said testimony and the production of said papers, including books, accounts and documents, as required by any subpoena issued by the director of agriculture. The court upon petition of the director of agriculture shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he had not attended and testified or produced said papers before the director of agriculture. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the director of agriculture, the court shall thereupon enter an order that the said witness appear before the director of agriculture at a time and place to be fixed in such order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court.

Powers of officers.

The powers conferred upon the director of agriculture by the provisions of this section may be exercised with like force and effect by such officers of the department as the director may authorize and designate to conduct any such investigation or hearing; provided, however, that except in his report to the director, or when called upon to testify in any court or proceeding at law, any such officer who shall divulge any information acquired by him from the private books, documents or papers of any person, while acting or claiming to act under any such authorization or designation, in respect to the confidential or private transactions, property or business of any person, firm, association or corporation, shall be guilty of a misdemeanor and shall be disqualified from acting in any official capacity in the department. In addition thereto, such officer shall be liable in damages to any person, firm, association or corporation for all injury resulting from such unlawful disclosure.

Report to governor.

§ 6. The director shall make a report to the governor at least sixty days before the commencement of each biennial session of the legislature. Such report shall give an account of all matters pertaining to his department, together with any recommendations, and shall specifically set forth a statement of the expenditures made by the department during the period up to and including the thirtieth day of June preceding said session. There shall also be set forth in such report a statement of the organization plan of the department, together with the number of classes of officers and employees in the department and the compensation paid the same.

Duty of attorney general.

§ 7. The attorney general shall be the legal adviser of the department in all matters relating to the department and to the powers and duties of its officers. Upon request of the director, the attorney general, or under his direction, the district attorney of any county in which the action is brought, shall aid in any investigation, hearing, prosecution or trial had under the laws which the director is required to administer, and shall institute and prosecute all necessary actions or proceedings for the enforcement of such laws and for the punishment of all violations thereof. The sheriffs and constables in the several counties shall execute all lawful orders of the director in such counties.

Powers of existing boards, etc., transferred. Offices abolished.

§ 8. The director of the department of agriculture shall succeed to and is hereby vested with all the duties, powers, purposes, responsibilities and jurisdiction of the state commissioner of horticulture, of the state board of horticultural examiners, of the state dairy bureau, of the state veterinarian, of the stallion registration board, of the state board of viticultural commissioners, of the board of citrus fruit shipments, of the cattle protection board and of the several officers of such bodies and offices; and whenever by the provisions of any statute or law now in force or that may hereafter be enacted as a duty or jurisdiction is imposed or authority conferred upon any of said bodies, offices or officers, such duty, jurisdiction and authority are hereby imposed upon and transferred to the director of the department of agriculture the same as though the title of the director of the department of agriculture had been specifically set forth and named therein. Said bodies, offices and officers whose duties, powers, purposes and responsibilities are so transferred to and vested in the director of the department of agriculture, are and each of them is hereby abolished and shall have no further legal existence, but the statutes and laws under which they existed and all laws prescribing their duties, powers, purposes and responsibilities and jurisdiction together with all lawful rules and regulations established thereunder, are hereby

expressly continued in force. The department of agriculture shall also succeed to and be in control of all records, books, papers, offices, equipment, supplies, moneys, funds, appropriations, land and other property, real or personal, now or hereafter held for the benefit or use of said bodies, offices and officers.

Laws to be enforced. Powers transferred to director.

§ 9. The director of the department of agriculture is hereby vested with the power and is charged with the duty of administering and enforcing the following laws:

An act to regulate the sale of commercial fertilizers or materials used for manurial purposes, and to provide penalties for the infractions thereof, and means for the enforcement of the act, approved March 20, 1903, and all acts amending or supplementing said act.

An act to prevent the propagation by the production of seed of that certain plant known as *Sorghum halepense*, otherwise known as Johnson grass, approved March 20, 1903, and all acts amending or supplementing said act.

An act to regulate the manufacture, sale, adulteration and misbranding of insecticides or fungicides or materials used for insecticidal or fungicidal purposes and to provide penalties for the infraction thereof and to appropriate money therefor, approved May 1, 1911, and all acts amending or supplementing said act.

An act to regulate the production of certified milk, cream, ice cream, butter and cheese; and repealing an act entitled "An act to regulate the production of certified milk," approved March 18, 1909, and all acts and parts of acts inconsistent with this act, approved April 25, 1913, and all acts amending or supplementing said act.

An act prohibiting the destruction of foodstuffs, food products or food articles, approved June 5, 1913, and all acts amending or supplementing said act.

Wherever in any of the statutes enumerated in this section or in any of the statutes amending or supplementing the same, a duty or jurisdiction is imposed or authority conferred upon any state board, commission, office or officer to administer the provisions of any of said statutes, such duty, jurisdiction and authority are hereby imposed upon and transferred to the director of the department of agriculture and the officers thereof with the same force and effect as if the name of the director of the department of agriculture occurred in the statute in each instance in lieu of the name of any board, commission, office or officer, or in lieu of the name of any member, deputy, assistant or employee thereof, as the case may be.

Authority to spend money on hand.

§ 10. From and after the date upon which this act takes effect, the director shall be and is hereby authorized and empowered to expend the moneys in any appropriation or in any special fund in the state treasury now remaining or made available by law for the administration of the provisions of any of the statutes enumerated in section nine hereof or for the use, support, or maintenance of any board, commission, office or officer that is abolished by the provisions hereof and whose duties, powers and functions are, by the provisions of this act, transferred to and conferred upon the department of agriculture. Such expenditures by the director shall be made in accordance with law in carrying on the work for which such appropriations were made or such special funds created.

AGRICULTURE, DEPARTMENT OF.

See tit. "Agriculture."

CHAPTER 6.

ALAMEDA CITY.

CONTENTS OF CHAPTER.

- ACT 104. FREEHOLDERS' CHARTER.
 106. STREET EXTENSION AND WIDENING.
 107. EXTENSION OF CERTAIN STREETS.
 108. SCHOOL BUILDING FUND.
 109. SALT MARSH AND TIDE LAND GRANT.

FREEHOLDERS' CHARTER OF THE CITY OF ALAMEDA:

ACT 104—Charter of Alameda.

History: Freeholders' charter, ratified at a special municipal election held January 9, 1917. Filed with the secretary of state January 25, 1917, Stats. 1917, p. 1752. Amended: Amendments ratified at a regular municipal election held March 11, 1919. Filed with the secretary of state April 11, 1919, Stats. 1919, p. 1481. Originally incorporated April 19, 1854, Stats. 1854, p. 76. Again incorporated March 7, 1872, Stats. 1871-72, p. 276. (Amended March 18, 1874, Stats. 1873-74, p. 448; March 20, 1876, Stats. 1875-76, p. 367.) Reincorporated February 21, 1878, Stats. 1877-78, p. 89. Incorporated as a city of the fifth class under the general Municipal Incorporation Act of 1883. Incorporated under a freeholders' charter ratified at a special municipal election July 18, 1906, approved February 7, 1907, Stats. 1907, p. 1051. Amended: Amendment ratified at a general municipal election April 10, 1911. Filed with the secretary of state January 27, 1913, Stats. 1913, p. 1454. Amendment ratified at a general municipal election April 14, 1913. Filed with the secretary of state June 2, 1913, Stats. 1913, p. 1720.

Charter of 1907—Control of streets—Building removal.—Under the charter of 1907, authorizing the city "to manage and control the streets," Alameda had power to pass an ordinance regulating the removal of buildings along and upon streets.—*Robinson v. Otis*, 30 Cal. App. 769, 159 Pac. 441.

Same—Clubhouse not a saloon.—The provision of section 1, article X, charter of Alameda City (Stats. 1907, p. 1093), making it unlawful to establish, open, keep, maintain, or carry on, any saloon, bar, store, dramshop, tippling place, stand or any place, where spirituous, malt or fermented liquors or wines, are sold or given away without permission pursuant to ordinance, does not

apply to a fraternal organization or its clubhouse, but is designed merely to limit and restrict the business of selling such liquors.—*Varcoe v. Alameda Local No. 1015*, B. P. O. E., 174 Cal. 549, 550, 163 Pac. 909.

Note: The provision referred to is not in the present charter.

Same—Retail butcher business.—The city has the power to impose a license upon retail butchers, either for regulation or revenue, and for that purpose a division into two classes based upon whether any vehicles are used in such business, and if so, how many, is a fair and reasonable classification.—*Bramman v. Alameda*, 162 Cal. 648 124 Pac. 243.

STREET EXTENSION AND WIDENING.

ACT 106—An act in relation to certain streets in the Town of Alameda.

History: Approved March 30, 1874, Stats. 1873-74, p. 795.

Extension of streets.—This act authorized the extension of Santa Clara (Jefferson) avenue to West End avenue; Railroad avenue to West End avenue; and the opening of

certain portions of Third avenue and the extension of Buena Vista avenue from Prospect to Third avenue. It also provided for the widening of Park street.

EXTENSION OF STREETS.

ACT 107—An act in relation to certain streets in the Town of Alameda.

History: Approved April 1, 1878, Stats. 1877-78, p. 964. Prior act repealed: Act of March 23, 1876, Stats. 1875-76, p. 424.

This act provided for the extension of certain streets.

Street opening—Proceedings initiated under repealed act.—Proceedings to open street

commenced four months after repeal of act authorizing the same are null and void.—*Cohen v. Gray*, 70 Cal. 85, 11 Pac. 503.

SCHOOL BUILDING FUND.

ACT 108—An act to provide funds for the school department of the town of Alameda.

History: Approved March 28, 1878, Stats. 1877-78, p. 599.

Bond issue for school building purposes.—Act authorized issue of \$50,000.

SALT MARSH AND TIDE LAND.

ACT 109—An act granting to the city of Alameda the salt marsh, tide and submerged lands of the state of California, including the right to wharf out therefrom to the city of Alameda, and regulating the management, use and control thereof.

History: Approved June 11, 1913, Stats. 1913, p. 707. In effect August 10, 1913. Amended May 24, 1917. In effect July 27, 1917. Stats. 1917, p. 907.

Tidelands granted to Alameda.

§ 1. There is hereby granted to the city of Alameda, a municipal corporation of the state of California, and to its successors, all the right, title and interest of the state of California, held by said state by virtue of its sovereignty, in and to all the salt marsh, tide and submerged lands, whether filled or unfilled, within the present boundaries of said city, and situated below the line of mean high tide of the Pacific ocean, or of any harbor, estuary, bay or inlet within said boundaries, to be forever held by said city, and by its successors, in trust for the uses and purposes, and upon the express conditions following, to wit:

Conditions of grant. Franchises for wharves, etc.

That said lands shall be used by said city and its successors, solely for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other utilities, warehouses, factories, storehouses, structures and appliances necessary or convenient for the promotion, benefit and accommodation of commerce and navigation, and said city, or its successors, shall not, except as herein authorized, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purpose whatever; provided, that said city, or its successors, may grant franchises thereon, for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, for purposes consistent with the trusts upon which said lands are held by the state of California and this grant, for a term not exceeding twenty-five years, and on such other terms and conditions as said city may determine, including a right to renew such lease or leases for a further term not exceeding twenty-five years or to terminate the same on such terms, reservations and conditions as may be stipulated in such lease or leases, and said lease or leases may be for any and all purposes which shall not interfere with navigation or commerce, with reversion to the said city on the termination of such lease or leases of any and all improvements thereon, and on such other terms and conditions as the said city may determine, but for no purpose which will interfere with navigation or commerce; subject also to a reservation in all such leases or such wharfing out privileges of a street, or of such other reservation as the said city may determine for sewer outlets, and for gas and oil mains, and for hydrants, and for electric cables and wires, and for such other conduits for municipal purposes, and for such public and municipal purposes and uses as may be deemed necessary by the said city, upon compensation being made for the injury and damage done to any improvement or structure thereon.

Owners of upland abutting to have preference. Grant to United States.

Provided, further, that in the granting of any and all such leases the city council shall, whenever in its judgment it can reasonably do so, give preference to the owners of upland abutting on the salt marsh, tide or submerged land proposed to be leased;

provided, however, that the said city of Alameda may grant, give, convey and alien such lands or any portion thereof, forever to the United States for public purposes of the United States; provided, however, that no such grant shall be made unless authorized and approved by a vote of the majority of the electors of such municipal corporation voting upon the proposition of making such grant at an election therein, at which such proposition shall have been submitted.

Right of city to rents, etc.

This grant shall carry the right to such city of the rents, issues and profits in any manner hereafter arising from the lands or wharfing out privileges hereby granted.

Right to use wharves reserved to state.

The state of California shall have, at all times, the right, together with the city if there be no lessee or licensee, or together with the lessee or licensee, if there be a lessee or licensee, to use, without charge, all wharves, docks, piers, slips, quays constructed on said lands or any part thereof, except wharves, docks, piers, slips, quays or other improvements constructed on such lands by the United States for public purposes of the United States, for any vessel or other water craft, or railroad, owned or operated by the state of California.

No discrimination in rates.

No discrimination in rates, tolls or charges for use or in facilities for any use or service in connection with wharves, docks, piers, slips or quays or property operated by the city, or property leased, the use of which is dedicated by the lessee or licensee for a public use, shall ever be made, authorized or permitted.

Right to fish reserved.

There is hereby reserved in the people of the state of California the right to fish in the waters on which said lands may front with the right of convenient access to said waters over said lands for said purpose, such enjoyment of access and right to fish to be regulated by ordinance of the city of Alameda, so as not to interfere, obstruct, retard or limit the right of navigation or the rights of lessees or licensees under lease or license given.

Leases affirmed.

All leases and licenses granted by ordinance of the city of Alameda prior to the first day of April, one thousand nine hundred seventeen, and the terms and conditions expressed therein are affirmed. [Amendment of May 24, 1917. In effect July 27, 1917. Stats. 1917, p. 907.]

§ 2. [Repealed May 24, 1917. Stats. 1917, p. 909.]

CHAPTER 7.

ALAMEDA COUNTY.

CONTENTS OF CHAPTER.

ACT 124. INCREASE OF NUMBER OF SUPERIOR JUDGES.

130. RECEIVING HOSPITAL.

131. CONTROL OF BRIDGE ACROSS SAN ANTONIO ESTUARY.

INCREASE OF NUMBER OF SUPERIOR JUDGES.

ACT 124—An act to increase the number of judges of the superior court of the county of Alameda, and for the appointment of such additional judges.

History: Approved May 5, 1917. In effect July 27, 1917. Stats. 1917, p. 242. Prior acts increasing the number of judges: Act of March 3, 1881, Stats. 1881, p. 19, increased the number from two to three; Act of February 13, 1893, Stats. 1893, p. 3, increased the number from three to four; Act of March 14, 1901, Stats. 1901, p. 295, increased the number from four to five; Act of April 6, 1909, Stats. 1909, p. 799, increased the number from five to six. The present act increases the number to eight.

RECEIVING HOSPITAL.

ACT 130—An act to authorize the board of supervisors of Alameda to establish a receiving hospital in the city of Oakland.

History: Approved March 29, 1878, Stats. 1877-78, p. 640.

BRIDGE ACROSS SAN ANTONIO ESTUARY.

ACT 131—An act giving control of the bridge across the estuary of San Antonio, in the county of Alameda, to the supervisors of said county.

History: Approved December 21, 1877, Stats. 1877-78, p. 3.

ALAMEDA COUNTY WATER DISTRICT.

See tit. "Water Districts."

CHAPTER 8.

ALBANY.

References: Incorporation, etc., see, post, Act 3094, note.

CONTENTS OF CHAPTER.

ACT 146. TIDE LAND GRANT.

TIDE LAND GRANT.

ACT 146—An act granting certain tidelands and submerged lands of the state of California to the city of Albany, and regulating the management, use and control thereof.

History: Approved May 6, 1919. In effect July 22, 1919. Stats. 1919, p. 310.

Tidelands granted to city of Albany. Conditions of grant.

§ 1. There is hereby granted to the city of Albany, a municipal corporation of the state of California, and to its successors, all the right, title and interest of the state of California, held by said state by virtue of its sovereignty in and to all tidelands and submerged lands, whether filled or unfilled, which are included within the present boundaries of the city of Albany, to be forever held by said city and by its successors in trust for the use and purposes, and upon the express conditions following, to wit:

(a) That said lands shall be used by said city and its successors, only for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said city or its successors shall not, at any time, grant, convey, give or alien said lands or any part thereof to any individual, firm or corporation, for any purposes whatever; provided, that said city or its successors may grant franchises thereon, for limited periods, but in no event exceeding fifty years for wharves and other public uses and purposes, and may lease said lands or any part thereof for limited periods, but in no event exceeding fifty years, for the purposes consistent with the trusts upon which said lands are held by the state of California, and with the requirements of commerce or navigation at said harbor.

(b) That said harbor shall be improved by said city without expense to the state, and shall always remain a public harbor for all purposes of commerce and navigation, and the state of California shall have at all times the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands, or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the state of California.

(c) That in the management, conduct or operation of said harbor, or of any of the utilities, structures or appliances mentioned in paragraph (a), no discrimination in rates, tolls, or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or its successors.

(d) There is hereby reserved, however, in the people of the state of California the absolute right to fish in all the waters of said harbor, with the right of convenient access to said waters over said land for said purpose.

CHAPTER 9.

ALHAMBRA.

CONTENTS OF CHAPTER.

ACT 147. FREEHOLDERS' CHARTER.

CHARTER OF THE CITY OF ALHAMBRA.

ACT 147—Charter of Alhambra.

History: Freeholder charter voted for and ratified at a special municipal election October 14, 1914. Filed with the secretary of state January 30, 1915, Stats. 1915, p. 1740.

CHAPTER 10.

ALIENS.

CONTENTS OF CHAPTER.

ACT 150. LICENSES TO ALIENS.

151. INDEXING NAMES OF PERSONS WHO HAVE DECLARED INTENTION.

152. ESCHATEATED ESTATES.

153. FISHING BY ALIENS.

155. EMPLOYMENT OF NATURALIZED AND NATIVE BORN CITIZENS IN PUBLIC OFFICES.

156. ALIEN LAND LAW.

LICENSES TO ALIENS.

ACT 150—An act to prohibit the issuance of licenses to aliens not eligible to become electors of the state of California.

History: Approved April 12, 1880, Stats. 1880, p. 39.

Code commissioners' note: "Unconstitutional.—*People v. Quong On Long*, 6 Pac. C. L. J. 192; see Pol. Code, § 3366, as amended 1901, p. 635."

Unconstitutional and void as violative of

the fourteenth amendment of the constitution of the United States.—*In re Ah Chong*, 2 Fed. 733.

Admission as attorney.—See *Kerr's Cyc. Code Civil Procedure*, §§ 275, 279.

INDEXING OF PERSONS WHO HAVE DECLARED INTENTION.

ACT 151—An act to provide for indexing the names of persons who have declared their intention to become or who have become citizens of the United States, in the several courts of record in the state.

History: Approved February 8, 1872, Stats. 1871-72, p. 80.

Code commissioners' note: "Section 1 probably in force, section 2 superseded by fee bill of 1895, p. 267."

ESCHEATED ESTATES.

ACT 152—An act relative to escheated estates.

History: Approved April 19, 1856, Stats. 1856, p. 137.

When claim of escheated estate, time to make.—See *Kerr's Cyc. Political Code*, § 1269; *Kerr's Cyc. Civil Code*, §§ 672, 1404.

Constitutional—The act is constitutional.—*State v. Rogers*, 13 Cal. 159.

Constitutional provisions as to aliens.—See constitution, article I, § 17, and article XIX, §§ 1, 4.

Inheritance by aliens.—See *Kerr's Cyc. Civil Code*, § 1404.

Limitation of actions by.—See *Kerr's Cyc. Code Civil Procedure*, § 354.

Non-resident aliens.—Interest escheats.—See *Kerr's Cyc. Civil Code*, §§ 1404-1407.

Property rights of aliens.—See *Kerr's Cyc. Civil Code*, §§ 671, 672, 1404. See, also, "Alien Land Law," post, Act 156.

Public employment.—See, post, Act 155.

Superseded.—Probably superseded.—See *Kerr's Cyc. Civil Code*, §§ 671, 672, and *Kerr's Cyc. Code Civil Procedure*, §§ 1269-1272.

FISHING BY ALIENS.

ACT 153—An act relating to fishing in this state.

History: Approved April 23, 1880, Stats. 1880, p. 123.

Code commissioners' note: "Unconstitutional; *In re Ah Chong*, 5 Pac. C. L. J. 451."

Hunting.—See tit. "Game Laws."

Fishing.—This act prohibited aliens, in-

capable of becoming citizens, from fishing in the waters of the state.

Various rights of aliens.—See notes to, ante, Act 152.

EMPLOYMENT OF NATIVE BORN AND NATURALIZED CITIZENS IN PUBLIC OFFICES.

ACT 155—An act to secure to native-born and naturalized citizens of the United States the exclusive right to be employed in any department of the state, county, city and county and city government in this state, except in certain schools, to validate certain acts, and to repeal all acts in conflict herewith.

History: Approved May 19, 1915. In effect August 8, 1915. Stats. 1915, p. 690. Prior acts: Act of April 3, 1880, Stats. 1880, p. 23, probably superseded by the Act of March 23, 1901, Stats. 1901, p. 589, which was repealed by the present act.

Only citizens for public work. Exceptions.

§ 1. No person except a native-born or naturalized citizen of the United States, shall be employed in any department of the state, county, city and county or city government in this state; provided, however, that nothing herein contained shall prohibit the employment as a member of the faculty or teaching force in public schools of this state, nor in schools supported in whole or in part by the state, of any person who has declared his intention to become a citizen of the United States, nor of any native-born woman of the United States who has married a foreigner; and provided, further, that the prohibitions of this act shall not apply to any member of the faculty or teaching force of any college or university supported in whole or in part by the

state, nor to any specialists or expert temporarily employed by any department of the state, or any county, city and county or city and engaged in special investigation.

Unlawful to employ persons other than citizens.

§ 2. It shall be unlawful for any person, whether elected, appointed or commissioned to fill any office in either the state, county, city and county or city government of this state, or in any department thereof, to appoint or employ any person to perform any duties whatsoever, unless such person so appointed or employed be a native-born or naturalized citizen of the United States, subject nevertheless, to the exceptions contained in section one of this act.

No payment for persons other than citizens.

§ 3. No money shall be paid out of the state treasury or out of the treasury of any county, or city and county or city, to any person employed in any of the offices mentioned in section two of this act unless such person shall be a native-born or naturalized citizen of the United States, subject to the exceptions contained in section one of this act.

Term defined.

§ 4. As used in this act the term "person who has declared his intention to become a citizen" shall not include any person who fails to secure his certificate of naturalization within six months after the time that he is entitled by law to secure the same.

Previous payments validated.

§ 5. No action shall be authorized or maintained for the recovery of money heretofore paid to any member of the faculty or teaching force of any public school of this state, or any school, college or university supported in whole or in part by the state, and all payments so made are hereby approved and declared valid.

Repealed.

§ 6. An act entitled, "An act to secure to native-born and naturalized citizens of the United States the exclusive right to be employed in any department of the state, county, city and county, or incorporated city or town government in this state," approved March 23, 1901, is hereby repealed and all other acts or parts of acts in conflict with this act are hereby repealed.

ALIEN LAND LAW.

ACT 156—An act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this state, providing for escheats in certain cases, prescribing the procedure therein, requiring reports of certain property holdings to facilitate the enforcement of this act, prescribing penalties for violation of the provisions hereof, and repealing all acts or parts of acts inconsistent or in conflict herewith.

History: Initiative act submitted to the people at the general election of November 2, 1920, and adopted. In effect December 9, 1920.

§ 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property, or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state.

§ 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

§ 3. Any company, association or corporation organized under the laws of this or any other state or nation, of which a majority of the members are aliens other than those specified in section one of this act, or in which a majority of the issued capital stock is owned by such aliens, may acquire, possess, enjoy and convey real property, or any interest therein, in this state, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such members or stockholders are citizens or subjects, and not otherwise. Hereafter all aliens other than those specified in section one hereof may become members of or acquire shares of stock in any company, association or corporation that is or may be authorized to acquire, possess, enjoy or convey agricultural land, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

§ 4. Hereafter no alien mentioned in section two hereof and no company, association or corporation mentioned in section three hereof, may be appointed guardian of that portion of the estate of a minor which consists of property which such alien or such company, association or corporation is inhibited from acquiring, possessing, enjoying or transferring by reason of the provisions of this act. The public administrator of the proper county, or any other competent person or corporation, may be appointed guardian of the estate of a minor citizen whose parents are ineligible to appointment under the provisions of this section.

On such notice to the guardian as the court may require, the superior court may remove the guardian of such an estate whenever it appears to the satisfaction of the court:

(a) That the guardian has failed to file the report required by the provisions of section five hereof; or

(b) That the property of the ward has not been or is not being administered with due regard to the primary interest of the ward; or

(c) That facts exist which would make the guardian ineligible to appointment in the first instance; or

(d) That facts establishing any other legal ground for removal exist.

§ 5. (a) The term "trustee" as used in this section means any person, company, association or corporation that as guardian, trustee, attorney-in-fact or agent, or in any other capacity has the title, custody or control of property, or some interest therein, belonging to an alien mentioned in section two hereof, or to the minor child of such an alien, if the property is of such a character that such alien is inhibited from acquiring, possessing, enjoying or transferring it.

(b) Annually on or before the thirty-first day of January every such trustee must file in the office of the secretary of state of California and in the office of the county clerk of each county in which any of the property is situated, a verified written report showing:

(1) The property, real or personal, held by him for or on behalf of such an alien or minor;

(2) A statement showing the date when each item of such property came into his possession or control;

(3) An itemized account of all expenditures, investments, rents, issues and profits in respect to the administration and control of such property with particular reference to holdings of corporate stock and leases, cropping contracts and other agreements in respect to land and the handling or sale of products thereof.

(c) Any person, company, association or corporation that violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine not exceeding

one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(d) The provisions of this section are cumulative and are not intended to change the jurisdiction or the rules of practice of courts of justice.

§ 6. Whenever it appears to the court in any probate proceeding that by reason of the provisions of this act any heir or devisee can not take real property in this state or membership or shares of stock in a company, association or corporation which, but for said provisions, said heir or devisee would take as such, the court, instead of ordering a distribution of such property to such heir or devisee, shall order a sale of said property to be made in the manner provided by law for probate sales of property and the proceeds of such sale shall be distributed to such heir or devisee in lieu of such property.

§ 7. Any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act, shall escheat to, and become and remain the property of the state of California. The attorney general or district attorney of the proper county shall institute proceedings to have the escheat of such real property adjudged and enforced in the manner provided by section four hundred seventy-four of the Political Code and title eight, part three of the Code of Civil Procedure. Upon the entry of final judgment in such proceedings, the title to such real property shall pass to the state of California. The provisions of this section and of sections two and three of this act shall not apply to any real property hereafter acquired in the enforcement or in satisfaction of any lien now existing upon, or interest in such property, so long as such real property so acquired shall remain the property of the alien, company, association or corporation acquiring the same in such manner. No alien, company, association or corporation mentioned in section two or section three hereof shall hold for a longer period than two years the possession of any agricultural land acquired in the enforcement of or in satisfaction of a mortgage or other lien hereafter made or acquired in good faith to secure a debt.

§ 8. Any leasehold or other interest in real property less than the fee, hereafter acquired in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act, shall escheat to the state of California. The attorney general or district attorney of the proper county shall institute proceedings to have such escheat adjudged and enforced as provided in section seven of this act. In such proceedings the court shall determine and adjudge the value of such leasehold or other interest in such real property, and enter judgment for the state for the amount thereof together with costs. Thereupon the court shall order a sale of the real property covered by such leasehold, or other interest, in the manner provided by section twelve hundred seventy-one of the Code of Civil Procedure. Out of the proceeds arising from such sale, the amount of the judgment rendered for the state shall be paid into the state treasury and the balance shall be deposited with and distributed by the court in accordance with the interest of the parties therein. Any share of stock or the interest of any member in a company, association or corporation hereafter acquired in violation of the provisions of section three of this act shall escheat to the state of California. Such escheat shall be adjudged and enforced in the same manner as provided in this section for the escheat of a leasehold or other interest in real property less than the fee.

§ 9. Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the state and the interest thereby conveyed or sought to be conveyed shall escheat to the state if the property interest involved is of such a character that an alien mentioned in section two hereof is inhibited from acquiring, possessing, enjoying or transferring it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein.

A prima facie presumption that the conveyance is made with such intent shall arise upon proof of any of the following groups of facts:

(a) The taking of the property in the name of a person other than the persons mentioned in section two hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in section two hereof;

(b) The taking of the property in the name of a company, association or corporation, if the memberships or shares of stock therein held by aliens mentioned in section two hereof, together with the memberships or shares of stock held by others but paid for or agreed or understood to be paid for by such aliens, would amount to a majority of the membership or the issued capital stock of such company, association or corporation;

(c) The execution of a mortgage in favor of an alien mentioned in section two hereof if said mortgagee is given possession, control or management of the property.

The enumeration in this section of certain presumptions shall not be so construed as to preclude other presumptions or inferences that reasonably may be made as to the existence of intent to prevent, evade or avoid escheat as provided for herein.

§ 10. If two or more persons conspire to effect a transfer of real property, or of an interest therein, in violation of the provisions hereof, they are punishable by imprisonment in the county jail or state penitentiary not exceeding two years, or by a fine not exceeding five thousand dollars, or both.

§ 11. Nothing in this act shall be construed as a limitation upon the power of the state to enact laws with respect to the acquisition, holding or disposal by aliens of real property in this state.

§ 12. All acts and parts of acts inconsistent or in conflict with the provisions hereof are hereby repealed; provided, that—

(a) This act shall not affect pending actions or proceedings, but the same may be prosecuted and defended with the same effect as if this act had not been adopted;

(b) No cause of action arising under any law of this state shall be affected by reason of the adoption of this act whether an action or proceeding has been instituted thereon at the time of the taking effect of this act or not and actions may be brought upon such causes in the same manner, under the same terms and conditions, and with the same effect as if this act had not been adopted;

(c) This act in so far as it does not add to, take from or alter an existing law, shall be construed as a continuation thereof.

§ 13. The legislature may amend this act in furtherance of its purpose and to facilitate its operation.

§ 14. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The people hereby declare that they would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

As to suit to quiet title of alien against state, where title was acquired prior to enactment of Alien Land Law, see, post, Act 4830a.

Rights of aliens in general.—See, ante, Act 152.

ALPINE COUNTY.

See Kerr's Cyc. Political Code.

ALTURAS.

See Act 3094, note.

ALVISO.

See Act 3094, note.

CHAPTER 11.

AMADOR CITY.

CONTENTS OF CHAPTER.

ACT 176. HOGS AND GOATS RUNNING AT LARGE.

HOGS AND GOATS.

ACT 176—An act to prevent hogs and goats running at large in Amador city, Amador county.

History: Approved March 30, 1874, Stats. 1873-74, p. 905.

Code commissioners say this act was repealed by the general estray law; but see editor's note to chapter on "Estrays."

CHAPTER 12.

AMADOR COUNTY.

CONTENTS OF CHAPTER.

ACT 185. PORTION OF EL DORADO COUNTY ADDED TO.

186. INDEBTEDNESS PRIOR TO ORGANIZATION.

187. AMADOR AND NEVADA WAGON ROAD.

188. TRESPASSING OF GOATS ON ENCLOSED LAND.

189. HOGS AND GOATS RUNNING AT LARGE.

PORTION OF EL DORADO COUNTY ADDED TO.

ACT 185—An act to attach a portion of El Dorado county to the county of Amador.

History: Approved April 16, 1855, Stats. 1855, p. 113.

Election to divide county.—See act of May 10, 1854, Stats. 1854, p. 156.

INDEBTEDNESS PRIOR TO ORGANIZATION.

ACT 186—An act to provide for the ascertainment of the indebtedness of Calaveras county, prior to the organization of Amador county; and to provide for the payment of that portion due from Amador county to the county of Calaveras.

History: Approved April 27, 1855, Stats. 1855, p. 165.

Division of county—Division of indebtedness.—The claim of the old county against the new county, for the latter's proportion of the indebtedness before division is of an equitable nature, and legislation is required to enforce its payment.—Beals v. Supervisors, 28 Cal. 449.

Same—Same—Same—Choses in action—Sale.—The provisions of § 9 does not contemplate that choses in action should be sold at public auction as required by the act of March 20, 1855, "to create a board of supervisors in the counties of this state and to define their duties and powers," and there is nothing in that act to restrict a county to exchange its credits for its debts, if it so desires, and can find any one to enter into that kind of a contract.—Beals v. Evans, 10 Cal. 459.

Same—Same—Same—Interest.—The new county is not required to pay interest on its proportion of the indebtedness due the old county, unless the legislative act requiring payment of the principal so provides.—Beals v. Supervisors, 28 Cal. 449.

Same—Same—Same—Same.—But the legislature may require such payment of inter-

est by a subsequent act of legislation.—Beals v. Amador County, 35 Cal. 624.

Same—Same—Same—Special fund.—The provisions of § 9 as to creation of special fund by Amador County to pay its proportion of the Calaveras County indebtedness, did not contemplate that such fund should be fully collected and paid into the county treasury before any part of the fund could be demanded in payment of the indebtedness for which it was provided, and payment may be demanded at any time when funds are in the hand of the treasurer to meet the warrant.—Beals v. Evans, 10 Cal. 459.

Payment of Amador's proportion of Calaveras County indebtedness.—See act of March 31, 1866, Stats. 1865-66, p. 471, and the supplementary act of March 30, 1872, Stats. 1871-72, p. 693.

Unconstitutional.—The provisions of § 2 of the act barring Calaveras County warrants unless presented for registration to the auditor of the county before the day fixed is unconstitutional as an impairment of the obligation of contracts.—Robinson v. Magee, 9 Cal. 81, 70 Am. Dec. 638.

AMADOR AND NEVADA WAGON ROAD.

ACT 187—An act to authorize the board of supervisors of Amador county to declare that portion of the Amador and Nevada wagon road which lies in Amador county a toll road.

History: Approved April 1, 1878, Stats. 1877-78, p. 963.

Constitutionality.—Question of constitutionality is raised but not decided.—People ex rel. Williams v. Horsley, 65 Cal. 381, 4 Pac. 384.

Grant of franchise—Effect of act.—The act simply grants the franchise to the county to collect tolls on the road, and does not purport to authorize the county to grant

any franchise to other persons.—People ex rel. Williams v. Horsley, 65 Cal. 381, 4 Pac. 384.

Repealed.—Question as to whether it was repealed by the act of February 28, 1883 (Stats. 1883, pp. 5, 20), raised but not decided.—People ex rel. Williams v. Horsley, 65 Cal. 381, 4 Pac. 384.

TRESPASSING OF GOATS.

ACT 188—An act to prevent the trespassing of goats on enclosed lands in Amador county.

History: Approved March 26, 1878, Stats. 1877-78, p. 536.

HOGS AND GOATS.

ACT 189—Sutter Creek, town of, Amador county, preventing hogs and goats running at large in.

History: Approved March 23, 1876, Stats. 1875-76, p. 402.

Code commissioners say this act was repealed by the general estray law of 1897; but see editor's note to chapter on "Estrays."

CHAPTER 13.

AMERICAN WATER AND MINING COMPANY.

CONTENTS OF CHAPTER.

ACT 195. EXTENSION OF WORK.

EXTENSION OF WORKS.

ACT 195—Authorizing American Water and Mining Company to extend its works.

History: Approved April 6, 1860, Stats. 1860, p. 155. Supplemented March 21, 1872, Stats. 1871-72, p. 471.

Benefits of act conferred on assignees.—By the supplemental act the benefits of the act were conferred upon George W. Reamer and associates, assignees of the company.

ANAHEIM.

See post Act 3094, note.

ANGELS.

See Act 3094, note.

CHAPTER 14.

ANIMALS.

References: See titles. "Cruelty to Animals"; "Estrays"; "Game Laws"; "Goats"; "Hogs"; "Live Stock"; "Sheep"; "Stallions"; "Trespassing Animals."

See, also, Kerr's Cyc. Penal Code, same and cognate titles.

Dog, property in, larceny of, value of. See Kerr's Cyc. Penal Code, § 471.

CONTENTS OF CHAPTER.

- ACT 249. DESTRUCTION OF SQUIRRELS AND GOPHERS.
- 250. ABATEMENT OF SQUIRREL NUISANCE.
- 251. DESTRUCTION OF PREDATORY ANIMALS.

DESTRUCTION OF SQUIRRELS AND GOPHERS.

ACT 249—An act to encourage the destruction of squirrels and gophers in certain counties of this state, and to provide for a bounty for the same.

History: Approved March 16, 1870, Stats. 1869-70, p. 316. Amended March 21, 1872, Stats. 1871-72, p. 474; March 23, 1872, Stats. 1871-72, p. 532; April 1, 1872, Stats. 1871-72, p. 834.

Code commissioners say this act was superseded by the county government act empowering the county supervisors to provide for the destruction of gophers, squirrels, etc.; but it is suggested that the true view should be that the act continues in force until the supervisors exercise the power, and is suspended only while there is a county ordinance in effect.

This act applied to Alameda, Contra Costa, Fresno, Stanislaus, Merced, San Joaquin, and Yolo counties. It was repealed as to Stanislaus county by an act for that purpose approved March 28, 1876, Stats. 1875-76, p. 513; and as to Alameda county, by an act approved January 11, 1872, Stats. 1871-72, p. 18; and as to Contra Costa county, by the amendatory act of April 1, 1872, Stats. 1871-72, p. 834.

ABATEMENT OF SQUIRREL NUISANCE.

ACT 250—An act to abate the squirrel nuisance in Stanislaus, Santa Cruz, San Joaquin, Merced, Fresno, San Benito, Tulare, San Mateo, Santa Clara, Monterey, and Kern counties, State of California.

History: Approved March 7, 1876, Stats. 1875-76, p. 143.

As to effect of county government act, see note to, ante, Act 249.

An act approved March 31, 1876, Stats. 1875-76, p. 637, made the provisions of this act applicable to San Luis Obispo county.

DESTRUCTION OF PREDATORY ANIMALS.

ACT 251—An act providing for the control and the destruction of predatory animals, vesting in the state commissioner of horticulture the administration of the provisions hereof, and defining his powers and duties in relation thereto.

History: Approved May 2, 1919. In effect July 24, 1919. Stats. 1919, p. 178.

Control of predatory animals.

§ 1. The state commissioner of horticulture is hereby directed to investigate reports of the depredations occasioned by predatory animals, to assist in instituting control measures in localities where depredations are known to be serious and co-operate with county board of supervisors. He may co-operate with the bureau of biological survey of the United States department of agriculture, and may enter into contracts with said bureau, determining the method of such co-operation, establishing uniform control methods, and governing the supervision of all persons employed in such work.

Predatory animal fund.

§ 2. The state commissioner of horticulture is hereby authorized to accept on behalf of the state donations of money from individuals, associations, corporations, county boards of supervisors, and other agencies interested in the control of coyotes and other harmful predatory animals, all such moneys to be paid into the state treasury and credited to the predatory animal fund which is hereby created to be expended only in the control of coyotes and other harmful predatory animals in accordance with the terms and conditions fixed by the state commissioner of horticulture acting by and through the rodent control division of his office. Moneys thus made available by any county board of supervisors shall be expended solely within the boundaries of the county making the appropriation, unless otherwise authorized by the supervisors of that county.

Study and report on control measures.

§ 3. The state commissioner of horticulture is hereby directed to investigate and make a study of control measures and of existing laws of this and other states providing

for the control and destruction of predatory animals, and to prepare a report, accompanied by a draft of such legislative measures as he may recommend to the legislature for adoption. Such report shall be printed by the superintendent of state printing, and shall be submitted to the governor on or before the first day of November in the year 1920, and shall be presented by him to the legislature at the opening of the forty-fourth session.

Predatory animals enumerated. — See
Kerr's Cyc. Penal Code, § 627½.

Protection of crops from wild ducks.—See
Kerr's Cyc. Penal Code, § 626½.

ANTIOCH.

See post Act 3094, note.

ANTONIO CREEK.

See Kerr's Cyc. Political Code, § 2349.

ANTWERP MESSENGER.

See Kerr's Cyc. Penal Code, § 598a.

CHAPTER 14a.

APIARIES.

CONTENTS OF CHAPTER.

ACT 282. APIARY INSPECTION ACT.

APIARY INSPECTION ACT.

ACT 282—An act to promote the apicultural interests of the state of California by providing county inspectors of apiaries, and defining their duties, and providing for their compensation, and repealing the act entitled "An act to authorize the board of supervisors of the several counties of this state to appoint inspectors of apiaries, and provide for their compensation, and defining their duties, and for the further protection of bee culture," approved March 13, 1883.

History: Approved February 20, 1901, Stats. 1901, p. 13. Amended February, 10, 1903, Stats. 1903, p. 7. Former act of March 13, 1883, Stats. 1883, p. 285, repealed.

County inspector of apiaries.

§ 1. Whenever a petition is presented to the board of supervisors of any county, signed by ten or more persons, each of whom is a property-holder resident of the county, and possessor of an apiary or place where bees are kept, stating that certain or all apiaries within the county are infected with the disease known as "foul-brood," or any other disease which is infectious or contagious in its nature, and injurious to the bees, their eggs or larvae, and praying that an inspector be appointed by them, whose duty it shall be to supervise the treatment of said bees and apiaries as herein provided, the board of supervisors shall, within twenty (20) days thereafter, appoint a suitable person, who shall be a skilled bee-keeper, inspector of apiaries. Upon petition of ten persons, each of whom is a resident property holder and possessor of an apiary, the board of supervisors may remove said inspector for cause, after a hearing of the petition.

Duties of inspectors. "Foul-brood" public nuisance. Expense county charge.

§ 2. It shall be the duty of the inspector in each county to cause an inspection to be made, when he deems it necessary, of any or every apiary, or other place within his jurisdiction in which bees are kept, and if found infected with foul-brood, or any other

infectious or contagious disease injurious to the bees, or their eggs or larvae, he shall notify the owner or owners, person or persons in charge, or in possession of said apiaries or places where bees are kept, that the same are infected with foul-brood, or any other disease infectious or contagious in its nature, and injurious to the bees, their eggs or larvae, and he shall require such person or persons to eradicate and remove such disease or cause of contagion within a certain time to be specified. Said notice may be served upon the person or persons, or either of them, owning or having charge, or having possession of such infected apiaries, or places where bees are kept, by any inspector, or by any person deputed by the said inspector for that purpose, or they may be served in the same manner as a summons in a civil action. Any and all such apiaries, or places where bees are kept, found infected with foul-brood, or any other infectious or contagious disease, are hereby adjudged and declared to be a public nuisance; and whenever any such nuisance shall exist at any place within his jurisdiction, or on the property of any non-resident, or on any property the owner or owners of which can not be found by the inspector, after diligent search, within the county, or upon the property of any owner or owners upon whom notice aforesaid has been served, and who shall refuse or neglect to abate the same within the time specified, it shall be the duty of the inspector to abate the same, either by treating the disease, or by destroying the infected hives, together with their combs and bees therein. The expense thereof shall be a county charge, and the board of supervisors shall allow and pay the same out of the general fund of the county.

Must keep record.

§ 3. It shall be the duty of the county inspector of apiaries to keep a record of his official acts and doings, and make a monthly report thereof to the board of supervisors; and the board of supervisors may withhold warrants for salary of said inspector until such time as said report is made.

Salary.

§ 4. The salary of the county inspector of apiaries shall be four dollars per day when actually engaged in the performance of his duties, and itemized necessary traveling expenses incurred in the performance of his duties as prescribed in this act. [Amendment of February 10, 1903. Stats. 1903, p. 7.]

Repeal of Act of 1883.

§ 5. An act entitled "An act to authorize the board of supervisors of the several counties of this state to appoint inspectors of apiaries, and provide for their compensation, and defining their duties, and for the further protection of bee-culture," approved March thirteenth, eighteen hundred and eighty-three, is hereby repealed.

Time of taking effect.

§ 6. This act shall take effect and be in force from and after its passage.

Powers of inspectors.

§ 7. The inspector of apiaries may, in his discretion, order the owner, or owners, or other person in charge of bees kept in box or other immovable or stationary comb-hives in apiaries infected with foul-brood or any other infectious or contagious disease, or within a radius of three miles of such diseased apiaries, to transfer such bees to movable frame hives within a reasonable time, to be specified in such order or notice, and in default of such transfer by the owner, or owners, or other person in charge of such bees, the inspector may destroy, or cause to be destroyed, all such hives, together with their contents, and the expense thereof shall be a county charge, as provided in section two of this act. [New section added February 10, 1903. Stats. 1903, p. 7.]

Imported bees. Must be inspected.

§ 8. Any person or persons who shall import bees into the state of California, which said bees are not accompanied with a certificate from a duly authorized inspector of apiaries, or bee inspector, certifying that such bees are free from foul-brood and other infectious or contagious diseases, or who shall import bees from another county within this state not having a bee inspector, into a county having a bee inspector shall immediately, upon the receipt of such bees, cause them to be inspected by a duly authorized inspector of apiaries, and if such bees are found to be infected with foul-brood or other infectious or contagious disease, such inspector shall proceed to have such disease eradicated as provided in section two of this act. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor. [New section added, February 10, 1903. Stats. 1903, p. 7.]

“Foul-brood” not to be removed.

§ 9. It shall be unlawful for any person owning or controlling bees within this state, which are known to be infected with foul-brood or other infectious or contagious disease, to remove said bees to a new location, without first giving ten days' notice to the county inspector of apiaries, stating when and where he intends moving said bees. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor. [New section added, February 10, 1903. Stats. 1903, p. 7.]

Infected apiary a misdemeanor.

§ 10. Any person or persons whose apiary is infected with foul-brood or any other infectious or contagious disease, and who sells, or offers for sale, from such infected apiary any bees, hives, bee fixtures or appurtenances, or who shall expose in his bee yard, or elsewhere, any infected comb-honey, beeswax, or other infected thing, or who conceals the fact that his apiary is so infected, shall be deemed guilty of a misdemeanor. [New section added, February 10, 1903. Stats. 1903, p. 7.]

Resisting inspector a misdemeanor.

§ 11. Any person or persons who shall resist, impede, or hinder in any way, the inspector of apiaries in the discharge of his duties under the provisions of this act, shall be deemed guilty of a misdemeanor. [New section added, February 10, 1905. Stats. 1903, p. 7.]

As to bees, keeping and liability, see 97 Am. St. Rep. 290.

APPRENTICES.

See tit. “Orphan Asylums”; also, Kerr's Cyc. Civil Code, §§ 264, et seq.

CHAPTER 15.**APPROPRIATIONS.****CONTENTS OF CHAPTER.****ACT 300. GENERAL APPROPRIATION BILL OF 1919.****GENERAL APPROPRIATIONS, 1919.**

ACT 300—An act making appropriations for the support of the government of the state of California for the seventy-first and seventy-second fiscal years.

History: Approved May 27, 1919, except as to certain items listed in statement dated May 27, printed at end of chapter. In effect immediately. Stats. 1919, p. 1311.

General appropriations.

§ 1. The following sums of money are hereby appropriated out of any money in the state treasury not otherwise appropriated for the support of the government of the

state of California for the seventy-first and seventy-second fiscal years; provided, that in all cases in which statutory provision has already been made for salaries or for other regular annual appropriations, the amounts herein appropriated shall be deemed to be the same amount appropriated by such statutes and not additional thereto.

Legislative Department.

For salaries of senators, forty thousand dollars.
For mileage of lieutenant governor and senators, four thousand four hundred dollars.
For pay of officers, clerks and all other employees of the senate, fifty thousand dollars.
For contingent expenses of senate, fifteen thousand dollars.
For salaries of assemblymen, eighty thousand dollars.
For mileage of assemblymen, seven thousand five hundred dollars.
For pay of officers, clerks and all other employees of assembly, fifty thousand dollars.
For contingent expenses of the assembly, eighteen thousand dollars.
For printing, binding and all other work performed and materials furnished by the state printing office to the legislature, eighty-five thousand dollars.

Judicial Department.

For salaries of justices of supreme court, one hundred twelve thousand dollars.
For salaries of two secretaries supreme court, nine thousand six hundred dollars.
For salary of reporter of decisions of supreme court and district courts of appeal, five thousand dollars.
For salaries of three assistant reporters of decisions of supreme court and district courts of appeal, nine thousand six hundred dollars.
For salary of librarian of supreme court, three thousand dollars.
For salaries of two phonographic reporters of supreme court, ten thousand eight hundred dollars.
For salaries of two bailiffs of supreme court, seven thousand two hundred dollars.
For expenses of supreme court under section forty-seven, Code of Civil Procedure, sixty-four thousand eight hundred dollars.
For postage and contingent expenses of the supreme court, three hundred dollars.
For salary of clerk of supreme court, ten thousand dollars.
For salary of chief deputy clerk of supreme court, five thousand four hundred dollars.
For salaries of six deputy clerks of supreme court, twenty-five thousand two hundred dollars.
For salary of stenographer to clerk of supreme court, three thousand dollars.
For salary of porter for office of clerk of supreme court at Sacramento, two thousand one hundred sixty dollars.
For postage and contingent expenses of clerk of supreme court, four thousand dollars.
For printing, etc., clerk of supreme court, two thousand five hundred dollars.
For salaries of six additional justices of divisions two of first and second district courts of appeal, eighty-four thousand dollars.
For salaries of justices of district courts of appeal, one hundred twenty-six thousand dollars.
For salaries of three clerks of district courts of appeal, sixteen thousand two hundred dollars.
For salaries of three deputy clerks of district courts of appeal, twelve thousand dollars.
For salaries of three phonographic reporters of district courts of appeal, fourteen thousand four hundred dollars.
For salaries of three bailiffs of district courts of appeal, nine thousand six hundred dollars.

For pay of two porters, first and second district courts of appeal, four thousand three hundred twenty dollars.

For pay of one porter, third district court of appeal, two thousand one hundred sixty dollars.

For postage and contingent expenses of clerks of district courts of appeal, one-third to each, four thousand five hundred dollars.

For printing, etc., clerks of district courts of appeal (one-third to each), three thousand dollars.

For salaries of secretaries for justices (one-third for each), eighteen thousand dollars.

For state's portion of salaries of judges of superior courts, five hundred seventy-eight thousand dollars.

For salaries officers and employees division two of first district court of appeal, twenty thousand six hundred forty dollars.

For salaries officers and employees division two of second district court of appeal, eleven thousand three hundred sixty dollars.

For postage, and contingent expenses of clerks of divisions two of first and second district courts of appeal (one-half to each), one thousand five hundred dollars.

For printing, etc., clerks of divisions two of first and second district courts of appeal (one-half to each), two thousand dollars.

For rent for quarters of division two of first district court of appeal, two thousand nine hundred four dollars.

For furniture and equipment division two of first district court of appeal, five hundred dollars.

For furniture and equipment division two of second district court of appeal, two thousand dollars.

Executive and Administrative Department.

For salary of governor, twenty thousand dollars.

For salary of private secretary to governor, ten thousand dollars.

For salary of executive secretary to governor, seven thousand two hundred dollars.

For salary of stenographer to governor, four thousand dollars.

For salary of messenger to governor, three thousand dollars.

For postage, etc., traveling and contingent expenses, governor's office (exempt from section six hundred seventy-two of the Political Code), eighteen thousand four hundred dollars.

For special contingent expenses (secret service), governor's office (exempt from provisions of section four hundred thirty-three and six hundred seventy-two of Political Code), ten thousand dollars.

For printing, etc., governor's office, one thousand five hundred dollars.

For support of governor's residence (exempt from sections four hundred thirty-three and six hundred seventy-two of Political Code), seventeen thousand five hundred dollars.

Lieutenant Governor.

For salary of lieutenant governor, eight thousand dollars.

State Board of Control.

For salary of members state board of control, thirty thousand dollars.

For salary of secretary to state board of control, seven thousand two hundred dollars.

For salaries of three clerks, ten thousand eight hundred dollars.

For salaries of two stenographers, six thousand dollars.

For salary of messenger, one thousand eight hundred dollars.

For salary of superintendent of accounts, seven thousand two hundred dollars.

For salaries of two assistant superintendents of accounts, ten thousand eight hundred dollars.

For support and maintenance of state board of control, including traveling and contingent expenses, one hundred eighty-two thousand dollars.

Secretary of State's Office.

For salary of secretary of state, ten thousand dollars.

For salary of deputy secretary of state, six thousand dollars.

For salary of bookkeeper, office secretary of state, four thousand eight hundred dollars.

For salary of corporation secretary, office secretary of state, five thousand six hundred dollars.

For salary of statistician, office secretary of state, four thousand eight hundred dollars.

For salary of keeper of archives, office secretary of state, four thousand dollars.

For salary of one recording clerk, office secretary of state, three thousand six hundred dollars.

For salaries of five recording clerks, office secretary of state, sixteen thousand dollars.

For salary of one register clerk, three thousand six hundred dollars.

For salaries of two certificate clerks, office of secretary of state, six thousand four hundred dollars.

For salary of messenger, office secretary of state, one thousand eight hundred dollars.

For salary of porter, office secretary of state, one thousand four hundred forty dollars.

For salaries of two special legislative clerks, office secretary of state, one thousand dollars.

For postage, expressage and telegraphing, office secretary of state (exempt from section four of this act), eleven thousand dollars.

For contingent and traveling expenses, office secretary of state, two thousand five hundred dollars.

For printing, etc., secretary of state (exempt from section four of this act), eleven thousand dollars.

For salary of superintendent and cashier, corporation license department, four thousand eight hundred dollars.

For salaries of two clerks, corporation license department, seven thousand two hundred dollars.

For salaries of four clerks, corporation license department, twelve thousand eight hundred dollars.

For pay of porter, corporation license department, seven hundred twenty dollars.

For pay of messenger, corporation license department, one thousand two hundred dollars.

For printing and compiling roster, one thousand dollars.

Controller's Office.

For salary of controller, ten thousand dollars.

For salary of deputy controller, six thousand dollars.

For salary of bookkeeper, controller's office, four thousand eight hundred dollars.

For salary of expert, controller's office, four thousand dollars.

For salary of four clerks, controller's office, fourteen thousand four hundred dollars.

For salaries of five clerks, controller's office, sixteen thousand dollars.

For salary of statistician, controller's office, four thousand eight hundred dollars.

For salary of warrant registrar, controller's office, four thousand eight hundred dollars.

For salary of stenographer, controller's office, two thousand four hundred dollars.

For salary of stenographer, controller's office, three thousand dollars.

For pay of porter, controller's office, one thousand four hundred forty dollars.

For contingent and traveling expenses, controller's office, twenty thousand dollars.

For expenses of collecting, compiling and printing county and municipal statistics, three thousand two hundred fifty dollars.

For printing, etc., controller's office, five thousand dollars.

For salary of inheritance tax attorney, seven thousand two hundred dollars.

For salaries of two assistant inheritance tax attorneys, fourteen thousand four hundred dollars.

For salary of one assistant inheritance tax attorney, five thousand four hundred dollars.

For expenses of inheritance tax department, including printing, traveling and contingent expenses, postage, expressage and telegraphing, clerical and other services, and any other expenses necessary and proper to the enforcement of the inheritance tax law, sixty-seven thousand five hundred dollars.

For general expense, branch inheritance tax department, San Francisco, eighteen thousand dollars.

For general expense, branch inheritance tax department, Los Angeles, sixteen thousand four hundred dollars.

For salary of two assistant tax attorneys, nine thousand six hundred dollars.

For salaries of extra clerks, tax collecting department, twelve thousand dollars.

For postage, expressage, telegraphing and contingent expenses, tax collecting department, three thousand six hundred dollars.

For printing, binding and ruling, tax collection department, two thousand five hundred dollars.

Treasurer's Office.

For salary of state treasurer, ten thousand dollars.

For salary of deputy state treasurer, six thousand four hundred dollars.

For salary of cashier, treasurer's office, five thousand four hundred dollars.

For salary of bond officer, treasurer's office, five thousand dollars.

For salary of deposit officer, treasurer's office, five thousand dollars.

For salary of one bookkeeper, treasurer's office, four thousand four hundred dollars.

For salary of stenographer, treasurer's office, three thousand dollars.

For salaries of four watchmen, treasurer's office, ten thousand five hundred sixty dollars.

For pay of porter, treasurer's office, one thousand four hundred forty dollars.

For postage, expressage, telegraphing, contingent and traveling expenses, treasurer's office, four thousand dollars.

For printing, etc., treasurer's office, one thousand nine hundred dollars.

Attorney General's Office.

For salary of attorney general, twelve thousand dollars.

For salary of assistant attorney general, eight thousand dollars.

For salary of chief deputy to attorney general, eight thousand dollars.

For salaries of six deputies to attorney general, thirty-seven thousand two hundred dollars.

For salary of one deputy to attorney general, six thousand dollars.

For salary of service agent, attorney general's office, three thousand six hundred dollars.

For salaries of two clerks, attorney general's office, seven thousand two hundred dollars.

For salary of phonographic reporter, attorney general's office, three thousand six hundred dollars.

For salaries of five stenographers, attorney general's office, fifteen thousand dollars.

For salary of one stenographer, attorney general's office, two thousand four hundred dollars.

For pay of porter, attorney general's office at Sacramento, one thousand eighty dollars.

For postage, expressage, telegraphing and contingent expenses, attorney general's office, five thousand dollars.

For traveling expenses, attorney general's office, one thousand five hundred dollars.

For costs and expenses of suits wherein the state is a party in interest, seven thousand five hundred dollars.

For office rent of attorney general in San Francisco, six thousand dollars.

For purchase of law books, attorney general's office, two thousand dollars.

For printing, etc., attorney general's office, five thousand dollars.

For payment of expenses incidental to conserving state lands, gathering evidence, and quieting and canceling outstanding evidences of title, two thousand dollars.

Legislative Counsel Bureau.

For support and salaries, twenty-five thousand dollars.

For additional salaries, three thousand six hundred dollars.

Surveyor General.

For salary of surveyor general, ten thousand dollars.

For salary of deputy surveyor general, six thousand dollars.

For salary of assistant surveyor general, four thousand five hundred dollars.

For salaries of three clerks, surveyor general's office, ten thousand eight hundred dollars.

For salaries of three clerks, register state land office, ten thousand eight hundred dollars.

For pay of porter, surveyor general's office, one thousand eighty dollars.

For contingent and traveling expenses, surveyor general's office, ten thousand five hundred dollars.

For printing, etc., surveyor general's office, one thousand seven hundred dollars.

Superintendent of State Printing.

For salary of superintendent of state printing, ten thousand dollars.

For salary of deputy superintendent of state printing, four thousand eight hundred dollars.

State Board of Equalization.

For salaries of members of the state board of equalization, thirty-two thousand dollars.

For salary of secretary, state board of equalization, eight thousand dollars.

For pay of porter, state board of equalization, nine hundred sixty dollars.

For postage, expressage, telegraph, and contingent expenses, state board of equalization, one thousand dollars.

For clerical and expert assistance, printing, postage and all other expenses involved in making the assessment of taxes, twenty-five thousand dollars.

For traveling and contingent clerical expenses, state board of equalization (Political Code, section three thousand seven hundred two), five thousand dollars.

For printing, etc., state board of equalization, five thousand dollars.

Superintendent Capitol Building and Grounds.

For salary of superintendent of capitol building and grounds, six thousand dollars.

For salary of clerk to superintendent of capitol building and grounds, three thousand six hundred dollars.

For salary of engineer, three thousand six hundred dollars.

For salary of additional engineer during session of the legislature, six hundred dollars.

For salary of fireman, two thousand six hundred forty dollars.

For salary of additional fireman during session of the legislature, four hundred forty dollars.

For salary of electrician, three thousand six hundred dollars.

For salary of additional electrician during session of the legislature, six hundred dollars.

For pay of head porter, two thousand six hundred forty dollars.

For pay of seven special policemen, eighteen thousand four hundred eighty dollars.

For pay of two elevator attendants, four thousand eight hundred dollars.

For pay of two additional elevator attendants during session of the legislature, eight hundred dollars.

For pay of three telephone operators, six thousand four hundred eighty dollars.

For pay of two additional telephone operators during session of the legislature, seven hundred twenty dollars.

For pay of one telephone exchange operator for twelve weeks, two hundred seventy dollars.

For special policemen capitol and executive mansion, ten thousand five hundred sixty dollars.

For purchase of carpets and furniture for capitol building and departments, two thousand dollars.

For water for capitol building and grounds, three thousand six hundred dollars.

For repairs to capitol building and furniture, two thousand dollars.

For repairs, improvement, equipment and furnishings, executive mansion, five thousand dollars.

For stationery, fuel, lights and supplies, twenty thousand dollars.

For salary of head gardener, four thousand two hundred dollars.

For pay of gardeners, porters, and other help in capitol building and grounds, sixty thousand nine hundred ninety-six dollars.

For purchase of implements, etc., and care and improvement of grounds of state capitol and executive mansion (exempt from section four of this act), twelve thousand dollars.

For traveling and contingent expenses, five hundred dollars.

For salary of emergency electrician, one month, one hundred fifty dollars.

For salary of typewriter expert, three thousand dollars.

For salary of assistant head gardener, two thousand six hundred forty dollars.

Board of Railroad Commissioners.

For salaries of commissioners, eighty thousand dollars.

For salaries of other civil executive officers in office of board of railroad commissioners and the support of the commission, four hundred nineteen thousand seven hundred fifty dollars.

Insurance Commissioner.

For salary of insurance commissioner, twelve thousand dollars.

For salary of deputy insurance commissioner, five thousand four hundred dollars.

Civil Service Commission.

For salaries of members of the commission, eighteen thousand dollars.

For support of the commission, fifty-two thousand dollars.

Immigration and Housing Commission.

For support of the commission, one hundred five thousand dollars.

For additional support and maintenance, forty thousand dollars.

Weights and Measures.

For salary of superintendent of weights and measures, eight thousand dollars.

For salary of deputy, three thousand six hundred dollars.

For support of department, fifteen thousand dollars.

State Water Commission.

For salaries of three commissioners, thirty thousand dollars.

For support of commission including salaries of office assistants, field men, and other expenses incidental to the work of the commission, ninety-three thousand eight hundred dollars.

Industrial Welfare Commission.

For support of the commission, seventy thousand dollars.

State Board of Health.

For salary of secretary, nine thousand dollars.

For salary of assistant secretary, four thousand eight hundred dollars.

For salary of attorney, six thousand dollars.

For salary of statistician, four thousand eight hundred dollars.

For salary of deputy statistician, three thousand two hundred dollars.

For salary of clerk, three thousand two hundred dollars.

For salary of two copyists, three thousand six hundred dollars.

For salary of director, pure food and drug laboratory, seven thousand two hundred dollars.

For salary of assistant director, pure food and drug laboratory, three thousand six hundred dollars.

For traveling and contingent expenses, forty-two thousand dollars.

For support district health offices, twenty-five thousand dollars.

For support pure food and drug laboratory, sixty-five thousand dollars.

For support state hygienic laboratory, fifty thousand dollars.

For printing, etc., eight thousand dollars.

For salary of consulting nutrition expert, two thousand four hundred dollars.

Bureau of Labor Statistics.

For salary of commissioner, eight thousand dollars.

For salary of deputy commissioner, four thousand eight hundred dollars.

For salary of deputy commissioner at Los Angeles, four thousand eight hundred dollars.

For salary of assistant deputy commissioner, four thousand two hundred dollars.

For salary of statistician, five thousand four hundred dollars.

For salary of stenographer, two thousand four hundred dollars.

For salary of attorney, four thousand eight hundred dollars.

For salaries of assistants, traveling and contingent expenses, fifty-five thousand dollars.

For office rent, five thousand one hundred dollars.

For printing, etc., six thousand dollars.

Industrial Accident Commission.

For salaries of members of the commission, thirty thousand dollars.

For support and maintenance of the commission, four hundred twenty thousand dollars.

Harbor Commissioners—Eureka.

For salaries of three commissioners, two thousand four hundred dollars.

For salary of harbormaster, two thousand four hundred dollars.

For salary of secretary to harbor commissioners, two thousand four hundred dollars.
For contingent expenses of harbor commissioners, three thousand dollars.

National Guard.

For salary of adjutant general, ten thousand dollars.
For salary of assistant adjutant general, six thousand dollars.
For salary of chief clerk, three thousand eight hundred dollars.
For salaries of three clerks, ten thousand two hundred dollars.
For salary of clerk and stenographer, three thousand dollars.
For salary of military storekeeper, two thousand four hundred dollars.
For salary of assistant military storekeeper, one thousand eight hundred dollars.
For support of the national guard and adjutant general's office, four hundred twenty thousand nine hundred dollars.

State Engineering Department.

For salaries of three appointed members, twenty-one thousand six hundred dollars.
For salary of state engineer, ten thousand dollars.
For salary of highway engineer, twenty thousand dollars.
For salaries of two assistant state engineers, twelve thousand dollars.
For salary of state architect, nine thousand six hundred dollars.
For salary of architectural designer, five thousand four hundred dollars.
For salaries of three architectural draughtsmen, twelve thousand dollars.
For salary of engineer's draughtsman, four thousand dollars.
For salary of mechanical engineer, five thousand four hundred dollars.
For salaries of two filing clerks, seven thousand two hundred dollars.
For salary of blue print pressman, three thousand dollars.
For salary of secretary, six thousand dollars.
For salaries of two clerks and stenographers, six thousand dollars.
For pay of porter, one thousand eight hundred dollars.
For printing, etc., five thousand dollars.
For contingent and traveling expenses, forty thousand dollars.
For salary of electrical engineer, four thousand two hundred dollars.
For salary of structural engineer, four thousand eight hundred dollars.
For salary of auditor, four thousand eight hundred dollars.
For salary of general superintendent, six thousand dollars.
For salary of assistant state architect, six thousand dollars.

Superintendent of Public Instruction.

For salary of superintendent, ten thousand dollars.
For salary of deputy superintendent, four thousand eight hundred dollars.
For salary of statistician, four thousand eight hundred dollars.
For salary of clerk and stenographer, three thousand two hundred dollars.
For salary of bookkeeper, three thousand two hundred dollars.
For postage, etc., contingent and traveling expenses, and clerical assistants, fourteen thousand dollars.
For printing, etc., twenty-four thousand dollars.
For textbooks for orphans, one thousand five hundred dollars.

State Library.

For salary of state librarian, ten thousand dollars.
For support and maintenance of state library, two hundred fifty thousand dollars.

University of California.

For support and maintenance of University of California, four hundred thousand dollars.

For support, maintenance and equipment of college of agriculture of University of California, including support of University Farm School at Davis, and also support of all experimental stations, all pathological and other investigations, farmers' institutes, and all agricultural departments connected with the University of California, eight hundred seventy-five thousand dollars.

For support and maintenance of Scripps Institution of Biological Research, thirty-five thousand dollars.

For support of work of insecticide and fungicide laboratory, provided for in chapter six hundred fifty-three, statutes 1911, ten thousand dollars.

State Board of Education.

For per diem of members of board of education, traveling and contingent expenses of board and commissioners of education and salaries of office employees, eighty thousand dollars.

For salaries of commissioners, twenty-four thousand dollars.

State Normal Schools.

For salaries of officers, teachers and employees at San Jose, two hundred two thousand five hundred dollars.

For support of state normal school at San Jose, care and improvement of grounds, and library, museum and purchase of scientific apparatus of same, thirty-eight thousand dollars.

For printing, etc., state normal school at San Jose, two thousand five hundred dollars.

For salaries of officers, teachers and employees of Los Angeles normal school, three hundred twenty-four thousand dollars.

For support of state normal school at Los Angeles, care and improvement of grounds, and library, museum and purchase of scientific apparatus of same, fifty-four thousand five hundred dollars.

For printing, etc., of same, two thousand five hundred dollars.

For salaries of officers, teachers and employees at state normal school at Chico, one hundred four thousand dollars.

For support of state normal school at Chico, care and improvement of grounds, library, museum and purchase of scientific apparatus of same, fourteen thousand eight hundred dollars.

For printing, etc., of same, one thousand two hundred dollars.

For salaries of officers, teachers and employees at state normal school at San Diego, one hundred fourteen thousand two hundred eighty dollars.

For support of state normal school at San Diego, care and improvement of grounds, library, museum and purchase of scientific apparatus of same, twenty-one thousand two hundred twenty-eight dollars.

For printing, etc., of same, one thousand two hundred fifty dollars.

For salaries of officers, teachers and employees at state normal school at San Francisco, one hundred thirty-four thousand nine hundred dollars.

For support of state normal school at San Francisco, care and improvement of grounds, library, museum and purchase of scientific apparatus of same, thirteen thousand five hundred dollars.

For printing, etc., of same, one thousand two hundred dollars.

For salaries of officers, teachers and employees at state normal school at Santa Barbara, eighty-one thousand dollars.

For support of state normal school at Santa Barbara, care and improvement of grounds, library, museum and purchase of scientific apparatus of same, ten thousand five hundred dollars.

For additional support elementary teaching courses state normal school at Santa Barbara, fourteen thousand eight hundred dollars.

For printing, etc., of same, eight hundred dollars.

For salaries, of officers, teachers and employees at state normal school at Fresno, one hundred twenty thousand dollars.

For support of state normal school at Fresno, care and improvement of grounds, library, museum and purchase of scientific apparatus of same, twenty thousand nine hundred dollars.

For printing, etc., of same, one thousand two hundred dollars.

For salaries of officers, teachers and employees at state normal school at Humboldt, fifty-six thousand one hundred twenty dollars.

For support of state normal school at Humboldt, care and improvement of grounds, library, museum and purchase of scientific apparatus of same, eleven thousand nine hundred dollars.

For printing, etc., of same, one thousand eight hundred dollars.

California Polytechnic School.

For salaries of officers, teachers and employees of same, ninety-seven thousand dollars.

For support and maintenance, including purchase of stock and equipment for farm and laboratories, care and improvement of grounds, and library for same, fifty-three thousand eight hundred dollars.

For printing, etc., of same, two thousand dollars.

Hastings College of the Law.

For payment of interest on one hundred thousand dollars to Hastings College of the Law, fourteen thousand dollars.

For rentals, four thousand eight hundred dollars.

California School for the Deaf and the Blind.

For support of school, eighty thousand dollars.

For salaries of officers, teachers and employees, one hundred eighty thousand dollars.

Industrial Home for Adult Blind.

For support, fifty-five thousand dollars.

For salaries of officers and employees, thirty-five thousand dollars.

For printing, six hundred dollars.

State Mining Bureau.

For salary of state mineralogist, seven thousand two hundred dollars.

For support, including salaries, one hundred thousand dollars.

Viticultural Commission.

For support of commission, fifteen thousand dollars.

State Agricultural Society.

For aid to state agricultural society, seventy thousand dollars.

For salary of secretary, six thousand dollars.

For salaries of employees, thirteen thousand eight hundred dollars.

For traveling expenses of the directors, four thousand dollars.

State Commissioner of Horticulture.

For salary of commissioner, eight thousand dollars.

For salary of deputy commissioner, five thousand four hundred dollars.

For salary of secretary, five thousand four hundred dollars.

For salary of superintendent of state insectary, five thousand four hundred dollars.

For salary of assistant superintendent of state insectary, three thousand six hundred dollars.

For salary of field deputy, insectary division, three thousand six hundred dollars.

For salary of chief deputy quarantine inspector, five thousand four hundred dollars.

For salary of deputy quarantine officer at San Francisco, three thousand six hundred dollars.

For salary of deputy quarantine officer at Los Angeles, three thousand six hundred dollars.

For salary of chief field deputy, eight thousand dollars.

For salary of chief clerk at Sacramento, three thousand two hundred dollars.

For use and support of office of commissioner of horticulture, searching for beneficial insects, and use and support of state insectary, one hundred sixty thousand dollars.

For printing, etc., thirteen thousand dollars.

State Veterinarian.

For salary of state veterinarian, eight thousand dollars.

For salary of assistant state veterinarian, six thousand dollars.

For salary of deputy state veterinarian, four thousand eight hundred dollars.

For salary of clerk, three thousand two hundred dollars.

For traveling and contingent expenses, including sheep inspection and enforcement of dairy laws, ninety-six thousand dollars.

State Dairy Bureau.

For support of state dairy bureau, seventy thousand dollars.

State Board of Forestry.

For salary of state forester, six thousand dollars.

For salary of deputy state forester, four thousand eight hundred dollars.

For salary of assistant state forester, three thousand two hundred dollars.

For support, including field and traveling expenses, twenty-seven thousand dollars.

For printing, etc., six thousand dollars.

Sutter's Fort and Marshall Monument.

For salary of guardian, Marshall monument and grounds, one thousand eight hundred dollars.

For care of grounds, Marshall monument, seven hundred fifty dollars.

For salary of guardian, Sutter's Fort, one thousand eight hundred dollars.

For salary of gardener, Sutter's Fort, two thousand four hundred dollars.

For salary of assistant gardener, Sutter's Fort, two thousand one hundred sixty dollars.

For maintenance of grounds and buildings at Sutter's Fort, two thousand dollars.

Veterans' Home.

For support and maintenance, three hundred sixty thousand dollars.

For printing, etc., two thousand five hundred dollars.

Woman's Relief Corps Home.

For support and maintenance, nineteen thousand two hundred dollars.

Orphan Aid.

For support of orphans, half orphans and abandoned children, two million one hundred thirty thousand dollars.

For salaries and support of children's department, and expenses of children's agent, forty-two thousand dollars.

State Board of Charities and Corrections.

For salaries and expenses, sixty thousand dollars.

State Commission in Lunacy.

For salaries of officers and employees and for salary of general superintendent of state hospital, forty thousand dollars.

For traveling expenses and all other contingent expenses, of the commission and officers and employees, five thousand dollars.

For printing, etc., eight thousand dollars.

Hospital for Insane.

For support of Stockton State Hospital, six hundred thousand four hundred twenty dollars.

For salaries of officers and employees, Stockton State Hospital, four hundred eighty-one thousand four hundred eighty dollars.

For support of Napa State Hospital, six hundred thirty-seven thousand eighty dollars.

For salaries of officers and employees, Napa State Hospital, five hundred twenty-four thousand two hundred eighty dollars.

For support of Agnews State Hospital, four hundred eighty-three thousand eight hundred forty dollars.

For salaries of officers, and employees, Agnews State Hospital, three hundred thirteen thousand three hundred forty-four dollars.

For support of Mendocino State Hospital, three hundred twenty-seven thousand seven hundred seventy dollars.

For salaries of officers and employees, Mendocino State Hospital, two hundred thirty-nine thousand nine hundred four dollars.

For support of Southern California State Hospital, five hundred eighty-nine thousand two hundred seventy-five dollars.

For salaries of officers and employees, Southern California State Hospital, four hundred seventy-one thousand four hundred fifteen dollars.

For support of Sonoma State Home, four hundred twenty-six thousand four hundred sixteen dollars.

For salaries of officers and employees, Sonoma State Home, three hundred twenty-five thousand dollars.

For support of Norwalk State Hospital, three hundred thousand four hundred dollars.

For salaries of officers and employees, Norwalk State Hospital, one hundred twenty-eight thousand four hundred dollars.

For support and salaries, Pacific Colony, forty-eight thousand dollars.

Transportation Expenses.

For transportation of prisoners, insane, delinquent and feeble-minded children to state institutions to which they are committed (exempt from section four of this act), two hundred twenty thousand dollars.

For expenses of returning criminals arrested without the state (exempt from section four of this act), thirty-four thousand dollars.

State Correctional Schools.

For support of Preston School of Industry, two hundred seventy-five thousand dollars.

For salaries of officers and employees, Preston School of Industry, one hundred sixty thousand dollars.

For support of Whittier State School, two hundred seventy-seven thousand dollars.

For salaries of officers and employees, Whittier State School, one hundred ninety thousand dollars.

For support of California School for Girls, one hundred forty-six thousand five hundred dollars.

For salaries of officers and employees, California School for Girls, one hundred four thousand one hundred dollars.

State Board of Prison Directors.

For printing, etc., five hundred dollars.

State Prisons.

For support of State Prison at Folsom, three hundred forty-five thousand dollars.

For salaries of officers and employees, State Prison at Folsom, two hundred twenty-five thousand dollars.

For support of State Prison at San Quentin, four hundred twenty-five thousand dollars.

For salaries of officers and employees, State Prison at San Quentin, two hundred seventy-six thousand dollars.

Advisory Pardon Board.

For support, five thousand dollars.

Miscellaneous.

For official advertising, six thousand dollars.

For purchase of topographic sheets, five hundred dollars.

For care of state burial grounds, five hundred dollars.

For payment of premiums on surety bonds, state officers and employees, seven thousand dollars.

For printing and advertising sale of state bonds, twenty thousand dollars.

For printing, etc., various officers not heretofore provided for (to be expended under the direction of the state board of control), four thousand five hundred dollars.

For payment of rewards offered by the governor, one thousand five hundred dollars.

For payment of reward offered by the governor for illegal voting, five hundred dollars.

For payment of rewards for arrest and conviction of highway robbers, two thousand dollars.

For emergency fund to be expended only upon unanimous vote of the board of control, approved by the controller, two hundred fifty thousand dollars.

Expenditures for Printing, etc.

§ 2. The various sums herein appropriated for printing, binding, ruling, materials and all other work provided for by law to be done in the state printing office shall be expended only upon requisitions to be approved by the state board of control, and said board is authorized and given power to reduce the amount of such requisitions either in whole or in any item thereof. When any state publication is printed and paid for out of any appropriation in this act, the disposition of the same shall be subject to the provisions of section two thousand two hundred ninety-five a of the Political Code of the state of California. The sums that are herein appropriated for expenses of the senate and assembly shall be disbursed under the direction of the bodies to which they respectively belong, and shall not be subject to any of the provisions of section six hundred seventy-two of the Political Code; provided, that the state controller shall not be required to draw any warrants until the original claims and vouchers, itemized and properly sworn to, are filed with him. The sums herein appropriated for the expenses of the national guard shall be audited by the adjutant general, as required by sections two thousand eighty-three and two thousand eighty-five of the Political Code. Not more than five hundred dollars of the money hereby appropriated for the support of the institutions of the state shall be used in each fiscal year for permanent

improvements, but shall be used solely for the payment of salaries and traveling expenses of the commissioners or directors having charge of the same (when such salaries or expenses are allowed by law), the salaries of employees, the purchase of material and supplies for the use of said institutions, and for such incidental and current expenses as may be necessarily incurred for the proper management and support of said institutions.

Biennial statement of state officers. Original bills required. Revolving fund.

§ 3. All persons having demands against the state, and various state officers, and the officers of all institutions under the control of the state, except the governor, to whom and for which appropriations other than salaries are made under the provisions of this act, shall, with their biennial report, submit a detailed statement, under oath, of the manner in which all appropriations for their respective departments and institutions have been expended, and the state board of control, is hereby expressly prohibited from allowing any demand payable out of any such appropriations until the same are presented in itemized form, accompanied by affidavit and voucher for money expended by them, stating specifically the service rendered, by whom performed, time employed, distance traveled, and necessary expenses thereof; if for articles purchased, the name of each article, together with the price paid for each and of whom purchased, with the date of the purchase; provided, that in instances where the duties of any state officer or board make necessary the use of moneys for purposes of a confidential nature, the board of control may audit claims for such expense without requiring itemization or vouchers; but such claims must be accompanied by a statement of the facts surrounding the expenditure, which statement must be filed in the office of the board of control; provided, further, that the total amount so allowed for such confidential purposes from the moneys herein appropriated shall not exceed in any one fiscal year the sum of two thousand dollars. All bills and vouchers, which shall be presented for supplies furnished or services rendered, shall be original bills and vouchers of the parties furnishing supplies and rendering services; provided, that no officer shall use or appropriate any money, appropriated by this act, for any purpose whatsoever, unless authorized thereto by law; and provided, that any officer, board, commission or department for whom any appropriation is made herein, may, with the permission of the board of control, and without at the time furnishing vouchers and itemized statements, draw from such appropriation, a sum not to exceed one thousand dollars for any such officer, board, commission or department. The sum so drawn shall be used as a revolving fund where cash advances are necessary, and at the close of each fiscal year, or at any other time, upon the demand of the board of control, must be accounted for and substantiated by vouchers and itemized statements submitted to and audited by the board of control and the controller.

Amounts expendable monthly.

§ 4. Not more than one twenty-fourth of the amount appropriated under this act for each department or institution for the two years ending June 30, 1921, shall be expended during any one month without the consent of the state board of control, and not more than one-half of such appropriation shall be expended during the seventy-first fiscal year, unless the same has been expressly authorized by this act.

Expenditures forbidden.

§ 5. The officers of the various departments, boards, commissions and institutions for whose benefit and support appropriations are made in this act are expressly forbidden to make any expenditure in excess of such appropriations, except the unanimous consent of the state board of control be first obtained, and a certificate, in writing, duly signed by every member of said board, of the unavoidable necessity of

such expenditure; and any indebtedness attempted to be created against the state in violation of the provisions of this section shall be absolutely null and void; and shall not be allowed by said state board of control nor paid out of any state appropriations; provided, that any member of any such department, board, commissions or institutions, who shall vote for any expenditure, or create any indebtedness against the state in excess of the respective appropriations made by this act, except by the unanimous consent of the state board of control, and the certificate in this section provided to be first obtained shall be liable on his official bond for the amount of such indebtedness, to be recovered in any court of competent jurisdiction by the person or persons, firm or corporation to whom such indebtedness is owing.

Fire insurance.

§ 6. No money appropriated by this act shall be used to renew, or pay for the renewal of any fire insurance on any public building or property, nor to effect or pay for any new insurance on any public building or property, except the state printing office and its contents.

Time in effect.

§ 7. This act, inasmuch as it provides for an appropriation for the usual current expenses of the state shall, under the provisions of section one, of article four, of the constitution of the state of California, take effect immediately.

Governor's veto of certain items.

State of California,
Executive Office, Sacramento.

The foregoing general appropriation bill, Assembly Bill No. 313, is approved except for the certain items hereinafter specifically set forth and objected to in accordance with section 16, article IV of the constitution, which items are disapproved, to wit:

1. I object to the item on page nine [1317] under heading "Legislative Counsel Bureau," "For additional salaries, three thousand six hundred dollars," for the reason that said bureau will be able to accomplish its work and pay sufficient salaries without this additional appropriation.

2. I object to the item on page fifteen [1322] under the heading "University of California," "For support and maintenance of University of California, four hundred thousand dollars," for the reason that Senate Bill No. 28, which has already been signed by me, appropriates a like amount for this same purpose and this item would be a duplication thereof.

3. I object to the following items on page eighteen [1325] under the heading "State Commission of Horticulture," to wit:

"For salary of commissioner, eight thousand dollars;

"For salary of deputy commissioner, five thousand four hundred dollars;

"For salary of assistant superintendent of state insectary, three thousand six hundred dollars;

"For salary of deputy quarantine officer at San Francisco, three thousand six hundred dollars;

"For salary of deputy quarantine officer at Los Angeles, three thousand six hundred dollars"; for the reason that Assembly Bill No. 1112, which has already been signed by me, reorganizes this department and renders these appropriations unnecessary.

4. I object to the item on page eighteen [1326] under the heading "State Veterinarian," "For salary of clerk, three thousand two hundred dollars," for the same reason set forth in the preceding paragraph hereof.

5. I object to the item on page twenty [1327], "For support and salaries, Pacific Colony, forty-eight thousand dollars," for the reason that Assembly Bill No. 735,

which has already been signed by me, carries sufficient appropriation for the needs of this institution.

Wm. D. Stephens,
Governor of California.

Dated: May 27, 1919.

[Page numbers given in above statement are those of bill presented to the governor for approval; accompanying numbers enclosed in brackets [] are the pages of these statutes on which items objected to appear.]

CHAPTER 16.

ARBITRATION.

CONTENTS OF CHAPTER.

ACT 306. STATE BOARD OF ARBITRATION.

STATE BOARD OF ARBITRATION.

ACT 306—An act to provide for a state board of arbitration for the settlement of differences between employers and employees, to define the duties of said board, and to appropriate the sum of twenty-five hundred dollars therefor.

History: Approved March 10, 1891, Stats. 1891, p. 49.

Appointment of board. Term. When parties can not agree. Oath of office.

§ 1. On or before the first day of May of each year, the governor of the state shall appoint three competent persons to serve as a state board of arbitration and conciliation. One shall represent the employers of labor, one shall represent labor employees, and the third member shall represent neither, and shall be chairman of the board. They shall hold office for one year and until their successors are appointed and qualified. If a vacancy occurs, as soon as possible thereafter the governor shall appoint some one to serve the unexpired term; provided, however, that when the parties to any controversy or difference, as provided in section 2 of this act, do not desire to submit their controversy to the state board, they may by agreement each choose one person, and the two shall choose a third, who shall be chairman and umpire, and the three shall constitute a board of arbitration and conciliation for the special controversy submitted to it, and shall for that purpose have the same powers as the state board. The members of the said board or boards, before entering upon the duties of their office, shall be sworn to faithfully discharge the duties thereof. They shall adopt such rules of procedure as they may deem best to carry out the provisions of this act.

Duties of board.

§ 2. Whenever any controversy or difference exists between an employer, whether an individual, copartnership, or corporation, which, if not arbitrated, would involve a strike or lockout, and his employees, the board shall, upon application, as hereinafter provided, and as soon as practicable thereafter, visit, if necessary, the locality of the dispute and make careful inquiry into the cause thereof, hear all persons interested therein who may come before them, advise the respective parties what, if anything, ought to be done or submitted to by either, or both, to adjust said dispute and make a written decision thereof. This decision shall at once be made public, and shall be recorded upon proper books of record to be kept by the board.

Application. Notice. Costs.

§ 3. Said application shall be signed by said employer, or by a majority of his employees in the department of the business in which the controversy or difference exists, or their duly authorized agent, or by both parties, and shall contain a concise

statement of the grievances complained of, and a promise to continue on in business or at work, without any lockout or strike, until the decision of said board, which must, if possible, be made within three weeks of the date of filing the application. Immediately upon receipt of said application, the chairman of said board shall cause public notice to be given of the time and place for hearing. Should the petitioners fail to keep the promise made therein, the board shall proceed no further thereupon without the written consent of the adverse party. And the party violating the contract shall pay the extra cost of the board entailed thereby. The board may then reopen the case and proceed to the final arbitration thereof as provided in section 2 hereof.

Decision binding six months.

§ 4. The decision rendered by the board shall be binding upon the parties who join in the application for six months, or until either party has given the other a written notice of his intention not to be further bound by the conditions thereof after the expiration of sixty days or any time agreed upon by the parties, which agreement shall be entered as a part of the decision. Said notice may be given to the employees by posting a notice thereof in three conspicuous places in the shop or factory where they work.

Public investigation.

§ 5. Both employers and employees shall have the right at any time to submit to the board complaints or grievances and ask for an investigation thereof. The board shall decide whether the complaint is entitled to a public investigation, and if they decide in the affirmative, they shall proceed to hear testimony, after giving notice to all parties concerned, and publish the result of their investigations as soon as possible thereafter.

Per diem.

§ 6. The arbitrators hereby created shall be paid five dollars per day for each day of actual service, and also their necessary traveling and other expenses incident to the duties of their office shall be paid out of the state treasury; but the expenses and salaries hereby authorized shall not exceed the sum of twenty-five hundred dollars for the two years.

Appropriation.

§ 7. The sum of twenty-five hundred dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated, for the expenses of the board for the first two years after its organization.

§ 8. This act shall take effect and be in force from and after its passage.

ARCADIA.

See Act 3094, note.

CHAPTER 17.

ARCATA.

References: Incorporation, etc., see post Act 3094, note.

CONTENTS OF CHAPTER.

ACT 313. TIDE LAND GRANT.

TIDE LAND GRANT.

ACT 313—An act granting to the city of Arcata tide and submerged lands of the state of California, including the right to wharf out therefrom to the city of Arcata, and regulating the management, use and control thereof.

History: Approved May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 708. Former act: Act of June 11, 1913. In effect August 10, 1913. Stats. 1913, p. 699, which was superseded by the present act.

Tidelands granted to Arcata.

§ 1. There is hereby granted to the city of Arcata, a municipal corporation of the state of California, and to its successors, all the right, title and interest of the state of California, held by said state by virtue of its sovereignty, in and to all tide and submerged lands, whether filled or unfilled, situate in the county of Humboldt, state of California, and described as follows, to wit:

Commencing at a point south eighty-nine and one-half degrees west five and ninety-one one-hundredths chains, and south thirty-one degrees fifty-two minutes west sixteen and twenty-seven one-hundredths chains from the center of section thirty-two, township six north, range one east of Humboldt meridian, Humboldt county, California, running thence north two hundred fifty feet to south side of dike; thence north seventy-five degrees west one thousand seven hundred fifty feet following the south side of the dike and crossing. Daniel's slough to a point on the section line between sections thirty-one and thirty-two; thence westward following the south side of the dike to a point on said dike south seventy-nine degrees west six thousand four hundred fifty feet; thence south six thousand four hundred forty feet to a point one thousand sixty feet due west of Beacon number nine; then east four thousand feet to a point seven hundred eighty feet south of "pier," as marked on United States hydrographic chart Humboldt bay survey 1911, sheet three, thence north fifty-four and one-half degrees east two thousand three hundred seventy-five feet to the end of the fourth course as recited in the description of the tide lands granted to the city of Arcata (approved June 11, 1913); thence north eighty degrees east five thousand seven hundred fifty feet to a point on the west side of the right of way of the Northwestern Pacific Railroad Company; thence following the west line of the Northwestern Pacific Railroad Company's right of way to a point in the center of Butcher's slough north twenty-seven degrees and fifty minutes west four thousand five hundred feet; thence north fifty-two and one-half degrees west six and twelve one-hundredths chains; thence north seventy-one and one-half degrees west four and five one-hundredths chains; thence north fifty-three and one-half degrees west eleven and twenty-six one hundredths chains; thence north thirty-one and one-half degrees west two and six one-hundredths chains to the place of beginning.

Said lands shall be forever held by said city, and by its successors, in trust for the uses and purposes and upon the express conditions following, to wit:

Use of lands.

That said lands shall be used by said city and its successors, solely for the establishment, improvement and conduct of a harbor, and for a construction, maintenance and

operation thereon of wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said city, or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purpose whatever; provided, that said city, or its successors, may grant franchises thereon, for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, for purposes consistent with the trusts upon which said lands are held by the state of California and with the requirements of commerce or navigation at said harbor, for a term not exceeding twenty-five years, and on such other terms and conditions as said city may determine, including a right to renew such lease or leases for a further term not exceeding twenty-five years or to terminate the same on such terms, reservations and conditions as may be stipulated in such lease or leases, and said lease or leases may be for any and all purposes which shall not interfere with navigation or commerce, with reversion to said city on the termination of such lease or leases of any and all improvements thereon, and on such other terms and conditions as the said city may determine, but for no purpose which will interfere with navigation or commerce; subject also to a reservation in all such leases or such wharfing out privileges of a street, or of such other reservation as the said city may determine for sewer outlets, and for gas and oil mains, and for hydrants, and for electric cables and wires, and for such other conduits for municipal purposes and for such public and municipal purposes and uses as may be deemed necessary by the said city; provided, however, that each person, firm or corporation or their heirs, successors or assigns now in possession of land or lands abutting on said lands within the boundaries of the city of Arcata, shall have a right to obtain a lease for a term of twenty-five years from said city of said land and wharfing out privileges therefrom with a right of renewal for a further term of twenty-five years pursuant to the provisions of this act and on such terms and conditions as said city may determine and specify, subject to the right of said city to terminate said lease at the end of the first twenty-five years or refuse to renew the same, or to terminate the lease so renewed during the term of such renewed lease on such just and reasonable terms for compensation for improvements at the then value of said improvements as said city may determine and specify.

Upon obtaining such lease and wharfing out privileges such person, firm or corporation, their heirs or assigns, shall quitclaim to said city any right they or any of them may claim or have to the said lands hereby granted.

Right to rents.

This grant shall carry the right to such city of the rents, issues and profits in any manner hereafter arising from the lands or wharfing out privileges hereby granted.

Right of state to use wharves, etc.

The state of California shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands or any part thereof, for any vessel or other water craft, or railroad owned or operated by the state of California.

No discrimination in rates.

No discrimination in rates, tolls or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or its successors in the management, conduct or operation of any of the utilities, structures or appliances mentioned in this section.

Right to fish reserved.

There is hereby reserved in the people of the state of California the right to fish in the waters on which said lands may front with the right of convenient access to said waters over said lands for said purpose.

CHAPTER 18.**ARCHITECTURE.****CONTENTS OF CHAPTER.****ACT 317. PRACTICE OF ARCHITECTURE.****PRACTICE OF ARCHITECTURE.****ACT 317—An act to regulate the practice of architecture.**

History: Approved March 23, 1901, Stats. 1901, p. 641. Amended March 26, 1903. Stats. 1903, p. 522.

State board created. Northern and southern districts. Qualifications of members.

Appointment. Term of office. Compensation. Expenses.

§ 1. Within sixty days from and after the passage of this act, the governor of the state shall appoint ten persons, which persons so appointed shall constitute a board, which board shall be known and designated as the state board of architecture. Five members of said board of architecture, shall be residents of the northern district of California, and shall constitute the northern district for the examination of applicants for certificates to practice architecture in this state. And five members of said board shall be appointed from the southern district of California, and shall constitute the southern district board for the examination of applicants for certificates to practice architecture in this state. The northern district shall be all that portion of the state north of the northerly line of the county of San Luis Obispo and the county of Kern and the county of San Bernardino. And the southern district shall be all that portion of the state south of the northerly line of the county of San Luis Obispo and of the county of Kern and of the county of San Bernardino. Said state board of architecture shall be appointed by the governor as follows: Five members shall be appointed from the members in good standing of the San Francisco chapter of the American Institute of Architects, or some similar institution or association of architects, two of whom shall be designated to hold office for two years. Five members shall be appointed from the members of the Southern California chapter of the American Institute of Architects, or some similar institution or association of architects, two of whom shall be designated to hold office for two years. Each person so appointed shall hold office for four years, unless so designated to hold office for two years. And thereafter, upon the expiration of the term of office of the persons so appointed, the governor of the state shall appoint a successor or successors to such outgoing person or persons whose term of office shall have expired, to hold office for four years; provided, that the membership of the state board of architecture shall be composed as herein set forth. Each member shall hold over after the expiration of his term of office until his successor shall have been duly appointed and qualified. Any vacancy occurring in the membership of the board shall be filled by the governor of the state for the unexpired term in like manner. The members of the board shall serve without compensation from the state. The expenses of the board shall be paid out of the fees collected from applicants for certificates.

Oath of office. Of officers.

§ 2. The members of the state board of architecture shall, before entering upon the discharge of the duties of their office, take and file with the secretary of state the

constitutional oath of office. The said state board of architecture shall, within thirty days from and after their appointment, meet and elect from their number a president and vice president, one of whom shall be a resident of the northern district, and one a resident of the southern district, and two secretaries, one from each district. The secretaries shall also act as treasurers. The person receiving the highest number of votes shall be secretary, and the person receiving the next highest number of votes, assistant secretary. Said persons shall hold office for two years, or until their successors shall have been duly elected and qualified.

Rules and regulations. Meetings. Organization. Examinations of applicants. Fees.
Duty of secretary of state.

§ 3. The board may adopt rules and regulations for the government of its proceedings, not inconsistent with this act. This state board shall adopt a seal for its own use, and one for each of the district boards. The seal used by the northern district board shall have the words "Northern District" inscribed thereon, and the one for the southern district shall have the words "Southern District" inscribed thereon, and the secretary and assistant secretary shall have charge, care and custody thereof. The secretary shall keep a correct record of all the proceedings of the board, which shall be open to public examination at all times. Six members shall constitute a quorum for the transaction of business of the state board of architecture, and three members shall constitute a quorum of the district boards for the transaction of business. Special meetings of the state board of architecture shall be called by the secretary upon the written request of four of its members, and by giving twenty days' written notice of such meeting, and the time and place at which such meeting is to be held, to each member of the board. The district board shall call special meetings upon the written request of two of its members made to the secretary, and upon five days' written notice to each member of such district board. Within thirty days from and after the date of their appointment, the state board shall meet to organize, elect officers as in this act provided for, and formulate and adopt a code of rules and regulations for its government in the examination of applicants for certificates to practice architecture in this state; and such other rules and regulations as may be necessary and proper, not inconsistent with this act. The board may from time to time repeal or modify its rules and regulations, not inconsistent with this act. The state board shall meet annually, on the second Tuesday in April, for the purpose of transacting such business as may lawfully come before it, not inconsistent with this act. The district boards shall hold their regular meetings for the examination of applicants for certificates to practice architecture, on the last Tuesday of January, April, July, and October of each year. The board of the northern district shall meet in San Francisco; and the board of the southern district shall meet in Los Angeles, and at such other times and places as they may elect, to examine applicants for certificates. Any person shall be entitled to an examination for a certificate to practice architecture, upon payment, to the district board when he makes application, of a fee of fifteen dollars, which fee shall be retained by the board; should the applicant pass a satisfactory examination by said district board, the secretary shall, upon the payment to him of a further fee of five dollars, issue to the applicant a certificate, signed by the president and secretary, sealed with the seal of the district board, and directed to the secretary of state, setting forth the fact that the person therein named has passed a satisfactory examination, and that such person is entitled to a certificate to practice architecture in this state, in accordance with the provisions of this act; and upon the payment to the secretary of state of a fee of five dollars, the secretary shall at once issue to the person therein named a certificate to practice architecture in this state in accordance with the provisions of this act, which certificate shall contain the full name of the applicant, his birthplace and age, together with the name of the district

board issuing the certificate, and date of issuance thereof. All papers received by the secretary of state on application for certificate shall be kept on file in his office, and a proper index and record thereof shall be kept by him.

Eligibility of applicants for certificates. Certificates must be recorded.

§ 4. Any architect in good standing, who shall show to the satisfaction of the district board of the district in which such architect may reside, that he was engaged in the practice of the profession of architecture on the date of the passage of this act, shall be granted a certificate without passing an examination, on the payment to the district board of a fee of five dollars; provided, such application shall be made within six months from and after the passage of this act. Said certificates shall set forth the fact that the person to whom the same was issued was practicing architecture in this state at the time of the passage of this act, and that the person therein named is entitled to a certificate to practice architecture without having to pass an examination by the district board; and the secretary of state shall, upon the payment to him of a fee of five dollars, issue to the person named therein a certificate to practice architecture in this state, in accordance with the provisions of this act. Each certificated architect shall have his certificate recorded in the office of the county recorder, in each and every county in this state, in which the holder thereof shall practice, and he shall pay to the recorder the same fee as is charged for the recording of deeds. A failure to have his certificate so recorded shall be deemed sufficient cause for revocation of such certificate.

Provisions as to practice of architecture. Non-resident architects. Revocation of certificates. New certificates. Seal.

§ 5. After the expiration of six months from the passage of this act, it shall be unlawful, and it shall be a misdemeanor, punishable by fine of not less than fifty dollars nor more than five hundred dollars, for any person to practice architecture without a certificate in this state, or to advertise, or put out any sign or card, or other device which might indicate to the public that he was an architect; provided, that nothing in this act shall prevent any person from making plans for his own buildings, nor furnishing plans or other data for buildings for other persons, provided the person so furnishing such plans or data shall fully inform the person for whom such plans or data are furnished, that he, the person furnishing such plans, is not a certified architect; provided, that nothing in this act shall prevent the employment of an architect residing out of the state of California to prepare plans and specifications for buildings or other structures within the state, conditioned he shall present satisfactory evidence to the board of the district in which the structure is to be erected that he is a competent architect, when such board shall issue to such architect a temporary certificate for such employment, upon the payment of a fee of five dollars. Architects' certificates issued in accordance with the provisions of this act shall remain in full force until revoked for cause, as hereinafter provided for in this act. A certificate may be revoked for dishonest practices, or for gross incompetency in the practice of the profession, which questions shall be determined by the district board of the district in which the person whose certificate is called in question shall reside, or shall be doing business; and upon a full investigation of the charges by the district board, an opportunity having been given the accused to be heard in his own defense or by counsel; and upon the verdict of at least four members of the district board, the board may issue its certificate to the secretary of state revoking the certificate of the person accused; and the secretary of state shall thereupon cancel such certificate. And on the cancellation of such certificate, it shall be the duty of the secretary of the district board to give notice of such cancellation to the county recorder of each county in this state, whereupon the recorder shall mark the certificate recorded in his office "Canceled."

After the expiration of six months the person whose certificate was revoked may have a new certificate issued to him by the secretary of state upon the certificate of the district board by which the certificate was revoked.

Every certificated architect shall have a seal, the impression of which must contain the name of the architect, his place of business, and the words "Certificated architect," with which he may stamp all plans prepared by him.

Time of taking effect of act.

§ 6. This act shall take effect from and after its passage.

Annual license fee of architects. Receipt for fees.

§ 7. Each regularly certificated architect shall pay an annual license fee of five dollars, said fee to be paid to the secretary of the board of the district of which he shall be a resident, and shall be payable in advance on January 1, and shall become delinquent the first day of April, of each year, after which date it shall be delinquent, and the certificate of such architects who shall fail to pay their license fees by April 1 of each year, shall be subject to cancellation by said district board, and notice of such cancellation shall be sent to each county recorder of the state of California and to the secretary of state, as provided in section 5 of the act to regulate the practice of architecture, approved March 23, 1901, for cancellation of certificates. And the secretary of the said district shall issue a receipt signed by the president and secretary of the district, and under the seal of the district board, to each architect paying said license fee, showing that said certificated architect has paid his annual license fee, which license receipt shall be displayed in a prominent place in the office of said architect. The fees so collected shall be used to meet the expenses of the state board of architecture. [New section approved March 26, 1903. Stats. 1903, p. 522. In effect immediately.]

Action by architect—Proof of compliance with act not essential to recovery—Matter of defense.—Proof of compliance with the act by the architect is not essential to a right of recovery; but non-compliance is matter of defense to be set up and proved by the defendant.—*Harris v. Bucher*, 25 Cal. App. 380, 174 Pac. 56.

Board of architecture—Violation of duty to fix reasonable rules and regulations—Remedy.—If the board fixes unreasonable or arbitrary rules for the examination of applicants, the remedy is to apply for appropriate relief, and does not justify an attack upon the validity of the act by habeas corpus proceedings.—*Ex parte McManus*, 151 Cal. 331, 90 Pac. 702.

Certificate of board—Want of, does not invalidate contract.—The certificate required by the act is necessary to enable the architect to perform his contract, but the want of it at the time of its execution does not render the contract illegal and void.—*Fitzhugh v. Mason*, 2 Cal. App. 229, 83 Pac. 282.

Constitutionality—As to constitutionality of Medical Practice Act, see *Ex parte Gerino*, 143 Cal. 412, 66 L. R. A. 249, 77 Pac. 166.

Same—Board of architecture — Mode of appointment.—The provisions of the act as to the mode of appointment of the members of the state board of architecture are constitutional.—*Ex parte McManus*, 151 Cal. 331, 90 Pac. 702.

Same—Delegation of legislative power—Fixing standard of qualifications.—The legislature may delegate its power to regulate

particular professions and fix standards of qualifications therefor to public commissions or boards, when such professions involve the exercise of skill and the possession of special knowledge and experience.—*Ex parte McManus*, 151 Cal. 331, 90 Pac. 702.

Same—Power of board not arbitrary.—No arbitrary power to make rules and regulations for the examination of applicants is conferred by the act, the authority given under the act is to pass such rules and regulations as are reasonably adapted to the purpose of determining the qualifications of applicants to practice the profession of architecture.—*Ex parte McManus*, 151 Cal. 331, 90 Pac. 702.

Same—Uniformity of operation—Classification.—The act is constitutional; the classification is reasonable, uniform in its operation, and makes no arbitrary or other discrimination between members of a class, and it does not grant special privileges or immunities to any members of a class that is not granted to all.—*Ex parte McManus*, 151 Cal. 331, 90 Pac. 702.

Same.—This statute can not be upheld as a police measure on the ground that it tended to promote the prosperity of those following the profession of architecture, by giving such persons who could obtain a license an advantage over others.—*Binford v. Boyd*, 178 Cal. 458, 174 Pac. 56.

Same.—This act can be upheld only upon the theory that the legislature believed that it was injurious to the public interest to allow unskilled and unqualified persons to

prepare plans and specifications for the erection of buildings, owing to the dangers which might arise from defects in plans or construction.—*Binford v. Boyd*, 178 Cal. 458, 174 Pac. 56.

Construction of act.—The act qualifies the absolute prohibition against the preparing of building plans and specifications by unlicensed architects by permitting such architects to prepare such plans, provided the owner is informed that such person has no license.—*Binford v. Boyd*, 178 Cal. 458, 174 Pac. 56.

Same.—The act shows that it was not intended to prevent the sale of plans by a qualified person, but to prevent such sale by an unqualified person, unless the purchaser was informed of the fact.—*Binford v. Boyd*, 178 Cal. 458, 174 Pac. 56.

Same.—The object of the act was to secure the erection of buildings from plans

prepared by persons sufficiently schooled in the profession to secure a license from the state board by complying with the state law.—*Binford v. Boyd*, 178 Cal. 458, 174 Pac. 56.

Corporations.—The act does not prohibit a corporation from contracting to furnish architectural plans and specifications to be prepared by third persons who are certified architects, and there is nothing in the act or the evils to be removed thereby which raises the implication that such is its effect.—*Binford v. Boyd*, 178 Cal. 458, 174 Pac. 56.

Same.—Can engage in business of architect by employing or engaging in certified architects under this statute, or by notifying persons with whom it contracts for building plans and specifications that the persons who prepare such plans and specifications are not certified architects.—*Binford v. Boyd*, 178 Cal. 458, 174 Pac. 56.

ARMORY.

See tit. "National Guard."

ARMORY BUILDING AND WHARF.

See tit. "National Guard."

CHAPTER 19.

ARMS.

References: See tit. "Military Academies."

CONTENTS OF CHAPTER.

ACT 323. AUTHORIZING THE GOVERNOR TO ISSUE ARMS AND ACCOUTREMENTS TO COLLEGES AND ACADEMIES.

ACT 323—An act to provide for the issuing arms and accoutrements to colleges and academies.

History: Approved May 2, 1862, Stats. 1862, p. 483.

This act authorizes the governor to issue arms to colleges or seminaries upon petition and the execution of a bond, and prescribes the duties of the trustees of such

institutions with respect to the use and custody of such arms.

Power of governor to issue arms and accoutrements.—See *Kerr's Cyc. Political Code*, § 380, subd. 14.

ARREST.

See *Kerr's Cyc. Code Civil Procedure*, §§ 1143, et seq.

ARROYO DEL MEDO.

See *Kerr's Cyc. Political Code*, § 2349.

ARROYO GRANDE.

See Act 3094, note.

ARSENAL.

See tit. "National Guard."

ARTESIAN WELLS.

See tit. "Waters."

CHAPTER 23.

ASEXUALIZATION.

CONTENTS OF CHAPTER.

ACT 346. ASEXUALIZATION OF INMATES OF CERTAIN INSTITUTIONS.

ASEXUALIZATION IN STATE INSTITUTIONS.

ACT 346—An act to provide for the asexualization of inmates of state hospitals for the insane, the Sonoma State Home, of convicts in the state prisons, and of idiots, and repealing an act entitled "An act to permit asexualization of inmates of the state hospitals and the California Home for the Care and Training of Feeble-minded Children and of convicts in the state prisons," approved April 26, 1909.

History: Approved June 13, 1913. In effect August 10, 1913. Stats. 1913, p. 775. Amended May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 571.

Prior act repealed: Act of April 26, 1909. Stats. 1909, p. 1093.

Asexualization of inmates of hospitals for insane before release.

§ 1. Before any person who has been lawfully committed to any state hospital for the insane, or who has been an inmate of the Sonoma State Home, and who is afflicted with mental disease which may have been inherited and is likely to be transmitted to descendants, the various grades of feeble-mindedness, those suffering from perversion or marked departures from normal mentality or from disease of a syphilitic nature, shall be released or discharged therefrom, the state commission in lunacy may in its discretion, after a careful investigation of all the circumstances of the case, cause such person to be asexualized, and such asexualization whether with or without the consent of the patient shall be lawful and shall not render the said commission, its members or any person participating in the operation liable either civilly or criminally. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 571.]

Asexualization of recidivists committed for sexual crimes.

§ 2. Whenever in the opinion of the resident physician of any state prison it will be beneficial and conducive to the benefit of the physical, mental, or normal condition of any recidivist lawfully confined in such state prison, to be asexualized, then such physician shall call in consultation the general superintendent of state hospitals and the secretary of the state board of health, and they shall jointly examine into the particulars of the case with the said resident physician, and if in their opinion or the opinion of any two of them, asexualization will be beneficial to such recidivist, they may perform the same; provided, that such operation shall not be performed unless the said recidivist has been committed to a state prison in this or some other state or country at least two times for rape, assault with intent to commit rape, or seduction, or at least three times for any other crime or crimes, and shall have given evidence while an inmate of a state prison in this state that he is a moral or sexual degenerate or pervert; and provided, further, that in the case of convicts sentenced to state prison for life, who exhibit continued evidence of moral and sexual depravity, the right to asexualize them, as provided in this section, shall apply whether they shall have been inmates of a state prison in this or any other country or state more than one time or not; provided, further, that nothing in this act shall apply to or refer to any voluntary patient confined or kept in any state hospital of this state.

Asexualization of idiots.

§ 3. Any idiot if a minor, may be asexualized by or under the direction of the medical superintendent of any state hospital, with the written consent of his or her parent

or guardian, and if an adult, then with the written consent of his or her lawfully appointed guardian, and upon the written request of the parent or guardian of any such idiot or fool, the superintendent of any state hospital shall perform such operation or cause the same to be performed without charge therefor.

Repealed.

§ 4. An act entitled "An act to permit asexualization of inmates of the state hospitals and the California Home for the Care and Training of Feeble-minded Children, and of convicts in the state prison," approved April 26, 1909, is hereby repealed.

Sterilization of inmates of Pacific Colony for feeble-minded and epileptics.—See, post, Act 2163.

ASSAULT WITH CORROSIVE LIQUIDS.

See Kerr's Cyc. Penal Code, § 244.

ASSESSORS.

See Kerr's Cyc. Political Code.

ASSIGNMENT OF NON-NEGOTIABLE INSTRUMENTS.

See Kerr's Cyc. Civil Code, § 1459.

ATTORNEY GENERAL.

See Kerr's Cyc. Political Code.

ATTORNEYS AT LAW.

See Kerr's Cyc. Code Civil Procedure, §§ 275, et seq.

CHAPTER 21.

AUBURN.

References: Incorporation, etc., see post Act 3094, note.

CONTENTS OF CHAPTER.

ACT 381. REMOVAL OF CEMETERY.

ACT 381—Authorizing the trustees of Auburn to remove a cemetery and to donate the land occupied thereby to the public for a park.

History: Approved March 26, 1895, Stats. 1895, p. 109.

CHAPTER 22.

AUDITORS.

CONTENTS OF CHAPTER.

ACT 385. REPORT OF COMMITMENTS TO PUBLIC INSTITUTIONS.

REPORT OF COMMITMENTS.

ACT 385—An act to provide for the supplying the county auditor with a report of commitments to public institutions.

History: Approved June 12, 1913. In effect August 10, 1913. Stats. 1913, p. 713.

Monthly certificate of commitments to public institutions.

§ 1. The county clerk of each county shall certify to the county auditor on the first day of each month, a list of all commitments to any public institution in the state,

including reform schools, insane asylums, and other public institutions of like nature; such certificate shall also contain a statement of the reason for the person so committed, and of the term of commitment, if the term be definitely fixed.

AUTOMOBILE.

See tit. "Motor-Vehicles."

AVALON.

See Act 3094, note.

AZUSA.

See Act 3094, note.

BALBOA PARK, EXPOSITION AT.

See tit. "Expositions."

CHAPTER 23.

BAKERSFIELD.

References: Incorporation, etc., see post Act 3094, note.

CONTENTS OF CHAPTER.

ACT 387. FREEHOLDERS' CHARTER.

FREEHOLDERS' CHARTER.

ACT 387—Freeholders' Charter of the City of Bakersfield.

History: Voted for and ratified at a special municipal election held November 7, 1914. Filed with the secretary of state January 23, 1915. Stats. 1915, p. 1552.

Duty of city council to call election.—On presentation of recall petition, sufficient in form and substance, duly certified, the duty of the city council to call an election is mandatory.—*Sidler v. City Council* (Cal. App.), 185 Pac. 194.

Grounds of recall.—The recall petition need not set forth any grounds on which

recall is sought.—*Sidler v. City Council* (Cal. App.), 185 Pac. 194.

"General election."—The phrase "general election" in section 32 of the Bakersfield charter, when read with other sections, has reference to the last general municipal election, and not general state election.—*Bakersfield, etc., Co. v. Hay*, 29 Cal. App. 289, 155 Pac. 132.

CHAPTER 24.

BANKRUPTCY AND INSOLVENCY.

CONTENTS OF CHAPTER.

ACT 392. INSOLVENT ACT OF 1895.

INSOLVENT ACT OF 1895.

ACT 392—An act for the relief of insolvent debtors, for the protection of creditors, and for the punishment of fraudulent debtors.

History: Approved March 26, 1895, Stats. 1895, p. 131. Amended February 26, 1897, Stats. 1897, p. 35; March 25, 1911, Stats. 1911, p. 489. Prior acts: Act of May 4, 1852, Stats. 1852, p. 69. Amended March 12, 1858, Stats. 1858, p. 58; April 27, 1860, Stats. 1860, p. 283; April 27, 1863, Stats. 1863, p. 750; supplemented March 31, 1876, Stats. 1875-76, p. 581. Act of April 6, 1880, Stats. 1880, p. 82. Amended April 6, 1891, Stats. 1891, p. 511; February 27, 1893, Stats. 1893, p. 45. Repealed by the present act. The Act of 1852 was continued in force by the codes. See *Kerr's Cyc. Political Code*, § 19; *Kerr's Cyc. Code Civil Procedure*, § 1822. But it was superseded, if not repealed by the Act of 1880. The Act of 1880 was superseded as to bank corporations by the "Bank Commissioners Act" (Stats. 1903, p. 365). See *People v. Superior Court*, 100 Cal. 105. The present act is suspended by the Federal Bankruptcy Act. See notes.

- ARTICLE I. GENERAL SUBJECT OF THE ACT.
II. VOLUNTARY INSOLVENCY.
III. INVOLUNTARY INSOLVENCY.
IV. ASSIGNEES.
V. PARTNERSHIPS. CORPORATIONS.
VI. PROOF OF DEBT.
VII. DISCHARGE.
VIII. FRAUDULENT PREFERENCES AND TRANSFERS.
IX. PENAL CLAUSES.
X. MISCELLANEOUS.

ARTICLE I.

General Subject of the Act.

§ 1. ACT, HOW CITED.

Act, how cited.

§ 1. Every insolvent debtor may, upon compliance with the provisions of this act, be discharged from his debts and liabilities. This act shall be known and may be cited as the insolvent act of eighteen hundred and ninety-five.

ARTICLE II.

Voluntary Insolvency.

§ 2. APPLICATION FOR DISCHARGE. PETITION, SCHEDULE, INVENTORY.

§ 3. SCHEDULE, CONTENTS OF.

§ 4. INVENTORY.

§ 5. AFFIDAVIT.

§ 6. ORDER OF COURT. POSSESSION OF SHERIFF. NOTICE OF MEETING OF CREDITORS. ELECTION OF ASSIGNEE. DUTY OF SHERIFF.

§ 7. PUBLICATION OF ORDER. EXPENSES.

§ 8. CLAIMS ENTITLED TO VOTE FOR ASSIGNEE. CLAIMS BARRED. EXCEPTIONS TO CLAIMS. DECISION, EFFECT OF. RIGHT OF MORTGAGEE TO VOTE.

Application to superior court for discharge from liabilities. Petition, schedule, inventory.

§ 2. An insolvent debtor, owing debts exceeding in amount the sum of three hundred dollars, may apply by petition to the superior court of the county, or city and county, in which he has resided for six months next preceeding the filing of his petition, to be discharged from his debts and liabilities. In his petition he shall set forth his place of residence, his inability to pay all his debts in full, his willingness to surrender all his estate and effects for the benefit of his creditors, and his desire to obtain a discharge from his debts and liabilities, and shall annex thereto a schedule and inventory, and valuation, in compliance with the provisions of this act. The filing of such petition shall be an act of insolvency, and thereupon such petitioner shall be adjudged an insolvent debtor.

Schedule, what to contain.

§ 3. Said schedule must contain a full and true statement of all his debts and liabilities, exhibiting to the best of his knowledge and belief to whom said debts or liabilities are due, the place of residence of his creditors, and the sum due each; the nature of the indebtedness or demand, whether founded on written security, obligation, contract, or otherwise; the true cause and consideration thereof, and the time and place when and where such indebtedness accrued, and a statement of any existing pledge, lien, mortgage, judgment, or other security for the payment of the same; also, an outline of the facts touching any liability, directly or indirectly, in the nature of an act of insolvency, and thereupon such petitioner shall be adjudged an insolvent debtor.

Inventory.

§ 4. Said inventory must contain an accurate description of all the estate, both real and personal, of the petitioner, including his homestead, if any, and all property exempt by law from execution, and where the same is situated, and all encumbrances thereon; also, an outline of the facts touching any right of action in favor of the insolvent against any one.

Affidavit.

§ 5. The petition, schedule, and inventory must be verified by the affidavit of the petitioner annexed thereto, and shall be in form substantially as follows: I, ———, do solemnly swear that the schedule and inventory now delivered by me contain a full, perfect, and true discovery of all the estate, real, personal, and mixed, goods and effects, to me in any way belonging; all such debts as are to me owing, or to any person or persons in trust for me, and all securities and contracts, and contracts whereby any money may hereafter become payable, or any benefit or advantage accrue to me or to my use, or to any other person or persons in trust for me; that the schedule and inventory, respectively, contain a clear outline of the facts touching any known right of action against me by any one, and an outline of the facts touching all rights of action in my favor against any one; that I have no lands, money, stock, or estate, reversion, or expectancy, besides that set forth in my schedule and inventory; that I have in no instance created or acknowledged a debt for a greater sum than I honestly and truly owe; that I have not, directly or indirectly, sold, or otherwise disposed of, or concealed, any part of my property, effects, or contracts; that I have not in any way compounded with my creditors whereby to secure the same, or to receive or to expect any profit or advantage therefrom, or to defraud or deceive any creditor to whom I am indebted in any manner. So help me God.

Order of court. Possession of sheriff. Notice of meeting of creditors. Election of assignee. Duty of sheriff.

§ 6. Upon receiving and filing such petition, schedule, and inventory, the court shall make an order declaring the petitioner insolvent, and directing the sheriff of the county, or city and county, to take possession of all the estate, real and personal, of the debtor, except such as may be by law exempt from execution, and of all his deeds, vouchers, books of account, and papers, and to keep the same safely until the appointment of an assignee. Said order shall further forbid the payment of any debts and the delivery of any property belonging to such debtor, to him, or for his use, and the transfer of any property by him; and shall further appoint a time and place for a meeting of the creditors, to prove their debts and choose an assignee of the estate, and shall designate a newspaper of general circulation published in the county, or city and county, in which the petition is filed, if there be one, and if there be none, in a newspaper published nearest to such county, or city and county, in which publication of such order shall be made. The time appointed for the election of an assignee shall not be less than eight nor more than ten days from the date of the order of adjudication. Upon the granting of said order, all proceedings against the said insolvent shall be stayed. When a receiver is appointed or an assignee chosen, as provided for in this act, the sheriff shall thereupon deliver to such receiver or assignee, as the case may be, all the property and assets of the insolvent which have come into his possession, and shall be allowed and paid as compensation for his services the same expenses and fees as would by law be collectible if the property had been levied upon and safely kept under attachment.

Publication of order. Expenses of.

§ 7. A copy of said order shall immediately be published by the clerk of said court, in a newspaper designated therein, as often as said newspaper is printed before the

meeting of creditors, and be served by the clerk forthwith by the United States mail, postage prepaid, or personally, on all creditors named in the schedule. There shall be deposited in addition to the usual cost of commencing such proceedings a sum of money sufficient to defray the cost of the publication ordered by the court, and ten cents for each copy, to be mailed to or served on the creditors, which latter sum is hereby constituted the legal fee of the clerk for the mailing or service required in this section.

Claims entitled to vote for assignee. Claims barred. Exceptions to claims. Decision, effect of. Right of mortgagee to vote.

§ 8. No claim shall be entitled to a vote for the election of an assignee, unless such claim shall be placed on file in the office of the clerk of the court in which the proceedings are pending, at least two days prior to the time appointed for the election of an assignee. All claims shall be established by a statement, showing the amount and nature of the claim, and security, if any; such statement to be verified by the claimant, his agent or attorney; provided, no claim barred by the statute of limitations shall be proved or allowed against the estate of an insolvent debtor for any purpose. Any person interested in the estate of the insolvent may file exceptions to the legality or good faith of any claim, by setting forth specifically in writing his interest in the estate, and the grounds of his objection to such claim; such specifications of exceptions to be verified by the affidavit of the party objecting, his agent or attorney, setting out among other things that such exceptions are not made for the purpose of delay, or otherwise than in good faith in the best interest of said estate. Such exceptions to be filed with the clerk of the court at least one day before the time appointed for the election of an assignee; and such exception shall be heard and disposed of by the court, on affidavit or other evidence, in a summary manner, before the election of an assignee. But the decision of the court upon the exceptions as to whether the claimant shall be entitled to vote for an assignee shall not be conclusive upon the right of the party to participate in the assets of the insolvent, the enforcement of such right being subject to the laws of the state touching the establishment of claims against the estates of insolvents in case of dispute. No creditor or claimant, who holds any mortgage, pledge, or lien of any kind whatever, as security for the payment of his claim, shall be permitted to vote any part of his secured claim in the election of assignee, unless he shall first have the value of such security fixed as provided in section forty-eight of this act, or surrender to the sheriff or receiver of the estate of the insolvent, if any receiver, all such property so mortgaged or pledged, or assign such lien to such receiver or sheriff; such surrender or assignment of security or lien to be for the benefit of all creditors of the estate of the insolvent. The value of such security, if fixed by the court, shall be so fixed at least one day before the day appointed for the election of an assignee; in which event the claimant may prove his demand, as provided in this section, for any unsecured balance subject to the same exceptions as all other claims. [Amendment, Stats. 1897, p. 35.]

ARTICLE III.

Involuntary Insolvency.

- § 9. ADJUDICATION, WHEN MADE. PETITION AND BOND.
- § 10. ORDER TO SHOW CAUSE. ORDER FORBIDDING PAYMENT OF DEBTS OR DELIVERY OF PROPERTY.
- § 11. SERVICE OF COPY OF PETITION ON DEBTOR.
- § 12. DEMURRER. ANSWER. TRIAL OF ISSUES.
- § 13. ORDER OF COURT OF ADJUDICATION OF INSOLVENCY. DUTY OF SHERIFF. MEETING OF CREDITORS. ELECTION OF TRUSTEE.
- § 14. ORDER OF COURT, PUBLICATION AND SERVICE OF. DEPOSIT OF COSTS AND FEES.
- § 15. PROCEEDINGS, WHEN DISMISSED.
- § 16. PROCESS AGAINST ABSENT OR FOREIGN DEBTORS. DUTY OF SHERIFF.
- § 17. RIGHTS OF OTHER CREDITORS.
- § 18. COURT MAY ORDER SALE OF PROPERTY.

Adjudication, when made. Petition and bond.

§ 9. An adjudication of insolvency may be made on the petition of five or more creditors, residents of this state, whose debts or demands accrued in this state, and amount in the aggregate to not less than five hundred dollars; provided, that said creditors, or either of them, have not become creditors by assignment within thirty days prior to the filing of said petition. Such petition must be filed in the superior court of the county, or city and county, in which the debtor resides or has his place of business, and must be verified by at least three of the petitioners, setting forth that such person is about to depart from this state, with intent to defraud his creditors, or being absent from the state with such intent, remains absent; or conceals himself to avoid the service of legal process; or conceals, or is removing, any of his property to avoid its being attached or taken on legal process; or being insolvent, has suffered his property to remain under attachment, or legal process, for three days; or has confessed or offered to allow judgment in favor of any creditors; or wilfully suffered judgment to be taken against him by default; or has suffered or procured his property to be taken on legal process, with intent to give a preference to one or more of his creditors; or has made any assignment, gift, sale, conveyance, or transfer of his estate, property, rights, or credits, with intent to delay, defraud, or hinder his creditors; or in contemplation of insolvency, has made any payment, gift, grant, sale, conveyance or transfer of his estate, property, rights, or credits; or has been arrested and held in custody by virtue of any civil process of court founded on any debt or demand; and such process remains in force, and not discharged by payment, or otherwise, for a period of three days; or being a merchant or tradesman, has stopped or suspended, and not resumed payment within a period of forty days after the maturity of any written acknowledgment of indebtedness, unless the party holding such acknowledgment has, in writing, waived the right to proceed under this subdivision; or being a bank or banker, agent, broker, factor, or commission merchant, has failed for forty days to pay any moneys deposited with or received by him in a fiduciary capacity, upon demand of payment, excepting savings and loan banks, or associations who loan the money of their stockholders and depositors on real estate, and provide in their by-laws for the repayment of such deposits. The petitioners may, from time to time, amend and correct the petition, so that the same shall conform to the facts by leave of the court before which the proceedings are pending, such amendment or amendments to relate back to and be received as embraced in the original petition; but nothing in this section shall be construed to invalidate any loan of actual value, or the security therefor, made in good faith upon a security taken in good faith on the occasion of the making of such loan. The said petition shall be accompanied by a bond with two sureties in the penal sum of at least five hundred dollars, conditioned that if the debtor should not be declared an insolvent, the petitioners will pay all costs and damages, including a reasonable attorney's fee, that the debtor may sustain by reason of the filing of said

petition. The court may, upon motion, direct the filing of an additional bond with different sureties, when deemed necessary.

Order to show cause. Order forbidding payment of debts or delivery of property.

§ 10. Upon the filing of such creditors' petition, the court, or a judge thereof, shall issue an order requiring such debtor to show cause, at a time and place to be fixed by said court, or judge, why he should not be adjudged an insolvent debtor, and at the same time, or thereafter, upon good cause shown therefor, said court, or judge, may make an order forbidding the payment of any debts, and the delivery of any property belonging to such debtor to him or for his use, or the transfer of any property by him.

Service of copy of petition on debtor.

§ 11. A copy of said petition, with a copy of the order to show cause, shall be served on the debtor, in the same manner as is provided by law for the service of summons in civil actions, but such service shall be made at least five days before the time fixed for the hearing; provided, that if, for any reason, the service is not made, the order may be renewed, and the time and place of hearing changed by supplemental order of the court; provided, however, that where the debtor or debtors on whom service is to be made reside out of this state; or has departed from the state; or can not, after due diligence, be found within the state; or conceals himself to avoid the service of the order to show cause, or any other process or orders in the matter; or is a foreign corporation, having no managing or business agent, cashier, or secretary within the state, upon whom service can be made, and such facts are shown to the court, or a judge thereof, by affidavit, such court or judge thereof shall make an order that the service of such order, or other process, be made by publication, in the same manner, and with the same effect, as service of summons by publication in ordinary civil actions.

Demurrer. Answer. Trial of issues.

§ 12. At the time fixed for the hearing of said order to show cause, or such other time as it may be adjourned to, the debtor may demur to the petition for the same causes as is provided for demurrer in other cases by the Code of Civil Procedure. If the demurrer be overruled, the debtor shall have five days thereafter in which to answer the petition. If the debtor answers the petition, such answer shall contain a specific denial of the material allegations of the petition controverted by him, and shall be verified in the same manner as pleadings in civil actions; and the issues raised thereon, may be tried with or without a jury, according to the practice provided by law for the trial of civil actions.

Order of court on adjudication of insolvency. Duty of sheriff. Meeting of creditors. Election of trustee.

§ 13. If the respondent shall make default, or if, after a trial, the issues are found in favor of the petitioners, the court shall make an order adjudging that said respondent is, and was at the time of filing the petition, an insolvent debtor, and that the debtor was guilty of the acts and things charged in the petition, or such of those acts and charges as the court may find to be true; and shall require said debtor, within such time as the court may designate, not to exceed three days, to file in court the schedule and inventory provided for in sections three and four of this act, duly verified, as required of a petitioning debtor; provided, that in the affidavit of the insolvent touching his property and its disposition he shall not be required to swear that he has not made any fraudulent preference, or committed any other act in conflict with the provisions of this act; but he may do so if he desires. Said order shall further direct the sheriff of the county, or city and county, where the insolvency petition is filed, or the receiver, if one has been theretofore appointed, to take possession of all the estate, real and personal, of the debtor, except such as may be by law exempt from execution

and of all his deeds, vouchers, books of account, and papers, and to keep the same safely until the appointment of an assignee. Said order shall further forbid the payment of any debts, and the delivery of any property belonging to such debtor, to him, or for his use, and the transfer of any property by him; and shall further appoint a time and place for a meeting of the creditors, to prove their debts, and choose an assignee of the estate, and shall designate a newspaper of general circulation published in the county, or city and county, in which the petition is filed, if there be one; and if there be none, in a newspaper published nearest to such county, or city and county, in which publication of said order shall be made. The time appointed for the election of an assignee shall not be less than eight nor more than ten days from the date of the order of adjudication. Upon granting of said order, all proceedings against the said insolvent shall be stayed. When a receiver is appointed subsequent to adjudication, or an assignee is chosen as provided for in this act, the sheriff shall thereupon deliver to such receiver or assignee, as the case may be, all the property and assets of the insolvent which have come into his possession, and shall be allowed and paid as compensation for his service the same expenses and fees as would by law be collectible if the property had been levied upon and safely kept under attachment.

Order of court, publication and service of. Deposit of costs and fees.

§ 14. A copy of the order provided for in section thirteen of this act, shall immediately be published by the clerk of said court in the newspaper designated therein, as often as such newspaper is printed before the meeting of creditors, and upon the filing, at any time before the date set for such meeting, of the schedule required by said section thirteen, a copy of said order shall be served by the clerk forthwith by United States mail, postage prepaid, or personally, on all creditors named in said schedule. If said schedule is not filed prior to the day fixed for the election of an assignee, publication of said order as herein required shall be of itself sufficient notice to the creditors of the time and place appointed for the election of an assignee. No order of adjudication upon creditors' petition shall be entered unless there be first deposited, in addition to the usual cost of commencing said proceedings, a sum of money sufficient to defray the cost of the publication ordered by the court, and the further sum of five dollars, which is hereby constituted the legal fee of the clerk for the mailing or service of notice to creditors required in this section.

Proceedings, when dismissed.

§ 15. If, upon such hearing or trial, the issues are found in favor of the respondent, the proceedings shall be dismissed, and the respondent shall recover costs from the petitioning creditors in the same manner as on the final judgment in civil actions.

Process against absent or foreign debtors. Duty of sheriff.

§ 16. In all cases where the debtor resides out of this state, or has departed from the state; or can not, after due diligence, be found within the state; or conceals himself to avoid service of the order to show cause, or any other preliminary process or orders in the matter; or is a foreign corporation, having no managing or business agent, cashier, or secretary within the state upon whom service of orders and process can be made, and it therefore becomes necessary to obtain service of process and order to show cause, as provided in section eleven of this act, then the petitioning creditors, upon submitting the affidavits requisite to procure an order of publication, and presenting a bond in double the amount of the aggregate sum of their claims against the debtor, shall be entitled to an order of court directing the sheriff of the county, or city and county, in which the matter is pending, to take into his custody a sufficient amount of property of the debtor to satisfy the demands of the petitioning creditors, and the costs of the proceedings. Upon receiving such order of the court to take into custody prop-

erty of the debtor, it shall be the duty of the sheriff to take possession of the property and effects of the debtor, not exempt from execution, to an extent sufficient to cover the amount provided for, and to prepare within three days from the time of taking such possession, a complete inventory of all the property so taken, and to return it to the court as soon as completed. The time for taking the inventory and making return thereof, may be extended for good cause shown to the court, or a judge thereof. The sheriff shall also prepare a schedule of the names and residences of the creditors, and the amount due to each, from the books of the debtor, or from such other papers or data of the debtor available that may come to his possession, and shall file such schedule list of creditors and inventory with the clerk of the court.

Rights of other creditors.

§ 17. In all cases where property is taken into the custody of the sheriff, as provided in the preceding section, if the property taken into custody by the sheriff does not embrace all the property and effects of the debtor not exempt from execution, any other creditor or creditors of the debtor, upon giving bond in double the amount of their claims, singly or jointly, shall be entitled to similar orders, and to like action, by the sheriff, until all claims be provided for, if there be sufficient property or effects. All property taken into custody by the sheriff by virtue of the giving of any such bonds shall be held by him for the benefit of all creditors of the debtor whose claims shall be duly proved, and as provided in this act. The bonds provided for in this and the preceding section to procure the order for custody of the property and the effects of the debtor, shall be conditioned that if, upon final hearing of the petition in insolvency, the court shall find in favor of the petitioners, such bonds and all of them shall be void; if the decision be in favor of the debtor, the proceedings shall be dismissed, and the debtor, his heirs, administrators, executors, or assigns, shall be entitled to recover such sum of money as shall be sufficient to cover the damages sustained by him, not to exceed the amount of the respective bonds, in any court having jurisdiction of the subject and the parties; provided, that if either the petitioners or the debtor shall appeal from the decision of the court, upon final hearing of the petition the appellant shall be required to give bond to the successful party in a sum double the amount of the value of the property in controversy, and for the costs of the proceedings. Any person interested in the estate may except to the sufficiency of the sureties on such bond, or bonds. When excepted to, the petitioner's sureties, upon notice to the person excepting of not less than two nor more than five days, must justify before a judge or county clerk in the same manner as upon bail on arrest; and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the clerk or judge shall issue an order vacating the order to take the property of the debtor into the custody of the sheriff.

Court may order sale of property.

§ 18. If in any case, proper affidavits and bonds are presented to the court, or a judge thereof, asking for and obtaining an order of publication, and an order for the custody of the property of the debtor, as provided in section sixteen and seventeen of this act, and thereafter the petitioners shall make it appear satisfactory to the court, or a judge thereof, that the interest of the parties to the proceedings will be subserved by a sale thereof, the court may order such property to be sold, in the same manner as property is sold under execution, the proceeds to be deposited in the court, to abide the result of the proceedings.

ARTICLE IV.

Assignees.

- § 19. ELECTION. BOND.
- § 20. ASSIGNEE, WHEN APPOINTED.
- § 21. ASSIGNMENT, EFFECT OF.
- § 22. AUTHORITY OF ASSIGNEE.
- § 23. ASSIGNMENT, RECORDING OF. PREPARATION OF SCHEDULE AND INVENTORY BY ASSIGNEE, AND SERVICE ON CREDITORS.
- § 24. ASSIGNEE MAY RESIGN. LIABILITY OF OUTGOING ASSIGNEE.
- § 25. ASSIGNEE, ENUMERATION OF POWERS OF.
- § 26. INSOLVENT TO DELIVER BOOKS, VOUCHERS, NOTES, ETC., TO COURT.
- § 27. EMBEZZLEMENT OF PROPERTY. LIABILITY.
- § 28. PENALTIES FOR CONCEALMENT, EMBEZZLEMENT, ETC., OF PROPERTY.
- § 29. ESTATE TO BE CONVERTED INTO MONEY. NO PRIVATE SALE WITHOUT ORDER. PETITION FOR SALE, NOTICE OF.
- § 30. WHEN COURT MAY ORDER SALE OF PORTION OF ESTATE.
- § 31. OUTSTANDING DEBTS ON PROPERTY, SALE OF. ACTIONS FOR DAMAGES, COMPROMISE OF.
- § 32. ASSIGNEES TO BE ALLOWED NECESSARY EXPENSES RATE OF COMMISSIONS ALLOWED.
- § 33. EXHIBIT BY ASSIGNEE TO COURT. EXCEPTIONS.
- § 34. ACCOUNT BY ASSIGNEE, FILING OF. DISTRIBUTION OF ASSETS.
- § 35. CREDITORS TO SHARE PRO RATA. BAIL, SURETIES OF GUARANTORS, RIGHTS OF.
- § 36. DIVIDENDS, NOT DELAYED BY SUBSEQUENT PROOF OF DEBTS. RIGHTS OF SUBSEQUENT CREDITORS.
- § 37. REFUSAL TO ACCOUNT OR PAY DIVIDENDS. DISCHARGE OF ASSIGNEE. DUTY OF DISCHARGED ASSIGNEE.
- § 38. FINAL ACCOUNT AND DIVIDEND.

Election. Bond.

§ 19. At a meeting of the creditors in open court, those being entitled to vote, as provided by section eight, shall proceed to the election of one assignee. In electing an assignee, the opinion of the majority in amount of claims shall prevail. The clerk of the court shall keep a minute of the deliberations of said creditors, and of the election and appointment of an assignee, and enter the same upon the records of the court. The assignee shall file, within five days, unless the time be extended by the court, with the clerk, a bond, in an amount to be fixed by the court, to the state of California, with two or more sufficient sureties, approved by the court, and conditioned for the faithful performance of the duties devolving upon him. The bond shall not be void upon the first recovery, but may be sued upon from time to time by any creditor aggrieved, in his own name, until the whole penalty be exhausted. The sureties on such bond may be required to justify upon the application of any party interested, in the same manner as bail upon arrest in civil cases.

Assignee, when appointed.

§ 20. If, on the day appointed for the meeting, creditors do not attend, or refuse to elect an assignee; or if, after election, the assignee shall fail to qualify within the proper time, or if a vacancy occurs by death or otherwise, it shall be lawful for the court to appoint an assignee and fix the amount of his bond.

Assignment. Effect of.

§ 21. As soon as an assignee is elected or appointed and qualified, the clerk of the court shall, by an instrument under his hand and seal of the court, assign and convey to the assignee all the estate, real and personal, of the debtor with all his deeds, books and papers relating thereto, and such assignment shall relate back to the commencement of the proceedings in insolvency, and shall relate back to the acts upon which the adjudication was founded, and by operation of law shall vest the title to all such property and estate, both real and personal, in the assignee, although the same is then attached on mesne process, as the property of the debtor, and shall dissolve any attachment made within one month next preceding the commencement of the insolvency proceedings. Such assignment shall operate to vest in the assignee all of the estate of

the insolvent debtor not exempt by law from execution. Whenever such assignment shall dissolve an attachment as herein provided, it shall also vacate any judgment made or entered, and dissolve and set aside any execution levied in any action or proceeding against the debtor commenced subsequently to the action in which the attachment is dissolved.

Authority of assignee.

§ 22. The assignee shall have the right to recover all the estate, debts, and effects of said insolvent. If, at the time of the commencement of proceedings in insolvency an action is pending in the name of the debtor, for the recovery of a debt or other thing which might or ought to pass to the assignee by the assignment, the assignee shall be allowed and admitted to prosecute the action, in like manner and with like effect as if it had been originally commenced by him. If there are any rights of action in favor of the insolvent for damages, on any account, for which an action is not pending, the assignee shall have the right to prosecute the same with the same effect as the insolvent might have done himself if no proceedings in insolvency had been instituted. If any action or proceeding at law, or in equity, in which the insolvent is defendant is pending at the time of the adjudication, the assignee may defend the same, in the same manner and with like effect as it might have been defended by the insolvent. In suit prosecuted or defended by the assignee, a certified copy of the assignment made to him shall be conclusive evidence of his authority to sue or defend.

Assignment, recording of. Preparation of schedule and inventory by assignee and service on creditors.

§ 23. The assignee shall, within one month after the making of the assignment to him, cause the same to be recorded in every county, or city and county, within this state, where any lands owned by the debtor are situated, and the record of such assignment, or a duly certified copy thereof, shall be conclusive evidence thereof in all courts. If the schedule and inventory required by this act have not been filed by the debtor the assignee shall within one month after his election, prepare and file such schedule and inventory from the best information he can obtain, and shall thereupon serve notice by United States mail, postage prepaid, or personally, on all creditors named in such schedule, whose claims have not been filed, to forthwith prove their demands.

Assignee may resign. Liability of outgoing assignee.

§ 24. Any assignee may at any time, by writing filed in court, resign his appointment, having first settled his accounts, and delivered up all the estate to such successor as the court shall appoint; provided, that if, in the discretion of the court, the circumstances of the case require it, upon good cause being shown, the court may, at any time before such settlement of account and delivery of the estate shall have been completed, revoke the appointment of such assignee and appoint another in his stead. The liability of the outgoing assignee, or of the sureties on his bond, shall not be in any manner discharged, released, or affected by such appointment of another in his stead.

Assignee, powers of, enumerated.

§ 25. The said assignee shall have power:

1. To sue in his own name and recover all the estate, debts, and things in action, belonging or due to such debtor, and no set-off or counterclaim shall be allowed in any such suit for any debt, unless it was owing to such creditor by such debtor at the time of the adjudication of insolvency.

2. To take into his possession all the estate of such debtor except property exempt by law from execution, whether attached or delivered to him, or afterward discovered, and all books, vouchers, evidence of indebtedness and securities belonging to the same.

3. In case of a non-resident absconding or concealed debtor, to demand and receive of every sheriff who shall have attached any of the property of such debtor, or who shall have in his possession any moneys arising from the sale of such property, all such property and moneys, on paying him his lawful costs and charges for attaching and keeping the same.

4. From time to time to sell at public auction all the estate, real and personal, vested in him as such assignee, which shall come to his possession and as ordered by the court.

5. On such sales to execute the necessary conveyances and bills of sale.

6. To redeem all valid mortgages and conditional contracts, and all valid pledges of personal property, and to satisfy any judgments which may be an encumbrance on any property sold by him, or to sell such property, subject to such mortgage, contracts, pledges, or judgments.

7. To settle all matters and accounts between such debtor and his debtors, subject to the approval of the court.

8. Under the order of the court appointing him, to compound with any person indebted to such debtor, and thereupon to discharge all demands against such person.

9. To have and recover from any person receiving a conveyance, gift, transfer, payment, or assignment, made contrary to any provision of this act, the property thereby transferred or assigned; or in case a redelivery of the property can not be had, to recover the value thereof, with damages for the detention.

Insolvent to deliver books, vouchers, notes, etc., to court.

§ 26. The insolvent shall, either before or on the day appointed for the meeting of creditors, deliver to the court all the commercial or account books he may have kept, which books shall be deposited in the clerk's office of said court. Said insolvent shall also deliver to the court at the same time, all vouchers, notes, bonds, bills, securities, or other evidences of debt, in any manner relating to or having any bearing upon or connection with the property surrendered by said debtor, and all such papers or securities shall be deposited in the clerk's office of said court, and the clerk shall hand them over, together with the books of the insolvent, to the assignee who may be appointed.

Embezzlement of property. Liability.

§ 27. If any person, before the assignment is made, having notice of the commencement of the proceedings in insolvency, or having reason to believe that insolvency proceedings are about to be commenced, embezzles or disposes of any of the moneys, goods, chattels, or effects of the insolvent, he is chargeable therewith, and liable to an action by the assignee for double the value of the property so embezzled or disposed of, to be recovered for the benefit of the estate.

Penalties for concealment, embezzlement, etc., of property.

§ 28. The same penalties, forfeitures, and proceedings by citation, examination and commitment shall apply on behalf of an assignee against persons suspected of having concealed, embezzled, conveyed away, or disposed of any property of the debtor, or of having possession or knowledge of any deeds, conveyances, bonds, contracts, or other writings which relate to any interest of the debtor in any real or personal estate as provided in the case of estates of deceased persons in sections one thousand four hundred and fifty-nine, one thousand four hundred and sixty, and one thousand four hundred and sixty-one of the Code of Civil Procedure.

Estate to be converted into money. No private sale without order. Petition for sale, notice of.

§ 29. The assignee shall as speedily as possible convert the estate, real and personal, into money. He shall keep a regular account of all moneys received by him as assignee

to which every creditor or other person interested therein may, at all reasonable times, have access. No private sale of any property of the estate of an insolvent debtor shall be valid unless made under the order of the court, upon a petition in writing, which shall set forth the facts showing the sale to be necessary. Upon filing the petition, notice of at least ten days shall be given by publication and mailing, in the same manner as is provided in section seven of this act. If it appears that a private sale is for the best interests of the estate, the court shall order it to be made.

When court may order sale of portion of estate.

§ 30. In all cases where there has been personal service of the order to show cause, or voluntary appearance after order of publication, when it appears to the satisfaction of the court that the estate of the debtor, or any part thereof, is of a perishable nature, or is liable to deteriorate in value, or is disproportionately expensive to keep, the court may order the same to be sold in such manner as may be deemed most expedient, under the direction of the sheriff, receiver, or assignee, as the case may be, who shall hold the funds received in place of the property sold until further order of the court.

Outstanding debts or property, sale of. Action for damages, compromise of.

§ 31. Outstanding debts, or other property due or belonging to the estate, which can not be collected and received by the assignee without unreasonable or inconvenient delay or expense, may be sold and assigned in like manner as the remainder of the estate. If there are any rights of action for damages in favor of the insolvent prior to the commencement of the insolvency proceedings, the same may, with the approval of the court, be compromised.

Assignees to be allowed necessary expenses. Rate of commissions allowed.

§ 32. Assignees shall be allowed all necessary expenses in the care, management, and settlement of the estate, and shall be entitled to charge and receive for their services commissions upon all sums of money coming to their hands and accounted for by them, as follows: For the first thousand dollars, at the rate of seven per centum; for all above that sum and not exceeding ten thousand dollars, at the rate of five per centum; and for all above that sum, at the rate of four per centum; provided, however, that if the person acting as assignee was receiver of the property of the estate pending the election of an assignee, any compensation allowed him as such receiver shall be deducted from the compensation to which he otherwise would be entitled as such assignee.

Exhibit by assignee to court. Exceptions.

§ 33. At the expiration of three months from the appointment of the assignee in any case, or as much earlier as the court may direct, a time and place shall be fixed by the court at which the assignee shall exhibit to the court and to the creditors, and file just and true accounts of all his receipts and payments, verified by his oath, and a statement of the property outstanding, specifying the cause of its outstanding, also what debts or claims are yet undetermined, and stating what sum remains in his possession, and shall accompany the same with an affidavit that notice by mail has been given to all creditors named in the schedule filed by the debtor or the assignee that said accounts will be heard at a time specified in such notice, which time shall not be less than ten nor more than fifteen days from the filing of such accounts. At the hearing the court shall audit the accounts, and any person interested may appear and file exceptions thereto and contest the same, and thereupon the court may order a dividend paid to those creditors whose claims have been proven and allowed. Thereafter, further accounts, statements, and dividends shall be made in like manner as often as occasion requires; provided, however, that it shall be the duty of the assignee to file his final account within one year from the date of the order of adjudication, unless the court,

after notice to creditors, shall grant further time, upon a satisfactory showing that great loss and waste would result to the estate by reason of the conversion of the property into money within said time, or that it has been impossible to do so by reason of litigation.

Account by assignee, filing of. Distribution of assets.

§ 34. The court shall at any time, upon the motion of any two or more creditors, require the assignee to file his account in the manner and upon giving the notice specified in the preceding section, and if he has funds subject to distribution, he shall be required to distribute them without delay.

Creditors to share pro rata. Bail, sureties or guarantors, rights of.

§ 35. All creditors whose debts are duly proved and allowed shall be entitled to share in the property and estate pro rata without priority or preference whatever, other than as provided in this act and in section one thousand two hundred and four of the Code of Civil Procedure; provided, that any debt proved by any person liable as bail, surety, guarantor, or otherwise, for the debtor, shall not be paid to the person so proving the same until satisfactory evidence shall be produced of the payment of such debt by such person so liable; and the share to which such debt would be entitled may be paid into court, or otherwise held, for the benefit of the party entitled thereto, as the court may direct.

Dividends, not delayed by subsequent proof of debts. Rights of subsequent creditors.

§ 36. Whenever any dividend has been duly declared, the distribution of it shall not be stayed or affected by reason of debts being subsequently proved, but the creditors proving such debts shall be entitled to a dividend equal to those already received by the other creditors, before any further dividend is made to the latter; provided, the failure to prove such claim shall not have resulted from his own neglect.

Refusal to account or pay dividends, discharge of assignee. Duty of discharged assignee.

§ 37. Should the assignee refuse or neglect to render his accounts as required by sections thirty-three and thirty-four of this act, or pay over a dividend when he shall have, in the opinion of the court, sufficient funds for that purpose, the court shall immediately discharge such assignee from his trust, and shall have power to appoint another in his place. The assignee so discharged shall forthwith deliver over to the assignee appointed by the court all the funds, property, books, vouchers, or securities belonging to the insolvent, without charging or retaining any commission or compensation for his personal services.

Final account and dividend.

§ 38. Preparatory to the final account and dividend, the assignee shall submit his account to the court, and file the same, and shall at the time of filing accompany the same with an affidavit that a notice by mail has been given to all creditors who have proved their claims, that he will apply for a settlement of his account and for a discharge from all liability as assignee, at a time specified in such notice, which time shall not be less than ten or more than twenty days from such filing. At the hearing the court shall audit the account, and any person interested may appear and file exceptions in writing and contest the same. The court thereupon shall settle the account, and order a dividend of any portion of the estate, remaining undistributed, and shall discharge the assignee, subject to compliance with the order of the court, from all liability as assignee to any creditor of the insolvent.

ARTICLE V.

Partnerships. Corporations.

§ 39. INSOLVENCY OF PARTNERSHIPS.

§ 40. PROVISIONS OF ACT APPLICABLE TO CORPORATIONS.

Insolvency of partnerships.

§ 39. Two or more persons who are partners in business, or the surviving partner of any firm, may be adjudged insolvent, either on the petition of such partners, or any one of them, or on the petition of five or more creditors of the partnership, qualified as provided for in section nine of this act, in which case an order shall be issued in the manner provided by this act, upon which all the joint stock and property of the partnership, and also all the separate estate of each of the partners, shall be taken, excepting such parts thereof as may be exempt by law; and all the creditors of the company, and the separate creditors of each partner, shall be allowed to prove their respective debts; and the assignee shall be chosen by the creditors of the copartnership, and shall also keep separate accounts of the joint stock or property of the copartnership, and the separate estate of each member thereof, and after deducting out of the whole amount received by such assignee the whole amount of the expenses and disbursements, the net proceeds of the joint stock shall be appropriated to pay the creditors of the copartnership, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors; and if there shall be any balance of the separate estate of any partner after the payment of his separate debts, such balance shall be added to the joint stock for the payment of the joint creditors; and if there shall be any balance of the joint stock after the payment of the joint debts, such balance shall be divided and appropriated to and among the separate estate of the several partners according to their respective right and interest therein, and as it would have been if the partnership had been dissolved without any insolvency; and the sum so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts, and the certificate of discharge shall be granted or refused to each partner as the same would or ought to be if the proceedings had been by or against him alone under this act; and in all other respects the proceedings as to the partners shall be conducted in the like manner as if they had been commenced and prosecuted by or against one person alone. If such copartners reside in different counties, the court in which the petition is first filed shall retain exclusive jurisdiction over the case. If the petition be filed by less than all the partners of a copartnership, those partners who do not join in the petition shall be ordered to show cause why they, as individuals, and said copartnership, should not be adjudged to be insolvent, in the same manner as other debtors are required to show cause upon a creditor's petition, as in this act provided; and no order of adjudication shall be made in said proceedings until after the hearing of said order to show cause; provided, that in case of proceedings by or against surviving partners, as such, only the partnership interest of deceased partners shall be subject to the control of the court in the insolvency proceedings; but the surviving partner, assignee, or creditors may pursue the property of the deceased partners in the court having jurisdiction thereof in probate proceedings.

Provisions of act applicable to corporations.

§ 40. The provisions of this act shall apply to corporations, and upon the petition of any officer of any corporation, duly authorized by the vote of the board of directors or trustees, at a meeting specially called for that purpose, or by the assent in writing of a majority of the directors or trustees as the case may be, or upon a creditor's petition made and presented in the manner provided in respect to debtors, the like proceedings shall be had and taken as are provided in the case of debtors. All the provisions of the act which apply to the debtor, or set forth his duties, examination, and liabilities, or prescribe penalties, or relate to fraudulent conveyances, payments and

assignments, apply to each and every officer of any corporation in relation to the same matters concerning the corporation. Whenever any corporation is declared insolvent, all its property and assets shall be distributed to the creditors; but no discharge shall be granted to any corporation.

ARTICLE VI.

Proof of Debt.

- § 41. PROOF OF DEBT FROM DEBTOR.
- § 42. CLAIMS, PROOF AND ALLOWANCE OF TRIAL OF.
- § 43. PROOF, WHEN DEBTOR IS BOUND AS INDORSEER, SURETY, ETC.
- § 44. CONTINGENT DEBTS, HOW ALLOWED.
- § 45. BAIL, SURETY, GUARANTOR, ETC., PROOF OF DEBT BY.
- § 46. FIXED LIABILITY, PROVING PROPORTIONATE PART.
- § 47. SET-OFF OR COUNTER-CLAIM.
- § 48. MORTGAGEE, PLEDGEE, ETC., CONDITIONS OF ADMISSION AS CREDITOR.
- § 49. CREDITOR PROVING CLAIM BARRED FROM ACT. VALID LIEN. UNREASONABLE DELAY. FINAL JUDGMENT.
- § 50. FRAUDULENT PREFERENCE. PROOF OF CLAIM. DIVIDENDS.
- § 51. COURT MAY EXAMINE DEBTOR, ETC.

Proof of debt from debtor.

§ 41. All debts due and payable from the debtor at the time of the adjudication of insolvency, and all debts then existing but not payable until future time, a rebate of interest being made when no interest is payable by the terms of the contract, may be proved against the estate of the debtor.

Claims, proof and allowance of. Trial of.

§ 42. All demands against the debtor for or on account of any goods or chattels wrongfully taken, converted, or withheld by him, may be proved and allowed as debts to the amount of the value of the property so withheld, from the time of the conversion; provided, however, that if the assignee, or any creditor whose claim has been proven against the estate, shall request it in writing, the court shall require the matter of such claim for damages to be tried as an ordinary action at law, to determine the liability of the debtor for such damages.

Proof when debtor is bound as indorser, surety, etc.

§ 43. If the debtor shall be bound as indorser, surety, bail, or guarantor, upon any bill, bond, note, or other specialty or contract, or for any debt of any person, and his liability shall not have become absolute until the adjudication of insolvency, the creditor may prove the same after such liability shall have become fixed, and before the final dividend shall have been declared.

Contingent debts, how allowed.

§ 44. In all cases of contingent debts and contingent liabilities, contracted by the debtor, and not herein otherwise provided for, the creditor may make claim therefor and have his claim allowed, with the right to share in the dividends, if the contingency shall happen before the order of the final dividend; or he may, at any time, apply to the court to have the present value of the debt or liability ascertained and liquidated, which shall be done in such manner as the court shall order, and shall be allowed to prove for the amount so ascertained.

Bail, surety, guarantor, etc., proof of debt by.

§ 45. Any person liable as bail, surety, or guarantor, or otherwise, for the debtor, who shall have paid the debt, or any part thereof, in discharge of the whole, shall be entitled to prove such debt, or to stand in the place of the creditor, if he shall have proved the same, although such payments shall have been made after the proceedings in insolvency were commenced; and any person so liable for the debtor, and who has not

paid the whole of said debt, but is still liable for the same, or any part thereof, may, if the creditor shall fail or omit to prove such debt, prove the same in the name of the creditor.

Fixed liability, proving proportionate part.

§ 46. Where the debtor is liable to pay rent, or other debt falling due at fixed and stated periods, the creditor may prove for a proportionate part thereof up to the time of the insolvency, as if the same became due from day to day, and not at such fixed and stated periods.

Set-off or counter-claim.

§ 47. In all cases of mutual debts and mutual credits between the parties, the account between them shall be stated, and one debt set off against the other, and the balance only shall be allowed and paid. But no set-off or counterclaim shall be allowed of a claim in its nature not provable against the estate; provided, that no set-off or counterclaim shall be allowed in favor of any debtor to the insolvent of a claim purchased by or transferred to him after the filing of the petition by or against him.

Mortgagee, pledgee, etc., conditions of admission as creditor.

§ 48. When a creditor has a mortgage, or pledge of real or personal property of the debtor, or a lien thereon, for securing the payment of a debt owing to him from the debtor, he shall be admitted as a creditor only for the balance of the debt, after deducting the value of such property, to be ascertained by agreement between him and the receiver, if any, and if no receiver, then upon such sum as the court, or a judge thereof, may decide to be fair and reasonable, before the election of an assignee, or by a sale thereof, to be made in such manner as the court, or judge thereof, shall direct; or the creditor may release or convey his claim to the receiver, if any, or if no receiver then to the sheriff, before the election of an assignee, or to the assignee if an assignee has been elected, upon such property, and be admitted to prove his whole debt. If the value of the property exceeds the sum for which it is so held as security, the assignee may release to the creditor the debtor's right of redemption thereon on receiving such excess; or he may sell the property, subject to the claim of the creditor thereon, and in either case the assignee and creditor, respectively, shall execute all deeds and writings necessary or proper to consummate the transaction. If the property is not sold or released, and delivered up, or its value fixed, the creditor shall not be allowed to prove any part of his debt.

Creditor proving claim barred from action. Valid lien. Unreasonable delay. Final judgment.

§ 49. No creditor, proving his debt or claim, shall be allowed to maintain any suit at law or in equity therefor, against the debtor, but shall be deemed to have waived all right of action and suit against him, and all proceedings already commenced, or unsatisfied, judgment already obtained thereon, shall be deemed to be discharged and surrendered thereby; and after the debtor's discharge, upon proper application and proof to the court having jurisdiction, all such proceedings shall be dismissed, and such unsatisfied judgments satisfied of record; provided, that no valid lien existing in good faith thereunder shall be thereby affected; and further provided, that a creditor proving his debt or claim shall not be held to have waived his right of action or suit against the debtor where a discharge has been refused or the proceedings have been determined without a discharge. And no creditor whose debt is provable under this act shall be allowed, after the commencement of proceedings in insolvency, to prosecute to final judgment any action therefor against the debtor until the question of the debtor's discharge shall have been determined, and any such suit or proceeding shall, upon the application of the debtor or of any creditor, or the assignee, be stayed to await the

determination of the court in insolvency on the question of discharge; provided, that there be no unreasonable delay on the part of the debtor or the petitioning creditors, as the case may be, in prosecuting the case to its conclusion; and provided also, that if the amount due the creditor is in dispute, the suit, by leave of the court, in insolvency may proceed to judgment for the purpose of ascertaining the amount due, which amount may be proven in insolvency, but execution shall be stayed as aforesaid; provided, further, that where a valid lien or attachment has been acquired or secured in any such action, and an undertaking been offered and accepted in lieu of such lien or attachment, the case may be prosecuted to final judgment for the purpose of fixing the liability of the sureties upon such undertaking, but execution against the insolvent upon such judgment shall be stayed. [Amendment, Stats. 1897, p. 36.]

Fraudulent preference. Proof of claim. Dividends.

§ 50. Any person who shall have accepted any preference, having reasonable cause to believe that the same was made or given by the debtor contrary to any provision of this act, shall not prove the debt or claim on account of which the preference was made or given; nor shall he receive any dividend thereon until he shall first have surrendered to the assignee all property, money, benefit, or advantage received by him under such preference.

Court may examine debtor, etc.

§ 51. The court may, upon the application of the assignee, or of any creditor of the debtor, or without any application, before or after adjudication in insolvency, examine upon oath the debtor in relation to his property and his estate and any person tendering or making proof of claims, and may subpoena witnesses to give evidence relating to such matters. All examinations of witnesses shall be had and depositions shall be taken in accordance with and in the same manner as is provided by the Code of Civil Procedure.

ARTICLE VII.

Discharge.

§ 52. WHEN DEBTOR MAY APPLY FOR DISCHARGE. NOTICE OF APPLICATION.

§ 53. DISCHARGE, WHEN NOT GRANTED.

§ 54. OPPOSITION TO DISCHARGE.

§ 55. CERTIFICATE OF DISCHARGE.

§ 56. FRAUDULENT DEBTS NOT DISCHARGED. DISCHARGE NOT TO AFFECT CO-DEBTOR.

§ 57. DISCHARGE RELEASES DEBTOR FROM WHAT. PROVISIO.

§ 58. REFUSAL OF DISCHARGE, EFFECT OF.

When debtor may apply for discharge. Notice of application.

§ 52. At any time after the expiration of three months from the adjudication of insolvency, but not later than one year from such adjudication, unless the property of the insolvent has not been converted into money, the debtor may apply to the court for a discharge from his debts, and the court shall thereupon order notice to be given to all creditors who have proved their debts, to appear, on a day appointed for that purpose, and show cause why a discharge should not be granted to the debtor; said notice shall be given by mail and by publication at least once a week, for four weeks, in a newspaper published in the county, or city and county, or, if there be none, in a newspaper published nearest such county, or city and county; provided, that if no debts have been proven, such notice shall not be required.

Discharge, when not granted.

§ 53. No discharge shall be granted, or if granted shall be valid, if the debtor shall have sworn falsely in his affidavit annexed to his petition, schedule, or inventory, or upon any examination in the course of the proceedings in insolvency, in relation to any material fact concerning his estate, or his debts, or to any other material fact; or if he

has concealed any part of his estate or effects, or any books or writing relating thereto; or if he has been guilty of fraud or wilful neglect in the care, custody, or delivery to the assignee of the property belonging to him at the time of the presentation of his petition and inventory, excepting such property as he is permitted to retain under the provisions of this act, or if he has caused or permitted any loss or destruction thereof; or if, within one month before the commencement of such proceedings, he has procured his lands, goods, moneys, or chattels to be attached, or seized on execution; or if he has destroyed, mutilated, altered, or falsified any of his books, documents, papers, writings, or securities, or has made, or been privy to the making of, any false or fraudulent entry in any book of account or other document with intent to defraud his creditors; or if he has given any fraudulent preference, contrary to the provisions of this act, or made any fraudulent payment, gift, transfer, conveyance, or assignment of any part of his property, or has lost any part thereof in gaming, or has admitted a false or fictitious debt against his estate; or, if having knowledge that any person has proven such false or fictitious debt, he has not disclosed the same to his assignee within one month after such knowledge; or if, being a merchant or tradesman, he has not, subsequently to the passage of this act, kept proper books of account; or if he, or any other person on his account, or in his behalf, has influenced the action of any creditor, at any stage of the proceedings, by any pecuniary consideration or obligation; or if he has, in contemplation of becoming insolvent, made any pledge, payment, transfer, assignment, or conveyance of any part of his property, directly or indirectly, absolutely or conditionally, for the purpose of preferring any creditor or person having a claim against him, or who is, or may be, under liability for him, or for the purpose of preventing the property from coming into the hands of the assignee, or of being distributed under this act in satisfaction of his debts; or if he has been convicted of any misdemeanor under this act, or has been guilty of fraud contrary to the true intent of this act; or, in case of voluntary insolvency, has received the benefits of this or any other act of insolvency or bankruptcy, within three years next preceding his application for discharge; or if insolvency proceedings in which he could have applied for a discharge are pending by or against him in the superior court of any other county, or city and county, in the state. And before any discharge is granted, the debtor shall take and subscribe an oath to the effect that he has not done, suffered, or been privy to any act, matter, or thing specified in this act, as grounds for withholding such discharge or as invalidating such discharge, if granted.

Opposition to discharge.

§ 54. Any creditor opposing the discharge of a debtor shall file specifications in writing, of the ground of his opposition, and after the debtor has filed and served his answer thereto, which pleadings shall be verified, the court shall try the issue or issues raised, with or without a jury, according to the practice provided by law in civil actions.

Certificate of discharge.

§ 55. If it shall appear to the court that the debtor has in all things conformed to his duty under this act, and that he is entitled under the provisions thereof to receive a discharge, the court shall grant him a discharge from all his debts, except as hereinafter provided, and shall give him a certificate thereof, under the seal of the court, in substance as follows: In the superior court of the county of ———, state of California. Whereas, ——— has been duly adjudged an insolvent under the insolvent laws of this state, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by the court that said ——— be forever discharged from all debts and claims, which by said insolvent laws are made provable against his estate, and which existed on the ——— day of ———, on which the petition of adjudication was filed by (or against) him, excepting such debts, if any, as are by said insolvent laws

excepted from the operation of a discharge in insolvency. Given under my hand, and the seal of the court, this ——— day of ———, A. D. ——. Attest: ———, clerk.
(Seal) ———, judge.

Fraudulent debts not discharged. Discharge not to affect codebtor.

§ 56. No debt created by fraud or embezzlement of the debtor, or his defalcation as a public officer, or while acting in a fiduciary character, shall be discharged under this act, but the debt may be proved, and the dividend thereon shall be a payment on account of said debt; and no discharge granted under this act shall release, discharge, or affect any person liable for the same debt, for or with the debtor, either as partner, joint contractor, indorser, surety, or otherwise.

Discharge releases debtor from what. Proviso.

§ 57. A discharge, duly granted under this act, shall, with the exceptions aforesaid, release the debtor from all claims, debts, liabilities, and demands, set forth in his schedule, or which were or might have been proved against his estate in insolvency, and may be pleaded by a simple averment that on the day of its date such discharge was granted to him, setting forth the same in full, and the same shall be a complete bar to all suits brought on any such debts, claims, liabilities, or demands, and the certificate shall be prima facie evidence in favor of such fact and of the regularity of such discharge; provided, however, that any creditor of said debtor, whose debt was proved or provable against the estate in insolvency, who shall see fit to contest the validity of such discharge on the ground that it was fraudulently obtained, and who has discovered the facts constituting the fraud subsequent to the discharge, may, at any time within two years after the date thereof, apply to the court which granted it to set it aside and annul the same, or if the same shall have been pleaded, the effect thereof may be avoided collaterally upon any such grounds.

Refusal of discharge, effect of.

§ 58. The refusal of a discharge to the debtor shall not affect the administration and distribution of his estate under the provisions of this act.

ARTICLE VIII.

Fraudulent Preferences and Transfers.

§ 59. FRAUDULENT PREFERENCES AND TRANSFERS.

Fraudulent preferences and transfers.

§ 59. If any debtor being insolvent, or in contemplation of insolvency, within one month before the filing of a petition by or against him, with a view to give a preference to any creditor, or person having a claim against him, or who is under any liability for him, procures any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, mortgage, assignment, transfer, sale, or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, to any one, the person receiving such payment, pledge, mortgage, assignment, transfer, sale, or conveyance, or to be benefited thereby, or by such attachment or seizure, having reasonable cause to believe that such debtor is insolvent, and that such attachment, seizure, payment, pledge, mortgage, conveyance, transfer, sale, or assignment is made with a view to prevent his property from coming to his assignee in insolvency, or to prevent the same from being distributed ratably among his creditors, or to defeat the object of, or in any way hinder, impede, or delay the operation of, or to evade any of the provisions of this act, such attachment, sequestration, seizure, payment, pledge, mortgage, transfer, sale, assignment, or conveyance, is void, and the assignee, or the receiver, may recover the property, or the value thereof, as assets of such insolvent debtor; and if such payment, pledge, mortgage, conveyance, sale, assignment, or trans-

fer is not made in the usual and ordinary course of business of the debtor, or if such seizure or sequestration is made under a judgment which the debtor has confessed or offered to allow, that fact shall be prima facie evidence of fraud. All assignments, transfers, conveyances, mortgages, or encumbrances of real estate shall be deemed, under this section, to have been made at the time the instrument conveying or affecting such realty was filed for record in the county recorder's office of the county, or city and county, where the same is situated.

ARTICLE IX.

Penal Clauses.

§ 60. PENAL OFFENSES. PENALTY.

Penal offenses. Penalty.

§ 60. From and after the taking effect of this act, if any debtor or insolvent shall, after the commencement of proceedings in insolvency, secrete or conceal any property belonging to his estate, or part with, conceal, or destroy, alter, mutilate, or falsify, or cause to be concealed, destroyed, altered, mutilated, or falsified, any book, deed, document, or writing relating thereto, or remove, or cause to be removed, the same or any part thereof, with intent to prevent it from coming into the possession of the assignee in insolvency, or to hinder, impede, or delay his assignee in recovering or receiving the same, or make any payment, gift, sale, assignment, transfer, or conveyance of any property belonging to his estate, with like intent, or shall spend any part thereof in gaming; or shall, with intent to defraud, wilfully and fraudulently conceal from his assignee, or fraudulently or designedly omit from his schedule any property or effects whatsoever; or, if in case of any person having, to his knowledge or belief, proved a false or fictitious debt against his estate, he shall fail to disclose the same to his assignee within one month after coming to the knowledge or belief thereof; or shall attempt to account for any of his property by fictitious losses or expenses; or shall, within three months before commencement of proceedings of insolvency, under the false pretense of carrying on business and dealing in the ordinary course of trade, obtain on credit from any person any goods or chattels, with intent to defraud; or shall, with intent to defraud his creditors, within three months next before the commencement of proceedings in insolvency, pawn, pledge, or dispose of, otherwise than by bona fide transactions in the ordinary way of his trade, any of his goods and chattels which have been obtained on credit and remain unpaid for, he shall be deemed guilty of misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail for not less than three months nor more than two years.

ARTICLE X.

Miscellaneous.

§ 61. PROCEEDINGS TO CONTINUE AFTER DEATH OF DEBTOR.

§ 62. STATUTE OF LIMITATIONS.

§ 63. CREDITOR MAY BE REPRESENTED BY ATTORNEY OR AGENT.

§ 64. EXEMPTIONS. HOMESTEAD.

§ 65. COMMENCEMENT OF PROCEEDINGS, WHAT DEEMED TO BE.

§ 66. WORDS DEFINED.

§ 67. RECEIVER, APPOINTMENT OF. ACCOUNT, REPORT, COMPENSATION.

§ 68. SECTIONS OF CODE OF CIVIL PROCEDURE RELATING TO CONTEMPTS, APPLICABLE.

§ 69. ATTACHMENTS. COSTS A PREFERRED DEBT. AWARD OF COSTS.

§ 70. DISMISSAL OF VOLUNTARY PETITION.

§ 71. APPEALS.

§ 72. REPEAL OF PRIOR ACT.

Proceedings to continue after death of debtor.

§ 61. If any debtor shall die after the order of adjudication, the proceedings shall be continued and concluded in like manner and with like validity and effect as if he had lived.

Statute of limitations.

§ 62. Pending proceedings by or against any person, copartnership, or corporation, no statute of limitations of this state shall run against a claim which in its nature is provable against the estate of the debtor.

Creditor may be represented by attorney or agent.

§ 63. Any creditor, at any stage of the proceedings, may be represented by his attorney or duly authorized agent.

Exemptions. Homestead.

§ 64. It shall be the duty of the court having jurisdiction of the proceedings to exempt and set apart, for the use and benefit of said insolvent, such real and personal property as is by law exempt from execution; and also a homestead, in the manner provided in section one thousand four hundred and sixty-five of the Code of Civil Procedure. But no property or homestead shall be set apart, as aforesaid, until it is first proved that notice of the hearing of the application therefor has been duly given by the clerk, by causing to be posted in at least three public places in the county at least ten days prior to the time of such hearing, setting forth the name of said insolvent debtor, and the time and place appointed for the hearing of such application, which said notice shall briefly indicate the homestead sought to be exempted or the property sought to be set aside; and the decree must show that such proof was made to the satisfaction of the court, and shall be conclusive evidence of that fact.

Commencement of proceedings, what deemed to be.

§ 65. The filing of a petition by or against a debtor upon which, or upon an amendment of which, an order of adjudication in insolvency may be made, shall be deemed to be the commencement of proceedings in insolvency under this act.

Words defined.

§ 66. Words used in this act in the singular, include the plural, and in the plural, the singular, and the word "debtor" includes partnerships and corporations.

Receiver, appointment of. Account, report, compensation.

§ 67. Upon the filing of either a voluntary or involuntary petition in insolvency, a receiver may be appointed by the court in which the proceeding is pending, or by a judge thereof, at any time before the election of an assignee, when it appears by the verified petition of a creditor that the assets of the insolvent, or a considerable portion thereof, have been pledged, mortgaged, transferred, assigned, conveyed, or seized, on legal process, in contravention or violation of the provisions of section fifty-nine of this act, and that it is necessary to commence an action to recover the same. The appointment, oath, undertaking and powers of such receiver shall in all respects be regulated by the general laws of the state applicable to receivers. When an assignee is chosen, and has qualified, the receiver shall forthwith return to court an account of the assets and property which have come into his possession, and of his disbursements, and a report of all actions or proceedings commenced by him for the recovery of any property belonging to the estate, and the court shall thereupon summarily hear and settle the receiver's account, and shall allow him a just compensation for his services, including a reasonable attorney's fee, whereupon the receiver shall deliver all property, assets, or effects remaining in his hands, to the assignee, who shall be substituted for the receiver in all pending actions or proceedings.

Sections of Code of Civil Procedure relating to contempts applicable.

§ 68. All sections of the Code of Civil Procedure of the state of California relating to contempts are hereby made applicable to all proceedings under this act.

Attachment. Costs a preferred debt. Award of costs.

§ 69. When an attachment has been made and is not dissolved before the commencement of proceedings in insolvency, or is dissolved by an undertaking given by the defendant, if the claim upon which the attachment suit was commenced is proved against the estate of the debtor, the plaintiff may prove the legal costs and disbursements of the suit, and of the keeping of the property, and if the levying of said attachment and the putting of the sheriff's keeper in charge has had the effect of preserving intact the assets of said insolvent, and the general creditors have been benefited thereby, the amount of costs allowed shall be a preferred debt. In all contested matters in insolvency the court may, in its discretion, award costs to either party, to be paid by the other, or to either or both parties, to be paid out of the estate, as justice and equity may require; and in awarding costs, the court may issue execution therefor. In all involuntary cases under this act, the court shall allow the petitioning creditors out of the estate of the debtor, if any adjudication of insolvency be made, as a preferred claim, all legal costs and disbursements incurred by them in that behalf. [Amendment approved March 25, 1911; Stats. 1911, p. 489.]

Dismissal of petition where it is voluntary.

§ 70. The court may, upon the application of the debtor, if it be a voluntary petition, or of the petitioning creditors, if a creditor's petition, dismiss the petition and discontinue the proceedings at any time before the appointment of an assignee upon giving ten days' notice to the creditors, in the same manner that notice of the time and place of an election of an assignee is given, if no creditor files written objections to such dismissal; provided, however, that by consent of all creditors the proceedings may be dismissed at any time. After the appointment of an assignee, no dismissal shall be made without the consent of all parties interested in or affected thereby.

Appeals.

§ 71. An appeal may be taken to the supreme court in the following cases:

1. From an order granting or refusing an adjudication of insolvency;
2. From an order made at the hearing of any account of an assignee, allowing or rejecting a creditor's claim, in whole or in part;
3. From an order granting or overruling a motion for a new trial;
4. From an order settling an account of an assignee;
5. From an order against or in favor of setting apart homestead or other property claimed as exempt from execution;
6. From an order granting or refusing a discharge to the debtor.

The notice, undertaking, and procedure on appeal shall conform to the general laws of this state regulating appeals in civil cases, except that when an assignee has given an official undertaking and appeals from a judgment or order in insolvency, his official undertaking stands in the place of an undertaking on appeal, and the sureties therein are liable on such undertaking; provided, however, that an appeal from an order granting or refusing an adjudication of insolvency shall not stay proceedings unless a written undertaking be entered into on the part of the appellant, with at least two sureties, in such an amount as the court, or a judge thereof, may direct, but not less than double the value of the property involved, to the effect that if the order appealed from be affirmed, or the appeal dismissed, appellant will pay all costs and damages which the adverse parties may sustain by reason of the appeal and the stay of proceedings.

Repeal of prior act.

§ 72. The insolvent act of eighteen hundred and eighty, and all amendments thereto, are hereby repealed; provided, however, that such repeal shall in no manner invalidate or affect any case in insolvency instituted and pending in any court on and prior to the day when this act shall take effect.

I. CONSTITUTIONALITY.

1. Act of 1852.
2. Legislative power — Concurrent jurisdiction.
3. Same—Notice to creditors — Order in chambers.
4. Supplementary act of 1876.
5. Appeal in contempt proceedings.
6. Impairing obligations of contracts.
7. Extra-territorial operation.
8. Power of congress not exclusive.

II. FEDERAL BANKRUPTCY ACT.

9. Federal Bankruptcy Act of 1898.
10. Federal act supersedes state law.
11. Enactment of state law while federal law was in force.
12. Suspension of state law.
13. Enactment of federal law.
14. Insolvent act of 1852.
15. Suspension of cases pending.
16. Repeal of federal law—Revival of state law.
17. Jurisdiction of U. S. courts exclusive.
- 17a. Mining corporations.

III. INSOLVENT ACT.

- 18, 19. Construction.
20. Act of 1852 not a bankrupt act.
21. Surrender of property by preferred creditor.
- 22-24. Partnerships.
25. Set-off.
- 25a. Gamblers entitled to benefits.
- 25b. Insurance corporations—Act applies to.
- 25c. Not superseded by § 601, Political Code.
- 25d. Saving clause of Act of 1880—Effect of.

IV. PROCEEDINGS.

a. In general.

- 25c. Special proceedings — No intendments.
26. Special proceeding—Not an action.
27. Collection of debts—Provable claim.
28. Special case—under Act of 1852.
29. Regularity.
- 30, 30a. Collateral attack.
31. Resident creditors only may institute.
32. Dismissal.
33. Appearance of insolvent.
34. Strict compliance with act essential.
- 34a. Same—Question of law.
- 35, 35a. Insolvency proceeding against insurance company.
36. Abatement by death of insolvent.
- b. Jurisdiction of court.*
37. Jurisdiction of supreme court—Constitutional amendments.
38. Prerequisites—District court.
39. Petition averment of creation of debts in state unnecessary.
40. When first step shows want of jurisdiction.
41. Foreign corporation.
42. How jurisdiction acquired.
43. Same—Insolvent corporation.

44. Jurisdiction attaches.
45. Jurisdictional facts — Proof of losses.
46. Same—Residence.
47. Jurisdiction to appoint assignee.
48. Jurisdiction to discharge insolvent.
49. Jurisdiction—Question of law for court, not of fact for jury.
50. Subsequent facts not conditions of jurisdiction.
51. Jurisdiction after discharge.
52. Jurisdiction not lost by discharge.
53. Jurisdiction is one quasi in rem.
54. Where petition does not show fraud.
55. Custody of estate when federal act becomes affective not lost when jurisdiction previously acquired.
56. Jurisdiction in equity to compel assignee to execute trust.
57. Proceedings are not stricti juris.
58. Several petitions of partners.
59. Debts of banker.
- 59a. Failure to file bond not jurisdictional.

c. Parties.

60. No parties except insolvent at filing of petition.
61. Insolvent, who is.
- 62-66. Insolvency defined.
67. Excess of assets over liabilities.
68. Means in another state.
69. Act of insolvency.
70. Partnership.
71. Insurance companies.

d. Petition.

72. Commencement of proceedings.
73. Complaint—Petition and schedule.
74. How addressed and entitled.
75. What must state—Discharge of debts.
76. Same—Indebtedness to five creditors.
77. Same—Same.
78. Same—Same — Creditors described as firms.
79. Same—Same—Same.
80. What need not state—Six months' residence.
81. Same—Same.
82. Same—Same.
- 82a. Place of business of corporation.
83. Residence—Sufficient statement.
84. Same—Same.
85. Same—Failure to state six months' residence.
86. Averment of creation of debts in state.
87. Statement of name of each creditor.
88. Failure to include all property.
89. Insufficiency in mode of statement — Collateral attack.
90. Vagueness of statement—Collateral attack.
91. Statement of insolvency of debtor, necessary.
92. Specific allegations of fraud.
93. Amended petition—Four creditors.
94. Allegation of partnership.
95. Negating fiduciary character of debts.
96. Partnership petition—Sufficiency of.

- 97. Application in joint name of partners.
- 97a. Same—Surrender of joint property only, insufficient.
- 98. Insufficiency not obviated by proof.
- 99. Signature of insolvent not required.
- 99a. Failure of petitioners to sign not ground of collateral attack.
- 100. Signature of insolvent not required—May be signed by attorney.
- 101. Need not be verified.
- 102. Creditors' petition—Verification.
- 103. Verification in usual form.
- 104. Amended petition—Verification by new creditor.
- 105. Prayer for discharge not necessary.
- 106. Collateral attack.

e. Schedule.

- 107. Schedule and petition constitute complaint.
- 108. Schedule consists of three parts: Losses, debts, and inventory.
- 109. Inventory most material part.
- 110. Defective statement not ground of dismissal.
- 111. Failure to state items with sufficient particularity.
- 112. Same—Creditor not prejudiced.
- 113. Statement when creditor unknown.
- 114. Omission of dollar mark.
- 115. Failure to allege ignorance when creditor unknown.
- 116. Insufficiently described note.
- 117. Variance in description of debt.
- 118. Same.
- 119. Defective description of promissory notes.
- 120. Intentional omission of property.
- 121. Inaccurate description of promissory note.
- 122. Meagreness of detail.
- 123. Errors in not fatal to right to discharge.
- 124. Examination of insolvent in reference to schedule.
- 125. Omission of worthless debts not fraudulent.
- 126. Omission of property from verified schedule—Perjury.
- 127. Debts—Unliquidated damages.
- 128. Same—Provable debt.
- 129. Same—Purpose of schedule.
- 129a. Same — "False and fictitious debts."
- 130. Same—Partnership property.
- 130a. Same—Contingent debts.
- 131. Losses—Vague and indefinite statement.
- 131a. Same—Estimate not honestly made.
- 131b. Indebtedness of insurance companies—Estimate of.
- 132. Assets not losses material in context of discharge.
- 133. Losses—Amend to make more definite.
- 134. Same—Schedule fatally defective.
- 134a. Same—Summary of.
- 135. Same—Purpose is to show cause of insolvency.
- 135a. Assets—Estate in expectancy.
- 136. Signature of insolvent.

- 136a. Same—Schedule of losses only.
- 137. Verification necessary.
- 138. Verification by involuntary insolvent not required.
- 139. Verification before judge not before notary.

f. Answer.

- 140. Verification.
- 141. Plea to charge of fraud.

g. Bond.

- 142. Covers only costs and damages.
- 143. Necessity—A proceeding without bond.
- 144. Failure to give.
- 145. Failure to file not jurisdictional.
- 146. Defect in.
- 147, 147a. Sufficiency.
- 148. Same—Creditors and debtor only interested.
- 149. Effect of objections to.
- 150. Creditors only can sue.
- 151. Wrongful seizure and detention of property or money—Assignee's sureties not liable.

h. Order to show cause, and notice to creditors.

- 152. Publication—Sufficiency.
- 153. Order to show cause—Served by publication.
- 154. Same—Sufficient.
- 155. Same—Insufficient.
- 156. Notice to creditors—Order to publish and order for meeting of creditors.
- 157. Same—Not process.
- 158. Same—No provision for notice to signers of creditors' petition.
- 159. Same—Publication.
- 160. Same—Date of publication.
- 161. Same—Publication sufficient.
- 162. Same—Same.
- 163. Same—Same.
- 164. Same—Newspaper need not be designated.
- 165. Same—Service by mail.
- 166. Same—Service by mail sufficient.
- 167. Same—Proof of publication.
- 168. Same—Same.
- 169. Same—Same—May be by affidavit.
- 170. Same—Affidavit of publication.

i. Service of copy of petition on debtor.

- 171. Collateral attack, after service.

j. Receiver.

- 172. Functions.
- 173. Authority to bring suit.
- 174. Goods of third party.
- 175. Not liable for tort.
- 176. The sheriff a mere custodian.
- 177. Refusal to take possession of goods offered voluntarily.
- 178. Is not a trespasser in accepting goods voluntarily surrendered.
- 179. Holds possession for the court.
- 180. Not protected when he takes goods of third person.
- 181. No right to seize goods of insolvent in hands of third person.
- 182. Examination of insolvent.
- 183. Appointment in chambers.

k. Assignee.

- 184. Officer of court.
- 185. Election—Who may vote—Unsecured claim.
- 186. Same—Majority in amount of claims.
- 187-196. Title of.
- 197. Same—Voluntary assignment.
- 198. Concealment of newly discovered property.
- 199. Conveyance of newly discovered property to insolvent.
- 200. Delivery of property to assignee.
- 201. Discovery of property after discharge.
- 202. Right of recovery — Fraudulent transfer.
- 203. Remedies of.
- 204, 205. Recovery of personal property.
- 206. Right to set aside fraudulent conveyance.
- 207. Action for conversion.
- 208. Right against execution levy.
- 209. Petition to sell insolvent estate.
- 210. Sale—Vested devise.
- 211, 212. Sale of insolvent's estate.
- 212a. Sale may be set aside.
- 213. Petition to sell estate of insolvent.
- 214. Liability of.
- 215. Same—Mistake in bookkeeping.
- 216. Same—Expenses.
- 217. Itemized account.
- 217a. Settlement of account.
- 218. Commissions.
- 219. Same—Disbursement of surplus.
- 220. Power to carry on business.

l. Assignments.

- 221. Void unless made under act.
- 222. Construction.
- 223. Growing crop on homestead.
- 224. Time of taking effect.
- 225. Requirements, under the act.
- 226. Same—Must embrace a trust.
- 227-231. Assignment for the benefit of creditors.
- 231a. Same—Mortgage.
- 232. Same—Purpose of 39th section of insolvent act of 1852.
- 233. Same—Repeal of code provisions.
- 234. Exempt property does not pass.
- 234a. Not void because property inventoried too high.

m. Exemptions.

- 235. Objections to.
- 236. Double claim.
- 237. Farm implements.
- 238. Partnership property.

n. Homestead.

- 239. Leased property.
- 240. Set aside only on insolvent's request.
- 241. Encumbrances not considered in fixing value.
- 242. Created by recorded declaration.
- 243. Hotel.
- 244. Under Act of 1880.
- 245. Opposition.

*1. Attachment.**o. Property covered by lien.*

- 246. Appointment of receiver — Effect upon lien.
- 247. Levy of, within one month.
- 248. Same.
- 249. Costs in wrongful attachment.
- 250, 251. Dissolution.
- 252. Release of sureties.
- 253. Same—Redelivery levied.
- 2. Execution.
- 254. Levy within one month.
- 254a. Not affected by adjudication.
- 3. Mechanics.
- 255. Not provable in insolvency proceedings.
- 4. Mortgage.
- 256. Foreclosure suits not covered.
- 257. Mortgage liens not affected by proceedings.
- 258. Chattel mortgage—Delayed record.
- 259. Possession of mortgagee—Knowledge of insolvency.
- 260. Holding title as security for purchase-price.
- 261. Claim secured by mortgage on exempt property.
- 262. Same—Right to dividends.
- 263. Order staying proceedings does not prevent mortgage foreclosure.
- p. Fraudulent transfers.*
- 264. A transfer to hinder, delay, and defraud creditors is void.
- 265. Same.
- 266. Insolvent act deals with transfers to creditors only.
- 267-269. Transfers with one month.
- 270. Transfer in preference to creditor not necessarily fraudulent.
- 271. No rule of law to prevent an insolvent debtor from giving preference.
- 272. Same—Section 39 does not prohibit preferences.
- 273. Transferee's knowledge of insolvency.
- 274. Transfer to secure future payments—Good faith of transferee—Ignorance of insolvency.
- 275. Transferee's want of notice of seller's fraud.
- 276. Creditors knowledge of insolvency implied when.
- 277. Same.
- 278, 279. Transfer out of the usual course of business.
- 280, 281. Same—Prima facie presumption.
- 282. Same—Transfer on Sunday with knowledge of attachment.
- 283. Same—Bill of sale of entire stock in trade.
- 284. Same—Entire stock in trade.
- 285-287. Same—Books of account.
- 288. Same—Instruction held out of place.
- 289. Action by assignee—Creditor without knowledge of insolvency.
- 289a. Same—Transfer eight months prior to commencement of proceedings.
- 289b. Same—Unsuccessful defense — Attorney's fee.

290. Question of intent is one of fact, not of law.
291. Motives creditor immaterial, when.
292. Payment of debt incurred in fiduciary capacity.
293. Sale of entire stock of goods with intent to give preference.
294. Good faith of transferee—Payment of full value.
295. Purchase by copartner at public auction.
296. Transfer void as to transferee and subsequent transferees.
297. Prima facie case rebutted.
298. Confession of judgment in favor of creditor.
299. Prohibition to restrain assignee's action.
- 299a. Transfer to hinder, delay, and defraud creditors involves actual fraud.
- 299b. Act construed as to fraud.
- q. Debts in fiduciary capacity.*
300. Dealer in mining stocks.
- r. Hearing and trial.*
301. Time set for hearing — Adjournment of court.
- 301a. Issue of fraud should be tried by a jury.
- s. Evidence.*
302. Prima facie evidence of fraud subject to rebuttal.
- 303, 304. Certified copy of assignment conclusive.
305. Same—Legislative power to make rule.
306. Fraudulent understanding.
307. Conflict as to fraudulent transfer.
308. Prima facie evidence of fraudulent transfer.
309. Same—Sufficient to set aside transfer.
310. Same—Transfer not in usual course of business.
311. Knowledge of insolvency—Admissions.
312. Affidavit of insolvent.
313. Proof of non-citizenship — non-residence.
- 313a. Account books—Failure to present is prima facie fraudulent.
- 313b. Certificate of discharge is prima facie evidence of regularity of proceedings.
- 313c. Same.
- t. Instructions.*
314. Fraud in execution of deed—Instruction erroneous.
315. Fraudulent intent — Instruction erroneous.
- u. Findings and conclusions.*
316. Unnecessary.
317. Finding of indebtedness sufficiently supported.
- v. Adjudication of insolvency.*
318. May be made on return day of order to show cause, without meeting of creditors.
319. When made.
320. Order is interlocutory—Entry in minutes.
321. Order relates back to date petition was filed.
322. Order is sufficient proof, when.
323. Sufficiency of order.
- 323a. Attorney's fee for contesting.
- w. Notice of adjudication.*
324. Mailing sufficient, when.
325. Clerical error in affidavit of mailing.
326. Clerical error in publication.
- x. Discharge.*
327. Pending appeal from order setting apart homestead.
328. Pending election of assignee.
329. Objections to discharge.
330. Assignee may oppose on ground of fraud of insolvent.
331. Creditor's opposition.
332. Same—Right of creditor to oppose.
333. Same—Same—Need not be judgment creditor.
334. Same—Formal answer to objections.
335. Same—Waiver of formal answers to objections.
336. Same—Unanswered specifications.
- 336a. Same — Failure to answer — Dismissal.
337. Same—Each objection requires an answer as a separate defense.
338. Same—Objections stricken out.
- 339-344. Same—Failure to keep proper account books.
345. Same—Burden of proof is on creditors.
346. Same—Too late, when.
347. General demurrer—Plea amounting to.
- 348, 348a. Creation of fraudulent debt in fiduciary capacity.
349. "Sworn falsely"—Unintentional mistake.
- 349a. Same—Element of fraud essential.
350. Benefit of act—Prior illegal proceeding.
351. Former adjudication—Res adjudicata.
352. Ignorant preference.
353. Fraud in procuring—Forfeiture of benefits of act.
354. As a bar—Fraud in procuring.
355. Same — Future liability — Hiring for a fixed term.
356. Same—Debts created in a fiduciary capacity.
357. Same—No defense, when.
358. Same—Under Act of 1880.
359. Same—Promissory note.
360. Same—Contract of hiring.
361. Effect—Debts owing at time of filing petition.
362. Same—Release of mortgage.
363. Same — Judgment not satisfied, when.
364. Same—Judgment rendered in another state.
365. Same—Under void proceedings.

- 366. Same—Judgment of discharge does not extinguish the debt.
- 367. Same—Final as to insolvent jurisdiction to administer trust remains.
- 368. Same—Discharge of partner as individual.
- 369. Agreement not to contest discharge void.
- 370. Denial—Return of goods to sheriff.
- 371. Fraud in procuring, may be pleaded by the sheriff, when.
- 372. Collateral attack upon — Jurisdiction of court not a proper subject of inquiry.
- 373-375. Extra-territorial operation and effect.
- 376. Action to set aside for fraud.
- 377. Same—Assignee.
- 378. Same—Creditor.
- 379. Same—Same.
- 380. Stay of proceedings pending petition for discharge.
- 380a. Right to set aside for fraud, not assignable.

y. Judgment.

- 381. In rem, as to status of debtor.
- 382. Collateral attack upon—Recital of jurisdictional facts.
- 383. Void for want of jurisdiction.
- 384. Docketing not required to preserve lien.

z. Contempt.

- 385. Failure to file schedule—Failure to obey citation.
- 386. Holding property claimed by receiver.
- 387. Refusal to surrender property.

aa. Appeal and error.

- 388. Order refusing adjudication.
- 389. Order requiring verification of schedule.
- 390. Time of appeal.
- 391. Jurisdiction of supreme court.
- 392. Appealable order—Res adjudicata.
- 393. Appeal by creditor—Service of notice of appeal.
- 394. Same—Not estopped by making proof of claim.
- 395. Right of appeal regulated by general law.
- 396. Bond of assignee operates as undertaking on appeal.
- 397. Order denying motion to dismiss.
- 398. Crudities and bad grammar in petition do not vitiate it on appeal.
- 399. Appeal by creditor stays all proceedings under order of adjudication.
- 400. Appealable order.
- 401. When evidence is insufficient.
- 402. Appeal in contempt proceedings.

bb. Attorney's fee.

- 403. Petition for, must show value of estate.

I. CONSTITUTIONALITY.

1. The insolvent law of 1852 is not obnoxious to any provision of the constitution.—Clarke v. Ray, 6 Cal. 600.

2. Legislative power—Concurrent jurisdiction.—In the exercise of a legitimate power the legislature was authorized to give both the district and county courts jurisdiction under the act (1852), and these courts hold such jurisdiction concurrently.—Harper v. Freelon, 6 Cal. 76.

3. Same—Order in chambers—Notice to creditors.—The legislature was empowered to authorize a notice to creditors to be issued under an order made in chambers by the county judge.—Flint v. Wilson, 36 Cal. 24.

4. The supplementary act of March 31, 1876, is constitutional.—Baum v. Raphael, 57 Cal. 361.

5. Appeal in contempt proceedings.—Provision of section 64 of insolvent act allowing such appeals unconstitutional.—Ex parte Clancy, 90 Cal. 553, 27 Pac. 411.

6. Impairing obligation of contracts.—The act of 1880 is not unconstitutional, and a discharge may be granted under it for a debt contracted in 1878.—Porter v. Innis, 79 Cal. 183, 21 Pac. 729.

See, also, Pomeroy v. Gregory, 66 Cal. 574, 6 Pac. 493.

7. Extra-territorial operation.—The state is denied the power to pass an insolvent law to discharge the obligation of contracts made elsewhere, by section 10, article I, of the federal constitution.—Lowenberg v. Levine, 93 Cal. 215, 16 L. R. A. 159, 28 Pac. 941.

8. Power of congress not exclusive.—The provisions of section 8 of article I of the federal constitution does not grant exclusive power to enact uniform bankrupt laws.—Martin v. Berry, 37 Cal. 208.

II. FEDERAL BANKRUPTCY ACT.

9. Federal bankruptcy act passed by Congress in pursuance of constitutional authority July 1, 1898, suspends the state Act of Insolvency while the federal act is in force. Mr. Justice Speer says, In re Macon Sash, etc., Co., 112 Fed. 323, the proposition that the federal bankruptcy law suspends state bankruptcy act is as clear upon authority as it must inevitably be by the logic of the supremacy of the national law. Among the numerous authorities sustaining this point, see Barber v. Mexico International Co., 73 Conn. 587, 48 Atl. 758; Harbaugh v. Costello, 184 Ill. 110, 116, 75 Am. St. Rep. 147, 56 N. E. 363; Fisk v. Montgomery, 21 La. Ann. 446; Van Nostrand v. Carr, 30 Md. 128; Parmenter Mfg. Co. v. Hamilton, 172 Mass. 178, 70 Am. St. Rep. 258, 51 N. E. 529; Foley-Bean Lumber Co. v. Sawyer, 76 Minn. 118, 78 N. W. 1038; Armour Packing Co. v. Brown, 76 Minn. 465, 79 N. W. 522; Rowe v. Page, 54 N. H. 190; Roese v. Locke, 53 How. Pr. (N. Y.) 148; Commonwealth v. O'Hara, 6 Phila. (Pa.) 402, 24 Leg. Int. 284, 3 Pittsb. 70; Matter of Reynolds, 3 R. I. 485, 5 Am. Rep. 615; Mauran v. Crown Carpet Lining Co., 23 R. I. 324, 50 Atl. 331; In re Gutwillig, 90 Fed. 475; In re Bruss-Ritter Co., 90 Fed. 651; In re Rouse, etc., Co., 91 Fed. 96, 99, 33 C. C. A. 356; In re Sievers, 91 Fed. 366, affirmed sub nom. Davis v. Bohle, 92 Fed. 325, 329, 34 C. C. A. 372; In re Curtis, 91 Fed. 737, affirmed 94 Fed.

630, 36 C. C. A. 430; *In re Smith*, 92 Fed. 135; *In re Etheridge Furniture Co.*, 92 Fed. 329; *In re Ogles*, 93 Fed. 426; *In re Richard*, 94 Fed. 633; *In re Macon Sash, etc., Co.*, 112 Fed. 323; *Carling v. Seymour Lumber Co.*, 113 Fed. 483, 51 C. C. A. 1; *In re Storck Lumber Co.*, 114 Fed. 360; *In re Rogers*, 116 Fed. 435, 437; *Ex parte Eames*, 2 Story C. C. 322, 8 Fed. Cas. 236, 5 Law Rep. 117, 1 N. Y. Leg. Obs. 212; *In re Reynolds*, 9 N. B. R. 50, 20 Fed. Cas. 612. See 16 Am. & Eng. Encyc. of L. (2d ed.) 642, 5 Cyc. 240.

10. Federal bankruptcy act supersedes the state law except as to matters expressly or impliedly excepted from its operation.—*R. H. Herron Co. v. Superior Court*, 136 Cal. 279, 89 Am. St. Rep. 124, 68 Pac. 814.

11. Enactment of state law while federal law was in force.—It was competent for the legislature to pass the bankruptcy act while a federal bankruptcy act was in force, but its operation was superseded.—*Lewis v. County Clerk*, 55 Cal. 604; *Seattle, etc., Co. v. Thomas*, 57 Cal. 197.

12. Suspension of state law.—The state law was suspended while the federal law was in force, but was revived when the latter was repealed, and its provision applied as well to indebtedness contracted before as after the repeal of the federal act.—*Boedefeld v. Reed*, 55 Cal. 299.

13. Enactment of federal bankruptcy act.—When congress enacts uniform bankruptcy law under the power conferred by section 8, article I, of the federal constitution, state laws on the subject, which conflict therewith, are suspended.—*Martin v. Berry*, 37 Cal. 208.

14. The insolvent act of 1852 conflicts with the federal bankrupt law, and its operations are suspended from the time the latter law went into effect.—*Martin v. Berry*, 37 Cal. 208.

15. Suspension of cases pending—Enactment of federal law does not suspend pending case under state law.—*Martin v. Berry*, 37 Cal. 208.

16. Repeal of federal law—Revival of state law.—On repeal of federal act state law became operative and applied to debts contracted during its suspension.—*Smith v. Creditors*, 59 Cal. 267, citing *Boedefeld v. Reed*, 55 Cal. 299; *Lewis v. County Court*, 5 Pac. Coast Law J. 326; *Seattle Coal & T. Co. v. Thomas*, 7 Id. 199.

17. Jurisdiction of United States courts exclusive.—Insolvent who has been refused a discharge by the United States courts can not thereafter obtain a discharge under the state law, for the same debts.—*In re Smith*, 68 Cal. 203, 8 Pac. 831.

III. INSOLVENT ACT.

17a. Mining corporations—Federal bankruptcy act of 1898 does not apply to mining corporations organized under the laws of the state, for the exclusive purpose of engaging in the mining business in the state, and the provisions of the state insolvency law are not superseded as to them.—*R. H. Herron Co. v. Superior Court*, 136 Cal. 279, 89 Am. St. Rep. 124, 68 Pac. 814.

18. The insolvent act must be construed so as to restrict the provisions of section 53 to the release of obligations incurred in California.—*Lowenberg v. Levine*, 93 Cal. 215, 16 L. R. A. 159, 28 Pac. 941.

19. The act should be liberally construed to effectuate its object and promote justice, regarded as an act designed to protect creditors of an insolvent.—*Beamer v. Freeman*, 84 Cal. 554, 24 Pac. 169.

20. Act of 1852 not bankrupt act.—The statute (1852) is not, strictly speaking, a bankrupt act or an insolvent act, but may be treated as such.—*Cohen v. Barrett*, 5 Cal. 195.

21. Surrender of possession of property by preferred creditor.—Section 50 of the insolvent law of 1895, has nothing to do with pleadings or defenses in an action, but relates solely to surrender of property by preferred creditor.—*Perkins v. Maier & Zobelein Brewery*, 134 Cal. 372, 66 Pac. 482.

22. Partnership.—The insolvent act does not apply to partnerships.—*In re Baker & Hamilton*, 55 Cal. 302.

23. Partnership.—The insolvent act makes no provision for a petition by a partnership, and the creditors are not affected by the partnership proceedings to pursue the property of an individual partner.—*California Furniture Co. v. Halsey*, 54 Cal. 315.

24. Same—Partners.—The provisions of section 39 refer to the relative disposition of partnership assets, and has no application to the case of the insolvency of an individual partner.—*In re Straut*, 125 Cal. 415, 58 Pac. 62.

25. Set-off.—Under sections 21 and 43 of the insolvent act a debtor of the insolvent may set off against his debt a claim against the insolvent purchased prior to the adjudication, with full knowledge of the insolvency.—*Conroy v. Dunlap*, 104 Cal. 133, 37 Pac. 887.

25a. Gamblers entitled to benefits of act.—Gamblers are entitled to the benefit of the insolvent law, and are not on that account debarred from such benefits.—*Grow v. Creditors*, 31 Cal. 328.

25b. Insurance corporations—Act applies to.—The insolvent act applies to insurance corporations.—*State, etc., Co. v. San Francisco*, 101 Cal. 135, 35 Pac. 549.

25c. Not superseded by section 601, Political Code.—The insolvent act has not been superseded by section 601 of the Political Code, as to insurance corporations.—*State, etc., Co. v. San Francisco*, 101 Cal. 135, 35 Pac. 549.

25d. Saving clause of act of 1880—Effect.—Effect of saving clause in act of 1880 was not intended to keep alive the mode of procedure in the act of 1852, where it conflicted with that provided by the new act.—*Struven v. Creditors*, 62 Cal. 45.

IV. PROCEEDINGS.

a. In general.

25e. Special proceedings—No intendments.—Proceedings in insolvency are special proceedings, and no intendments can be

made in favor of the jurisdiction.—*McDonald v. Katz*, 31 Cal. 167.

26. Special proceeding—Not an action.—A proceeding in insolvency is not an action within the meaning of §§ 2466 and 2468, Civil Code, but is a special proceeding under § 23 of that code, and partnership firms may sign the petition without filing a certificate with the clerk.—*In re Dennery*, 89 Cal. 101, 26 Pac. 639.

27. Collection of debts—Provable claim.—A proceeding in insolvency is not for the collection of debts merely, but is for the benefit of all the creditors, and it is only necessary to show that the creditor has a provable debt for the requisite amount.—*In re Dennery*, 89 Cal. 101, 26 Pac. 639.

28. Special case under act of 1852. The proceeding is in the nature of a special case within the meaning of the constitution.—*Harper v. Freelon*, 6 Cal. 76.

29. Regularity.—Substantial compliance with requirements of act must be shown.—*Hastings v. Cunningham*, 39 Cal. 137.

30. Collateral attack.—An action to quiet title to lands sold by the assignee is a collateral attack upon the insolvency proceedings.—*Newlove v. Mercantile Trust Co.*, 156 Cal. 657, 105 Pac. 971.

30a. Same—Defect in bond of assignee.—Proceedings in involuntary insolvency can not be attacked collaterally on the ground that the assignee's bond, filed and approved by the court, is for a less amount than that required by the order of appointment.—*Luhrs v. Kelly*, 67 Cal. 289, 7 Pac. 696.

31. Institution of proceedings—Only creditors resident of California may institute proceedings under the insolvent act (1880, § 8).—*In re Baum*, 68 Cal. 238, 9 Pac. 90.

32. Dismissal.—A proceeding against a debtor may be dismissed on his motion, for unreasonable delays in prosecution; but it may thereafter be commenced anew.—*Kornahrens v. Creditors*, 64 Cal. 492, 3 Pac. 126.

33. Appearance of insolvent to move to strike out amended petition adding names of new creditors on grounds other than of want of jurisdiction of his person, is a general appearance, notwithstanding an express statement to the contrary and express reservation of his right to regular process.—*In re Clarke*, 125 Cal. 388, 58 Pac. 22.

34. Strict compliance with act essential.—One who claims the benefit of the insolvent's act must comply strictly with its provisions.—*McAllister v. Strode*, 7 Cal. 428; *Judson v. Atwill*, 9 Cal. 479.

34a. Same—Question of law.—Whether one who seeks the benefits of the insolvent act has strictly complied with the provisions of the act is a question of law, not of fact for the jury.—*Schloss v. Creditors*, 31 Cal. 201.

35. Insolvency proceedings against insurance companies.—See *Kerr's Cyc. Political Code*, § 604a.

35a. Insolvent insurance companies must be reported to the attorney general.—See *Kerr's Cyc. Political Code*, § 604.

36. Abatement of proceedings—Death of

insolvent before return day of order to show cause abates proceedings.—*Vermont Marble Co. v. Superior Court*, 99 Cal. 579, 34 Pac. 326.

b. Jurisdiction of court.

37. Jurisdiction of supreme court—Constitutional amendments.—In error, has not been withdrawn by the constitutional amendments, nor has the jurisdiction on appeal been taken away by the repeal of section 336 of the practice act.—*People ex rel. Storgis v. County Court*, 28 Cal. 115.

38. Prerequisites—The district court, acting as a court of limited or inferior jurisdiction in the matter, must first ascertain that the person, subject matter, and relief sought, are within the statute, before its jurisdiction will attach.—*Cohen v. Barrett*, 5 Cal. 195, 211; *Meyer v. Kohlman*, 8 Cal. 44.

39. Jurisdiction of court—Petition.—Averment that debts were created in this state unnecessary, and the court does not owe its jurisdiction to such fact.—*Sharp v. Creditors*, 10 Cal. 418.

40. When the first step in the proceedings shows the party to be beyond the pale of the act, and the subject matter beyond the jurisdiction of the court, the court is without jurisdiction for any purpose.—*Cohen v. Barrett*, 5 Cal. 195, 211.

41. Foreign corporation.—Under the provisions of sections 8 and 21, act of 1880, California courts have jurisdiction of proceedings in involuntary insolvency against a foreign corporation having property and a place of business in the state.—*In re Castle Dome, etc., Co.*, 3 Cal. Unrep. 1, 18 Pac. 794.

42. How jurisdiction acquired.—Jurisdiction of the subject matter and the parties are acquired through the filing of the petition containing a statement of the facts prescribed by sections 2 and 3, and the schedules, duly verified, and by making the proper orders and giving the proper notice.—*Lange-nour v. French*, 34 Cal. 92.

43. Same—Insolvent corporation.—Superior court acquires jurisdiction of the estate of an insolvent corporation by the filing of a creditor's petition, setting forth the fact of insolvency and praying an adjudication.—*State, etc., Co. v. San Francisco*, 101 Cal. 135, 35 Pac. 549.

44. Jurisdiction attaches upon the filing of the petition, properly signed and verified, and a service of a copy thereof with a copy of the order to show cause, on the debtor.—*Luhrs v. Kelly*, 67 Cal. 289, 7 Pac. 696.

45. Jurisdictional facts—Proof of losses.—The requirement as to proof of losses sustained by the insolvent, as required by section 36 of the act (1852), is not jurisdictional.—*Langenour v. French*, 34 Cal. 92.

46. Same—Residence—Jurisdictional fact of residence of six months is shown by an averment that the petitioner "is, and for ten years last past has been a citizen of Placer County, State of California."—*Lange-nour v. French*, 34 Cal. 92.

47. Jurisdiction to appoint assignee is acquired by service upon debtor of creditor's petition and order of court to show

cause.—*Ohleyer v. Bunce*, 2 Cal. Unrep. 252, 3 Pac. 105.

48. Jurisdiction to discharge insolvent is acquired only by publication of notice to creditors, but the jurisdiction to make the orders which precede such notice attaches on the filing of the petition and schedule.—*Cerf v. Oaks*, 59 Cal. 132.

49. Jurisdiction — Question of law for court, not of fact for jury.—The question whether jurisdiction was obtained by the court by insolvency proceedings was for the court and not the jury.—*Dean v. Grimes*, 72 Cal. 442, 14 Pac. 178.

50. Subsequent facts not conditions of jurisdiction.—Having acquired jurisdiction through the filing of the petition, or the filing and giving of notice to creditors, the subsequent acts of the court are not conditions of such jurisdiction.—*Brewster v. Ludskins*, 19 Cal. 192.

51. Jurisdiction after discharge.—The court not having lost its jurisdiction of the subject matter as to newly discovered property after the discharge, its jurisdiction of the assignee, if lost, may be restored by his consent.—*Rued v. Cooper*, 109 Cal. 682, 34 Pac. 98.

52. Jurisdiction not lost by discharge.—Discharge and settlement of accounts is not such a final judgment or order as to affect the jurisdiction of the court.—*Rued v. Cooper*, 109 Cal. 682, 34 Pac. 98.

53. Jurisdiction is one quasi in rem.—Proceeding in insolvency is one quasi in rem, and the property of the insolvent passes on the adjudication under the control of the court, and the jurisdiction of the court is not lost by the court where there is any property, or right of action remaining unadministered.—*Rued v. Cooper*, 109 Cal. 682, 34 Pac. 98.

54. Where petition does not show fraud.—Where the insolvent is guilty of fraud the act denies its benefits to him; but if the petition does not show fraud on its face, the court has jurisdiction to proceed and distribute the fund, even though the insolvent debtor should have been guilty of fraud and not entitled to his discharge.—*Cohen v. Barrett*, 5 Cal. 195.

55. Jurisdiction of custody of estate when federal act becomes effective not lost when previously acquired.—Custody of estate of insolvent is acquired from the order under section 9, staying further judicial proceedings against it, and at that time court acquires jurisdiction to conduct the proceedings to a conclusion without being affected by the federal law.—*Martin v. Berry*, 37 Cal. 208.

56. Jurisdiction of equity to compel assignee to execute his trust.—The court in equity has jurisdiction to compel the assignee to execute his trust, and the creditor's remedy under the act is not exclusive.—*Sanderson v. McIntosh*, 65 Cal. 36, 2 Pac. 728.

57. Proceedings are not *sua iuris* in law or equity, and jurisdiction is vested in the district courts independent of their

general jurisdiction, as of a new remedy created by statute.—*Cohen v. Barrett*, 5 Cal. 195.

58. Several petitions of partners.—The insolvency court acquires no jurisdiction over the partnership property through the several petitions of the individual partners, and the discharge of the latter can not operate in favor of the partnership.—*Glenn v. Arnold*, 56 Cal. 631; *Freeman v. Campbell*, 56 Cal. 639.

59. Debts of banker.—Where the petition shows on its face that the indebtedness as to which the petitioner is seeking a discharge was incurred in the business of banking, the court has no jurisdiction of the proceedings.—*Cohen v. Barrett*, 5 Cal. 195, 210.

59a. Failure to file bond, not jurisdictional.—*Creditors v. Consumer's Lumber Co.*, 98 Cal. 318, 33 Pac. 196.

c. Parties.

60. No parties except insolvent at filing of petition.—There are no parties except the petitioner, at the time of an adjudication in insolvency, nor until after one or more creditors shall have made and filed proofs of claims, and such an adjudication and an order fixing the day for the election of an assignee did not violate section 170 of the Code of Civil Procedure, because of the election as assignee of the judge's son-in-law.—*Chinette v. Conklin*, 105 Cal. 465, 38 Pac. 1107.

61. Insolvent, who is.—The insolvent act is for the relief of insolvents, and one whose assets are 40 per cent above his liabilities is not an insolvent.—*Hunt v. Creditors*, 9 Cal. 45.

62. Insolvency defined.—One who is unable to pay his debts with his own means is an insolvent.—*Washburn v. Huntington*, 78 Cal. 573, 21 Pac. 305.

63. Same.—A debtor is not insolvent, within the meaning of the act, if he has sufficient means or resources of any kind to enable him to pay all his debts as they become due in the ordinary course of business, though he may not have sufficient money to meet them or to pay a particular debt when due.—*Sacry v. Lobree*, 84 Cal. 41, 23 Pac. 1088.

64. Same.—One who is not in a condition to meet his engagements, or to pay his debts in the usual and ordinary course of business; but he is not insolvent merely because his assets, at a given date, may not satisfy all the demands against him due and to become due.—*Bell v. Ellis*, 33 Cal. 620.

65. Same.—One is insolvent though he controls property out of which he may voluntarily pay his debts, if such property is beyond the process of the law.—*Adams v. Prather*, 176 Cal. 33, 167 Pac. 534.

66. Same.—A debtor is insolvent when he is unable to pay his debts, out of his own means, as they become due.—*In re Ramazina*, 110 Cal. 488, 42 Pac. 980.

67. Excess of assets over liabilities is not inconsistent with insolvency.—*In re Choze*, 112 Cal. 630, 44 Pac. 1066.

68. Means in another state.—A debtor is insolvent when he is unable to pay his debts from his own means, when due, but it is not essential that his means should be in this state.—Cook v. Cockins, 117 Cal. 140, 48 Pac. 1025.

69. Act of insolvency.—A creditor's petition which alleges that the insolvent, in contemplation of insolvency, sold and conveyed a stock of merchandise, described in the petition, sufficiently states an act of insolvency.—In re Patton, 110 Cal. 33, 42 Pac. 459.

70. Partnership.—The fact that the assets exceed the liabilities of a partnership does not necessarily prove solvency, when the petition discloses the hopeless insolvency of the partners.—In re Ramazzina, 110 Cal. 488, 42 Pac. 980.

71. Insolvency of insurance companies, what constitutes.—See Kerr's Cyc, Political Code, § 602.

d. Petition.

72. Commencement of proceedings within the statute is the filing a petition sufficient to support an adjudication of insolvency.—La Point v. Boulware, 104 Cal. 264, 37 Pac. 927.

73. Complaint.—Petition and schedule constitute the complaint.—Wilson v. Creditors, 32 Cal. 406.

74. How addressed and entitled.—Petition may be addressed to court or judge, and may be entitled as being in the matter of the insolvent to be discharged of his debts, though not necessarily so. It should be brief and refer to the schedule.—Wilson v. Creditors, 32 Cal. 406.

75. What must state—Discharge of debts.—Petition must so state if insolvent seeks discharge for debts not described or imperfectly stated.—Wilson v. Creditors, 32 Cal. 406.

76. Same—Indebtedness to five creditors.—Facts showing indebtedness to at least five creditors should be alleged with the certainty and fullness as is required in a complaint for debt.—In re Russell, 70 Cal. 132, 11 Pac. 622.

77. Same—Same.—Petition must show that they are at least five in number, and that they are creditors of the insolvent to the extent of five hundred dollars, and failure to do so is fatal to their petition; and the petition can not be amended by bringing in new creditors.—Anderson v. Superior Court, 122 Cal. 216, 54 Pac. 829.

78. Same—Same—Creditors described as firms.—The petition is sufficient under section 8, if it describes the creditors as firms or copartnerships, although it does not give the names of the partners.—In re Russell, 70 Cal. 132, 11 Pac. 622.

79. Same—Same—Same.—Petition of creditor firms is sufficient if it states the name of the firms, without the names of their members.—In re Russell, 70 Cal. 132, 11 Pac. 622; In re Dennery, 89 Cal. 101, 26 Pac. 639; Campbell v. Judd, 2 Cal. Unrep. 522, 7 Pac. 804, 7 West Coast R. 372.

80. What need not state—Six months' residence.—Petition need not allege resi-

dence in the county for six months prior to filing.—In re Thomas, 5 Cal. Unrep. 303, 44 Pac. 327.

81. Same—Same.—Non-residence of partners does not defeat the right of a partnership firm to become a petitioning creditor.—In re Dennery, 89 Cal. 101, 26 Pac. 639.

82. Same—Same.—The fact of six months' residence need not be stated in petition.—Barrett v. Carney, 33 Cal. 530.

82a. Place of business of insolvent corporation.—County of may be proved by parol.—98 Cal. 318, 33 Pac. 198.

83. Residence—Sufficient statement.—A statement that petitioner is "a resident of the city of San Francisco," is a sufficient statement that he is a resident of the fourth judicial district.—Slade v. Creditors, 10 Cal. 483.

84. Same—Same.—A cause of action is stated when it shows that the creditors are residents of California, that the demands are due, accrued in this state, and states their nature and amounts, and such other facts required by section 8 of the act of 1880.—In re Close, 106 Cal. 574, 39 Pac. 1067.

85. Same—Failure to state six months' residence.—Where the petition does not state the fact, the court may be informed of it in some other mode, and when attacked in a collateral proceeding, it is presumed in favor of the validity of the judgment that the court informed itself as to such residence.—Barrett v. Carney, 33 Cal. 530.

86. Averment that debts were created in state unnecessary to give the court jurisdiction.—Sharp v. Creditors, 10 Cal. 418.

87. Statement of name of each creditor.—Petition must state the name of each creditor, if known, and if unknown, must so state.—McAllister v. Strode, 7 Cal. 428.

88. Failure to include all property.—The failure to include certain property will not be sufficient to affect the jurisdiction of the court, where there is full compliance with the requirements of the statute in all other respects.—Newlove v. Mercantile Trust Co., 156 Cal. 657, 105 Pac. 971.

89. Insufficiency of mode of statement—Collateral attack.—Petition can not be attacked collaterally for a mere insufficiency in the mode of statement, but only for a total absence of averment.—Mogk v. Peterson, 75 Cal. 496, 17 Pac. 446.

90. Vagueness of statement—Collateral attack.—Mere vagueness of statement is not ground for collateral attack.—Pope v. Kirchner, 77 Cal. 152, 19 Pac. 264.

91. Statement of insolvency of debtor, necessary.—Creditor's petition, which is based upon a transfer with intent to defraud creditors, and which fails to state that the debtor was insolvent at the time the transfer was made, or the time of the transfer or what property was transferred, will not support an adjudication in insolvency, and is insufficient on both general and special demurrer.—In re Mealy, 127 Cal. 103, 59 Pac. 313.

92. Specific allegations of fraud.—Under section 8 a creditor's petition is not demurrable if it alleges the transfer of the prop-

erty with intent to hinder, delay and defraud creditors, and sets forth the name of the grantee, together with the circumstances of time and place, and a general description of the property conveyed.—In re Patton, 110 Cal. 33, 42 Pac. 459.

93. Amended petition—Four creditors.—Where one of the creditors to the original petition has been paid, and only four remain to present an amended petition, the court is without jurisdiction to entertain the same.—In re Whipple, 129 Cal. 426, 62 Pac. 65.

94. Allegation of partnership.—Partnership petition need not directly allege that petitioners are partners, where it sufficiently appears from the whole petition that they are.—In re Ramazzina, 110 Cal. 488, 42 Pac. 980.

95. Negating fiduciary character of debts.—Petition need not aver that the debts were not fiduciary so as to show that they were not within the provision of section 13.—Brewster v. Ludekins, 19 Cal. 162.

96. Partnership petition—Sufficiency of.—The allegation that the insolvents, naming them, as "copartners, doing business under the firm name . . . are indebted to your petitioners," can only be understood as charging that the indebtedness arose out of the partnership business.—Wright v. Cohn, 88 Cal. 328, 26 Pac. 600.

97. Application in joint name of partners.—An application made in the joint name of the partners is insufficient as being without the authority of the act.—Meyer v. Kohlman, 8 Cal. 44.

97a. Same—Joint property of partnership only.—A petition, schedule and affidavit, in the joint name of partners, which shows a surrender of joint property only, is insufficient.—Meyer v. Kohlman, 8 Cal. 44.

98. Insufficiency not obviated by proof.—Insufficiency of petition can not be obviated by proof.—Judson v. Atwill, 9 Cal. 477.

99. Signature of insolvent to petition not required.—The petition need not be signed by the insolvent or his attorney, but he must sign the schedule.—Wilson v. Creditors, 32 Cal. 406.

99a. Failure of petitioners to sign, not ground for collateral attack.—Where proceedings are regular on their face it is not subject to collateral attack on the ground that the signers of the petition were not actual creditors.—Riego v. Foster, 125 Cal. 178, 57 Pac. 896.

100. Signature of insolvent not required—May be signed by attorney.—The signature of the insolvent is not necessary.—Brewster v. Ludekins, 19 Cal. 162.

101. Need not be verified.—Petition need not be verified.—Wilson v. Creditors, 32 Cal. 406.

102. Creditors' petition — Verification.—Verification of petition by three creditors is necessary to its validity, and is jurisdictional. Verification held a nullity.—In re Visalia City Water Co., 119 Cal. 561, 51 Pac. 856.

103. Verification in usual form.—Verification in the usual form of verification of

pleadings, which includes matters stated on information and belief, is not objectionable.—Wright v. Cohn, 88 Cal. 328, 26 Pac. 600.

104. Verification by new creditor—Amended petition.—A new creditor not in the original petition is not authorized to verify.—In re Whipple, 129 Cal. 426, 62 Pac. 65.

See, also, In re Visalia City Water Co., 119 Cal. 561, 51 Pac. 856; Anderson v. Superior Court, 122 Cal. 216, 54 Pac. 829.

105. Prayer for discharge not necessary, and it is sufficient if the petition avers petitioners desire to be discharged.—In re Chope, 112 Cal. 630, 44 Pac. 1066.

106. Collateral attack.—To be immune from collateral attack, the petition should set forth such a state of facts as bring the case within the statute, and due publication of notice to creditors.—Friedlander v. Loucks, 34 Cal. 18.

e. Schedule.

107. Schedule and petition constitute the complaint.—Wilson v. Creditors, 32 Cal. 406.

108. Schedule consists of three parts: Losses, debts, and inventory.—Schedule should consist of three parts: First, summary statement of the insolvent's affairs, with list of losses sustained, as complete as it can be conveniently made; second, a list of his debts; and, third, a perfect inventory of the estate, real, personal and mixed.—Wilson v. Creditors, 32 Cal. 406.

109. Inventory most material part.—The most material part is the inventory of insolvent's estate, and should be made as full and complete as possible.—Wilson v. Creditors, 32 Cal. 406.

110. Defective statement not ground of dismissal.—Defective statement of items is not ground for dismissing proceeding.—Bennett v. Creditors, 22 Cal. 38.

111. Failure to state items with sufficient particularity.—The failure to state items with sufficient particularity is a defect affecting the sufficiency of the papers as pleadings.—Bennett v. Creditors, 22 Cal. 38.

112. Same—Creditor not prejudiced.—A creditor is not prejudiced by a decree of discharge of his debtor under the insolvent act, or prevented from enforcing his claim, if the debts and liabilities are not set out in the schedule with the particularity required by the act.—Slade v. Creditors, 10 Cal. 483.

113. Statement when creditor unknown.—A statement "that the schedule of his debts and liabilities, annexed to his petition, contains the names of his creditors as near as he can state them," is a sufficient compliance with the act, even though the schedule did not contain the name of the creditor who was the assignee of a note imperfectly described, and did not state that he was ignorant of the same or that the owner of the note was unknown.—Barrett v. Carney, 33 Cal. 530.

114. Omission of dollar mark.—Where the amounts written in the schedule clearly show that they represent dollars, the omission of the dollar mark will not be deemed a material defect in determining the amount

of the insolvent's debts.—*Newlove v. Mercantile Trust Co.*, 156 Cal. 657, 105 Pac. 971.

115. Failure to allege ignorance when creditor unknown.—Where the schedule fails to give the name of the owner of certain promissory notes, or to state ignorance of such name, the discharge of the insolvent is insufficient to bar subsequent action on the notes.—*Judson v. Atwill*, 9 Cal. 477. See, also, *McAllister v. Strode*, 7 Cal. 428.

116. Insufficiently described note.—A note by the insolvent payable to the order of Alfred McCarty, described in the schedule as "Alfred McCarty, borrowed money, April, 1855, \$500," is insufficiently described, a discharge is no bar to a subsequent action thereon.—*McCarty v. Christie*, 13 Cal. 79.

117. Variance in description of debt is not material if described so as to enable the holder to readily identify it.—*Brewster v. Ludekins*, 19 Cal. 162.

118. Same.—Where the schedule describes a certain note as in suit when in fact at the time of filing the petition it has passed into judgment, the variance is not fatal.—*Brewster v. Ludekins*, 19 Cal. 162.

119. Defective statement of promissory notes.—Defective statement of certain promissory notes which constitute a part of the debts and liabilities of the insolvent, does not invalidate the proceedings.—*Slade v. Creditors*, 10 Cal. 483.

120. Intentional omission of property may be shown in an action on a promissory note in answer to a plea of a discharge.—*Dean v. Baker*, 64 Cal. 232, 30 Pac. 806.

121. Inaccurate description of promissory note.—Where the insolvent is liable as an indorser on the note of another person, it is inaccurate to describe such note and liability as contingent, giving the names of the maker, without giving that of the present owner, or stating that he is ignorant of such name.—*McAllister v. Strode*, 7 Cal. 428.

122. Meagreness of detail can not be reached by an objection to the substance.—*Wilson v. Creditors*, 32 Cal. 406.

123. Errors in not fatal to right to discharge.—Insolvent is entitled to a discharge notwithstanding errors in his schedule, where he acted in good faith and under advice of counsel.—*In re Bregard*, 84 Cal. 322, 24 Pac. 317.

124. Examination of insolvent in reference to schedule.—If creditors have reason to suppose that petitioner's insolvency is simulated or pretended, or that he has fraudulently misrepresented his affairs in any respect, they may charge fraud and have the insolvent examined in detail in reference to his schedule.—*Wilson v. Creditors*, 32 Cal. 406.

125. Omission of worthless debts not fraudulent.—Debts due insolvent, shown to be worthless and barred by limitation, omitted from schedule, does not amount to fraud and false swearing, and is not ground for collateral attack.—*Pope v. Kirchner*, 77 Cal. 152, 19 Pac. 264.

126. Omission of property from verified schedule—Perjury.—An insolvent who willfully omits from his schedule, verified ac-

cording to the requirements of the insolvent act, any of his property is guilty of perjury, and the provision in the act making such omission a misdemeanor does not affect the statute against perjury.—*People v. Platt*, 67 Cal. 21, 7 Pac. 1.

127. Debts—Unliquidated damages.—Unliquidated damages for repudiated or abandoned lease is not a debt within the meaning of the insolvent act.—*In re Bell*, 85 Cal. 119, 24 Pac. 633.

128. Same—Provable debt.—Under section 37, debts not due, but payable at a future time, are provable debts.—*In re Dennery*, 89 Cal. 101, 26 Pac. 639.

129. Same—Purpose of schedule.—The principal object is to inform the court that in fact the petitioner is insolvent, and to assist the court and assignee in settling the estate.—*Wilson v. Creditors*, 32 Cal. 406.

129a. Same—"False and fictitious debts."—Partnership debts which a copartner has attempted to pay with partnership assets without insolvent's knowledge, are not "false and fictitious debts."—*In re Bregard*, 84 Cal. 322, 24 Pac. 317.

130. Same—Partnership property.—The insolvent should include all property in which he is interested, including partnership property and debts for which he is personally liable.—*In re Bregard*, 84 Cal. 322, 24 Pac. 317.

130a. Contingent debts—Debts payable at a future time may be proven as liabilities and are released under the act.—*Mooney v. Detrick*, 85 Cal. 549, 22 Pac. 1111, 26 Pac. 280.

131. Losses—Objection that it is vague and indefinite has nothing to do with the contest on the ground of fraud.—*Grow v. Creditors*, 31 Cal. 328.

131a. Same—Estimate not honestly made.—Where a petitioner in insolvency alleges losses in trade, and he fails, as a witness, to explain how the same were incurred, it is to be inferred that his estimate of such losses was not made honestly.—*Schloss v. Creditors*, 31 Cal. 201.

131b. Indebtedness of insurance companies, estimate of.—See *Kerr's Cyc. Political Code*, § 602a.

132. Assets not losses material in contest of discharge.—A contest by the creditors of an application of the debtor for a discharge, based upon fraud, brings out the acts of the petitioner in relation to his estate, and his schedule of assets, not the schedule of his losses.—*Grow v. Creditors*, 31 Cal. 328.

133. Losses—Amend to make more definite.—If a more complete and definite schedule of the insolvent's losses is desired, the proper course is to move to amend.—*Grow v. Creditors*, 31 Cal. 328.

134. Same—Schedule fatally defective.—A schedule of losses, after specifying certain bad debts, specifies "large amounts of other bad debts," and is not, for that reason, fatally defective in not giving a list of losses.—*Brewster v. Ludekins*, 19 Cal. 162.

134a. Same—Summary of may be incorporated in the petition.—*Wilson v. Creditors*, 32 Cal. 406.

135. Same—Purpose is to show cause of insolvency.—The principal object is to show good faith by showing cause of inability to pay debts.—*Wilson v. Creditors*, 32 Cal. 406.

135a. Assets—Estate in expectancy.—Future revenue from office of county treasurer does not constitute an estate in expectancy within the meaning of the insolvent law, and the concealment of that fact in his petition does not amount to fraud.—*Grow v. Creditors*, 31 Cal. 328.

136. Signature of insolvent required to schedule, though not to petition.—*Wilson v. Creditors*, 32 Cal. 406.

136a. Same—Schedule of losses only.—Where it consisted of three parts, liabilities, assets, and losses, and only the schedule of losses was signed by the insolvent, that is sufficient to protect the proceedings from collateral attack.—*Brewster v. Ludekins*, 19 Cal. 162.

137. Verification necessary.—Schedule must be verified.—*Wilson v. Creditors*, 32 Cal. 406.

138. Verification by involuntary insolvent not required.—Involuntary insolvent is not required to file a verified inventory and schedule.—*In re Green*, 96 Cal. 162, 31 Pac. 15.

139. Verification before judge, not before notary.—Verification must be before the judge of the court to which application is made, and no jurisdiction to adjudge a discharge exists where such verification is made before a notary.—*Baker v. Everhart*, 65 Cal. 27, 2 Pac. 495.

f. Answer.

140. Verification.—Although the act of 1852 did not require verification of the answer, under the act of 1880, requiring it, enacted subsequent to the filing of the petition but prior to filing answer, the answer should have been verified.—*Strueven v. Creditors*, 62 Cal. 45.

141. Plea to charge of fraud may be guilty or not guilty; but insolvent may object, as by demurrer, that the acts charged do not amount to fraud.—*Wilson v. Creditors*, 32 Cal. 406.

g. Bond.

142. Covers only costs and damages.—Bond of original creditor's petition covers only costs and damages, but not costs and damages under a new petition in a new proceeding.—*Anderson v. Superior Court*, 122 Cal. 216, 54 Pac. 829.

143. Necessity — A proceeding without bond, in the face of objections to the want of same, and without waiver thereof, is in excess of the jurisdiction of the court, and prohibition will lie to restrain the proceeding.—*Anderson v. Superior Court*, 122 Cal. 216, 54 Pac. 829.

144. Failure to give.—Failure to give does not render the proceedings, but is matter of abatement, and must be pleaded before the trial of the issues, and if not specifically urged it is waived, and can not be presented after adjudication. — *In re Clarke*, 125 Cal. 388, 58 Pac. 22.

145. Failure to file, not jurisdictional.—Failure to file the bond required by section 8, with two sureties and all the creditors as principals, though irregular, does not affect the jurisdiction of the court.—*Creditors v. Consumer's Lumber Co.*, 93 Cal. 318, 33 Pac. 196.

146. Defect in.—A debtor of the insolvent can not raise the question of defectiveness in the assignee's bond in an action by the latter, where the creditors make no objection.—*Mogk v. Peterson*, 75 Cal. 496, 17 Pac. 446.

147. Sufficiency.—The insolvent act contemplates a bond with two sureties and all the creditors as principals.—*In re Visalia City Water Co.*, 119 Cal. 561, 51 Pac. 856.

147a. Same.—Bond not signed by all the petitioning creditors and by two sureties is insufficient.—*In re Mealy*, 127 Cal. 103, 59 Pac. 313.

148. Same—Creditors and debtor only interested.—Creditors and debtor are alone interested in the amount and sufficiency of the assignee's bond.—*Best v. Johnson*, 78 Cal. 217, 12 Am. St. Rep. 41, 3 L. R. A. 168, 20 Pac. 415.

149. Effect of objections to.—An objection to the form of the bond filed with the original petition, and to the sufficiency of the sureties, is a waiver of other objections to the bond, and to the lack of a new bond after the filing of the amended petition.—*In re Clarke*, 125 Cal. 388, 58 Pac. 22.

150. Creditors only can sue.—The creditors only, can sue on the assignee's bond.—*Best v. Johnson*, 78 Cal. 217, 12 Am. St. Rep. 41, 3 L. R. A. 168, 20 Pac. 415.

151. Wrongful seizure or detention of property or money—Assignee's sureties not liable for.—*Best v. Johnson*, 78 Cal. 217, 12 Am. St. Rep. 41, 3 L. R. A. 168, 20 Pac. 415.

h. Order to show cause, and notice to creditors.

152. Publication—Sufficiency.—When the adjudication is made on Monday, and the order to show cause and notice to creditors was published the following Saturday, which was the first day of publication after the making of the order, and publication was made on each intervening Saturday thereafter for thirty-six days, until the day set for the meeting of creditors, the requirements of section 7 of the act are sufficiently complied with.—*Newlove v. Mercantile Trust Co.*, 156 Cal. 657, 105 Pac. 971.

153. Order to show cause—Served by publication.—The order to show cause, required by section 10 of the act (1880), may be served by publication, so far as the rights of the assignee are concerned, as if personal service had been made.—*Arnold v. Kahn*, 67 Cal. 472, 8 Pac. 36.

154. Same—Sufficient.—An order directing the clerk to issue an "order for the creditors to appear . . . and show cause why the insolvent should not be discharged from his debts, in pursuance of the insolvent laws, and likewise make an assignment of his estate for the benefit of his creditors." is a substantial compliance with sections 5 and 8 of the act.—*Flint v. Wilson*, 36 Cal. 24.

155. **Same—Insufficient.**—If made the day before the presentation of the petition, it was coram non judice and void.—*Hastings v. Cunningham*, 39 Cal. 137.

See, also, *Hahn v. Kelly*, 34 Cal. 391, 94 Am. Dec. 742.

156. **Notice to creditors—Order to publish notice and order for meeting of creditors.**—Order to publish notice to creditors is not insufficient because it combines such order with order for meeting of creditors.—*Langenour v. French*, 34 Cal. 92.

157. **Same—Not process.**—Even if it were, the fact that it did not run in the name of the people is not a fatal error.—*Brewster v. Ludekins*, 19 Cal. 162.

158. **Same—No provision for notice to creditors signing petition.**—No provision for notice to creditors signing the petition.—*Ohleyer v. Bunce*, 2 Cal. Unrep. 252, 3 Pac. 165.

159. **Same—Publication.**—Notice to creditors must be published for the first time at least thirty days before the day fixed for the creditors to appear and show cause, otherwise a judgment of discharge is void.—*McDonald v. Katz*, 31 Cal. 167.

160. **Same—Date of publication,** is the first day notice is published.—*Clarke v. Ray*, 6 Cal. 600.

161. **Same—Publication sufficient.**—Publication on December 7, returnable January 6, following, is a sufficient compliance with the requirement for 30 days notice.—*Dean v. Grimes*, 72 Cal. 442, 14 Pac. 178.

162. **Same—Same.**—Notice to creditors to appear December 1, 1879, published on November 1, 1879, was in time.—*Wilson v. Creditors*, 55 Cal. 476.

163. **Same—Same.**—Where the order for meeting of creditors was made May 21, 1879, and the date for the meeting was fixed for June 23, 1879, publication of notice to be made once a week for four weeks in "The Woodland Democrat," publication in "The Woodland Daily Democrat" on May 23d and 30th, and June 6 and 13, was sufficient.—*Steele v. Creditors*, 58 Cal. 244.

164. **Same—Newspaper need not be designated.**—Newspaper need not be designated by judge in the order for publication.—*Steele v. Creditors*, 58 Cal. 244.

165. **Same—Service by mail.**—Notice to creditors, may be served by mail under section 7 of the act.—*Pomeroy v. Gregory*, 66 Cal. 574, 6 Pac. 493.

166. **Same—Service by mail sufficient.**—Mailing four days after the making of the order is a sufficient compliance with the requirement that the mailing shall be "forthwith."—*Newlove v. Mercantile Trust Co.*, 156 Cal. 657, 105 Pac. 971.

167. **Same—Proof of publication** may be made by affidavit of proprietor of newspaper in which published.—*Barrett v. Carney*, 33 Cal. 530.

168. **Same—Same.**—The recitals of an order appointing an assignee is sufficient proof of publication of notice to creditors.—*Ohleyer v. Bunce*, 65 Cal. 544, 4 Pac. 549.

Gen. Laws—9

169. **Same—Same—May be by affidavit.**—Proof of may be made by affidavit.—*Schloss v. Creditors*, 31 Cal. 201.

170. **Same—Affidavit of publication.**—The act requires publication "at least once a week for four successive weeks," and affidavit that publication was made "at least four consecutive weeks beginning on the 31st of October, 1878, and ending on the 5th of December, 1878, both inclusive," does not show sufficient compliance with the requirement to confer jurisdiction.—*Hernandez v. Creditors*, 57 Cal. 333.

i. Service of copy of petition on debtor.

171. **Collateral attack after service.**—Errors committed subsequent to the service upon the debtor of a copy of the petition properly signed and verified and of the order to show cause, are not subject to collateral attack.—*Luhrs v. Kelly*, 67 Cal. 289, 7 Pac. 696.

j. Receiver.

172. **Function of.**—By means of the receiver the court may take possession of and preserve the property of the insolvent, and protect the rights of the creditors, and the receiver sue for the recovery of the insolvent's assets, or property fraudulently conveyed by him, and may apply for an examination of the insolvent as to his affairs.—*Dennery v. Superior Court*, 84 Cal. 7, 24 Pac. 147.

173. **Authority to bring suit.**—Receiver can only bring suit where necessary to preserve property of an insolvent which come into his possession, and can not bring suit to set aside a transfer made by the insolvent prior to the commencement of the insolvency proceeding.—*Tibbets v. Cohn & Co.*, 116 Cal. 365, 48 Pac. 332.

174. **Goods of third party.**—The court is authorized to direct the receiver to return goods belonging to a third party.—*Tapscott v. Lyon*, 103 Cal. 297, 37 Pac. 225.

175. **Not liable for tort.**—Receiver can not be held liable as a tortfeasor for any act within the scope of his duty.—*Tapscott v. Lyon*, 103 Cal. 297, 37 Pac. 225.

176. **The sheriff a mere custodian.**—The sheriff as receiver is a mere custodian of the estate of the insolvent, and does not represent the insolvent debtor for the purpose of defending actions, and is not the legal representative of such insolvent for the purpose of the service of notice of a laborer's lien.—*Taylor v. Hill*, 115 Cal. 143, 46 Pac. 922.

177. **Refusal to take possession of goods offered voluntarily.**—Receiver can not refuse to take possession of goods voluntarily surrendered by the person in whose possession are the goods he is directed to take, under penalty of contempt, and he can not surrender them without leave of the court.—*Tapscott v. Lyon*, 103 Cal. 297, 37 Pac. 225.

178. **Receiver is not a trespasser** when he accepts as the property of the insolvent goods from third persons voluntarily surrendered.—*Tapscott v. Lyon*, 103 Cal. 297, 37 Pac. 225.

179. Holds possession for the court.—Receiver holds possession of goods of the insolvent as the servant of the court, and adverse claimants are not justified in disturbing his possession except by leave of the court.—*Tapscott v. Lyon*, 103 Cal. 297, 37 Pac. 225.

180. Not protected when he takes goods from third person.—Receiver who takes goods of insolvent from third person against latter's will, does so at his personal risk and will not be protected by the court.—*Tapscott v. Lyon*, 103 Cal. 297, 37 Pac. 225.

181. No right to seize goods of insolvent in hands of third person.—Receiver has no right to seize goods of insolvent in hands of third person however fraudulent may be the latter's possession.—*Tapscott v. Lyon*, 103 Cal. 297, 37 Pac. 225.

182. Examination of insolvent.—The court may require the insolvent to appear and be examined as to the affairs of the estate on the application of the receiver.—*Goodday v. Superior Court*, 65 Cal. 580, 4 Pac. 626.

183. Appointment in chambers.—Appointment may be made in chambers on ex parte application.—*Real Estate Association v. Superior Court*, 60 Cal. 223.

k. Assignee.

184. Officer of court.—Assignee is the hand of the court, though elected by the creditors, and, for the purpose of the proceeding is an officer of the court.—*Rued v. Cooper*, 109 Cal. 682, 34 Pac. 98.

185. Election—Who may vote—Unsecured claim.—Unsecured portion of claim, not wholly secured may be voted.—*Widber v. Superior Court*, 94 Cal. 430, 29 Pac. 870.

186. Same—Majority in amount of claims.—Majority in amount of claims entitled to vote prevails.—*O'Neill v. Reynolds*, 116 Cal. 264, 48 Pac. 57.

187. Title of.—Assignee takes the property of the insolvent subject to all the rights and equities of third person therein in the hands of the insolvent.—*Kirk v. Roberts*, 3 Cal. Unrep. 671, 31 Pac. 620.

188. Same.—Assignee becomes vested with title to all the insolvent's property, from and after surrender, whether mentioned in the schedule even if he does not know of its existence until after the discharge.—*Poehlman v. Kennedy*, 48 Cal. 201.

189. Same.—Title vests by relation as of date of commencement of proceedings, and he may maintain action to quiet title against purchaser of property of the insolvent at execution sale, within a month prior thereto.—*Scoville v. Anderson*, 131 Cal. 590, 63 Pac. 1013.

190. Same.—Assignee is successor in interest of the creditors.—*Merrill v. Hurlbert*, 63 Cal. 496; *Brown v. Bank of Napa*, 77 Cal. 544, 20 Pac. 71.

191. Same—Estate of insolvent devolves in trust for the benefit of others upon the assignee by operation of law.—*Brown v. Bank of Napa*, 77 Cal. 544, 20 Pac. 71.

192. Same—Trustee.—Title to property of

insolvent vests by law in the assignee as trustee for the insolvent and for the creditors, and his title is not restricted to the items of the schedule.—*Rued v. Cooper*, 109 Cal. 682, 34 Pac. 98.

193. Same—After acquired property.—Property of insolvent at date of adjudication passes to assignee, but not that afterwards acquired.—*Day v. Superior Court*, 61 Cal. 489.

194. Same—Relates back to filing petition.—Title of assignee relates to the filing of the petition and prevails over an intervening judgment quieting title of a third party against the insolvent.—*Freeman v. Spencer*, 128 Cal. 394, 60 Pac. 979.

195. Same—Vested devise.—Interest of insolvent devisee passes to his assignee under act of 1880.—*Newlove v. Mercantile Trust Co.*, 156 Cal. 657, 105 Pac. 971.

196. Same—Partnership property.—Involuntary insolvency proceeding against a partnership is properly against the individuals, as partners, and the separate estate of each passes to the assignee.—*Wright v. Cohn*, 88 Cal. 328, 26 Pac. 600.

197. Same—Voluntary assignment.—Proceeding is voluntary act of insolvent, and his right of property is not divested, nor does the title vest in the assignee, until there is a valid assignment.—*Hastings v. Cunningham*, 39 Cal. 137.

198. Concealment of newly discovered property.—The assignee's duty to the creditors will not permit him to conceal property of the insolvent discovered after the discharge, nor to refuse to recover it and divide the proceeds among them.—*Rued v. Cooper*, 109 Cal. 682, 34 Pac. 98.

199. Conveyance of newly discovered property to insolvent.—The assignee is not authorized to convey to the insolvent property discovered after discharge.—*Rued v. Cooper*, 109 Cal. 682, 34 Pac. 98.

200. Delivery of property to.—If the examination of the insolvent shows that he has money in his possession belonging to the insolvent's estate the court may order its delivery to the assignee.—*Goodday v. Superior Court*, 65 Cal. 580, 4 Pac. 626.

201. Discovery of property after discharge.—The assignee may procure an ex parte order setting aside the discharge upon the discovery of a cause of action to recover property of the insolvent.—*Rued v. Cooper*, 109 Cal. 682, 34 Pac. 98.

202. Right of recovery. — Fraudulent transfer.—The assignee may recover property fraudulently transferred by insolvent within a month prior to the filing of the petition.—*Ballou v. Andrews Banking Co.*, 128 Cal. 562, 61 Pac. 102.

203. Remedies of.—An assignee seeking to recover property of insolvent has the same remedies as private individual—replevin, detinue, trover.—*Perkins v. Maier & Zobelein Brewery*, 134 Cal. 372, 66 Pac. 482.

204. Recovery of personal property.—The assignee can not recover personal property transferred by the insolvent to pay a debt more than thirty days prior to commence-

ment of proceedings.—*La Point v. Boulware*, 104 Cal. 264, 37 Pac. 927.

205. Same.—The assignee may recover personal property transferred by the insolvent under a sale void under section 3440, Civil Code, from the transferee.—*Brown v. Bank of Napa*, 77 Cal. 544, 20 Pac. 71; *Davis v. Winona Wagon Co.*, 120 Cal. 244, 52 Pac. 487.

206. Right to set aside fraudulent conveyance.—A complaint in an action by an assignee to set aside conveyances of the insolvent made five years prior to adjudication of insolvency, which does not allege any express trust, or actual fraud, or constructive fraud, does not state a cause of action.—*Babcock v. Chase*, 111 Cal. 351, 43 Pac. 1105.

207. Action for conversion.—An assignee has no authority to maintain an action for conversion against a purchaser at foreclosure sale, under a mortgage by his insolvent, made more than thirty days prior to the filing of the petition, where there was no apparent violation of the insolvent act.—*Perkins v. Maier & Zobelein Brewery*, 133 Cal. 496, 65 Pac. 1030.

208. Rights of as against execution levy.—Levy of execution, in absence of statute, creates rights superior to those of the assignee in insolvency.—*Hefner v. Herron*, 117 Cal. 473, 49 Pac. 586.

209. Petition to sell the insolvent's estate need not set out the property in detail, but a reference to the inventory and schedule is sufficient.—*In re Corralitos, etc.*, *Canning Co.*, 130 Cal. 570, 62 Pac. 1076.

210. Sale—Vested devise.—The assignee was authorized to sell the vested interest of an insolvent devisee in lands, although still in the possession of the executor under the terms of the devise.—*Newlove v. Mercantile Trust Co.*, 156 Cal. 657, 105 Pac. 971.

211. Sale of insolvent's estate.—Unlike requirement of probate law, necessity of sale of insolvent's estate need not be shown.—*In re Corralitos, etc.*, *Canning Co.*, 130 Cal. 570, 62 Pac. 1076.

212. Same.—Under the insolvent law the sale must be made "as ordered by the court," and the court may direct the property to be sold together and not separately, and may direct in what paper and for what period publication of notice of sale may be made.—*In re Corralitos, etc.*, *Canning Co.*, 130 Cal. 570, 62 Pac. 1076.

212a. Sale by, may be set aside on the assignee's motion upon equitable grounds without resort to bill in equity.—*Thompson v. Superior Court*, 119 Cal. 538, 51 Pac. 863.

213. Petition to sell the estate of the insolvent is not objectionable for failure to allege that the property has been assigned to the assignee petitioner.—*In re Corralitos, etc.*, *Canning Co.*, 130 Cal. 570, 62 Pac. 1076.

214. Liability of.—Except in case of negligence, the assignee is not liable for money that never came into his hands.—*Estate of Raley*, 123 Cal. 38, 55 Pac. 790.

215. Same—Mistake in bookkeeping.—The assignee is not liable for moneys never

received by him, notwithstanding his mistake in charging himself with the full amount of moneys collected by former assignees and crediting himself with moneys paid out, instead of charging himself with the moneys actually received from them.—*Estate of Raley*, 123 Cal. 38, 55 Pac. 790.

216. Same — Expenses.—Credits claimed by the assignee for expenses must come within the purview of section 32 of the act of 1895.—*Estate of Raley*, 123 Cal. 38, 55 Pac. 790.

217. Itemized account.—The court can require the assignee to itemize his account and may in its discretion refer the same to a referee for report.—*Estate of Raley*, 123 Cal. 38, 55 Pac. 790.

217a. Settlement of account.—The fact that the assignee believes that he has disposed of all the property of the insolvent, and has settled his account does not divest his title, nor so end the proceedings that they may not be revived upon the discovery of other property.—*Rued v. Cooper*, 109 Cal. 682, 34 Pac. 98.

218. Commissions.—The assignee is entitled to commissions on moneys accounted for in his quarterly account, as a preferred claim.—*Estate of Raley*, 123 Cal. 38, 55 Pac. 790.

219. Disbursement of surplus.—Only the surplus over the amount claimed as commissions should be disbursed and distributed pro rata to the creditors.—*Estate of Raley*, 123 Cal. 38, 55 Pac. 790.

220. Power to carry on business.—The assignee has no power under the insolvent act to carry on the business of the insolvent, and if he does so under a creditor's agreement he is their agent and they are liable as his principals.—*Wilson v. Henderson*, 123 Cal. 258, 55 Cal. 986.

1. Assignments.

221. Void unless made under act.—Under the insolvent act every species of assignment is void unless made under the provisions of the act.—*Adams v. Woods*, 8 Cal. 152, 68 Am. Dec. 313.

222. Construction of.—*Mogk v. Peterson*, 75 Cal. 496, 17 Pac. 446.

223. Growing crop on homestead.—An assignment of all real and personal property generally, does not pass to the assignee a crop growing on the insolvent's homestead.—*Dascey v. Harris*, 65 Cal. 357, 4 Pac. 204.

224. Time of taking effect.—Assignment takes effect by relation at the filing of the petition and order staying proceedings is made.—*Hastings v. Cunningham*, 39 Cal. 137.

225. Requirements, under the act.—An assignment within the law must embrace a trust for third persons.—*Dana v. Stanford*, 10 Cal. 269; *Wellington v. Sedgwick*, 12 Cal. 469.

226. Same—Must embrace a trust.—Unless the assignment embraces a trust in favor of a third person, it amounts to nothing but a mortgage.—*Dana v. Stanford*, 10 Cal. 269.

227. Assignment for benefit of creditors.—A conveyance to a creditor as security is not an assignment for the benefit of creditors within the meaning of the insolvent act.—*Lawrence v. Neff*, 41 Cal. 566.

228. Same.—The provisions of the code permitting such assignments had the effect of repealing pro tanto the provisions of section 39 of the act forbidding assignments except under the act.—*Dresbach v. Creditors*, 63 Cal. 187.

229. Same.—Assignment for the benefit of creditors made under the provisions of part 2, title 3 of the Civil Code, would not prevent the insolvent from receiving a discharge.—*Dresbach v. Creditors*, 63 Cal. 187.

230. Same.—Provisions of Civil Code not repealed by insolvent act.—*Hecht v. Green*, 61 Cal. 269.

231. Same.—Assignment for the benefit of creditors not made in conformity with the statute (1852) is void.—*Chever v. Hays*, 3 Cal. 471.

231a. Same.—Mortgage not an assignment for the benefit of creditors, when given to secure indebtedness and protect creditors from liability incurred by reason of their indorsement of insolvent's paper, within either the letter or spirit of section 39 of the insolvent act, and did not create a trust for the use of the mortgagor, within the statute of frauds.—*Dana v. Stanford*, 10 Cal. 269.

232. Same.—Purpose of 39th section of insolvent act (1852).—The purpose of the act was to do away with voluntary assignments for the benefit of creditors, by insolvent debtors, and was not intended to prevent him from transferring his property to his creditor, either in payment of his debts, or as security for such payment.—*Dana v. Stanford*, 10 Cal. 269.

233. Same.—Repeal of code provisions.—The provisions of the Civil Code as to assignments was not repealed by the act of 1880.—*Dresbach v. Creditors*, 63 Cal. 187; *Barroilhet v. Fisch*, 63 Cal. 462.

234. Exempt property does not pass by the statutory assignment in bankruptcy to the assignee.—*Mogk v. Peterson*, 75 Cal. 496, 17 Pac. 446.

234a. Not void because property inventoried too high.—Assignment is not void because some debts were inventoried too high, in the absence of evidence of design; nor for a mere mistake in computation.—*Barroilhet v. Fisch*, 63 Cal. 462.

m. Exemptions.

235. Objections to.—Creditors may object to setting aside property without filing any paper, on an application for exemption under section 60 (1880).—*In re Baldwin*, 71 Cal. 74, 12 Pac. 44.

236. Double claim.—Where a certain implement was set aside for an insolvent farmer under section 60 of the insolvent act (1880), another of same kind can not be set aside unless it is shown that the first was insufficient for his needs.—*In re Baldwin*, 71 Cal. 74, 12 Pac. 44.

237. Farm implements.—Thrashing ma-

chine, owned by two or more farmers in common, and used for thrashing their crops, but principally in thrashing for hire, is not exempt from execution, and can not be set aside out of the insolvent estate of one of the farmers as exempted under section 60 of the insolvent act.—*In re Baldwin*, 71 Cal. 74, 12 Pac. 44.

238. Partnership property is not exempt from forced sale, and partners are not entitled under the insolvent act to have any part set apart to them as exempt, although such property would be exempt, if owned solely by one of the partners.—*Cowan v. Creditors*, 77 Cal. 403, 11 Am. St. Rep. 294, 19 Pac. 755.

n. Homestead.

239. Leased property.—Where a homestead consists of two houses, one of which is used exclusively for leasing the latter is not exempt under the insolvent law.—*In re Ligget*, 117 Cal. 352, 59 Am. St. Rep. 190, 49 Pac. 211.

240. Set aside only on insolvent's request.—Homestead can be set aside only at the request of the insolvent.—*La Point v. Blanchard*, 101 Cal. 549, 36 Pac. 98.

241. Encumbrances not considered in fixing value.—Homestead encumbrances not to be considered in fixing value.—*Estate of Herbert*, 122 Cal. 329, 54 Pac. 1109.

242. Created by recorded declaration.—The court must set aside the homestead created by recorded declaration as in the case of a deceased person, and has no power to set aside a homestead of more than \$5000 value, but must require a portion to be set apart, or sold if necessary.—*Estate of Herbert*, 122 Cal. 329, 54 Pac. 1109.

243. Hotel.—An insolvent is not entitled to have property used primarily as a hotel set apart to him as a homestead.—*McDowell v. His Creditors*, 103 Cal. 264, 42 Am. St. Rep. 114, 35 Pac. 1031, 37 Pac. 203.

244. Under act of 1880.—Under section 60 of the insolvent act of 1880 a homestead may be set apart to the insolvent, although the same never constituted his residence.—*In re Bowman*, 69 Cal. 244, 10 Pac. 412.

245. Opposition.—The court may refuse to set apart a homestead although there may be no written opposition thereto.—*In re Ligget*, 117 Cal. 352, 59 Am. St. Rep. 190, 49 Pac. 211.

o. Property covered by lien.

1. Attachment.

246. Appointment of receiver—Effect upon lien.—Attachment lien is not affected by the appointment of a receiver of an insolvent's estate, and the court may, notwithstanding such lien, order the sheriff to deliver the attachment property to the receiver, notwithstanding such lien, and the receiver takes such property subject to the lien.—*Von Roun v. Superior Court*, 58 Cal. 358. See also *ex parte Desmond*, 59 Cal. 399.

247. Levy of within one month.—An attachment levied at 12.30 p. m. on the same day of the month preceding that on which the petition was filed in the succeeding month, though filed at 4.20 p. m. is levied

within one month prior to filing the petition within the meaning of the insolvent act.—*Scoville v. Anderson*, 131 Cal. 590, 63 Pac. 1013.

248. Same.—Provision as to dissolution of attachments made within one month prior to adjudication in insolvency, is equivalent to an express declaration that other liens are not affected.—*Vermont Marble Co. v. Superior Court*, 99 Cal. 579, 34 Pac. 326.

See, also, *Hefner v. Herron*, 117 Cal. 473, 49 Cal. 586.

249. Costs in wrongful attachment.—Costs incurred in a wrongful attachment can not be recovered as a legal charge under section 65 of the insolvent act.—*In re Harvey*, 3 Cal. Unrep. 832, 32 Pac. 567.

250. Dissolution.—The mere filing of a creditor's petition is not sufficient to authorize the court to dissolve an attachment against the debtor's property.—*Bertz v. Turner*, 102 Cal. 672, 36 Pac. 1014.

251. Same.—The insolvency act had the effect of dissolving attachments on the insolvent's property levied within two months prior to filing petition, and it was proper for the court to direct the officer to release such an attachment.—*Baum v. Raphael*, 57 Cal. 361.

252. Release of sureties.—The provisions of section 45, of the insolvent act of 1880, does not apply to attachments within one month prior to commencement of insolvent proceedings, such attachments being dissolved under the operation of section 17.—*Rosenthal v. Parkins*, 6 Cal. Unrep. 21, 53 Pac. 444.

253. Same—Redelivery bond.—Where a redelivery bond has been given and the attachment thereby dissolved, and no attachment is in force at the commencement of insolvency proceedings, the sureties on such redelivery bond are liable thereon.—*Rosenthal v. Parkins*, 123 Cal. 240, 55 Pac. 804.

See, also, *San Francisco Sulphur Co. v. Aetna, etc., Co.*, 11 Cal. App. 695, 106 Pac. 111; *Credit Association v. Griffin*, 32 Cal. App. 598, 163 Pac. 695.

2. Execution.

254. Levy within one month.—Levy under execution made within one month prior to adjudication in insolvency under the act of 1880 is not dissolved or affected, and property may be sold thereunder after adjudication.—*Elliott v. Warfield*, 122 Cal. 632, 55 Pac. 409.

254a. Not affected by adjudication.—Execution lien is not affected by a subsequent adjudication in insolvency of the execution debtor, and the appointment of the sheriff as receiver of his estate.—*Ward v. Healy*, 114 Cal. 191, 45 Pac. 1065.

See, also, *Vermont Marble Co. v. Superior Court*, 99 Cal. 579, 34 Pac. 326.

3. Mechanics.

255. Not provable in insolvency proceedings.—Debt secured by mechanics' lien is not provable in an insolvency proceeding, and foreclosure thereof is not stayed thereby.—*Bradford v. Dorsey*, 63 Cal. 122.

4. Mortgage.

256. Foreclosure suits not covered.—Transfer of suits against the insolvent under section 14, does not apply to suits to foreclose mortgages or other liens.—*Rix v. McHenry*, 7 Cal. 89.

257. Mortgage liens not affected by proceedings.—Mortgage liens created before the application in insolvency, are not affected, but the right of the assignee in insolvency is confined to the surplus.—*Rix v. McHenry*, 7 Cal. 82.

258. Chattel mortgage—Delayed record.—Chattel mortgage as to creditors of the insolvent mortgagor, where the record was delayed six months, and recorded only two days prior to the mortgagor's adjudication in insolvency, and where the creditors, without notice of the mortgage, gave him credit.—*Ruggles v. Cannedy*, 127 Cal. 290, 46 L. R. A. 371, 53 Pac. 911.

See, also, *Beamer v. Freeman*, 84 Cal. 554, 24 Pac. 169.

259. Possession of mortgagee—Knowledge of insolvency.—It is immaterial whether the mortgagee has reason to believe that the mortgagor was insolvent at the time possession was taken, the mortgage being valid.—*Perkins v. Maier & Zobelein Brewery*, 133 Cal. 496, 65 Pac. 1030.

260. Holding title as security for purchase price.—One who sells land taking promissory notes in payment, and retains title to the land as security, can not afterwards, on the adjudication of insolvency of the buyer claim payment of the notes without surrendering the title to the land to the assignee.—*In re Harvey*, 3 Cal. Unrep. 832, 32 Pac. 567.

261. Claim secured by mortgage on exempt property.—Creditor whose claim is partly secured by a mortgage lien upon exempt property which never reached the hands of the assignee, is in the position of the lienholder upon the property of a third person, which he could not be expected to surrender before receiving dividends from the insolvent estate.—*Estate of Levin Brothers*, 139 Cal. 350, 73 Pac. 159.

262. Same—Right to dividends.—A creditor, whose claim is partly secured by mortgage lien upon homestead of insolvent set apart under the act, is entitled to dividends upon the full amount of his claim, and after receiving full dividends from the assets of the insolvent firm, he may exhaust the security by foreclosure.—*Estate of Levin Brothers*, 139 Cal. 350, 73 Pac. 159.

263. Order staying proceedings does not prevent mortgage foreclosure.—Stay order does not prevent a mortgagee from foreclosing.—*Montgomery v. Merrill*, 62 Cal. 385.

p. Fraudulent transfers.

264. A transfer made to hinder, delay, and defraud creditors is void under section 3439, Civil Code, whether made to a creditor or a non-creditor, and may be avoided at the instance of creditors or an assignee in insolvency.—*Salisbury v. Burr*, 114 Cal. 451, 46 Pac. 270.

265. Same.—A sale made to hinder, delay, and defraud creditors is absolutely void and not merely voidable, as to creditors, and the receiver is their agent with authority to treat such sale as void.—*Tapscott v. Lyon*, 103 Cal. 297, 37 Pac. 225.

266. Insolvent act deals with transfers to creditors only.—The insolvent act (§ 55) deals with transfers designed to give preference to creditors, and does not apply to transfers to other than creditors to defraud creditors.—*Salisbury v. Burr*, 114 Cal. 451, 46 Pac. 270.

267. Transfers within one month.—A transfer of property by an insolvent, to a creditor, made within a month before the filing of his petition, under circumstances which show that the transfer was intended as a preference, is in violation of section 55 of the act (1880), is void, and no previous demand by the assignee is necessary to maintain an action for possession.—*Cerf v. Phillips*, 75 Cal. 185, 16 Pac. 778.

268. Same.—Unless a transfer is made within a month prior to commencement of proceedings in insolvency, and with intent on the part of the debtor to give a preference thereby, the views and motives of the creditor, and his knowledge of the existence of insolvency, are immaterial.—*Haas v. Whittier, Fuller & Co.*, 87 Cal. 613, 25 Pac. 917.

269. No preference is fraudulent under §§ 49 and 55, unless made within one month prior to filing the petition, and an objection that the insolvent, a year and eight months prior to such filing, paid certain creditors in full, knowing at the time that he was insolvent and with intent to prefer them, is not a valid objection.—*Dyer v. Bradley*, 89 Cal. 557, 26 Pac. 1103.

270. Transfer in preference to creditor not necessarily fraudulent.—A transfer is not necessarily fraudulent though the insolvent debtor and the creditor know that it will have the effect of defeating other creditors in the collection of their debts.—*Dana v. Stanford*, 10 Cal. 269.

271. No rule of law to prevent an insolvent debtor from giving preference.—There is no rule of law which prevents a debtor, in insolvent circumstances, from the application of his property to the payment of one debt rather than another.—*Randall v. Buffington*, 10 Cal. 491.

272. Same—Section 39 does not prohibit preferences.—Section 39 of the act contains nothing prohibiting an insolvent from conveying his property, either absolutely or as security, directly to one of his creditors to the exclusion of the rest.—*Lawrence v. Neff*, 41 Cal. 566.

273. Transferee's knowledge of insolvency.—When transferee knows sufficient facts to put him on inquiry, he will be charged with reasonable cause to believe the debtor to be insolvent.—*Washburn v. Huntington*, 78 Cal. 573, 21 Pac. 305.

274. Transfer to secure future payments—Good faith of transferee—Ignorance of insolvency.—A transfer of property to secure future payments, and not for previous lia-

bility is not a fraudulent preference under the insolvent act, where the transferee paid full value, and did not know or have reason to know that the transferor was insolvent, notwithstanding the transfer was made within 30 days prior to the filing of the petition.—*Haskin v. James*, 96 Cal. 258, 31 Pac. 36.

275. Transferee's want of notice of seller's fraud.—Transfer can not be vacated for fraud of seller where the buyer had no part therein and no notice of the fraud.—*Grunsky v. Parlin*, 110 Cal. 179, 42 Pac. 575.

276. Creditor's knowledge of insolvency implied, when.—A creditor can not wilfully shut his eyes to the means of information which he knows is at hand, and if he does so, his willing ignorance is equivalent to actual knowledge.—*Levy v. Irvine*, 134 Cal. 664, 66 Pac. 953.

277. Same.—When the means of knowledge were ample, and the creditor had opportunity to know from the books placed in his hands, he is charged with knowledge, if he fails to make an investigation.—*Levy v. Irvine*, 134 Cal. 664, 66 Pac. 953.

278. Transfer out of the usual course of business.—Transfer from debtor to creditor not in the usual course of business is prima facie fraudulent, and sufficient to charge transferee with notice of insolvency.—*Godfrey v. Miller*, 80 Cal. 420, 22 Pac. 290.

279. Same.—A transfer from the debtor to a creditor not in the usual or ordinary course of business is prima facie evidence that the transferee had reasonable cause to believe that the debtor was insolvent and that the transfer was made to prevent the property from reaching his assignee in insolvency for the benefit of the creditors.—*Washburn v. Huntington*, 78 Cal. 573, 21 Pac. 305.

280. Same—Prima facie presumption.—A transfer to a creditor not in the usual course of business is prima facie presumed to be a preference in violation of section 55 of the act; but such presumption may be overcome by counter evidence that no preference was intended.—*Haas v. Whittier*, 97 Cal. 411, 32 Pac. 449.

281. Same—Same—Prima facie presumption of, is overturned by uncontradicted evidence of debtor and creditor that no preference was intended and that both intended that all creditors should be treated alike.—*Haas v. Whittier*, 97 Cal. 411, 32 Pac. 449.

282. Same—Transfer on Sunday with knowledge of attachment.—A transfer of a horse and buggy from debtor to creditor, on a Sunday, without trial, with knowledge that other property of the debtor was attached the preceding day, and that another attachment was expected the following day, was not in the usual course of business, and the transferee will be held to have been charged with notice of insolvency.—*Godfrey v. Miller*, 80 Cal. 420, 22 Pac. 290.

283. Same—Bill of sale of entire stock in trade is not in the usual course of business, and is prima facie fraudulent and void

as to creditors.—*Chevallier v. Commins*, 106 Cal. 580, 39 Pac. 929.

284. Same—Entire stock in trade.—A transfer by a merchant of his entire stock in trade to a creditor is not in the usual course of business, and when made by an insolvent debtor, upon proof thereof, the burden is on the purchaser to disprove fraud by showing ignorance of the intent of the insolvent to make a fraudulent preference.—*Tapscott v. Lyon*, 103 Cal. 297, 37 Pac. 225.

285. Same—Books of account.—Transfer of book accounts, made by means of orders drawn on debtors in favor of insolvent's creditor, is an assignment out of the usual and ordinary course of business within the meaning of the act.—*Washburn v. Huntington*, 78 Cal. 573, 21 Pac. 305.

286. Same—Same.—Transfer of accounts, books, journal, ledger and blotter of firm, to the father-in-law of one of the partners, residing in another county, is not in the usual course of business, and is *prima facie* fraudulent, and the burden is thrown on the defendant in an action by the assignee for the recovery of the property to show the contrary.—*Ballou v. Andrews Banking Co.*, 128 Cal. 562, 61 Pac. 102.

287. Same—Same.—Transfer of a part or of all of a firm's books is not in the usual course of business.—*Ballou v. Andrews Banking Co.*, 128 Cal. 562, 61 Pac. 102.

288. Same—Instruction held out of place.—An instruction as to knowledge or reason to know the insolvency of the transferor, on the part of the transferee, is out of place if it omits to include the question as to the transfer out of the usual course of business where the evidence shows the transfer of the stock of goods.—*Matthews v. Chaboya*, 111 Cal. 435, 44 Pac. 169.

289. Action by assignee—Creditor without knowledge of insolvency.—In an action by assignee to recover property alleged to have been transferred in preference of a creditor in violation of the insolvent act, findings that defendant neither knew nor believed, nor had reasonable cause to believe transferor was insolvent or made the transfer in contemplation of insolvency, are sufficient to support a judgment for defendant.—*Smith v. Fratt*, 4 Cal. Unrep. 821, 37 Pac. 1033.

289a. Same—Transfer eight months prior to commencement of proceedings.—Action by assignee to recover property transferred by the insolvent eight months prior to commencement of proceedings. Nonsuit.—*McNeil v. Hansen*, 115 Cal. 214, 46 Pac. 1065.

289b. Same—Unsuccessful defense—Attorney's fee.—Trustee of property conveyed in trust less than thirty days before commencement of proceedings is not entitled to attorney's fees for unsuccessfully defending an action for their recovery brought by the assignee.—*Sanger v. Ryan*, 122 Cal. 52, 54 Pac. 522.

290. Question of intent is one of fact, not of law.—Question of intent of insolvent is one of fact and not of law.—*Haas v. Whittier*, 97 Cal. 411, 32 Pac. 449.

291. Motives of creditor immaterial, when.—Motives of creditor are immaterial, if debtor does not intend a preference.—*Haas v. Whittier*, 97 Cal. 411, 32 Cal. 449.

292. Payment of debt incurred in fiduciary capacity.—The fact that a fraudulent transfer is made in part payment of indebtedness for moneys held in a fiduciary capacity, does not relieve the transaction of its fraudulent character.—*Godfrey v. Miller*, 80 Cal. 420, 22 Pac. 290.

293. Sale of entire stock of goods with intent to give preference.—One admittedly an insolvent can not pay one creditor with intent to make a preference, and if he sells his entire stock of goods to a creditor with such intent, and the creditor is aware of that fact, the sale is void, although full value was paid and applied to pay an honest debt.—*Tapscott v. Lyon*, 103 Cal. 297, 37 Pac. 225.

294. Good faith of transferee—Payment of full value.—Where transferee paid full value for goods, in good faith, without knowledge of fraudulent intent on part of insolvent the transfer can not be attacked as fraudulent.—*Haskin v. James*, 96 Cal. 258, 31 Pac. 36.

See, also, *Albertoll v. Branham*, 80 Cal. 631, 13 Am. St. Rep. 200, 22 Pac. 404.

295. Purchase by copartner at public auction.—Purchase by copartner of books of account of insolvent firm at public auction, not made with insolvent effects, may be made, and such copartner may enforce a claim in favor of the firm against the estate of an insolvent copartner.—*In re Levy v. Schwab* (*Bank of Woodland v. Schwab*), 130 Cal. 282, 62 Pac. 520.

296. Transfer void as to transferee and subsequent transferees.—Where a transfer by an insolvent is void as against creditors, it is void as to a second transferee.—*Ballou v. Andrews Banking Co.*, 128 Cal. 562, 61 Pac. 102.

297. Prima facie case rebutted.—Prima facie case of fraudulent transfer successfully rebutted.—*In re Muller*, 118 Cal. 432, 50 Pac. 660.

298. Confession of judgment in favor of creditor.—Confession of judgment in favor of creditor is not alone sufficient to sustain an action by the assignee on ground of fraudulent preference.—*Bernheim v. Christal*, 76 Cal. 567, 18 Pac. 683.

299. Prohibition to restrain assignee's action.—Prohibition will not lie against an assignee in insolvency to prevent the bringing of an action to recover property of the insolvent transferred in a fraudulent preference.—*Goddard v. Superior Court*, 90 Cal. 364, 27 Pac. 298.

299a. Transfer to hinder, delay, and defraud creditors by one who is insolvent involves actual fraud and not merely legal fraud.—*In re Strock*, 128 Cal. 658, 61 Pac. 282.

299b. Act construed as to fraud.—The fraud referred to in section 55 of the act (1880) is construed to mean fraud on the provisions of the act.—*Washburn v. Huntington*, 78 Cal. 573, 21 Pac. 305.

q. Debts in fiduciary capacity.

300. A dealer in mining stocks who receives money to buy stock for another, buys the stock, sells it at a profit, and refuses to deliver either stock or proceeds on demand, such proceeds are held in trust, and the obligation created is one created in a fiduciary capacity, and is not affected by his discharge in insolvency.—Herrlich v. McDonald, 80 Cal. 472, 22 Pac. 299.

r. Hearing and trial.

301. Time set for hearing—Adjournment of court.—The fact the court was adjourned though not for the term, at the time appointed for the hearing of objections, and at the time of such hearing, is no objection to the validity of the proceedings, it not appearing that the parties suffered injustice.—Clarke v. Ray, 6 Cal. 600.

301a. Fraud—The issue of fraud should be tried by a jury as provided in section 20.—Davenport v. Creditors, 62 Cal. 29.

s. Evidence.

302. Prima facie evidence of fraud subject to rebuttal.—Prima facie evidence of fraud in sale of property out of the usual course of business is subject to rebuttal.—Grunsky v. Parlin, 110 Cal. 179, 42 Pac. 575.

303. Certified copy of assignment is conclusive evidence of right of assignee to bring an action for the recovery of property of the insolvent transferred in violation of the provisions of the insolvent act within thirty days prior to the filing of the petition.—Riego v. Foster, 125 Cal. 178, 57 Pac. 896.

304. Same.—Certified copy of assignment is conclusive evidence under section 18 of the insolvent act of the assignee's authority, and such authority can not be collaterally attacked when such certificate is presented in evidence in support thereof.—Fitzgerald v. Neustadt, 91 Cal. 600, 27 Pac. 936.

305. Same—Legislative power to make rule.—There is no reason why the legislature had not the power to make such a rule of evidence.—Fitzgerald v. Neustadt, 91 Cal. 600, 27 Pac. 936.

306. Fraudulent understanding.—Evidence of an understanding between the insolvent and the transferee, that he would trade with no one else, and that if he failed in business he would turn over the business to such transferee, is admissible to show intent; and such an agreement, if good between the parties is void as to creditors, and is no defense to an action by the assignee for the recovery of the property transferred in accordance with its terms.—Chevalier v. Commins, 106 Cal. 580, 39 Pac. 829.

307. Conflict as to fraudulent transfer.—In an action by an assignee to recover personal property alleged to have been fraudulently transferred, and the question is as to whether there is a conflict of evidence as to the purpose of the transfer, the fact that the evidence goes to show that one of the witnesses who testified had acted in bad faith and was unworthy of belief is imma-

terial.—Chevalier v. Commins, 106 Cal. 580, 39 Pac. 929.

308. Prima facie evidence of fraudulent transfer.—The transfer of a mercantile business to a creditor, in satisfaction of his claim, within one month prior to the filing of a creditor's petition is prima facie evidence of fraud, and the transferee has reasonable cause to believe the fact of insolvency; but this prima facie evidence may be rebutted.—Matthews v. Chaboya, 111 Cal. 435, 44 Pac. 169.

309. Same—Sufficient to set aside transfer.—Transfer to a creditor, under all the conditions which under section 55 render it a fraudulent preference, of property occupied, but not claimed, as a homestead, is sufficient ground to set the same aside at the suit of the assignee, and to restore the property to the estate of the insolvent.—La Point v. Blanchard, 101 Cal. 549, 36 Pac. 98.

310. Same—Transfer not in usual course of business.—Transfer out of usual course of business is merely prima facie evidence of fraud, and may be overcome by proof of creditor's good faith, without knowledge of debtor's insolvency, and without intent to secure a preference.—Bernheim v. Christal, 76 Cal. 567, 18 Pac. 683.

311. Knowledge of insolvency—Admissions.—Conversations with third persons, in which debtor admitted insolvency, are admissible in support of allegation of reasonable cause to believe against transferee of insolvent debtor.—Washburn v. Huntington, 78 Cal. 573, 21 Pac. 305.

312. Affidavit of insolvent required by section 49 is properly admissible in evidence to show what he intended to show at the trial of the opposition of the creditors to his discharge.—In re Harris, 81 Cal. 350, 22 Pac. 867.

313. Proof of non-citizenship—non-residence.—Must be made by one who claims the benefit of such fact.—Porter v. Innis, 79 Cal. 183, 21 Pac. 729.

313a. Account books—Failure to present is prima facie fraudulent.—An insolvent must deposit in the clerk's office his books of account for inspection of creditors, and his failure to do so, or explain such failure, is prima facie evidence of fraud to the injury of his creditors.—Schloss v. Creditors, 31 Cal. 201.

313b. Certificate of discharge is prima facie evidence of regularity of proceedings.—A discharge is prima facie evidence of regularity of proceedings.—Pope v. Kirchner, 77 Cal. 152, 19 Pac. 264.

313c. Same.—Certificate of discharge is prima facie evidence of the regularity of the proceedings.—Herrlich v. McDonald, 80 Cal. 472, 22 Pac. 299.

t. Instructions.

314. Fraud in execution of deed—Instruction erroneous.—Where fraud is charged in the execution of a deed to his property shortly prior to making application for a discharge, it is error to instruct the jury "That to find the charge of fraud sustained, they must believe the deed made with intent to defeat, hinder or delay creditors, and

to have been actually delivered to grantees; that proof of record was no proof of delivery."—*Fisk v. Creditors*, 12 Cal. 281.

315. Fraudulent intent—Instruction erroneous.—An instruction as to fraudulent intent is error where the fraud is a legal fraud and no evidence of actual fraud exists.—*Matthews v. Chaboya*, 111 Cal. 435, 44 Pac. 169.

u. Findings and conclusions.

316. Unnecessary.—Formal findings and conclusions of law are not necessary upon an adjudication of insolvency.—*In re Clarke*, 125 Cal. 388, 58 Pac. 22.

317. Finding of indebtedness is sufficiently supported by evidence that the indebtedness in the aggregate is equal to the exact sum of several items of indebtedness set forth in the petition, although not incurred in the manner therein stated.—*In re Abbott*, 74 Cal. 381, 16 Pac. 21.

v. Adjudication of insolvency.

318. May be made on return day of order to show cause, without meeting of creditors.—The court may adjudge a party insolvent in an involuntary proceeding on the return day of the order to show cause, without waiting for a meeting of creditors.—*Lyon v. Crosby*, 64 Cal. 34, 27 Pac. 786.

319. When made.—Adjudication of insolvency occurs when order is made for meeting of creditors.—*Cerf v. Oaks*, 59 Cal. 132.

320. Order is interlocutory—Entry in minutes.—The order is interlocutory and should be entered in the minutes, but the failure to do so, or an incomplete or informal entry, does not render the adjudication invalid, if the order is sufficient in form and substantial.—*In re Clarke*, 125 Cal. 388, 58 Pac. 22.

321. Order relates back to the date the petition was filed.—*State Inv., etc., Co. v. San Francisco*, 101 Cal. 135, 35 Pac. 549.

322. Order is sufficient proof, when.—Adjudication in voluntary insolvency is sufficient proof, in the absence of a contrary showing, of inadequacy of the debtor's property to pay his debts.—*Ruggles v. Cannedy*, 127 Cal. 290, 46 L. R. A. 371, 53 Pac. 911.

323. Sufficiency of order.—Adjudication is sufficient if the defendant is adjudged insolvent on a specific date prior to the filing of the petition, and ever since has been, and still is, and its sufficiency is not affected by the unnecessary conclusion of law that the defendant was insolvent.—*In re Clarke*, 125 Cal. 388, 58 Pac. 22.

323a. Attorney's fee for contesting adjudication in insolvency.—The insolvent act makes no provision for an attorney's fee for contesting adjudication.—*In re Close*, 106 Cal. 574, 39 Pac. 1067.

w. Notice of adjudication.

324. Mailing sufficient, when.—Where the place of residence of the creditors only appears in the petition, addressing the notice to the residences, instead of to their places of business, held not material.—*Pope v. Kirchner*, 77 Cal. 152, 19 Pac. 264.

325. Clerical error in affidavit of mailing,

held not material.—*Pope v. Kirchner*, 77 Cal. 152, 19 Pac. 264.

326. Clerical error in publication.—A slight clerical error in the spelling of the insolvent's name is not material where the name is published twice correctly in the same notice.—*Pope v. Kirchner*, 77 Cal. 152, 19 Pac. 264.

x. Discharge.

327. Pending appeal from order setting apart homestead.—Under sections 48 and 49 the insolvent is entitled to a discharge, subject to the right of the creditors to oppose the same on stated grounds, but the order setting apart a homestead under sections 60 and 67 is not one of these grounds, and an appeal pending from such order does not affect the right to a discharge.—*Demartin v. Demartin*, 85 Cal. 76, 24 Pac. 596.

328. Pending election of assignee—Appointment of assignee.—The insolvent has nothing to do with the appointment of the assignee, and he is not prevented from asking for his discharge by the delay of the creditors in electing an assignee.—*In re Harris*, 81 Cal. 350, 22 Pac. 867.

329. Objections to discharge may be on either of two grounds: First, illegality in appointment of assignee, which raises a question of law for the court; and, second, fraud committed by insolvent, which raises a question of fact for the jury.—*Wilson v. Creditors*, 32 Cal. 406.

330. Assignee may oppose on ground of fraud of insolvent, and is not precluded from so doing because of acceptance of office of assignee.—*Hinkel v. Creditors*, 63 Cal. 328.

331. Creditor's opposition.—Each creditor may file his opposition to the discharge and may withdraw it at will, whether the other creditors consent or not (*Ross, J., dis.*).—*Brangon v. Creditors*, 64 Cal. 394, 1 Pac. 477.

332. Same—Right of creditor to oppose.—Any creditor has the right to be made a party to the insolvency proceeding for the purpose of opposing the discharge, or obtaining his proportion of the assets, whether named in the assignment or not.—*Lambert v. Slade*, 4 Cal. 337.

333. Same—Same—Need not be judgment creditor.—A creditor, to have a right to oppose an insolvent's discharge under the act of 1852, need not be a judgment creditor.—*Davenport v. Creditors*, 62 Cal. 29.

334. Same—Formal answer to objections.—The court is not deprived of jurisdiction to determine objections of creditor to discharge of insolvent, by failure of latter to file formal answer thereto.—*Estate of Clark*, 128 Cal. 147, 60 Pac. 663.

335. Same—Waiver of formal answer to objections.—Absence of formal answer to objections is waived by creditor by introducing evidence to support objections.—*Estate of Clark*, 128 Cal. 147, 60 Pac. 663.

336. Same—Unanswered specifications.—After demurrer sustained to some and striking others, specifications setting forth fraudulent conduct on insolvent's part sufficient to deprive him of right to discharge, re-

main unanswered, it is error to dismiss creditor's opposition after failure to amend after demurrer, and the discharge will be reversed on appeal.—Estate of Rich, 129 Cal. 494, 62 Pac. 56.

336a. Same—Failure to answer—Dismissal.—When the insolvent fails or refuses to answer an accusation of fraud the court may dismiss the case, but can not take his estate and distribute it to creditors without discharging their claims against him.—Sanborn v. Creditors, 37 Cal. 609.

337. Same—Each objection requires an answer as a separate defense.—Each objection specified is in the nature of a separate defense, and if it shows sufficient ground, it must be answered and found in insolvent's favor to entitle him to a discharge.—Estate of Rich, 129 Cal. 494, 62 Pac. 56.

338. Same—Objections stricken out.—Objections based on specifications of irrelevant and immaterial facts may be stricken out on motion.—Dyer v. Bradley, 89 Cal. 557, 26 Pac. 1103.

339. Failure to keep proper account books.—Where the creditor fails to specify defects an objection that insolvent failed to keep proper account books is not sufficient to defeat application for discharge.—Estate of Clark, 128 Cal. 147, 60 Pac. 663.

340. Same—Same.—Failure to keep proper account books prevents a merchant or tradesman from obtaining a discharge under the act of 1880, and the fact of omission in good faith was immaterial.—In re Good, 78 Cal. 399, 20 Pac. 860.

341. Same—Same.—Where the evidence showed that the insolvent had not engaged in business prior to July 20, 1881, the question whether he kept proper books of account from and after the passage of the act (June 16, 1880) is immaterial.—In re Lukes, 71 Cal. 113, 12 Pac. 390.

342. Same—Same.—An insolvent merchant or tradesman engaged in business prior to the passage of the act of 1880, but who did not keep proper account books, is not prohibited under section 49 of the act from obtaining a discharge.—In re Lukes, 71 Cal. 113, 12 Pac. 390.

343. Same—Same.—Where the books of the firm fail to show a debt of the firm for money loaned, the appearance of which on the books would have shown insolvency, the books were not "proper."—In re Good, 78 Cal. 399, 20 Pac. 860.

344. Same—Same.—The keeping of such books only as showed solvency does not satisfy the requirement, and the failure to keep proper books of account defeats discharge.—Sullivan v. Washburn & Moen Mfg. Co., 139 Cal. 257, 72 Pac. 992.

345. Same—Burden of proof is on creditors.—The burden is on the creditors to prove the insolvent, who has filed the affidavit required by section 49, guilty of some act which the statute makes a barrier to his discharge.—In re Harris, 81 Cal. 350, 22 Pac. 867.

346. Same—Too late, when.—The objection to the jurisdiction for defects in the proof of publication of notice to creditors

comes too late after the creditor has made a general appearance, filed his claim in due and proper form, and voluntarily appeared in opposition to the discharge, and then for the first time raises the objection.—In re Yoell, 131 Cal. 581, 63 Pac. 913.

347. General demurrer—Plea amounting to.—Objection that matters, if taken as confessed, do not amount to fraud, is in nature of general demurrer, and must be overruled if any of the charges are sufficient.—Grow v. Creditors, 31 Cal. 328.

348. Creation of fraudulent debt in fiduciary capacity.—Objection that debtor in fiduciary capacity created a fraudulent debt is not valid as against discharge.—Dyer v. Bradley, 89 Cal. 557, 26 Pac. 1103.

348a. Same.—Debt in fiduciary capacity, fraudulently contracted, is not, under section 52, affected by discharge.—Dyer v. Bradley, 89 Cal. 557, 26 Pac. 1103.

349. "Sworn falsely"—Unintentional mistake.—An unintentional and innocent mistake in the affidavit is not within the meaning of the words "sworn falsely" in section 49 of the insolvent act, so as to prevent the insolvent from obtaining his discharge.—Demartin v. Demartin, 85 Cal. 76, 24 Pac. 596.

349a. Same—Element of fraud essential.—The phrase "have sworn falsely," in section 49 of the insolvent act, necessarily imports a wilful act done with a fraudulent intent, and from which the element of fraud can not be eliminated.—Dean v. Grimes, 72 Cal. 442, 14 Pac. 178; Demartin v. Demartin, 85 Cal. 76, 24 Pac. 596.

350. Benefit of act—Prior illegal proceeding.—A discharge can not be successfully contested on the ground that the insolvent had had the benefit of the act within three years prior to the application for discharge, where the prior petition had been dismissed because of less than three hundred dollars indebtedness.—In re Marsh, 115 Cal. 230, 46 Pac. 1072.

351. Former adjudication—Res adjudicata.—A former adjudication as to the validity and bona fides of a deed from the insolvent conveying certain of his property executed a few days before the filing of his petition, in an action by the assignee to set aside the deed, is a defense to an objection on the same ground to his discharge made by the creditors.—In re Baird, 84 Cal. 95, 24 Pac. 167.

352. Ignorant preference of a creditor, at time insolvent did not know his insolvency, is no bar to his discharge.—In re Harris, 81 Cal. 350, 22 Pac. 867.

353. Fraud in procuring—Forfeiture of benefits of act.—Under the provisions of section 32 of the act a discharge procured by fraud, concealment of property, or false statement in his schedule, can not be pleaded in bar of a subsequent suit.—Ellsasser v. Hunter, 26 Cal. 279.

354. As a bar—Fraud in procuring.—The discharge of an insolvent debtor under the act (1852) does not relieve him from liability upon a judgment previously rendered, upon which execution is subsequently issued, where it is shown that the discharge

was procured by fraud, concealment of property, or false statements in his schedule.—*Ellsasser v. Hunter*, 26 Cal. 279.

355. Same—Future liability—Hiring for a fixed term.—A discharge is a bar to an action for the recovery of money due, subsequent to discharge under a previous contract entered into prior to discharge, for a fixed term, and the liability under such contract is one within the meaning of the act.—*Mooney v. Detrick*, 85 Cal. 549, 22 Pac. 1111, 26 Pac. 280.

356. Same—Debts created in a fiduciary capacity.—A commission merchant who receives goods to be sold and the proceeds transmitted to the consignor, less commission, and who sells the goods and fails to transmit the proceeds, thereby incurs a debt in a fiduciary capacity, and an action thereon against such merchant is not barred by a discharge in insolvency.—*Mayberry v. Cook*, 121 Cal. 588, 54 Pac. 95.

357. Same.—No defense when the record in insolvency neither names the plaintiff nor the contract on which action is brought, nor states that defendant described all his debts and liabilities to the best of his knowledge and belief.—*Rourke v. McLaughlin*, 38 Cal. 196.

358. Same.—Under act of 1880 bars action on judgment rendered in 1876.—*Hundley v. Chaney*, 65 Cal. 363, 4 Pac. 238.

359. Same—Promissory note.—Discharge is a defense to an action on a promissory note made to a citizen of California, but transferred to a citizen of another state subsequent to the discharge.—*Thomas v. Crow*, 65 Cal. 470, 4 Pac. 448.

360. Same—Contract of hiring.—A discharge is no bar to action on a contract for hiring for a certain length of time, where the money became due thereon after the discharge.—*Mooney v. Detrick*, 3 Cal. Unrep. 191, 22 Pac. 1111.

361. Effect—Debts owing at time of filing petition.—A discharge only affects debts owing at the filing of the petition.—*Waggle v. Worthy*, 74 Cal. 266, 5 Am. St. Rep. 440, 15 Pac. 831.

362. Release of mortgage.—Decree of discharge from promissory note secured by mortgage does not release the mortgage, but merely limits the mortgagee to the proceeds of the mortgage.—*Luning v. Brady*, 10 Cal. 265.

363. Same—Judgment not satisfied, when.—A judgment based on the fraudulent acts of the insolvent is not satisfied by the latter's discharge under the insolvent act.—*Carit v. Williams*, 74 Cal. 183, 15 Pac. 751.

364. Same—Judgment rendered in another state.—Discharge in this state is no bar to an action on a judgment rendered in another state in favor of a resident thereof.—*Bean v. Loryea*, 81 Cal. 151, 22 Pac. 513.

365. Same—Under void proceedings.—Where the proceedings under the act are without jurisdiction they are void, and the discharge can not be pleaded in bar on a subsequent creditor's suit.—*Meyer v. Kohlman*, 8 Cal. 44.

366. Same.—Judgment of discharge does

not extinguish the debt, but merely relieves the debtor from compulsory payment, and leaves subsequent payment to his conscience.—*Smith v. Richmond*, 19 Cal. 476.

367. Same—Final as to insolvent—Jurisdiction to administer trust remains.—After the discharge the insolvent is not a necessary or proper party to subsequent proceedings, and so far as he is reasonably concerned the adjudication is final, but the jurisdiction of the court to administer the trust remains until the property is finally disposed of.—*Rued v. Cooper*, 109 Cal. 682, 34 Pac. 98.

368. Same—Discharge of partner as individual operates as a discharge from individual liability for the partnership debts.—*Hawley v. Campbell*, 62 Cal. 442; *Dresbach v. Creditors*, 63 Cal. 187.

369. Agreement not to contest, whether verbal or written, in consideration of payment of debt in full, is a "pecuniary consideration or obligation," and renders the discharge void under section 49.—*Estudillo v. Meyerstein*, 72 Cal. 317, 13 Pac. 869.

370. Denial.—Return of goods by the assignee to the sheriff, when discharge denied, held proper.—*Appel v. Creditors*, 57 Cal. 211.

371. Fraud in procuring discharge may be pleaded by the sheriff in an action against him by the transferee of a discharged insolvent for damages sustained in a levy of execution upon a judgment rendered previous to such discharge.—*Ellsasser v. Hunter*, 26 Cal. 279.

372. Collateral attack upon—Jurisdiction of court not proper subject of inquiry.—In a collateral attack upon a judgment of discharge the question of the jurisdiction of the court is not a proper subject of inquiry.—*Friedlander v. Loucks*, 34 Cal. 18.

373. Extra-territorial operation and effect.—Insolvent laws have none, and contracts of citizens of other states can not be discharged thereunder, unless such citizens voluntarily become parties to the proceeding.—*Scamman v. Bonslett*, 118 Cal. 93, 62 Am. St. Rep. 226, 50 Pac. 272.

374. Same.—Where both debtor and creditor were citizens of California at the date of the contract, and it was made and is payable in this state, a certificate of discharge in insolvency is a valid defense, although the creditor had afterwards become a resident of another state.—*Scamman v. Bonslett*, 118 Cal. 93, 62 Am. St. Rep. 226, 50 Pac. 272.

375. Same.—A discharge under the insolvent law does not bar an action by the citizen of another state on a promissory note which does not specify the place of payment, where the holder was at the time of its execution and continued to be a resident and citizen of another state.—*Rhodes v. Borden*, 67 Cal. 7, 6 Pac. 850.

376. Action to set aside for fraud.—May be brought under section 53, and need not necessarily be brought by motion in the insolvency proceedings.—*Estudillo v. Meyerstein*, 72 Cal. 317, 13 Pac. 869.

377. Same—Assignee.—An assignee of claims against an insolvent, not himself a creditor, is not within the terms of section

53 of the act of 1880, and can not, after the discharge of the insolvent, maintain an action to set aside the decree on the ground of fraud.—*Sanborn v. Doe*, 92 Cal. 152, 27 Am. St. Rep. 101, 28 Pac. 105.

378. Same—Creditor.—Creditor only can commence proceeding to annul certificate of discharge, as provided in section 53 of the act of 1880, and the assignee has no right to do so.—*Wagner v. Superior Court*, 4 Cal. Unrep. 310, 34 Pac. 648.

379. Same—Same.—The effect of a final discharge in insolvency proceedings is to end them so far as the insolvent is concerned, and can only be restored by a creditor's application to set it aside and annul the discharge.—*Wagner v. Superior Court*, 100 Cal. 359, 34 Pac. 820.

380. Stay of proceedings made pending petition for discharge under the insolvent act would not prevent issue of execution and sale of property of the judgment debtor thereunder during the time for the lien of the judgment.—*Isaac v. Swift*, 10 Cal. 71, 70 Am. Dec. 698.

380a. Right to set aside for fraud, not assignable.—Right to set aside decree on the ground of fraud under section 53 of the act of 1880, not subject to assignment.—*Sanborn v. Doe*, 92 Cal. 152, 27 Am. St. Rep. 101, 28 Pac. 105.

y. Judgment.

381. In rem as to status of debtor.—Decree is one in rem so far as the status of the debtor is concerned.—*Arnold v. Kahn*, 67 Cal. 472, 8 Pac. 36.

382. Collateral attack upon—Recital of jurisdictional facts.—A judgment which recites "That the requirements of said act . . . and all orders of the court herein, have, in every respect, been fully complied with and performed by said petitioner," sufficiently shows the existence of all jurisdictional facts necessary to uphold the judgment against collateral attack.—*Langenour v. French*, 34 Cal. 92.

383. Void for want of jurisdiction.—A judgment of discharge rendered by the county court without jurisdiction is void, and the creditors may enforce collection of their debts at discretion.—*People ex rel. Sturgis v. County Court*, 28 Cal. 115.

384. Docketing judgment is not required to preserve the lien.—*Hastings v. Cunningham*, 39 Cal. 137.

z. Contempt.

385. Failure to file schedules, and failure to obey a citation to answer concerning his property, may be punished, as for contempt, by imprisonment until he obeys the order.—*In re Clarke*, 125 Cal. 388, 58 Pac. 22.

386. Holding property claimed by receiver.—One who holds property claimed by receiver of an insolvent estate can not be adjudged in contempt for refusing to turn it over to the receiver on an order of court where he holds such property adversely to the insolvent for a corporation of which he is an officer.—*Ex parte Hollis*, 59 Cal. 405.

387. Refusal to surrender property.—Refusal of insolvent, after adjudication, may

be punished as for contempt.—*Ex parte Clark*, 110 Cal. 405, 42 Pac. 905.

aa. Appeal and error.

388. Order refusing an adjudication.—Such an order is appealable, and therefore writ of error will lie.—*Widber v. Superior Court*, 94 Cal. 430, 29 Pac. 870.

389. Order requiring verification of schedule not appealable.—Order requiring an involuntary insolvent to verify his schedule is not appealable.—*In re Abbott*, 74 Cal. 381, 16 Pac. 21.

390. Time to appeal.—Minute order for discharge does not conclude trial where the court subsequently made findings and judgment of discharge was entered and an appeal within sixty days after filing of findings is in time notwithstanding the unexplained lapse of a year from the minute order and the filing of findings.—*Sullivan v. Washburn & Moen Mfg. Co.*, 139 Cal. 257, 72 Pac. 992.

391. Jurisdiction of supreme court.—The supreme court has jurisdiction on appeal from a judgment in an insolvent case, as a special case within the meaning of section 336 of the practice act.—*Fisk v. Creditors*, 12 Cal. 281.

392. Appealable order.—Res adjudicata.—An order denying the right of the insolvent to grape crop on homestead, and affirming the right of the assignor, is appealable, and becomes res adjudicata, and a bar to an action to recover it, upon failure to appeal within the time limited.—*Sunkler v. McKenzie*, 127 Cal. 554, 78 Am. St. Rep. 86, 59 Pac. 982.

393. Appeal by creditor.—Service of notice of appeal need only be served on the insolvent, and need not be served on the receiver or the other creditors who had not filed proof of claims.—*In re Choze*, 112 Cal. 630, 44 Pac. 1066.

394. Same—Not estopped by making proof of claim.—Creditor is not estopped to pursue an appeal from adjudication of insolvency by making proof of claim.—*In re Choze*, 112 Cal. 630, 44 Pac. 1066.

395. Right of appeal regulated by general law.—Right of appeal regulated by the general law for appeals in civil cases.—*Dennery v. Superior Court*, 84 Cal. 7, 24 Pac. 147.

396. Bond of assignee operates as undertaking on appeal.—Under § 67 of the act of 1880 the assignee's bond operates as an undertaking on an appeal by him from a judgment or order, and when the judgment or order directs the payment of money, operates as a stay bond.—*In re Sharp*, 92 Cal. 577, 28 Pac. 783.

397. Order denying motion to dismiss proceedings made by creditor after adjudication of insolvency is not appealable.—*In re Wierbitzky*, 96 Cal. 310, 31 Pac. 115.

398. Crudities and bad grammar in the petition do not vitiate the pleading on appeal.—*In re Ramazzina*, 110 Cal. 488, 42 Pac. 980.

399. Appeal by creditor stays all proceedings under the order of adjudication,

and the superior court has no jurisdiction to modify the order so as to allow execution against homestead of insolvent.—*Stater v. Superior Court*, 107 Cal. 536, 40 Pac. 949.

400. Appealable order.—An order directing the assigner to render an account as required by section 29 of the insolvent act of 1886, is not appealable.—*Rosenthal, Feder & Co. v. Levy*, 73 Cal. 9, 14 Pac. 368.

401. When the evidence is insufficient to sustain any of the grounds of opposition, a

judgment refusing the discharge will be reversed.—*In re Baird*, 84 Cal. 95, 24 Pac. 167.

402. Appeal in contempt proceedings.—See “Constitutionality,” 5.

bb. Attorney’s fee.

403. Petition for, must show value of estate.—A petition for attorney’s fee in an insolvent case, which fails to show the nature and value of the estate, is insufficient.—*In re Close*, 106 Cal. 574, 39 Pac. 1067.

CHAPTER 25.

BANKS AND BANKING.

CONTENTS OF CHAPTER.

ACT 406. INVOLUNTARY DISSOLUTION OF SAVINGS BANKS.

409. “BANK ACT.”

410. INVOLUNTARY LIQUIDATION OF BANKS.

INVOLUNTARY DISSOLUTION OF SAVINGS BANKS.

ACT 406—An act providing for the dissolution and winding up of savings banks, trust companies, and banks of deposit, and providing for the disposition of all funds deposited therein and not claimed within five years after such banks have ceased to do business, or after the commencement of proceedings to dissolve.

History: Approved March 31, 1891, Stats. 1891, p. 271.

Right to dissolve savings banks, etc.

§ 1. That any savings bank or trust company or bank of deposit heretofore created or which may be hereafter created shall have the right, on application of the stockholders or members to the superior court of the county wherein its principal place of business is situated, to dissolve said corporation in the manner provided for in title six, part three, of the Code of Civil Procedure.

Dissolved savings bank fund.

§ 2. It is hereby made the duty of every person or corporation holding funds of any savings bank or trust company or bank of deposit, at the end of five years from and after such bank has ceased to receive deposits or do business, to pay the same into the state treasury, which money shall be held in the state treasury in a fund which is hereby designated as “the dissolved savings bank fund”; and at the same time it shall be the duty of such person or corporation to furnish to the state controller a list of the names of all depositors to whom said moneys belong or to whom said bank owes the same.

How drawn upon.

§ 3. The money in said “the dissolved savings bank fund” may be drawn out on the warrants of the state controller, issued on proofs of ownership, approved and allowed by the state board of examiners.

When same escheats.

§ 4. All moneys paid into the said “the dissolved savings bank fund” uncalled for within five years after being paid in shall escheat to the state, and thereafter only drawn out in such manner as now provided for by law for the estates of deceased persons escheated to this state.

Attorney general empowered to bring actions.

§ 5. That any person or corporation failing to comply with the provisions of this act shall be liable to the state of California for the amount of money so retained by them contrary to the provisions of the first four sections of this act; and the attorney general of this state is hereby authorized, empowered, and directed to bring action, in the name of the people of the state of California, in such manner and upon the same terms as now provided for escheated estates, to recover judgment for said money, and when so recovered, to be paid into the state treasury and held subject to the provisions of this act; provided, that said fund shall be liable for the expense of the recovery of the same, to be paid out upon demands audited by the state board of examiners.

Investment of funds.

§ 6. Whenever and as often as there is in the state treasury to the credit of the said "the dissolved savings bank fund" the sum of ten thousand dollars, the state board of examiners must invest the same in civil funded bonds of this state, or in bonds of the United States, or in bonds of the several counties of this state; the investments to be made in such manner and upon such terms as the board shall deem for the best interests of the said "the dissolved savings bank fund"; provided, that no bonds of any counties shall be purchased, of which the debt, debts, or liabilities at the time exceed fifteen per cent of the assessed value of the taxable property of said county.

Bonds purchased, delivery to state treasury.

§ 7. All bonds purchased by the board under the provisions of this act must be delivered to the state treasurer, who shall keep them as a portion of said "the dissolved savings bank fund," the interest upon such bonds to be placed by him to the credit of said fund.

To sell bonds to meet payments.

§ 8. Whenever the moneys on hand in the state treasury, to the credit of the said "the dissolved savings bank fund" is not sufficient to pay the claims allowed by the state board of examiners against said fund, it shall be the duty of said board to sell such bonds belonging to said fund as they may deem proper, for the purpose of providing funds for the payment of such claims so allowed by them.

§ 9. This act shall take effect from and after its passage.

Incorporation of banks, capital stock, etc.—See Kerr's Cyc. Civil Code, tit. Corporations.

Investment of funds in bonds of particular public corporations.—See title of particular corporation, and Kerr's Cyc. Political Code, § 3480.

License of bankers.—See Kerr's Cyc. Political Code, § 3379.

Savings banks, regulation in general.—See, post, Act 409.

Savings and loan corporations.—See Kerr's Cyc. Civil Code, §§ 571, et seq.

Taxation of money in savings banks.—See Kerr's Cyc. Political Code, § 3617.

Taxation of shares of stock.—See Kerr's Cyc. Political Code, §§ 3608-3610.

Voluntary dissolution of corporations, in general.—See Kerr's Cyc. Civil Code, §§ 1227, et seq.

THE "BANK ACT."

ACT 409—An act to define and regulate the business of banking.

History: Approved March 1, 1909, Stats. 1909, p. 87. Amended: (1) February 9, 1911, Stats. 1911, p. 7; (2) April 21, 1911, Stats. 1911, p. 958; (3) April 21, 1911, Stats. 1911, p. 1003; (4) April 21, 1911, Stats. 1911, p. 1008; (5) December 18, 1911, Stats. 1911 (ex. sess.), p. 12; (6) December 24, 1911, Stats. 1911 (ex. sess.), p. 115; (7) May 6, 1913. In effect August 10, 1913. Stats. 1913, p. 136; (8) May 31, 1913. In effect August 10, 1913. Stats. 1913, p. 335; (9) April 28, 1915. In effect August 8, 1915. Stats. 1915, p. 297; (10) June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1104; (11) June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1138; (12) June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1139; (13) May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 586; (14) May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 598; (15) May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 622; (16) May 3, 1919. In effect July 22, 1919. Stats. 1919, p. 185; (17) May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 622. Prior acts repealed: The "Bank Commissioner's Act," approved March 24, 1903, Stats. 1903, p. 365. Amended March 20, 1905, Stats. 1905, p. 304. The "Bank Commissioner's Act," approved March 30, 1878, Stats. 1877-78, p. 740. Amended March 10, 1887, Stats. 1887, p. 90; March 25, 1895, Stats. 1895, p. 172; February 25, 1901, Stats. 1901, p. 30; was repealed March 2, 1903, Stats. 1903, p. 73.

ARTICLE I. GENERAL PROVISIONS, §§ 1-51.**II. SAVINGS BANKS, §§ 60-69.****III. COMMERCIAL BANKS, §§ 80-83.****IV. TRUST COMPANIES, §§ 90-106.****V. STATE BANKING DEPARTMENT, §§ 120-147.****ARTICLE I.***General Provisions.***§ 1. TITLE OF ACT.****§ 2. "BANK" DEFINED.**

Classification.

Money in Escrow.

§ 3. BANKING CORPORATIONS, NUMBER OF PERSONS REQUIRED TO FORM.**§ 4. "SAVINGS BANK," DEFINED.****§ 5. "COMMERCIAL BANK," DEFINED.**

May Be Insurance Agent in Cities of Not More Than 5000 Persons.

§ 6. "TRUST COMPANY," DEFINED.**§ 7. FOREIGN CORPORATIONS.**

Conditions of Doing Business in State.

Capital and Deposits to Be Kept Separate From General Business.

Superintendent of Banks, Attorney for Service of Process.

Service of process.

Trust Company May Act as Executor.

Branch Office Prohibited.

Lending Money.

§ 8. CERTIFIED COPY OF ARTICLES OF INCORPORATION TO BE FILED WITH SUPERINTENDENT OF BANKS.**§ 9. OPENING OF BRANCH OFFICE.**

Conditions.

Capital.

Discontinuance.

Certificate of Authority. Fee.

Savings Banks, in Schools.

Penalty.

§ 10. DIRECTORS.

Qualifications Required.

Bank Without Capital Stock.

- § 11. MEETINGS OF DIRECTORS.
OATH OF OFFICE.
OATH OF AGENTS OF FOREIGN CORPORATIONS.
- § 12. ADVERTISING.
Restrictions.
Use of Word "Bank."
Not to Apply to Use of Corporate Name by Building and Loan Associations.
Penalty.
Injunction.
- § 12a. ADVERTISING.
Prerequisites To.
Not to Apply to Building and Loan Associations.
- § 12b. LIFE INSURANCE COMPANIES. ACT DOES NOT APPLY TO.
- § 12c. FOREIGN CORPORATIONS.
May Lend Money in State.
Representative.
License. Fee.
- § 13. OTHER CORPORATIONS NOT TO ENGAGE IN BANKING BUSINESS.
EXPRESS COMPANIES MAY RECEIVE AND TRANSMIT MONEY.
- § 14. ADVERTISING CAPITAL.
- § 15. UNCLAIMED DEPOSITS.
Claimants to Show Cause.
Publication of Summons and Notice.
Jurisdiction of Court.
Statement of President or Manager.
Contents of.
Biennial Statement of Ten Year.
Publication.
Penalty for Failure to Make.
Transferred Deposits.
- § 16. REPEALED.
- § 17. STOCKHOLDERS.
List of Accessible.
- § 18. REPEALED.
- § 19. CAPITAL AND SURPLUS.
Percentage of Deposits.
- § 20. RESERVES OF COMMERCIAL BANKS.
How Maintained.
If Member of Federal Reserve Bank.
Penalty for Not Maintaining.
Depositaries.
Capital and Surplus of.
Restoration of Capital and Surplus Of.
"Reserves on Hand."
"Reserves on Deposit."
"Total Reserves."
"Reserve Depositary."
- § 21. DIVIDENDS.
SURPLUS.
LOSSES MAY BE CHARGED TO SURPLUS.
DEPOSITORS' PRIOR CLAIM.
- § 21a. PREFERENCE TO DEPOSITORS.
BORROWING MONEY.
- § 22. COMMERCIAL, SAVINGS AND TRUST COMBINATION.
- § 23. DEPARTMENTAL BUSINESS.
Consent of Superintendent of Banks.
Capital Stock.
Place of Not Over 5000 Persons.
Over 5000 and Not Over 25,000 Persons.
Over 25,000 and Not Over 100,000 Persons.
Over 100,000 and Not Over 200,000 Persons.
Over 200,000 Persons.

NOT APPLICABLE TO EXISTING BANKS.
DECREASE OF CAPITAL.
CENSUS.

- § 24. OPENING NEW DEPARTMENT.
Certificate. Fee.
- § 25. DEPARTMENTAL RESERVES.
INTER-DEPARTMENT TRANSACTIONS.
- § 26. DEPARTMENTAL BOOKS OF ACCOUNT SEPARATELY KEPT.
- § 27. ASSETS TO PAY DEPARTMENT DEPOSITORS.
- § 28. SIGNS.
Must Show Kind of Bank.
"Branch."
- § 29. NON-STOCK CORPORATIONS HERETOFORE CREATED.
May Elect to Have a Capital Stock.
Conditions of Change.
Procedure.
- § 30. SAFE DEPOSIT DEPARTMENT.
- § 31. SALE OF BUSINESS.
Conditions.
Rights of Creditors.
Publication of Notice.
- § 31a. CONSOLIDATION OF BANKS.
Ratification by Stockholders.
Notice, Publication Of.
Articles of Incorporation and Consolidation.
By Whom Signed.
Filing.
Certificate. Duplicate to Secretary of State.
Obligations Not Impaired.
Increase of Stock.
- § 32. TRUST FUNDS.
- § 33. REPEALED.
- § 34. INVESTMENT ON OWN STOCK FORBIDDEN. PENALTY.
- § 35. PURCHASE OF REAL ESTATE CONTRACTS. WRITTEN CONSENT OF SUPERINTENDENT OF BANKS REQUIRED.
- § 36. PURCHASE OF BOND ISSUES OF IN EXCESS OF FIVE PER CENT OF ITS ASSETS BY COMMERCIAL BANK FORBIDDEN. EXCEPTION.
- § 37. INVESTMENT IN CAPITAL STOCK OF CORPORATIONS.
Conditions.
Stock of Trust Company.
Stock of Safe Deposit Corporation.
- § 38. PENAL LIABILITIES OF DIRECTORS AND EMPLOYEES.
- § 39. OFFICER MUST NOT OVERDRAW ACCOUNT.
- § 40. STOCKHOLDERS' LIABILITY, WAIVER OF.
- § 41. PURCHASE OF ASSETS AT DISCOUNT BY OFFICER, ETC.
Consent of All Directors Required.
- § 42. PURCHASE OF ASSETS AT DISCOUNT BY OFFICER, ETC.
Penalty.
- § 43. DEPOSIT OF FUNDS IN ANOTHER BANK.
Conditions.
- § 44. LOAN ON STOCK OF ANOTHER BANK.
- § 45. UNPAID INTEREST NOT TO BE INCLUDED IN PROFITS PREVIOUS TO DIVIDEND.
- § 46. INVESTMENT IN BOND ISSUE OF MORE THAN FIVE PER CENT OF ASSETS FORBIDDEN.
EXCEPTION.
- § 47. LOANS ON REAL ESTATE.
- § 48. NATIONAL BANKS MUST SUBMIT TO EXAMINATION.
- § 48a. NATIONAL BANKING ASSOCIATIONS UNDER FEDERAL RESERVE ACT.
Authorized to Act in Fiduciary Capacities.
Duties of State Treasurer and Superintendent of Banks in Relation Thereto.
Charges by State Banking Department for Services.
- § 49. COMMERCIAL BANKS FORBIDDEN TO ADVERTISE AS SAVINGS BANKS.
Penalty.
- § 50. CERTIFICATE, POSTING.

§ 51. DEPOSITS BY ORDER OF COURT.

§ 52. CERTIFIED CHECKS.

§ 53. CAPITAL STOCK.

Par Value.

Indorsement of Paid-Up Value on Certificate.

§ 54. REAL ESTATE PURCHASED AT SALES UNDER PLEDGES, MORTGAGES, ETC., FOR ITS BENEFIT.

Sale of in Five Years Required.

Appraisal.

Notice.

Minimum Price.

Fees. Cost of sale.

§ 55. RECEIVING DEPOSITS NOT CREATION OF DEBT.

"REAL ESTATE."

"REAL PROPERTY."

"PERSONAL PROPERTY."

§ 56. MEMBERS OF FEDERAL RESERVE BANK.

Powers.

Subject to Federal Reserve Examinations.

§ 56a. CONVERTING INTO NATIONAL BANKING ASSOCIATION.

Conditions.

Notice of Intention.

Notice of Conversion.

Form of Notice.

Surrender of State License.

Advertisement of Conversion.

§ 57. REAL ESTATE LOANS.

§ 58. FOREIGN BANKING.

Application for Permission to Engage In.

Information as to Foreign Branches.

Regulations by Superintendent of Banks.

"Bank act."

§ 1. This act shall be known as the "bank act," and shall be applicable to all corporations specified in the next section and to such other persons, associations, co-partnerships or corporations who shall, by violating any of its provisions, become subject to the penalties provided therein. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1104.]

This section was also amended May 6, 1913, Stats. 1913, p. 137.

"Bank" defined. Money in escrow. Classification.

§ 2. The word "bank," as used in this act shall be construed to mean any incorporated banking institution which shall have been incorporated to conduct the business of receiving money on deposit, or transacting a trust business as hereinafter defined. The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business shall be deemed to be doing a commercial or savings bank business whether such deposit is made subject to check or is evidenced by a certificate of deposit, a pass book, a note, a receipt or other writing; provided, that nothing herein shall apply to or include money or its equivalent left in escrow or left with an agent, pending investment in real estate or securities for or on account of his principal. It shall be unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state except by means of a corporation duly organized for such purpose. Banks are divided into the following classes:

(a) Savings banks;

(b) Commercial banks; and

(c) Trust companies. [Amendment approved May 6, 1913. Stats. 1913, p. 137.]

Three persons may form banking corporation.

§ 3. Corporations may be organized by any number of natural persons, not less in any case than three, under the laws of this state to conduct, as provided in this act,

and not otherwise, any one or more or all of the businesses mentioned in divisions (a), (b), and (c) of section two, of this act. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1105.]

This section was also amended May 6, 1913, Stats. 1913, p. 137.

Savings bank, meaning of term.

§ 4. The term "savings bank," when used in this act, means a bank organized for the purpose of accumulating and loaning the funds of its members, stockholders, and depositors, and which may loan and invest the funds thereof, receive deposits of money; loan, invest, and collect the same with interest; and may repay depositors with or without interest, and having power to invest said funds in such property, securities, and obligations as may be prescribed by this act; and to declare and pay dividends on its general deposits, and a stipulated rate of interest on deposits made for a stated period or upon special terms.

"Commercial bank." May act as insurance agent in cities of less than five thousand.

§ 5. The term "commercial bank," when used in this act, means any bank authorized by law to receive deposits of money, deal in commercial paper or to make loans thereon, and to lend money on real or personal property, and to discount bills, notes or other commercial paper, and to buy and sell and advertise for purchase or sale such securities as are permissible for investment by commercial banks, gold and silver bullion, or foreign coins or bills of exchange; provided, any commercial bank located and doing business in any place the population of which does not exceed five thousand persons, as shown by the last preceding federal census, or any subsequent census compiled and certified under any law of this state, may, under such rules and regulations as may be prescribed by the superintendent of banks, act as the agent for any fire, life, or other insurance company authorized by the authorities of the state of California to do business in this state, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the said bank and the insurance company for which it may act as agent; provided, however, that no such bank shall in any case assume or guarantee the payment of any premium on insurance policies issued through its agency by its principal; and provided, further, that said bank shall not guarantee the truth of any statement made by an assured in filing his application for insurance. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 622.]

"Trust company" defined.

§ 6. The term "trust company," when used in this act, means any corporation which is incorporated under the laws of this state for the purpose of conducting the business of acting as executor, administrator, guardian of estates, assignee, receiver, depositor or trustee under appointment of any court or by authority of any law of this state, or as trustee for any purpose permitted by law. [Amendment approved May 6, 1913. Stats. 1913, p. 137.]

Foreign corporations. Capital and deposits kept separate. Loans, income as profits.

Attorney. Service of process. Trust company as executor. Attorney. Branch office prohibited. May lend money.

§ 7. No foreign corporation shall transact a banking business in this state without first complying with all the requirements of the laws of this state relative to banks as defined in this act, and without having assigned to its business in this state the amount of paid-up capital and surplus required by this act for the transaction of such business within this state. No foreign banking corporation shall transact business in this state until such corporation has made the assignment of capital required by this section and

has received a certificate from the superintendent of banks; provided, that a foreign banking corporation shall not be permitted to accept deposits of money in this state but may receive a certificate from the superintendent of banks to transact in this state only the business of buying or selling, paying or collecting bills of exchange, or of issuing letters of credit or of receiving money for transmission or transmitting the same by draft, check, cable or otherwise, or of making loans; and provided, further, that those foreign banking corporations that now have power to do a banking business in this state and which now receive deposits of money shall be permitted to continue to accept money on deposit. Any foreign banking corporation transacting business in this state shall become subject to the supervision of the state superintendent of banks. Every foreign banking corporation, including those which were on January second, nineteen hundred thirteen, transacting business in this state, which receives any deposits or transacts any other banking business or transacts its business in such a manner as might lead the public to believe that its business is that of a bank shall conduct all its business in accordance with the statutes governing incorporated banking institutions organized under the laws of this state. The capital of any such foreign banking corporation assigned to its business in this state and all funds and deposits of money received by any such corporation in this state or for or in connection with its business in this state and all accounts and transactions of said business transacted by any such foreign corporation in this state shall be kept separate and apart from the general business, assets and accounts of such foreign corporation in the same manner as if the business of such foreign corporation conducted within this state was that of a separate and independent corporation organized under the laws of this state for the purpose of doing a banking business and all of the provisions of this act affecting investments, loans of money, receiving deposits and conducting business in any respect shall be deemed to apply to such assigned capital, investments, loans, deposits, assets, funds and business in the same manner as if such assigned capital, investments, loans, deposits, assets, funds and business were that of such separate and independent corporation; provided, that loans may be made by any such foreign corporation based on its entire paid-up capital and surplus in case such foreign corporation shall have assigned to its business in this state a paid-up capital and surplus as above provided equal to twenty per centum of the deposit liability of such branch agency or office to residents of this state. Such funds and investments or loans thereof shall be appropriated solely to the security and payment of such deposits, and shall not be mingled with the investments of the capital stock or other money or property belonging to such corporation or be liable for the debts or obligations thereof. All income received from the investment of said funds over and above such funds as may be paid to depositors as interest or shall be carried to the surplus fund, as provided in section twenty-one of this act, shall accrue as profits to the corporation and may be transferred to its general funds. No such foreign corporation shall transact any banking business in this state until it has executed and filed with the superintendent of banks a written instrument appointing such superintendent or his successor in office, its true and lawful attorney, upon whom all process issued by authority of or under any law of this state may be served, with the same effect as if such corporation was formed under the laws of this state and had been lawfully served with process therein. Such service upon such attorney shall be deemed personal service on such corporation. The superintendent of banks shall forthwith forward by mail, postage prepaid, a copy of every process served upon him under the provisions of this section, addressed to the manager or agent of such corporation, at its principal place of business in this state. For each copy of process, the superintendent of banks shall collect the sum of two dollars, which shall be paid by the plaintiff or moving party at the time of the service, to be recovered by him as a part of his taxable costs if he succeed in the suit or proceeding. No

foreign corporation shall have or exercise in this state the power to receive deposits of trust moneys, securities or other personal property from any person or corporation or any of the powers specified in section six of this act, nor have or maintain an office in this state for the transaction of, or transact, directly or indirectly, any such or similar business, except that a trust company incorporated in another state may have or exercise in this state such powers as are permitted to foreign corporations by the provisions of section ninety of this act and may be appointed and may accept appointment and may act in this state as executor of or trustee under the last will and testament of any deceased person, upon giving the bond required in such cases of individuals unless waived by the last will and testament making such appointment and by taking and subscribing an oath for faithful performance of such trust by the president, vice president, secretary, manager or trust officer of said corporation; provided, that such superintendent of banks, for the time being, shall be attorney of such foreign corporation qualifying or acting in this state as such executor or trustee, upon whom process against such foreign corporation may be served in any action or legal proceeding against such executor or trustee affecting or relating to the estate or property represented or held by such executor or trustee, or any act or default of such foreign corporation in reference to such estate or property, and it shall be the duty of any such foreign corporation so qualifying or acting to file in the office of said superintendent of banks a copy of its articles of incorporation, or of the statute chartering such corporation, certified by its secretary under its corporate seal, together with the postoffice address of its home office, and a duly executed appointment of said superintendent of banks as its attorney to accept service of process as above provided, and said superintendent of banks, when any such process is served upon him, shall at once mail the papers so served to the home office of such corporation; and provided, further, that no foreign corporation which may have or exercise in this state such powers as are permitted to foreign corporations by the provisions of section ninety of this act or having authority to act as executor of or trustee under the last will and testament of any deceased person shall establish or maintain, directly or indirectly, any branch office or agency in this state, or shall in any way solicit, directly or indirectly, any business as executor or trustee therein, and that for any violation of this proviso, the court having jurisdiction of such executor or trustee in said proceeding may in its discretion, revoke the right of such foreign corporation thereafter to act as executor or trustee therein; provided, that nothing in this act shall limit or affect the right of any foreign corporation doing a banking business in this state, to lend within this state, moneys of such corporation which do not form a part of the moneys, deposits or assets of such corporation assigned or belonging to its business in this state.

This section shall not be construed to prohibit foreign banking corporations, which do not maintain an office in this state for the transaction of business, from making loans in this state secured by mortgages on real property, nor from accepting assignments of mortgages covering real property situated in this state, nor from making loans through correspondents which are engaged in the business of banking in this state under the laws of this state. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 598.]

This section was also amended May 6, 1913, Stats. 1913, p. 137.

Copy of articles of incorporation.

§ 8. Every corporation, at the time it applies for a certificate of authority to do a banking business, must file with the superintendent of banks a certified copy of its articles of incorporation, or of the statute chartering such corporation, a certified copy of its by-laws, and also a certified copy of all instruments amending or altering such articles of incorporation or charter or by-laws. Thereafter a certified copy of each amendment or certificate designed to increase or decrease the capital stock, to change

the number of directors, to amend the articles of incorporation, to change the principal place of business, or the name of such corporation, or to effect any other organic change shall likewise be so filed before such instrument takes effect. Each certification required by the provisions of this section other than that of by-laws must be by the secretary of state. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 623.]

This section was also amended May 6, 1913, Stats. 1913, p. 140; May 17, 1917, Stats. 1917, p. 601.

Approval for opening branch office. Capital. Discontinuances.

§ 9. No bank in this state, or any officer or director thereof, shall hereafter open or keep an office other than its principal place of business, without first having obtained the written approval of the superintendent of banks to the opening of such branch office, which written approval may be given or withheld in his discretion, and shall not be given by him until he has ascertained to his satisfaction that the public convenience and advantage will be promoted by the opening of such branch office; provided, that no bank or any officer or director thereof, shall open or maintain any such branch office unless the capital of such bank, actually paid in, in cash, shall exceed the amount required by this act by the sum of twenty-five thousand dollars for each branch office opened and maintained in the place where its principal business is transacted; and provided, that for each branch office opened or maintained by any bank, other than a bank transacting only the business described in section six of this act, in any place in this state other than the place where the principal business of such bank is transacted, the capital of such bank, actually paid in, in cash, shall exceed the amount required by this act in the sum required by this act for every bank hereafter organized in the place where each branch office is to be opened or maintained, exclusive of the capital required for a trust department; and, provided also, that for each branch office opened or maintained by any corporation which has power to transact only such business as is described in section six of this act or in section four hundred fifty-three x of the Civil Code, in any place in this state other than the place where the principal business of such corporation is transacted, the capital of such corporation, actually paid in, in cash, shall exceed the amount required by this act in the sum of twenty-five thousand dollars; and provided, further, that no branch office may be discontinued without the previous written approval of the superintendent of banks.

Certificate of authority. Fee. Savings banks in schools. Penalty.

Every bank, before it opens a branch office, shall obtain the certificate of authority of the superintendent of banks for the opening of each of said branch offices. The applicant shall pay for such certificate a fee of fifty dollars; provided, however, that, in order to encourage saving among the children of the schools of this state, a bank may, with the written consent of and under regulations approved by the superintendent of banks and, in the case of public schools, by the board of education or board of school trustees of the city or district in which the school is situated, arrange for the collection of savings from the school children by the principal or teachers of such schools or by collectors. The principal, teacher or person authorized by the bank to make collections from the school children shall be deemed to be the agent of the bank and the bank shall be liable to the pupil for all deposits made with such principal, teacher or other person, the same as if the deposits were made by the pupil directly with the bank. Every bank and every such officer or director violating the provisions of this section shall forfeit to the people of the state the sum of one hundred dollars for every day during which any branch office hereafter opened shall be maintained without such written approval. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 601.]

This section was also amended May 6, 1913, Stats. 1913, p. 140.

Qualifications for bank director. Bank without capital stock.

§ 10. No person shall be eligible for election as director of a bank having a capital stock unless he is a stockholder of the bank, owning, in his own right, shares thereof of the par value of at least five hundred dollars; and every person elected to be director who, after such election, shall cease to be the owner in his own right of the amount of such stock aforesaid, or shall hypothecate or in any way pledge such stock as security for any loan or debt shall immediately notify the superintendent of banks in writing of such sale or hypothecation and such director may be removed from the office of director by the superintendent of banks; provided, however, that any executor or executrix, administrator or administratrix holding shares of a bank of the par value of five hundred dollars, in his or her representative capacity shall be eligible for election as a director thereof. If a bank be organized without capital stock, no person shall be eligible as a director thereof unless he is both a member and a depositor of such bank. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 602.]

This section was also amended May 6, 1913, Stats. 1913, p. 141; June 3, 1915, Stats. 1915, p. 1138.

Meetings. Oath of director. Agents of foreign corporations.

§ 11. The board of directors of a bank organized under the laws of this state must hold a meeting in its banking premises at least once a month. Each such director, when appointed or elected, shall take an oath that he will, as far as the duty devolves on him, diligently and honestly administer the affairs of such bank, and will not knowingly violate or willfully permit to be violated any of the provisions of law applicable to such bank, and that he is the owner in good faith and in his own right of shares of stock of the par value required by section ten of this act, subscribed by him or standing in his name on the books of the bank, and that the same to an amount equal to the par value of at least five hundred dollars, are not hypothecated or in any way pledged as security for any loan or debt. Such oath shall be subscribed by the director making it, certified by the officer before whom it is taken, and immediately transmitted to the superintendent of banks and filed and preserved in his office; provided, the managers or agents residing in this state, of a foreign corporation transacting any banking business in this state, shall take an oath that they will, as far as the duty devolves on them, diligently and honestly administer the affairs of such bank, and will not knowingly violate or willfully permit to be violated any of the provisions of law applicable to such bank. Such oath shall be subscribed by the managers or agents taking it, certified by the officer before whom it is taken, and immediately transmitted to the superintendent of banks and filed and preserved in his office. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1105.]

This section was also amended April 21, 1911, Stats. 1911, p. 1008; May 6, 1913, Stats. 1913, p. 141.

Advertising as bank. Use of word "bank." Not applicable to building and loan associations. Penalty. Injunction.

§ 12. No person, firm, company, copartnership or corporation, either domestic or foreign, not subject to the supervision of the superintendent of banks, and not required, by the provisions of this act, to report to him, and which has not received a certificate to do a banking business from the superintendent of banks, shall advertise that he or it is receiving or accepting money or savings, and issuing notes or certificates of deposit therefor, or shall make use of any office sign, at the place where such business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank or trust company, or that deposits are received there or payments made on check, or any other form of banking business transacted, nor shall any such person or persons, firm, company,

copartnership or corporation, domestic or foreign, make use of or circulate any letterheads, billheads, blank notes, blank receipts, certificates or circulars, or any written or printed, or partly written and partly printed, paper, whatever, having thereon any artificial or corporate name or other word or words indicating that such business is the business of a bank, savings bank or trust company; nor shall any such person, firm, company, copartnership or corporation, or any agent of a foreign corporation not having an established place of business in this state, solicit or receive deposits or transact business in the way or manner of a bank, savings bank or trust company, or in such a way or manner as to lead the public to believe that its business is that of a bank, savings bank or trust company. Nor shall any person, firm, company, copartnership or corporation, domestic or foreign, not subject to the supervision of the superintendent of banks, and not required by the provisions of this act to report to him, and which has not received from the superintendent of banks a certificate to do a banking business, hereafter transact business under any name or title which contains the word "bank," or "banker," or "banking," or "savings bank," or "savings" or "trust" or "trustee" or "trust company"; provided, that this section shall not apply to the corporate name of any building and loan association now or heretofore doing business in this state; and provided, further, that any such association having in its corporate name words not clearly indicating the nature of its business shall, on all signs, letterheads and advertising matter, state "This is a building and loan association" or words to that effect; and provided, further, that any building and loan association may borrow money, issue investment certificates or evidences of indebtedness, stating the rate of interest and terms and conditions of repayment, and do such other business as may be authorized by the laws of the state relating to building and loan associations; and provided, further, that no such association shall advertise or hold itself out to the public as a savings bank. Any person, firm, company, copartnership or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state one hundred dollars a day for every day or part thereof during which such violation continues. Upon action brought by the superintendent of banks the court may issue an injunction restraining any such person, firm, company, copartnership or corporation from further using such words in violation of the provisions of this section or from further transacting business in such a way or manner as to lead the public to believe that its business is that of a bank, savings bank or trust company during the pendency of such action and for all time and may make such other order or decree as equity and justice may require. [Amendment of May 6, 1913. Stats. 1913, p. 141.]

This section was also amended December 24, 1911, Stats. 1911, Ex. Sess., p. 115.

Prerequisites to advertising as bank. Not applicable to building and loan associations.

§ 12a. Every person, firm, company, copartnership or corporation, domestic or foreign, advertising that he or it is receiving or accepting money or savings, and issuing notes or certificates of deposit therefor or advertising that he or it is transacting the business of a bank, savings bank or trust company, or making use of any office sign at the place where such business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank or trust company, or that deposits are received there or payments made on check, or that interest is paid on deposits, or that certificates of deposit, either with or without interest are being issued, or that any other form of banking business is transacted, and every person, firm, company, copartnership or corporation, domestic or foreign, making use of or circulating any letterheads, billheads, blank notes, blank receipts, certificates or circulars, or any written or printed, or partly written and partly printed, paper, whatever, having thereon any artificial or corporate name, or advertising that such business is the business of a bank, savings

bank or trust company, must have the proper capital stock paid in and set aside for the purpose of transacting such business, and must have received from the superintendent of banks, as provided for in this act, a certificate to do a banking business. Any person, firm, company, copartnership or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state one hundred dollars a day for every day or part thereof during which such violation continues. Upon action brought by the superintendent of banks the court may issue an injunction restraining any such person, firm, company, copartnership or corporation from further violating any provision of this section, and may make such further order or decree as equity and justice may require. Every person, firm, company, copartnership or corporation doing any of the things or transacting any of the business defined in this section, must transact such business according to the provisions of the bank act, and the superintendent of banks or his deputy or examiners shall have authority to examine the accounts, books and papers of every such person, firm, company, copartnership or corporation, domestic or foreign, in order to ascertain whether such person, firm, company, copartnership or corporation has violated or is violating any provisions of this section; provided, that this section shall not apply to the corporate name of any building and loan association now or heretofore doing business in this state; and provided, further, that any such association having in its corporate name words not clearly indicating the nature of its business shall, on all signs, letterheads and advertising matter, state: "This is a building and loan association" or words to that effect; and provided, further than any building and loan association may borrow money, issue investment certificates or evidences of indebtedness, stating the rate of interest and terms and conditions of repayment, and do such other business as may be authorized by the laws of the state relating to building and loan associations; and provided, further, that no such association shall advertise or hold itself out to the public as a savings bank. [Amendment approved May 6, 1913. Stats. 1913, p. 143.]

This section was added to the act April 21, 1911, Stats. 1911, p. 1008; and was also amended December 24, 1911, Stats. 1911, Ex. Sess., p. 116.

Not applicable to life insurance companies.

§ 12b. Nothing in this act shall be construed or held to apply to any corporation organized under the laws of any other state which is authorized by its charter or articles of incorporation to transact the business of life insurance and also to be known as and to transact business as a trust company and which shall have complied with the laws of this state affecting the transaction in this state of the business of life insurance by a foreign corporation and which shall have heretofore engaged in such business of life insurance in this state, in such manner as to forbid or prevent its making use of its corporate title in its life insurance business in this state in any such way and to any such extent as it might have made use of the same if this act had not been passed. [New section, approved May 6, 1913. Stats. 1913, p. 144.]

Foreign corporations may lend money in state. Representative. License. Fee.

§ 12c. Any corporation organized under the laws of any country or state other than this state which has complied with all of the laws of this state pertaining to foreign corporations and is not engaged in the business of banking or receiving money on deposit in this state may lend money or buy and sell bonds in this state and, for that purpose, may maintain offices in this state, and sue and be sued in this state under its proper corporate name, notwithstanding any prohibitions contained in this act as to the use of any words in the name, signs or advertising matter of corporations not under the supervision of the superintendent of banks; provided, that nothing in this act shall be construed to prohibit any representative of any foreign banking corporation from maintaining an office in this state as the office of a representative and not the

place of business of a bank or trust company, nor to prohibit such representative from making use of any office sign at the place where such representative's office is maintained having thereon words indicating that such office is the place of business of a representative of a foreign bank or trust company; and provided, further, that any representative of a foreign bank maintaining an office within this state may make use of such foreign bank's letterheads, circulars and other printed matter in the transaction of business as such representative; and provided, further, every representative of any foreign bank or trust company before opening an office as a representative shall have received a license from the superintendent of banks to open such representative's office. Such license may be issued upon application to the superintendent of banks and the payment of an annual license fee of fifty dollars and may be refused or revoked by the superintendent of banks at his discretion. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 603.]

This section was added to the act May 6, 1913, Stats. 1913, p. 144.

Corporations forbidden to engage in banking. Express companies, etc., may transmit money.

§ 13. No corporation, domestic or foreign, other than a corporation formed under or subject to the banking laws of this state or of the United State, except as permitted by such laws, or other than an express company as hereinafter defined in this section, shall by any implication or construction be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt, of receiving deposits, of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt for circulation as money, or of engaging in any other form of banking; nor shall any such corporation, except an express company having contracts with railroad companies for the operation of an express service upon the lines of such railroad companies, or a transatlantic steamship company, or a transpacific steamship company, or a telegraph company, or a telephone company, possess the power of receiving money for transmission or of transmitting the same, by draft, traveler's check, money order or otherwise. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 603.]

The original section, dealing with unincorporated banks, was repealed May 6, 1913, Stats. 1913, p. 144. A new section of the same number was added June 3, 1915, Stats. 1915, p. 1105.

Advertising capital, resources, liabilities, etc.

§ 14. No bank, or officer thereof, shall advertise in any manner, or publish any statement of the capital authorized or subscribed, unless it or he advertise and publish in connection therewith, the amount of capital actually paid up. No bank shall publish a statement of its resources or liabilities in connection with those of any other bank, unless such statement shall show the resources and liabilities of each bank separately; nor shall surplus and undivided profits be advertised as an aggregate. [Amendment approved May 6, 1913. Stats. 1913, p. 144.]

Unclaimed deposits. Claimants to show cause. Publication of summons and notice. Jurisdiction of court.

§ 15. All amounts of money heretofore or hereafter deposited with any bank to the credit of depositors who have not made a deposit on said account or withdrawn any part thereof or the interest and which shall have remained unclaimed for more than twenty years after the date of such deposit, or withdrawal of any part of principal or interest, and where neither the depositor or any claimant has filed any notice with such bank showing his or her present residence, shall, with the increase and proceeds thereof, be deposited with the state treasurer after judgment in the manner provided in the Code of Civil Procedure. At the time of issuing the summons in the action provided for in section 1273 of the Code of Civil Procedure, the clerk shall also issue a

notice signed by him, giving the title and number of said action, and referring to the complaint therein, and directed to all persons, other than those named as defendants therein, claiming any interest in any deposit mentioned in said complaint, and requiring them to appear within sixty days after the first publication of such summons, and show cause, if any they have, why the moneys involved in said action should not be deposited with the state treasurer as in said section provided, and notifying them that if they do not so appear and show cause, the state will apply to the court for the relief demanded in the complaint. A copy of said notice shall be attached to and published with the copy of said summons required to be published by said section, and at the end of the copy of such notice so published there shall be a statement of the date of the first publication of said summons and notice. Any person interested may appear in said action and become a party thereto. Upon the completion of the publication of the summons and notice, and the service of the summons on the defendant bank, or banks, as in said section 1273 of the Code of Civil Procedure provided, the court shall have full and complete jurisdiction over the state, and the said deposits and of the person of every one having or claiming any interest in the said deposits, or any of them, and shall have full and complete jurisdiction to hear and determine the issues therein, and render the appropriate judgment thereon.

Statement concerning unclaimed deposits. Matters shown in statement.

The president or managing officer of every bank must, within fifteen days after the first day of January of every year, return to the superintendent of banks and to the state controller a sworn statement showing the names of depositors known to be dead, or who have not made further deposits, or withdrawn any moneys during the preceding twenty years. Such statement shall show in detail the following matters, viz.:

First—The name and last known place of residence or post office address of the person making such deposit;

Second—The amount and date of such deposit and whether the same are in moneys or securities, and if the latter, the nature of the same;

Third—The interest due on such deposit, if any, and the amount thereof;

Fourth—The sum total of such deposit, together with the interest added thereto due from such bank on account of such deposit or deposits and the interest thereon to such depositor, but nothing contained herein shall require any corporation or person renting lock boxes or safes in vaults for storage purposes to open or report concerning property stored therein. Such reports itemized as aforesaid shall be signed by the person making the same and shall be sworn to before a person competent to administer oaths as a full, complete and truthful statement of each of the items therein contained.

Biennial statement of ten-year unclaimed deposits. Publication of statement. Penalty for violation. Transferred deposits.

The president or managing officer of every bank must within fifteen days after the first day of January of every odd numbered year, return to the superintendent of banks a sworn statement showing the names of depositors known to be dead, or who have not made further deposits, or withdrawn any moneys during the preceding ten years. Such statements shall show the amount of the account, the depositor's last known place of residence or post office address, and the fact of death, if known to such president or managing officer. Such president or managing officer must give notice of these deposits in one or more newspapers published in or nearest to the town or city where such bank has its principal place of business, at least once a week for four consecutive weeks, the cost of such publication to be paid pro rata out of such unclaimed deposits. This section does not apply to any deposit made by or in the name of a person known to the president or managing officer to be living. The superintendent of banks must incorporate in his subsequent report such returns made to him as pro-

vided in this section. If any president or managing officer of any bank neglects or refuses to make the sworn statements required by this section such bank shall forfeit to the state of California the sum of one hundred dollars a day for each day such default shall continue. Any president or managing officer of any bank who violates any of the provisions of this section shall forfeit to the state of California the sum of one hundred dollars a day for each and every day such violation shall continue. For the purposes of this section all deposits received by any bank under the provision of section thirty-one or section thirty-one a of this act shall be deemed to have been deposited with such bank at the time the deposit was made with the bank from which the deposit was transferred; provided, that any bank which shall make any deposit with the state treasurer in conformity with the provisions of this section shall not thereafter be liable to any person for the same and any action which may be brought by any person against any bank for moneys so deposited with the state treasurer shall be defended by the attorney general without cost to such bank. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1106.]

This section was also amended May 6, 1913, Stats. 1913, p. 145.

Bank deposits of married women and minors. Deposits in trust. Withdrawal of deposits of deceased persons. Not over five hundred dollars.

§ 16. [Repealed May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 623.]

This section was amended April 21, 1911, Stats. 1911, p. 1003; May 31, 1913, Stats. 1913, p. 335; June 3, 1915, Stats. 1915, p. 1139.

Stockholders, list of to be accessible.

§ 17. Every bank now in existence or hereafter organized shall keep in its offices, in a place accessible to the stockholders, depositors, and creditors thereof, and for their use, a book containing a list of stockholders in such corporation, and the number of shares of stock held by each; and every such bank shall keep posted in its office, in a conspicuous place, accessible to the public generally, a notice signed by the president or secretary, showing:

1. The names of the directors of such bank.
2. The number and the par value of the shares of stock held by each director.

The entries on such book and such notice shall be made and posted within twenty-four hours after any transfer of stock, and shall be prima facie evidence against each director and stockholder of the number of shares of stock held by each.

Partnership, list of.

§ 18. [Repealed May 6, 1913. Stats. 1913, p. 146.]

Capital and deposit liabilities.

§ 19. The aggregate of paid-up capital together with the surplus, of every commercial bank, must equal ten per centum of its deposit liabilities. The aggregate of paid-up capital and surplus of every savings bank having a capital stock, and the reserve fund of every savings bank without a capital stock, must equal the following percentages of its deposit liabilities:

- (a) Ten per centum of any amount up to and including two million dollars.
- (b) Seven and one-half per centum of any amount in excess of two million dollars up to and including five million dollars.
- (c) Five per centum of any amount in excess of five million dollars up to and including fifteen million dollars.
- (d) Two and one-half per centum of any amount in excess of fifteen million dollars up to and including forty million dollars.
- (e) One per centum of any amount in excess of forty million dollars.

The deposits shall not be increased if such proportion of paid-up capital and surplus or reserve fund to deposit liabilities is not maintained, and in no event shall said paid-up capital be less than the minimum paid-up capital provided by this act; provided, that such deposit liabilities shall be exclusive of United States and postal savings deposits and deposits of the state of California and of any county and municipality in the state of California which are secured as required by law. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 623.]

This section was also amended May 6, 1913, Stats. 1913, p. 146.

Total reserves of commercial banks.

§ 20. Every commercial bank shall maintain total reserves against its aggregate deposits, exclusive of United States and postal savings deposits and deposits of the state of California and of any county and municipality in the state of California, which are secured as required by law, as follows:

1. Eighteen per centum of such deposits if such bank has its principal place of business in a city having a population of one hundred thousand or over.
2. Fifteen per centum of such deposits, if such bank is located in a city having a population of fifty thousand or over and less than one hundred thousand.
3. Twelve per centum of such deposits if such bank is located elsewhere in the state.

How maintained. If member of federal reserve bank. Penalty for not maintaining reserves.

At least one-half of the total reserves shall be maintained as reserves on hand and shall consist of gold bullion or any form of money or currency authorized by the laws of the United States, and the remainder of the total reserves required by the provisions of this section shall be maintained as reserves on deposit or as reserves on hand; such reserves on hand to consist of gold bullion or any form of money or currency authorized by the laws of the United States; provided, however, that all or any part of the reserves may be deposited, subject to call, with a federal reserve bank in the district in which such bank is located.

If any bank shall have become a member of a federal reserve bank, it shall comply with the reserve requirements of the federal reserve act and its amendments, and its compliance therewith shall be in lieu of, and shall relieve such bank from compliance with, the provisions of this section.

If any bank shall not maintain the total reserves required the superintendent of banks may impose a penalty upon it, based upon the length of time such encroachment upon its total reserves amounting to one per centum or more of its aggregate deposits shall continue, at the following rates:

1. At the rate of six per centum per annum upon any such encroachment not exceeding two per centum of such deposits.
2. At the rate of eight per centum per annum upon any additional encroachment in excess of two and not exceeding three per centum of such deposits.
3. At the rate of ten per centum per annum upon any additional encroachment in excess of three and not exceeding four per centum of such deposits.
4. At the rate of twelve per centum per annum upon any additional encroachment in excess of four per centum of such deposits.

Reserve depositories. Required capital and surplus of depository.

The superintendent of banks shall, in his discretion, upon the nomination of any bank, designate a depository or depositories for the reserves on deposit of such bank provided for by this act. Except as otherwise provided in this section, such depository shall be a bank or national banking association located in this state. Every reserve depository, which has its principal place of business in a judicial township or in a city located in this state in which the population is less than fifty thousand, shall have at

all times as its total reserves an amount equal to the total reserves required by the provisions of this section for every bank which has its principal place of business in a city having a population of fifty thousand or over and less than one hundred thousand. But no bank or national banking association shall hereafter be designated as a depository of any such reserves unless it shall have a combined capital and surplus of not less than the following amounts:

1. Two hundred fifty thousand dollars, if located in a city which has a population of three hundred thousand or over;
2. Two hundred thousand dollars, if located in a city which has a population of one hundred thousand or over and less than three hundred thousand;
3. One hundred fifty thousand dollars, if located in a city which has a population of fifty thousand or over and less than one hundred thousand;
4. One hundred thousand dollars, if located elsewhere in the state.

Such depository may also be a banking corporation with a capital and surplus of one million dollars or more, located in any city in the United States.

Restoration of reserves. "Reserves on hand." "Reserves on deposit." "Total reserves." "Reserve depository."

If the total reserves of any bank shall be less than the amount required by this section, such bank shall not increase its liabilities by making any new loans or discounts, otherwise than by discounting bills of exchange on sight, or by paying any dividends from profits until the full amount of its total reserves has been restored. The superintendent of banks may notify any bank whose total reserves shall be below the amount herein required, to restore such total reserves; and, if it shall fail for thirty days thereafter to restore such total reserves, such bank shall be deemed insolvent and may be proceeded against under the provisions of this act; provided, that all deposits of money herein permitted or required shall comply with the provisions of section forty-three of this act.

The term, "reserves on hand," when used in this act, means the reserves against deposits kept, pursuant to the provisions of this act, in the vault of any bank or in any safety deposit box in any other bank in this state, said box to be under the exclusive control of the depositing bank.

The term, "reserves on deposit," when used in this act, means the reserves against deposits maintained by any bank pursuant to this act in reserve depositories, or in a federal reserve bank in the district in which such bank is located and not in excess of the amount authorized by this act.

The term, "total reserves," when used in this act, means the aggregate of reserves on hand and reserves on deposit maintained pursuant to the provisions of this act.

The term, "reserve depository," when used in this act, means a bank, trust company or banking corporation designated by the superintendent of banks on the nomination of the depositing bank as a depository for reserves on deposit. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 623.]

This section was also amended April 21, 1911, Stats. 1911, p. 1909; December 18, 1911, Stats. 1911, Ex. Sess. p. 2; May 6, 1913, Stats. 1913, p. 147; June 3, 1915, Stats. 1915, p. 1107; May 17, 1917, Stats. 1917, p. 604.

Dividends. Surplus. Charging loss to surplus. Depositors' prior claim.

§ 21. The directors of any bank having a capital stock may, at certain times, and in such manner as its by-laws prescribe, declare and pay dividends to depositors and stockholders of so much of the profits of the bank, and of the interest arising from the capital, surplus and deposits, as may be appropriated for that purpose under its by-laws or under its agreements with depositors, but every such bank shall, before the declaration of any such dividend, carry at least one-tenth part of the net profits of the stockholders for the preceding half year, or for such period as is covered by

the dividend, to its surplus, until such surplus shall amount to twenty-five per centum of its paid-up capital stock. The whole or any part of such surplus, if held as the exclusive property of the stockholders, may at any time be converted into paid in capital, in which event such surplus shall be restored in the manner above provided until it amounts to twenty-five per centum of the aggregate paid-up capital stock. Subject to the provisions of section nineteen of this act, any losses sustained by any such bank in excess of its undivided profits may be charged to and paid from its surplus, in which event such surplus shall be restored in the manner above provided, to the amount required by law; provided, however, that any bank which has invested any portion of its surplus in its bank premises, furniture and fixtures, vaults, or safe deposit vaults and boxes necessary or proper to carry on its banking business shall not be permitted to charge any loss to that portion of its surplus so invested. A larger surplus may be created and nothing herein contained shall be construed as prohibitory thereof. The capital and assets of any such bank are a security to depositors and stockholders, depositors having the priority of security over stockholders. [Amendment approved May 6, 1913. Stats. 1913, p. 147.]

Preference to depositors. Terms and conditions on which bank may borrow money.

§ 21a. No bank, banker, or bank officer, shall give preference to any depositor or creditor except as otherwise authorized by law; provided, that any commercial bank or commercial department of a departmental bank, is authorized and empowered for temporary purposes, to borrow money, or to borrow money and pledge or hypothecate as collateral security therefor, its assets not exceeding fifty per centum in excess of the amount borrowed, but only to the extent and upon terms and conditions as follows:

(1) Any amount up to, but not exceeding the amount of its capital and surplus, without consent of the superintendent of banks; provided, however, that any amount borrowed, except as otherwise provided in this section, in excess of the amount of its capital and surplus, at such time actually paid in and remaining undiminished by losses or otherwise, must first be approved in writing by the superintendent of banks; provided, also, that no excess loan made to any such bank shall be invalid or illegal as to the lender, even though made without the consent of the superintendent of banks; provided, also, that the rediscounting with or without guarantee or endorsement with a federal reserve bank, of notes, drafts, bills of exchange and loans secured by obligations of the United States, is hereby authorized and shall not be limited by the terms of this act, and shall not be considered as borrowed money within the meaning of this section.

(2) Any amount of California, state, county, city, city and county funds, or any other public money, in the manner it is or may be authorized by law to borrow and receive such public money on deposit without the approval of the superintendent of banks.

(3) Any amount of the United States moneys and postal savings moneys of the United States, and receive such moneys on deposit, and pledge or hypothecate such of its securities and upon such terms as may be required by the laws of the United States or the rules and regulations of the secretary of the treasury of the United States, without the approval of the superintendent of banks.

(4) Any amount, in addition to the amounts authorized to be borrowed in this section, for the purpose of buying from the United States, United States bonds, United States treasury certificates, or notes or obligations of the United States.

(5) To rediscount with and sell to a federal reserve bank any and all such notes, drafts, bills of exchange, acceptances and any other securities, with no other restrictions, and as fully, and to the same extent as this privilege is given to national bank members under the terms of the federal reserve act, or by regulations of the federal reserve board made pursuant thereto.

(6) No bank shall make partial payments upon any certificate of deposit.

(7) In no case shall an overdraft of more than ninety days' standing be allowed as an asset of any bank.

(8) Any debt due to any commercial bank, on which interest is past due and unpaid for the period of one year, unless the same is well secured, and is in process of collection, shall be considered a bad debt and shall be charged off to the profit and loss account at the expiration of that time. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 626.]

This section was added to the act May 6, 1913, Stats. 1913, p. 148.

Commercial savings and trust combination.

§ 22. Any corporation authorized by its articles of incorporation so to do, may combine the business of a commercial bank and savings bank and trust company, or any one or more or all of them; provided, that no corporation authorized to transact a trust business and which is also organized to engage in the business of title insurance, shall engage in or combine the business of a commercial bank or savings bank. [Amendment approved May 6, 1913. Stats. 1913, p. 149.]

Consent to do departmental business. Capital stock.

§ 23. When a bank desires to do a departmental business, it shall first obtain the consent of the superintendent of banks, and in its application therefor, file a statement making a segregation of its capital and surplus for each department. Such capital and surplus, when so apportioned and approved by the superintendent of banks, shall be considered and treated as the separate capital and surplus of such department as if each department was a separate bank. Thereafter a bank may, from time to time, with the previous consent and approval of the superintendent of banks and subject to the provisions of section nineteen of this act, change any segregation and apportionment of capital and surplus previously made and make a new segregation and apportionment of its capital and surplus. Every bank hereafter organized doing a departmental business shall have paid up, in cash, capital stock as follows:

Place of 5000 persons.

(a) In any locality in which the population does not exceed five thousand persons, not less than twenty-five thousand dollars if it transacts both a commercial and savings business, or not less than one hundred twenty-five thousand dollars, if it transacts both a commercial and trust business, or not less than one hundred twenty-five thousand dollars if it transacts both a savings and trust business, and not less than one hundred twenty-five thousand dollars if it transacts a commercial, savings and trust business.

More than 5000 persons.

(b) In any city in which the population is more than five thousand persons, but does not exceed twenty-five thousand persons, not less than fifty thousand dollars if it transacts both a commercial and savings business, or not less than one hundred fifty thousand dollars if it transacts both a commercial and trust business, or not less than one hundred fifty thousand dollars if it transacts both a savings and trust business, and not less than one hundred fifty thousand dollars if it transacts a commercial, savings and trust business.

More than 25,000 persons.

(c) In any city in which the population is more than twenty-five thousand persons but does not exceed one hundred thousand persons, not less than one hundred thousand dollars, if it transacts both a commercial and savings business, or not less than two hundred thousand dollars if it transacts both a commercial and trust business, or not less than two hundred thousand dollars if it transacts both a savings and trust business, and not less than two hundred thousand dollars if it transacts a commercial, savings and trust business.

More than 100,000 persons.

(d) In any city in which the population is more than one hundred thousand persons but does not exceed two hundred thousand persons, not less than two hundred thousand dollars, if it transacts both a commercial and savings business, or not less than four hundred thousand dollars if it transacts both a commercial and trust business, or not less than four hundred thousand dollars if it transacts both a savings and trust business, and not less than four hundred thousand dollars if it transacts a commercial, savings and trust business.

More than 200,000 persons.

(e) In any city in which the population exceeds two hundred thousand persons, not less than three hundred thousand dollars if it transacts both a commercial and savings business, or not less than five hundred thousand dollars if it transacts both a commercial and trust business, or not less than five hundred thousand dollars if it transacts both a savings and a trust business, and not less than five hundred thousand dollars if it transacts a commercial, savings and trust business.

Not applicable to existing banks. May not decrease capital. Census.

The foregoing classification shall not apply to any bank already in existence which has received from the superintendent of banks a certificate to do a banking business; nor to any bank the location of which shall have been included by annexation or consolidation within the limits of a city of a class requiring a larger capitalization, but no bank thus excepted shall be permitted to establish any new branch office as provided in section nine of this act or to remove its place of business from the original limits of the city or township wherein it was located prior to such annexation or consolidation until it shall have the capital required of banks in such city not within said exception. Such excepted banks may not in any case decrease their capital stock but may increase the same in the manner provided by law to an amount either greater or less than that required of banks in such city not within said exception. The capital stock referred to herein shall be increased from time to time and to the same extent as provided for in section nineteen of this act. For the purposes of this act, the population shown and determined by the last preceding federal census, or any subsequent census compiled and certified under any law of this state, shall be deemed to be the population of any city in which any such bank is to be organized. If the principal place of business of any bank so organized is located outside of the corporate limits of any city, then the population of that portion of the judicial township in which said bank is to have its principal place of business, which is not included within the boundaries of any municipal corporation, as such population is shown and determined by such federal or subsequent official census, shall be the basis for classification under the provisions of this act. [Amendment approved May 6, 1913. Stats. 1913, p. 149.]

This section was also amended April 21, 1911, Stats. 1911, p. 1010.

Opening new department. Fee.

§ 24. Every bank, before it commences to do business or before it opens a new department and commences to transact business in or under such new department, shall obtain the certificate of the superintendent of banks for the opening of each of the departments specified. Each certificate herein provided for shall be given when the superintendent shall, by the examination required by this act, have satisfied himself that the proper amount of cash has been paid in as capital and the provisions of this act complied with. The applicant shall pay for the certificate for each department a fee of fifty dollars. [Amendment approved May 6, 1913. Stats. 1913, p. 150.]

Total reserves for each department. Transactions between departments.

§ 25. Every bank shall maintain for each department total reserves equal in amount to that required by this act for the respective business conducted, and shall keep

separate and distinct the total reserves of any department from that of any other department; and all deposits made with other banks, whether temporary or otherwise, shall be assets of the respective departments by which they were made, and shall be so carried on the books of such other banks, and shall be repaid only upon the order of the department to whose credit they stand. No department shall receive deposits from any other department of the same corporation; except that a trust department, in proper cases, may make deposits of trust or any other funds under its control with the savings department of the same corporation and may, upon order, previously obtained, of any court having jurisdiction of any trust or fund, make deposits of moneys belonging thereto with the commercial department of the same corporation; provided, however, that any bank having departments shall have the right to sell and transfer any bonds, securities or loans from one department to another upon receipt of the actual value thereof, if such bonds, securities or loans are, under the provisions of this act, a legal investment for the department purchasing the same. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1109.]

This section was also amended May 6, 1913, Stats. 1913, p. 151.

Books of account to be kept separate.

§ 26. Every bank having different departments shall keep separate books of account for each department of its business, and shall be governed as to all deposits, reserves, investments and transactions relating to each department by the provisions in this act specifically provided for the respective kind of business.

It shall keep all investments relating to the savings department entirely separate and apart from the investments of its other department or departments.

Every bank shall conduct the business of all its departments in one building, or in adjoining buildings, and shall keep entirely separate and apart in each department the cash, securities and property belonging to such department, and shall not mingle the cash, securities and property of one department with that of another.

Assets to repay department depositors.

§ 27. All money and assets belonging to each department, whether on hand or with other banks, and the investments made, shall be held solely for the repayment of the depositors and other claimants of each such department, as herein provided, until all depositors and other claimants of each such department shall have been paid, and the overplus then remaining shall be applied to any other liabilities of such bank. [Amendment approved May 6, 1913. Stats. 1913, p. 151.]

Signs must show kind of bank. "Branch."

§ 28. Every bank in this state must, on all its window signs and in advertising, and on letterheads and other stationery on which its business is transacted, use the word "savings" if it conducts a savings business, or the word "trust" if it conducts a trust business, and the word "commercial" if it conducts a commercial business. Every bank, which maintains a branch office, must on all window signs and in advertising, and on letterheads and other stationery on which the business of said branch office is transacted, use in letters and type, equal in prominence to that used in its corporate name, the word "branch" and the name of the place where its principal business is located. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 606.]

This section was also amended May 6, 1913, Stats. 1913, p. 151; June 3, 1915, Stats. 1915, p. 1110.

Non-stock corporations heretofore created.

§ 29. Every corporation heretofore created under the laws of this state, doing a banking business therein, and which has no capital stock, may elect to have a capital stock, and may issue certificates of stock therefor, in the same manner as corporations

formed under the provisions of part IV, title I, chapter I, article I, of the Civil Code, relating to the formation of corporations; provided, that no such corporation shall use or convert any moneys or funds theretofore belonging to it, or under its control, into capital stock; but such funds or moneys must be held and managed only for the purposes and in the manner for which they were created. Before such change is made, a majority of the members of such corporation present at a meeting called for the purpose of considering the proposition whether it is best to have a capital stock, its amount, and the number of shares into which it shall be divided, must vote in favor of having a capital stock, fix the amount thereof, and the number of shares into which it shall be divided. Notice of the time and the place of holding such meeting, and its object, must be given by the president of such corporation by mailing notice of such meeting to each member of such corporation at his last known post office address at least ten days prior to the day fixed for such meeting, and by publication in some newspaper printed and published in the county, or city and county, in which the principal place of business of the corporation is situated, at least once a week for three consecutive weeks prior to the holding of the meeting. A copy of the proceedings of this meeting, giving the number of persons present, the votes taken, the notice calling the meeting, the proof of its publication, the amount of capital actually subscribed and by whom, all duly certified by the president and secretary of the corporation, must be filed in the office of the secretary of state and clerk of the county where the articles of incorporation are filed. Thereafter such corporation is possessed of all the rights and powers and is subject to all the obligations, restrictions and limitations, as if it had been originally created with a capital stock.

Safe deposits.

§ 30. Any bank may conduct a safe-deposit department, but shall not invest more than one-tenth of its capital and surplus in such safe-deposit department.

Sale of business. Conditions of sale stated. Rights of creditors. Publication of notice.

§ 31. Any bank may sell the whole of its business or the whole of the business of any of its departments to any other bank which may purchase such business after obtaining the consent of the stockholders of the selling and of the purchasing banks holding of record at least two-thirds of the issued capital stock of each of such corporations; such consent to be expressed either in writing executed and acknowledged by such stockholders and attached to the instrument of sale, or to a copy thereof, or by vote at a stockholders' meeting of each of such banks called for that purpose. The selling and purchasing banks must for such purposes enter into an agreement of sale and purchase, which agreement shall contain all the terms and conditions connected with such sale and purchase. Such agreement shall contain proper provision for the payment of liabilities of the selling bank or of the department sold, and in this particular shall be subject to the approval of the superintendent of banks; and shall not be valid until such approval is obtained. Such agreement may contain provisions for the transfer of all deposits to the purchasing bank, subject, however, to the right of every depositor of the selling bank to withdraw his deposit in full amount on demand after such transfer, irrespective of the terms under which it was deposited with the selling bank. The rights of creditors of the selling bank shall not in any manner be impaired by any such sale, nor shall any liability or obligation for the payment of any money due or to become due, or any claim or demand, in any manner, or for any cause existing against such selling bank or against any stockholder thereof, be in any manner released or impaired, and all the rights, obligations and relations of all the parties, creditors, depositors, trustees and beneficiaries of trusts shall remain unimpaired by the sale, but such bank to which the other shall sell all its business or all the business of any of its departments, shall succeed to all such relations, obligations,

trusts and liabilities and be held liable to pay and discharge all such debts and liabilities and to perform all such trusts of the selling bank in the same manner as if such bank to which the other had sold had itself incurred the obligation or liability or assumed the relation of trust, and the stockholders of the respective corporations so entering into such agreement shall continue subject to all the liabilities, claims and demands existing against them as such at or before such sale. Immediately after the execution of such agreement of sale and purchase notice thereof shall be published for at least four successive weeks in a newspaper in each of the counties of the state in which either of such banks shall have its principal place of business; provided, however, that no action can be brought against such selling bank or any of its stockholders on account of any deposits so transferred after the expiration of one year from the last day of publication herein required. An affidavit showing such publication shall be filed in the office of the superintendent of banks within ten days after the last publication thereof. The affairs of such selling bank, or selling department of a bank, shall remain subject to the provisions of this act. [Amendment approved May 6, 1913. Stats. 1913, p. 151.]

Consolidation of banks. Ratification by stockholders. Notice. Publication. Articles of incorporation and consolidation.

§ 31a. Any bank incorporated under the laws of this state may consolidate with one or more banks incorporated under the laws of this state, its capital stock, properties, trusts, claims, demands, contracts, agreements, obligations, debts, liabilities and assets of every kind and description, upon such terms and in such manner as may be agreed upon by their respective boards of directors, a copy of which agreement must be filed in the office of the superintendent of banks; provided, that such agreement shall be subject to the approval of the superintendent of banks and shall not be valid until such approval be obtained; provided, further, that no such consolidation shall take effect until such agreement shall have been ratified and confirmed in writing by the stockholders of the respective banks holding of record at least two-thirds of the issued capital stock of their respective banks, or such agreement may be submitted to the stockholders of each of such corporations at a meeting thereof to be called upon notice specifying the time, place and object thereof, addressed to each stockholder at his last known post-office address and deposited in the post-office, postage prepaid, at least two weeks prior to the date fixed for said meeting, and published for at least two successive weeks, prior to the date of said meeting, in a newspaper in each of the counties of the state in which any of such banks shall have its principal place of business, and if such agreement shall be approved at each of such meetings of the respective stockholders separately by the vote or ballot of the stockholders owning at least two-thirds of the stock of each such bank, the same shall be the agreement of such banks. In case of such consolidation "articles of incorporation and consolidation" must be prepared, setting forth:

First—The name of the new corporation;

Second—The purpose for which it is formed;

Third—The place where its principal business is to be transacted;

Fourth—The term for which it is to exist, which shall not exceed fifty years;

Fifth—The number of its directors (which shall not be less than three) and the names and residences of the persons appointed to act as such until their successors are elected and qualified;

Sixth—The amount of its capital stock and the number of shares into which it is divided;

Seventh—The amount of stock actually subscribed, and by whom;

Eighth—The names of the constituent corporations.

By whom signed. Articles filed with county clerk. **With secretary of state.** Certificate of authorization. **Obligations not impaired.** **Right to increase stock.**

Said articles of incorporation and consolidation must be signed and countersigned by the president and secretary of each constituent corporation and sealed with their corporate seals. There must be annexed thereto the approval of the superintendent of banks and memoranda of the ratification and confirmation thereof by the stockholders of each constituent corporation, which must be respectively signed and acknowledged by stockholders representing at least two-thirds of the capital stock of their respective corporations. When completed as aforesaid said articles must be filed in the office of the county clerk of the county in which is located the principal place of business of the new corporation, and a copy of the articles of incorporation and consolidation certified by such county clerk must be filed in the office of the secretary of state, who must issue, over the great seal of the state, a certificate that a copy of the articles of incorporation and consolidation containing the required statement of facts has been filed in his office. The secretary of state must file in his office a duplicate of the certificate hereinbefore provided for and copies thereof, duly certified by the secretary of state, shall have the same force and effect in evidence as the original. A copy of the articles of incorporation and consolidation, certified by said secretary of state, must be filed in the office of the superintendent of banks, and also in the office of the county clerk of any county in which were filed the original articles of incorporation of either of the constituent corporations. When the superintendent of banks issues the certificate of authorization provided for by section one hundred twenty-eight of this act the new or consolidated corporation shall be a body politic and corporate by the name stated in the certificate, and for the term of fifty years, unless it is, in the articles of incorporation and consolidation, otherwise stated and thereupon each constituent corporation named in the articles of incorporation and consolidation must be deemed and held to have become extinct in all courts and places, and said new corporation must be deemed and held in all courts and places to have succeeded to all their several capital stocks, properties, trusts, claims, demands, contracts, agreements, assets, choses and rights in action of every kind and description, both at law and in equity, and to be entitled to possess, enjoy, and enforce the same and every [part] thereof, as fully and completely as either and every of its constituents might have done had no consolidation taken place. Said consolidated or new corporation must also, in all courts and places, be deemed and held to have become subrogated to its several constituents and each thereof, in respect to all their contracts and agreements with other parties, and all their debts, obligations, and liabilities, of every kind and nature, to any persons, corporations, or bodies politic, whomsoever, or whatsoever, and said new corporation must sue and be sued in its own name in any and every case in which any or either of its constituents might have sued or might have been sued at law or in equity had no such consolidation been made. Nothing in this section contained shall be construed to impair the obligation of any contract to which any of such constituents were parties at the date of such consolidation. All such contracts may be enforced by action or suit, as the case may be, against the consolidated corporation, and satisfaction obtained out of the property which, at the date of the consolidation, belonged to the constituent which was a party to the contract in action or suit, as well as out of any other property belonging to the consolidated corporation, and the stockholders of each constituent corporation so entering into such agreement shall continue subject to all the liabilities, claims and demands existing against them at or before such consolidation to the same extent as if the same had not been made. The right of said new corporation to increase or decrease its capital stock, to change the number of its directors, to amend its articles of incorporation, to change its principal place of business, or its name, or to effect any other organic change shall be governed by the general corporation laws of this state and by

the bank act, and the procedure to effect any such change shall be that defined by the general corporation laws and the bank act.

The superintendent of banks shall transmit to the secretary of state a duplicate of the certificate of authorization hereinbefore referred to and the secretary of state shall file the same in his office. The superintendent of banks shall also file a duplicate of such certificate in his own office. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 606.]

This section was added to the act May 6, 1913, Stats. 1913, p. 152.

Trust funds.

§ 32. Any bank receiving trust funds in accordance with the provisions of this act relating to trust companies must not mingle such trust funds with the other assets of the corporation, except as otherwise provided in section twenty-five of this act, and such funds shall not be carried or counted as any part of the total reserves provided for in this act. The officers of any bank who knowingly violate or consent to the violation of this provision shall be guilty of a felony. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1110.]

This section was also amended May 6, 1913, Stats. 1913, p. 155.

Officer may not borrow bank funds.

§ 33. [Amended April 21, 1911. Stats. 1911, p. 1011. Repealed May 6, 1913. Stats. 1913, p. 155.]

Not to invest in own stock. Penalty.

§ 34. No bank shall purchase or invest its capital or surplus or money of its depositors, or any part of either, in shares of its own capital stock; nor loan its capital or surplus or the money of its depositors, or any part of either, on shares of its own capital stock, unless such purchase or loan shall be necessary to prevent loss to such bank on debts previously contracted in good faith. Every person or corporation violating any provision of this section shall forfeit to the people of the state twice the nominal amount of such stock. [Amendment approved May 6, 1913. Stats. 1913, p. 155.]

Consent to purchase certain contracts.

§ 35. No bank shall purchase any contract arising from the sale of real estate or any note or bond in which contract, or note, or bond any director, officer, employee, or controlling stockholder of such bank is personally or financially interested, directly or indirectly, for his own account, for himself, or as the partner or agent of others, without the previous consent in writing of the superintendent of banks. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 609.]

This section was also amended April 21, 1911, Stats. 1911, p. 1011; May 6, 1913, Stats. 1913, p. 155.

Purchase of bond issue by commercial banks.

§ 36. No commercial bank receiving deposits of money shall purchase or agree to purchase any bond issue in excess of five per centum of its assets, except bonds of the United States, of the state of California, of the counties, cities and counties, cities or school districts of this state, or bonds of any irrigation district such as are legal for investment by savings banks. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1110.]

See, post, § 46.

Investment in capital stock of corporations.

§ 37. No bank shall, except as otherwise provided in this act, purchase or invest its capital or surplus or money of its depositors, or any part of either, in the capital stock of any corporation unless the purchase or acquisition of such capital stock shall

be necessary to prevent loss to the bank on an obligation owned or on a debt previously contracted in good faith. Any capital stock so purchased or acquired shall be sold by such bank within six months thereafter if it can be sold for the amount of the claim of such bank against it; and all capital stock thus purchased or acquired must be sold for the best price obtainable by said bank within three years after such purchase or acquisition unless the superintendent of banks shall extend the time of its sale for a period not to exceed two years.

Stock of trust company.

Any bank, with the previous written consent of the superintendent of banks, may purchase or otherwise acquire and hold the whole or any part of the capital stock of not more than one trust company organized and existing under the laws of this state, and doing business in the same city in which the principal place of business of such bank is located; provided, however, that not more than an amount equal to twenty-five per centum of the capital and surplus of any such bank may be at any one time invested in the capital stock of such trust company or such other corporation; and provided, further, that no such trust company shall engage in or combine the business of a commercial bank or a savings bank or a title insurance company.

Stock of safe deposit corporation.

Any bank, with the previous written consent of the superintendent of banks, may purchase or otherwise acquire and hold, the whole or any part of the capital stock of not more than one corporation authorized and empowered to conduct a safe deposit business, which such corporation is organized and existing under the laws of this state and doing business in the same city in which the principal place of business of such bank is located; provided, however, that not more than an amount equal to ten per centum of the capital and surplus of any such bank may be at any one time invested in the capital stock of such safe deposit corporation. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 627.]

This section was also amended May 6, 1913, Stats. 1913, p. 155.

Penal liabilities of directors and employees.

§ 38. A director, officer, agent or employee of any bank who,

First—Knowingly receives or possesses himself of any of its property otherwise than in payment for a just demand, and with intent to defraud, omits to make or to cause or direct to be made a full and true entry thereof in its books and accounts; or,

Second—Concurs in omitting to make any material entry thereof; or,

Third—Knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false; or,

Fourth—Having the custody or control of its books, willfully refuses or neglects to make any proper entry in the books of such corporation as required by law, or to exhibit or allow the same to be inspected and extracts to be taken therefrom by the superintendent of banks, his chief deputy or any of his examiners, shall be guilty of a felony.

Officer may not overdraw account.

§ 39. Any officer, director, agent, teller, clerk or employee of any bank who either,

First—Knowingly overdraws his account with such bank, and thereby obtains the money, notes or funds of any such bank; or,

Second—Asks or receives or consents or agrees to receive any commission, emolument, gratuity or reward, or any money, property or thing of value, for his own personal benefit, or of personal advantage, for procuring or endeavoring to procure for any person, firm or corporation any loan from, or the purchase or discount of any

paper, note, draft, check or bill of exchange, by such bank, or for permitting any person, firm or corporation to overdraw any account with such bank, is guilty of a felony. [Amendment approved April 21, 1911. Stats. 1911, p. 1011.]

Stockholders' liability, waiver of.

§ 40. No bank mentioned in this act shall make any contract with any of its depositors whereby the stockholders' liability provided for by the constitution of this state is in any manner waived, and if any such contract shall be so made, such contract shall be void.

Consent for officer to purchase assets at discount.

§ 41. No officer, director, agent, or other employee of any bank shall directly or indirectly, for his own personal benefit, purchase, or be interested in the purchase of any of such bank's obligations or assets for a less sum than shall appear upon the face of any such obligations or assets to be the value thereof except with the previous consent of all the directors of said bank, such consent to be evidenced by a resolution adopted by said directors. A certified copy of said resolution shall immediately be transmitted to the superintendent of banks. Every person violating any provision of this section, shall for each offense forfeit to the people of the state, twice the face value of any such obligations or assets so purchased. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 609.]

This section was also amended May 6, 1913, Stats. 1913, p. 156.

Officer not to purchase assets at discount.

§ 42. No officer, director, agent or other employee of any bank, shall directly or indirectly, for his own personal benefit, purchase, or be interested in the purchase of any of the assets of said bank for a less sum than the current market value thereof. Every person violating any provision of this section, shall for each offense, forfeit to the people of the state, twice the nominal amount of any such assets so purchased. [Amendment approved May 6, 1913. Stats. 1913, p. 156.]

Deposit of funds in another bank.

§ 43. No bank shall deposit any of its funds in any other bank, except a federal reserve bank, unless such other bank has been nominated as a depository for its funds by the vote of a majority of the directors or trustees of the bank making the deposit, and such other bank has been designated by the superintendent of banks as such depository.

The superintendent of banks may in his discretion revoke such a designation. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 627.]

This section was also amended April 21, 1911, Stats. 1911, p. 1012; May 6, 1913, Stats. 1913, p. 156; May 17, 1917, Stats. 1917, p. 609.

Loan on stock of another bank.

§ 44. No bank shall hereafter make a loan secured by the stock of another bank, if by making such loan the total stock of such other bank held by such loaning bank as collateral will exceed in the aggregate twenty-five per centum of the capital stock of such other bank; provided, that no loan upon the capital stock of any bank shall be made unless such bank has been in existence at least two years and has earned and paid a dividend upon its capital stock; and provided, further, that no bank may loan more than five per centum of its assets upon the capital stock of any corporation whatsoever as collateral security. [Amendment approved May 6, 1913. Stats. 1913, p. 156.]

Interest unpaid.

§ 45. Interest unpaid, although due or accrued, on debts owing to any bank, shall not be included in calculation of its profits previous to a dividend; nor shall any bank,

except with the previous written consent of the superintendent of banks, enter or at any time carry on its books any of its assets at a valuation exceeding its actual cost to such bank. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 609.]

Investment in one bond issue.

§ 46. No commercial bank shall invest or loan more than five per centum of its assets in any one bond issue, except bonds of the United States, of the state of California, of the counties, cities and counties, cities or school districts of this state, or bonds of any irrigation district such as are legal for investment by savings banks. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1111.]

See, ante, § 36.

Loans on real estate.

§ 47. No commercial bank shall, except for the purpose of facilitating the sale of property owned by the bank, make any loan on the security of real estate, unless it is a first lien and is either

(1) Made for a period of time not exceeding six months and upon security worth at least fifteen per centum more than the amount loaned; or

(2) Made for a period of time exceeding six months and not exceeding ten years and does not exceed sixty per centum of the market value of the real estate taken as security.

No commercial bank shall loan in the aggregate more than thirty-five per centum of its assets on real estate loans of the character specified in subdivision two of this section. These provisions, however, shall not prevent any bank from taking another and immediately subsequent mortgage or deed of trust thereon when it already holds a first mortgage or deed of trust on such real estate, nor from accepting a second lien on real estate to secure the repayment of a debt previously contracted in good faith; nor shall it prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith when, in the judgment of the directors of such bank, such subsequent liens are necessary further to secure the payment of any debts and save such bank from loss. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1111.]

This section was also amended May 6, 1913, Stats. 1913, p. 156.

National banks must permit examination.

§ 48. Any national bank, in this state, other than a federal reserve bank, receiving the deposits of any bank organized and conducting business under this act, must, at the request of the superintendent of banks, submit to an examination by him, or his duly appointed examiners, should the superintendent of banks in his discretion deem it necessary or desirable that such examination be made; and the expense of such examination shall be paid by such depository bank; and if any such bank shall refuse to permit such examination to be made by, or under the direction of, the superintendent of banks, then the superintendent of banks shall notify in writing every bank depositing its funds with such bank, to withdraw its deposits therefrom, and all such banks shall comply with such order. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1112.]

This section was also amended May 6, 1913, Stats. 1913, p. 157.

National banking association under federal reserve act. Charge by state banking department for services

§ 48a. Any national banking association, whose principal place of business is in this state, is hereby authorized to act in fiduciary capacities in all respects as provided by the acts of congress, approved December 23, 1913, and amendments thereof, commonly known as the federal reserve act, and all acts herein provided to be performed

by the state treasurer, the superintendent of banks or other public officials for or in respect of trust companies, shall be performed for such national banking association equally with trust companies. Every such national banking association which shall be authorized to exercise said fiduciary powers, and which has qualified by making the deposit of securities required by the law of this state, may act, or may be appointed by any court to act in any such capacity in like manner as an individual. The superintendent of banks shall inspect and examine the books, records and assets of the trust department of each national banking association which conducts a trust department in this state to the same extent that the said superintendent of banks exercises visitatorial supervision over trust companies organized and existing under the laws of this state.

The charge by the state banking department for all services rendered to any national banking association by the superintendent of banks, in accordance with the provisions of this section, shall be paid by the national banking association requiring such services. Such charge for services shall be determined by the superintendent of banks, and shall be no higher than the charge for a similar service to trust companies organized under the laws of this state.

The cost of all regular and ordinary service shall be calculated upon the amount of the securities deposited by each such national bank with the treasurer of the state for the due execution and faithful performance of its court and private trusts at the same ratio as is applied to the capital and surplus of trust companies organized under the laws of this state in determining the cost to them for such services.

The cost of all special and extraordinary services shall be the same as that provided for in section one hundred twenty-four of this act. [New section added May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 628.]

Commercial banks may not advertise as savings banks.

§ 49. It shall not be lawful for any commercial bank, individual, trust company, association, firm, stock company, copartnership or corporation, to advertise or put forth a sign as a savings bank, or either directly or indirectly or in any way to solicit or receive deposits or to transact business in the way or manner of a savings bank, or to advertise that he or it is receiving or accepting savings, or in any way which might lead the public to believe that such deposits are received or invested under the same conditions or in the same manner as deposits in savings banks, except in the case of savings banks or banks having savings departments, subject to the provisions of this act. Any commercial bank, individual, trust company, association, firm, stock company, copartnership or corporation, violating any provision of this section shall forfeit to this state one hundred dollars a day for every day during which such violation continues. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1112.]

This section was also amended April 21, 1911, Stats. 1911, p. 1012; May 6, 1913, Stats. 1913, p. 157.

Posting certificate.

§ 50. Every bank shall post in a conspicuous place in its banking room or branch office the last certificate obtained from the superintendent of banks under the provisions of either section nine or one hundred twenty-seven of this act. [Amendment approved May 6, 1913. Stats. 1913, p. 158.]

Deposits by order of court.

§ 51. Any court having appointed and having jurisdiction of any executor, administrator, guardian, assignee, receiver, depositary or trustee, upon the application of such executor, administrator, guardian, assignee, receiver, depositary or trustee, or upon the application of any person having an interest in the estate administered upon by such officer or trustee, after notice to other parties in interest as the court may direct, and after a hearing upon such application, may authorize such officer or trustee to

deposit any money then in his hands as such officer or trustee or which may thereafter come into his hands, and until the further order of the court, in any bank organized under the laws of the state of California; and upon such deposit being made, the officer or trustee so depositing the same shall thereafter and while such moneys remain on deposit in such bank, be relieved and discharged from all liability and responsibility therefor, and the bond required of such officer or trustee given upon his appointment shall be thereupon by said court reduced to such an amount as the court may deem reasonable; such deposit shall be repaid only upon the orders of said court, and shall be a preferred claim against such bank and be paid in full before any other depositor of such bank shall have been paid.

Certified checks.

§ 52. Whenever a check drawn on any bank is certified by any officer or employee of such bank, the amount thereof shall be immediately charged against the account of the person, firm or corporation drawing the same. It shall be unlawful for any officer or employee of any bank to certify any check drawn upon such bank unless the person, firm or corporation drawing the check has on deposit with the bank at the time such check is certified, an amount of money subject to the payment of such check, equal to the amount specified in such check. Any officer or employee of any bank who shall willfully violate the provisions of this section, or shall resort to any device, or receive any fictitious obligations, directly or indirectly, in order to evade the provisions hereof, or who shall certify checks before the amount thereof shall have been regularly entered to the credit of the drawer, shall be guilty of a felony. [New section approved April 21, 1911. Stats. 1911, p. 1012.]

Par value of capital stock of banks.

§ 53. The capital stock of any bank having a capital stock shall have a par value of one hundred dollars per share, and the paid-up value shall be endorsed upon the face of each certificate issued, which paid-up value shall be the same on all certificates issued. No bank shall have preferred stock; provided, however, that no bank whose capital stock, on January 1, 1915, failed to comply with any of the requirements of this section, shall be compelled to change its capital stock in compliance herewith. [Amendment of April 28, 1915. In effect August 8, 1915. Stats. 1915, p. 297.]

This was a new section added to the act April 21, 1911, Stats. 1911, p. 1016.

Real estate to be sold within five years. Appraisal of value. Notice of sale. Minimum price. Fees. Cost.

§ 54. All real estate purchased by any bank at sales under pledges, mortgages or deeds of trust for its benefit for money loaned and such as may be conveyed to it by borrowers in satisfaction and discharge of loans made thereon and all other real estate owned or held by it, which is not necessary for carrying on its business, must be sold or exchanged for other real estate by such bank within five years after title thereto shall have vested in it by purchase or otherwise; provided, however, that no exchange of such real estate for other real estate shall be made unless and until written consent thereto shall first be given by the superintendent of banks; and provided, further, that any real estate so taken in exchange may be held for such period of time as the superintendent of banks may fix but not to exceed five years. Parcels of such real estate not sold or exchanged within said time may be purchased by any person wanting the same upon the conditions and proceedings following: The intending purchaser may file a petition in the superior court in and for the county wherein said real estate or any portion thereof is situated; upon the filing of such petition a citation shall be issued out of said court directed to the bank owning such real estate requiring such bank to show cause on a day certain which shall be not earlier than ten days after the service

of such citation, why commissioners should not be appointed by said court for the purpose of appraising the value of the real estate described in the petition and of selling the same at public auction under the provisions of this section. If there shall be any liens or encumbrances of record against such real estate the person or persons holding such liens or encumbrances shall likewise be cited and the court shall in its final decree distribute the proceeds of such sale, if a sale thereof shall be made, according to the equities of the parties. If it shall appear at the hearing of such petition that the real estate therein sought to be purchased is held by such bank in violation of the provisions of this section or of the constitution of this state, the court shall appoint three commissioners to appraise the value thereof and sell the same at public auction at the county seat of the county wherein said real estate or any part thereof is located. Notice of which said sale shall be given to the bank owning said real estate and to any other persons interested therein as shown by the records of such county at least ten days before the date of such sale and shall be published once a week for three successive weeks in some newspaper published in the county where such real estate or any part thereof may be located, or if no newspaper shall be published in such county then in a newspaper published in some neighboring county. Such notice shall state the time and place of such sale and shall describe the real estate to be sold with common certainty and state the value thereof as fixed by the appraisement of such commissioners and state that no bid less than such appraised value will be received therefor. No sale shall be made for an amount less than the appraised value of such real estate fixed by said commissioners, and in the event that no bid is received at such sale at least equal to said appraised value of said real estate no intending purchaser can institute the proceedings provided for in this section within one year thereafter. In case of any sale made under the provisions of this section and of the refusal of any bank owning such real estate or of any lienholder or encumbrancer to execute the conveyances or releases necessary or proper to vest the title of such bank, lienholder or encumbrancer in the purchaser thereof the court shall have power in such proceedings to direct said commissioners to execute such deeds, conveyances or releases upon the payment to them of the purchase price therefor. The fees of such commissioners and cost of sale shall be fixed by the court, upon making such appointment, but the entire expense thereof shall not exceed one hundred dollars. The cost of any such proceedings shall be borne by the intending purchaser if no sale shall be made, but if a sale shall be made the costs of such proceedings shall be borne by the purchaser of the property and the person who filed the petition and advanced the costs of such proceedings shall be reimbursed in case he shall not become such purchaser. All sales hereunder shall be returned to the court having jurisdiction of the matter in the same manner as in the case of sales, by commissioners, of real estate on foreclosure of mortgages. Nothing in this section contained shall be deemed to affect the power of the superintendent of banks to require the writing down of the value of real estate held by any bank, at any time, when such writing down shall be proper. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 622.]

This was a new section added to the act May 6, 1913, Stats. 1913, p. 158.

Receiving deposits not creation of debt. "Real estate" defined.

§ 55. Receiving deposits, issuing certificates of deposit, checks and bills of exchange, and the like, in the transaction of the ordinary business of a bank, must not be construed to be the creation of debt within the meaning of the phrase "create debt" in section three hundred nine of the Civil Code, nor of indebtedness within the meaning of the phrase "the capital stock can not be diminished to an amount less than the indebtedness of the corporation" in section three hundred fifty-nine of the Civil Code, except that no bank shall reduce its capital stock to an amount less than is required by this act to be

maintained by such bank, or less than any indebtedness of such bank other than such deposits.

The terms "real estate," or "real property," or "personal property," when used in this act shall have the meaning defined in, and shall be construed in accordance with the provisions of title I of part I of division second of the Civil Code. [New section approved May 6, 1913. Stats. 1913, p. 159.]

Authority to become member of federal reserve bank.

§ 56. Any bank is hereby authorized and empowered to become a member of a federal reserve bank.

Nothing in this act shall prohibit any such bank from becoming a member of a federal reserve bank, in the manner provided in the federal reserve act, nor from investing any part of its capital or surplus or reserve fund in the capital stock of such federal reserve bank, in accordance with the terms and provisions of such federal reserve act; provided, that such investment shall in no case exceed the minimum amount required to join or associate itself with or maintain membership in such federal reserve bank; provided, also, that such investment may be carried in either the commercial, savings, or trust department, or may be apportioned to any two or all three of such departments of any departmental state bank member.

Powers. Subject to federal reserve examinations.

Any bank joining or associating itself with such federal reserve bank shall have and exercise all powers, not in conflict with the laws of this state, which are conferred upon any member bank in any such federal reserve bank, by the provisions of the federal reserve act and the regulations of the federal reserve board. Such member bank and its directors, officers and stockholders shall continue to be subject, however, to all liabilities and duties imposed upon them by the bank act and by any other law of this state.

Any bank which shall have become a member of a federal reserve bank shall be subject to the examinations required under the terms of the federal reserve act, and the superintendent of banks may, in his discretion, accept such examination in lieu of the examination required under the provisions of this act, and he, his agents and employees, may furnish to the federal reserve board, the federal reserve bank, or to examiners duly appointed by the federal reserve board or the federal reserve bank, copies of all examinations made, and may disclose to such federal reserve board, federal reserve bank, or examiner, any information with reference to the condition or affairs of state bank members. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 628.]

This was a new section added to the act May 6, 1913, Stats. 1913, p. 160; and amended June 3, 1915, Stats. 1915, p. 1112.

Bank converting into national banking association.

§ 56a. Nothing in this act shall prevent or prohibit any bank from converting into a national banking association under the provisions of section five thousand one hundred fifty-four of the United States revised statutes, or section eight of the federal reserve act, or any other federal or state law; provided, however, that no savings bank and no departmental bank having a savings department, organized and existing under the laws of the state of California, shall convert into a national banking association except upon the following conditions:

Notice of intention.

1. Coincident with its application to the comptroller of the currency, any such savings or departmental bank shall file with the superintendent of banks formal notice of intention to convert into a national banking association.

Notice of conversion.

2. Prior to conversion, any such savings or departmental bank shall place in the hands of the superintendent of banks—

(a) A constructive notice for newspaper advertisement, directed to its savings depositors, of the fact of conversion;

(b) Actual notice addressed to each and every savings depositor, at his or her last known address, enclosed in stamped and addressed envelopes ready for mailing, this notice to be as follows:

“You are hereby notified that the undersigned, formerly the, now the, has converted from a banking corporation existing under the laws of California into a national banking association; and has therefore ceased to be under the jurisdiction and the direction of the California state banking department and the bank act of California, and is now under the jurisdiction and control of the federal reserve act and the national act.” No other matter may be enclosed with this notice unless by permission of the superintendent of banks.

Surrender of state license.

3. Upon conversion said bank shall file with the superintendent of banks a copy of its authorization as a national banking association, certified by the comptroller of the currency; and shall surrender to the superintendent of banks its license as a state banking corporation.

Advertisement of conversion.

4. Immediately following the conversion of a state bank, the superintendent of banks shall cause the publication of the notice provided in subdivision (a) of paragraph two of this section; same to be at least once a week for four successive weeks in a newspaper of general circulation, printed and published in every town where said bank transacts its business and if there be no such paper in any such town or towns, then in the county where such bank transacts its business, and the superintendent of banks shall cause to be mailed the notices provided in subdivision (b) of paragraph two of this section. The advertisement shall be at the expense of the converting bank, prepaid to the department. [New section added May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 629.]

Loans secured by a first lien on real estate.

§ 57. Whenever in this act it is required that loans or investments shall be secured by a first lien on real estate, the lien of any tax, assessment or bond levied or issued by this state or by any county, city and county, city, town, municipality, school district, reclamation district, irrigation district or any other political or governmental subdivision of this state (not including bonds given pursuant to any law authorizing the same by any person or corporation in lieu of payment of any tax or assessment levied against any particular real property) and the lien of any assessment levied to pay such bonds shall not be deemed to be a prior encumbrance or lien on such real property unless an installment or call of such tax, assessment or bond shall be due and delinquent; and any bonds given pursuant to any law authorizing the same by any person or corporation in lieu of payment of any tax or assessment levied against any particular real property and any lien given to secure the payment of assessments or subscriptions to meet the requirements of any law of the United States in respect to any irrigation project of the United States in this state which may be levied, made or received by any corporation or association formed to carry out the objects and requirements of any such law of the United States shall not be deemed to be a prior encumbrance or lien on such real property if the lien given to secure such assessments and subscriptions taken with the loan or investment so secured shall amount to not more than sixty per centum

of the market value of the land securing the same. [New section added June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1113.]

Application for permission to engage in foreign banking.

§ 58. Any bank possessing a capital and surplus of one million dollars or more may file application with the superintendent of banks for permission to exercise, upon such conditions and under such regulations as he may prescribe, either or both of the following powers:

First—To establish branches in foreign countries or in dependencies or insular possessions of the United States for the furtherance of the foreign commerce of this state and of the United States.

Second—To invest an amount not exceeding in the aggregate ten per centum of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered or incorporated under the laws of the state of California, and principally engaged in international or foreign banking or banking in a dependency or insular possession of the United States either directly or through the agency, ownership or control of local institutions in foreign countries, or in such dependencies or insular possessions.

Such applications shall specify the name and capital of the bank filing it, the powers applied for and the place or places where the banking operations proposed are to be carried on. The superintendent of banks shall have power to approve or to reject such application in whole or in part if for any reason the granting of such application is deemed inexpedient, and shall also have power from time to time to increase or decrease the number of places where such banking operations may be carried on.

Information regarding foreign branches.

Every bank operating foreign branches shall be required to furnish information concerning the condition of such branches to the superintendent of banks upon demand, and every bank investing in the capital stock of banks or corporations described under subparagraph two of the first paragraph of this section shall be required to furnish information concerning the condition of such banks or corporations to the superintendent of banks upon demand, and the superintendent of banks may order special examinations of the said branches, banks or corporations at such time or times as he may deem best. The cost of such special examinations shall be paid by said branches, banks or corporations.

Regulations by superintendent.

Before any bank shall be permitted to purchase stock in any such corporation the said corporation shall enter into an agreement or undertaking with the superintendent of banks to restrict its operations or conduct its business in such manner or under such limitations and restrictions as the said superintendent of banks may prescribe for the place or places wherein such business is to be conducted. If at any time the superintendent of banks shall ascertain that the regulations by him are not being complied with, said superintendent of banks shall be authorized and shall have power to institute an investigation of the matter and to send for persons and papers, subpoena witnesses and administer oaths in order to satisfy himself as to the actual nature of the transactions referred to. Should such investigation result in establishing the failure of the corporation in question, or of the bank or banks which may be stockholders therein, to comply with the regulations laid down by the said superintendent of banks, such banks may be required to dispose of stockholdings in the said corporation upon thirty days' notice, and in the event of their noncompliance with such order the superintendent of banks may institute proceedings for forfeiture of license

Every such bank shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office, and shall at the end of each fiscal period transfer to its general ledger the profit or loss accruing to each branch as a separate item. [New section added May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 630.]

ARTICLE II.

Savings Banks.

§ 60. CAPITAL STOCK.

- In Places of 5000 Persons and Under.
- In Places of Over 5000 and Not Over 25,000 Persons.
- In Places of Over 25,000 and Not Over 100,000 Persons.
- In Places of Over 100,000 and Not Over 200,000 Persons.
- In Places of Over 200,000 Persons.

WITHOUT CAPITAL STOCK.

§ 61. REAL AND PERSONAL PROPERTY.

Kind That May Be Purchased and Held.

Limitations on Purchase of Personal Property.

Purchase of Bonds.

United States Bonds.

Foreign Bonds.

State of California Bonds.

State Bonds of Other States.

District Bonds.

Mutual and District Water Bonds.

Railroad Bonds.

Rule for Determination of Income.

Security.

First Mortgage.

Refunding Mortgage.

Trust Deed on Operative Property.

Guaranteed Railroad Bonds.

Public Utility Bonds.

Security.

First Mortgage.

Refunding Mortgage.

Trust Deed on Operative Property.

Definitions.

Notes Secured by First Mortgage.

Market Value of Oil and Timber Lands.

Collateral Trust Bonds.

Bonds Legal for Investment in New York and Massachusetts.

Guaranteed Payment.

"Net Earnings," Defined.

Bonds, etc., Certified by Superintendent of Banks.

Previous Investments.

Legality Not Affected.

Investment Value of Bonds.

Bonds of Public Utilities Under Jurisdiction of Railroad Commission.

Validity of Bonds.

State Does Not Guarantee.

Advertisement of Bonds as Legal Investment.

Penalty for False Advertisement.

§ 61a. BONDS FOR INVESTMENT BY SAVINGS BANKS.

Superintendent of Banks May Investigate.

Opinion of Attorneys.

Certificate.

Revocation Of.

Renewal or Extension Of.

Expenses.

§ 62. REAL AND PERSONAL PROPERTY.

Trading in Forbidden.

- DRAFTS, PAYMENT OF.
- BORROWING MONEY.
- PUBLIC MONEYS.
- § 63. CERTIFICATES OF DEPOSIT.
- TIME CERTIFICATES.
- § 64. TIME AND CONDITION OF REPAYMENT OF DEPOSITS.
- By-Laws and Contracts as To.
- RESERVE FUND.
- § 65. LOANS TO DIRECTOR OR OFFICER FORBIDDEN. PROVISOS.
- LOANS TO AGENT OR EMPLOYEE.
- Record Of.
- Report to Superintendent of Banks.
- Religious Corporations, Clubs, Etc.
- LOANS TO DIRECTOR ON SECURITY.
- § 66. LOANS EXCEEDING FIFTY PER CENT OF STOCK FORBIDDEN. RENEWAL OF LOAN.
- § 67. LOANS, LIMITATION ON.
- Bill of Exchange.
- Not Eligible for Discount or Purchase.
- Credit Reports.
- Amount, Limitation On.
- On Bonds and Notes.
- On Personal Property.
- On Bonds or Capital Stock of Corporations.
- Real Estate.
- Capital Stock of Corporations.
- Mining Stock.
- § 68. RESERVES.
- Deposit of.
- Of Member of Federal Reserve Bank.
- Failure to Maintain.
- DEALINGS WITH COMMERCIAL BANK.
- § 68½. DEPOSITS OF DECEASED PERSONS.
- § 69. BUSINESS TO BE CONDUCTED UNDER PROVISIONS OF THIS ACT.
- § 70. LIBERTY BONDS.

Capital stock of savings banks. Without capital stock.

§ 60. Every savings bank hereafter organized must have paid up in cash a capital stock of not less than

(a) Twenty-five thousand dollars if its principal place of business is located in any locality the population of which does not exceed five thousand persons;

(b) Fifty thousand dollars if its principal place of business is located in any city the population of which is more than five thousand persons, but does not exceed twenty-five thousand persons;

(c) One hundred thousand dollars if its principal place of business is located in any city the population of which is more than twenty-five thousand persons but does not exceed one hundred thousand persons;

(d) Two hundred thousand dollars if its principal place of business is located in any city the population of which is more than one hundred thousand persons but does not exceed two hundred thousand persons;

(e) Three hundred thousand dollars if its principal place of business is located in any city the population of which is more than two hundred thousand persons.

Excepting that any savings bank organized without capital stock must have a reserve fund of at least one million dollars. Until the capital stock or reserve fund hereinbefore required shall be actually paid in, the superintendent of banks shall refuse to issue the certificate required by this act. The foregoing classification shall not apply to any savings bank already in existence which has received its certificate to do a banking business from the superintendent of banks; nor to any bank the location of which shall have been included by annexation or consolidation within the limits of a city of a class requiring a larger capitalization, but no bank thus excepted shall be

permitted to establish any new branch office as provided in section nine of this act or to remove its place of business from the original limits of the city or township wherein it was located prior to such annexation or consolidation until it shall have the capital required of banks in such city not within said exception. Such excepted banks may not in any case decrease their capital stock but may increase the same in the manner provided by law to an amount either greater or less than that required of banks in such city not within said exception; provided, that nothing herein shall be construed to affect the provisions of section nineteen of this act relative to the proportion of capital and surplus to deposits or of section twenty-three of this act relative to the capital stock required of banks doing a departmental business. The provisions of section twenty-three of this act, as to population, shall apply to any bank organized under the provisions of this section. [Amendment approved May 6, 1913. Stats. 1913, p. 160.]

This section was also amended April 21, 1911, Stats. 1911, p. 1012.

Purchase of real or personal property by savings banks.

§ 61. Any savings bank may purchase, hold and convey real or personal property as follows:

1. The lot and building in which the business of the bank is carried on; furniture and fixtures, vaults and safe deposit vaults and boxes necessary or proper to carry on its banking business; such lot and building, furniture and fixtures, vaults and safe deposit vaults and boxes shall not, in the aggregate, be carried on the books of such bank as an asset to an amount exceeding its paid-up capital and surplus; and hereafter, the authority of a two-thirds vote of all of the directors shall be necessary to authorize the purchase of such lot and building, or the construction of such building.

2. Such as may have been mortgaged, pledged or conveyed to it in trust for its benefit in good faith, for money loaned in pursuance of the regular business of the corporation.

3. Such as may have been purchased at any sales under pledge, mortgage or deed of trust made for its benefit for money so loaned and such as may be conveyed to it by borrowers in satisfaction and discharge of loans made thereon.

Limitations on purchase of personal property. Purchase of bonds.

No savings bank shall purchase, own, or sell personal property, except such as may be requisite for its immediate accommodation for the convenient transaction of its business, notes or bonds secured by trust deeds or mortgages on real estate, bonds, securities or evidences of indebtedness, public or private, gold or silver bullion and United States mint certificates of ascertained value, and evidences of debt issued by the United States. No savings bank shall purchase, own, hold or convey bonds, securities or evidences of indebtedness, public or private, except as follows:

United States bonds.

(a) Bonds or interest-bearing notes or obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest, or those issued under authority of the United States;

Foreign bonds.

(aa) Bonds or interest-bearing notes or obligations of England or the United Kingdom of Great Britain and Ireland, or France, or the Dominion of Canada, or those for which the faith and credit of any one or more of said countries are pledged for the payment of principal and interest; or bonds or interest-bearing notes or obligations of any other foreign country or government, which bonds or interest-bearing notes or obligations shall have first been approved by the superintendent of banks in writing;

State of California bonds.

(b) Bonds of this state, or those for which the faith and credit of the state of California are pledged for the payment of principal and interest, or those of any county, city and county, city or school district of this state;

State bonds.

(c) Bonds or stocks or notes of any state in the United States that has not, within five years previous to making such investment by such bank, defaulted in the payment of any part of either principal or interest, or those of any county, city and county, city or town, in any state of the United States other than the state of California, issued under authority of any law of such state, which county, city and county, city or town, had, as shown by the federal or state census next preceding such investment, a population of more than twenty thousand inhabitants; provided, however, that the entire bonded indebtedness of such county, city and county, city or town, including such issue of bonds or stocks or notes, does not exceed fifteen per centum of the value of the taxable property therein as shown by its last equalized assessment roll; and provided, further, that such county, city and county, city or town, or the state in which it is located has not defaulted in payment of any part of either principal or interest due upon any legally authorized bond or stock or note issue within five years next preceding such investment;

District bonds.

(d) Bonds of any district organized under the laws of the state of California which are required to be and are investigated and approved by a commission now or hereafter authorized by a law of this state to conduct such investigation and give such approval and by authority of which approval said bonds are declared to be legal investments for savings banks;

(e) Bonds of any district organized under the laws of the state of California not otherwise provided for in this section; or those of any mutual water company organized under the laws of this state and operating wholly within this state; provided, that all bonds specified in this paragraph shall first be certified by the superintendent of banks after an investigation in manner and form as is provided for by section sixty-one a of this act; and provided, further, that no bonds of any mutual water company shall be certified by the superintendent of banks unless the company issuing said bonds shall have been in continuous operation for a period of five years next preceding the application for said certificate and shall have served not less than seventy-five per centum of the lands entitled to service by said mutual water company for a period of not less than three years next preceding the application for said certificate;

Bonds of railroad corporation.

(f) (1) Bonds of any railroad corporation incorporated under the laws of the state of California and operating exclusively therein; provided, said corporation has had net earnings for the period herein fixed amounting to at least one and one-fourth times the interest on all its outstanding mortgage indebtedness; or,

(2) Bonds of any railroad corporation incorporated under the laws of any state in the United States, operating at least five hundred miles of standard gauge track exclusive of sidings; provided, said corporation has had net earnings for the period herein fixed amounting to at least one and one-half times the interest on all its outstanding mortgage indebtedness; or,

(3) Bonds of any railroad corporation, the payment of which has been guaranteed, both as to principal and interest, by a railroad corporation meeting the requirements of either subdivision (1) or (2) of paragraph (f) of this section; provided, that such guaranteeing corporation has had for the period herein fixed net earnings amounting

to at least one and one-half times the interest on all its outstanding mortgage indebtedness and, in addition thereto, sufficient, taken with the earnings of all corporations whose bonds it has guaranteed, to qualify as investments for savings banks, as in this section provided, all such guaranteed bonds; provided, that the excess of income of any corporation whose bonds have been so guaranteed, over the amount required by this section for such corporation, shall not apply to or be included in determining the income so required; provided, further, that the guarantee of such bonds hereafter guaranteed must establish a lien upon all the operating properties of the guaranteeing corporation, which lien must take precedence over any subsequent issues of mortgage obligations by said guaranteeing corporation.

Rule for determination of income.

In determining the income of any corporation specified in paragraph (f) of subdivision three of this section, there shall be included the income of any corporation or corporations out of which it shall have been formed through consolidation or merger, and of any corporation or corporations, the entire business and income producing property of which the corporation issuing such bonds has wholly acquired.

Security.

All bonds authorized for investment by paragraph (f) of subdivision three of this section must be secured by a mortgage or deed of trust which is, at the time of making such investment, either

First mortgage.

I. A closed first mortgage or deed of trust; or,

II. A first mortgage or deed of trust containing provisions restricting the issuance of further bonds until such time as the income of said corporation shall have been at least sufficient, during the twelve months next preceding the issuance of any additional bonds, to meet the earning requirements specified in the respective subdivisions of this paragraph applicable to such corporation after including the additional bonds then proposed to be issued; or,

Refunding mortgage.

III. A refunding mortgage or deed of trust providing for the retirement of all prior lien mortgage debts of said corporation, and restricting the issuance of further bonds until such time as the income of said corporation shall have been at least sufficient, during the twelve months next preceding the issuance of any additional bonds, to meet the earning requirements specified in the respective subdivisions of this paragraph applicable to such corporation after including the additional bonds then proposed to be issued; or,

Trust deed on operative property. Guaranteed railroad bonds legal investments for savings banks.

IV. An underlying or divisional closed mortgage or deed of trust of property which forms a part of the operating system of the corporation then owning said property. In the case of bonds secured by an underlying or divisional closed mortgage or deed of trust, the net income required by this section shall be based exclusively upon the income, maintenance charges, operating expenses, taxes, and mortgage indebtedness of or against the property covered by such underlying or divisional closed mortgage or deed of trust, or, if such income, maintenance charges or operating expenses can not be definitely ascertained, on the proper proportionate share of such property in the general income, maintenance charges, operating expenses, and taxes of the corporation then owning such property and on the mortgage indebtedness of or against the property covered by such underlying or divisional closed mortgage or deed of trust; pro-

vided, however, that if the payment of the bonds secured by such underlying or divisional closed mortgage or deed of trust shall be guaranteed or assumed by the corporation then owning the property securing the same, such bonds shall be legal investments for savings banks, if the net income of such corporation from all sources shall equal the amount herein required, notwithstanding any insufficiency of the income derived from the property covered by such underlying or divisional closed mortgage or deed of trust to meet the requirements of this section.

No savings bank shall purchase the bonds of any railroad corporation deriving less than twenty per centum of its gross receipts from passenger revenues.

The term, "railroad corporation," when used in paragraph (f) of subdivision three of this section, shall have the meaning defined in the "public utilities act."

Public utility bonds.

(g) Bonds of any street railroad corporation; or of any gas; water; pipe line; light; power; light and power; gas, light and power; electrical; telephone; telegraph; or telephone and telegraph corporation or of any other "public utility" incorporated under the laws of the state of California; and

(1) Operating exclusively in the state of California, provided said corporation has had, for the period herein fixed, net earnings amounting to one and one-half times the interest on all its outstanding mortgage indebtedness; or,

(2) Operating its property in part within the state of California, provided said corporation has had, for each of its two fiscal years next preceding such investment, net earnings amounting to one and one-half times the interest on all its outstanding mortgage indebtedness; or,

(3) The payment of which is guaranteed, both as to principal and interest, by a public utility corporation meeting the requirements of either subdivision (1) or (2) of paragraph (g) of this section, provided that such guaranteeing corporation has had for the period required in the respective subdivisions of this paragraph relating thereto, net earnings amount to at least one and one-half times the interest on all of said guaranteeing corporation's outstanding mortgage indebtedness, and, in addition thereto, sufficient, taken with the earnings of all corporations whose bonds it has guaranteed, to qualify as investments for savings banks, as in this section provided, all such guaranteed bonds; provided, that the excess of income of any corporation whose bonds have been so guaranteed, over the amount required by this section for such corporation, shall not apply to or be included in determining the income so required; provided, further, that the guarantee of such bonds hereafter guaranteed must establish a lien upon all the operating properties of the guaranteeing corporation which lien must take precedence over any subsequent issues of mortgage obligations by said guaranteeing corporation.

In determining the income of any corporation specified in paragraph (g) of subdivision three of this section, there shall be included the income of any corporation or corporations out of which it shall have been formed through consolidation or merger, and of any corporation the entire business and income producing property of which the corporation issuing such bonds has wholly acquired.

Security.

All bonds authorized for investment by paragraph (g) of subdivision three of this section must be secured by a mortgage or deed of trust which is at the time of making such investment; either

First mortgage.

I. A closed first mortgage or deed of trust; or,

II. A first mortgage or deed of trust containing provisions restricting the issuance of further bonds until such time as the income of said corporation shall have been at

least sufficient, during the twelve months next preceding the issuance of any additional bonds, to meet the earning requirements specified in the respective subdivisions of this paragraph applicable to such corporation after including the additional bonds then proposed to be issued; or,

Refunding mortgage.

III. A refunding mortgage or deed of trust providing for the retirement of all prior lien mortgage debts of said corporation and restricting the issuance of further bonds until such time as the income of said corporation shall have been at least sufficient, during the twelve months next preceding the issuance of any additional bonds, to meet the earning requirements of such corporation after including the additional bonds then proposed to be issued; or,

Trust deed on operative property.

IV. An underlying or divisional closed mortgage or deed of trust of property which forms a part of the operating system of the corporation then owning said property. In the case of bonds secured by an underlying or divisional closed mortgage or deed of trust, the net income required by this section shall be based exclusively upon the the income, maintenance charges, operating expenses, taxes and mortgage indebtedness of or against the property covered by such underlying or divisional closed mortgage or deed of trust or, if such income, maintenance charges or operating expenses can not be definitely ascertained, on the proper proportionate share of such property in the general income, maintenance charges, operating expenses and taxes of the corporation then owning such property and on the mortgage indebtedness of or against the property covered by such underlying or divisional closed mortgage or deed of trust; provided, however, that if the payment of the bonds secured by such underlying or divisional closed mortgage or deed of trust shall be guaranteed or assumed by the corporation then owning the property securing the same, such bonds shall be legal investments for savings banks, if the net income of such corporation from all sources shall equal the amount herein required, notwithstanding any insufficiency of the income derived from the property covered by such underlying or divisional closed mortgage or deed of trust to meet the requirements of this section.

Definitions.

The terms "street railroad corporation," "pipe line corporation," "gas corporation," "electrical corporation," "telephone corporation," "telegraph corporation," "water corporation," and "public utility," when used in paragraph (g) of subdivision three of this section, shall have the meaning defined in the "public utilities act."

Notes secured by first mortgage.

(h) Notes or bonds secured by first mortgage or deed of trust or other first lien upon real estate, improved or unimproved; provided, that the entire note or bond issue shall not exceed sixty per centum of the market value of such real estate, or such real estate with improvements, taken as security; and provided, further, in case the said note or bond issue is created for a building loan on real estate, that at no time shall the entire outstanding note or bond issue exceed sixty per centum of the market value of the real estate and the actual cost of the improvements thereon taken as security.

Market value of oil and timber land.

In determining the market value of any real estate under the provisions of paragraph (h), subdivision three of this section, where such real estate, improved or unimproved, consists of oil or other mineral or timber land, the value represented by such oil or other mineral or timber shall not be included in fixing such market value.

Nothing herein contained shall prevent savings banks from making loans secured by mortgage or deed of trust upon lands wherein redwood timber is included in fixing the market value thereof.

Collateral trust bonds.

(i) Collateral trust bonds or notes when secured by either:

(1) Deposit of bonds authorized for investment by this section of a market value at least fifteen per centum in excess of the par value of the collateral trust bonds or notes issued; or,

(2) Deposit of bonds authorized for investment by this section and other securities of a combined market value at least twenty per centum in excess of the par value of the collateral trust bonds or notes issued; provided, that the par value of said collateral trust bonds or notes shall in no case exceed the market value of that portion of the security represented by bonds authorized for investment by his section.

(3) Deposit of any notes or bonds authorized for investment by this section and other securities of a combined market value of at least thirty per centum in excess of the par value of the collateral trust bonds or notes issued; provided, that the par value of such collateral trust bonds or notes issued shall in no case exceed the market value of that portion of the security represented by notes or bonds authorized for investment by this section; provided, further that the collateral pledged consist of bonds authorized for investment by this section of the market value of at least seventy-five per centum of the par value of such collateral trust bonds or notes issued.

Legal investment in New York and Massachusetts.

(j) Bonds legal for investment by savings banks in the states of New York or Massachusetts; provided, however, that as to bonds of the character specified in paragraph (c) of subdivision three of this section, such bonds shall also conform to the requirements of such paragraph.

Guaranteed payment.

(k) Notes or bonds secured by mortgage or deed of trust, payment of which is guaranteed by a policy of mortgage insurance, and mortgage participation certificates, issued by a mortgage insurance company in accordance with the provisions of chapter eight of title two or part four of division first of the Civil Code.

"Net earnings."

"Net earnings" as used in this section shall be deemed to mean the amount remaining after deducting from the gross earnings all taxes, maintenance charges and operating expenses except depreciation charges, sinking fund charges and interest on indebtedness.

Unless herein otherwise expressly provided the period for which any corporation must have "net earnings" sufficient to qualify its bonds as an investment for savings banks under this section shall be either the fiscal year of such corporation next preceding the investment therein by any savings bank or twelve consecutive months in the fourteen months next preceding such investment.

Bonds, etc., certified by superintendent of banks.

No notes, bonds, or other securities shall be deemed to come within or conform to the requirements of either of paragraphs (f), (g), (h), or (i) of subdivision three of this section, unless such notes, bonds or other securities shall, in the manner provided in this act, have been certified by the superintendent of banks to come within and fully conform to the requirements of one or the other of said paragraphs; provided, however, that any bank may, without such certification by the superintendent of banks, purchase any note or bond or issue of notes or bonds provided for in said paragraph (h), when-

ever such purchase constitutes the entire amount of notes or bonds executed by the makers thereof and secured by the same real estate; provided, also, that no savings bank shall hold any such notes or bonds unless such holding constitutes the entire issue thereof at any time outstanding; and provided, also, that nothing in this paragraph shall be construed to permit savings banks to invest in notes or certificates evidencing participation in any mortgage on real estate unless in this act specifically authorized or in or on any form of obligation secured by any undivided interest in real estate designed to distribute the obligation so secured.

Legality of previous investments not affected.

The legality of investments heretofore lawfully made pursuant to the provisions of this section, or of any law of this state as it existed on and subsequent to July 1, 1909, shall not be affected by any amendments to this section or this act; nor shall any such amendments require the changing of investments once lawfully made under this act.

Investment value of bonds.

Any bonds authorized by this section as a legal investment for savings banks may be carried on the books of said bank at their investment value, based on their market value at the time they were originally bought, unless the superintendent of banks shall require any or all of the bonds which may thereafter have a market value less than the original investment value to be written down to such new market value which shall be done gradually if practicable and in such manner as he may determine; or he may, by a plan of amortization to be determined by him, require such gradual extinction of premium as will bring such bonds to par at maturity.

When it shall be necessary to prevent loss to any savings bank on an obligation owned or on a debt previously contracted in good faith, it may, with the previous written consent of the superintendent of banks, purchase or acquire bonds of any railroad corporation incorporated under the laws of the state of California and operated exclusively therein, notwithstanding such bonds do not conform to the requirements in this section contained; provided, any bonds so purchased or acquired must be sold for the best price obtainable by any bank within five years after such purchase or acquisition.

Bonds of public utilities.

No savings bank shall hereafter purchase or loan money upon any bond, note or other evidence of indebtedness, issued by any "public utility," subject to the jurisdiction, regulation or control of the railroad commission of this state under the provisions of the "public utilities act," approved December 23, 1911, and acts amendatory thereof or supplemental thereto, unless each such bond, note or other evidence of indebtedness was either:

- (a) Issued prior to the taking effect of the "public utilities act"; or,
- (b) Issued under authority of the railroad commission, in accordance with the provisions of said act; or,
- (c) A note issued for a period not exceeding twelve months, in accordance with the provisions of subdivision (b) of section fifty-two of said act.

State does not guarantee validity of bonds.

No provision of this act, and no act or deed, done or performed under or in connection therewith, and no finding made or certificate issued under any provision thereof, shall be held or construed to obligate the state of California to pay, or be liable for the payment of, or to guarantee in any manner whatsoever, the regularity or the validity of the issuance of any stock or bond certificate, or bond, note, or other evidence of indebtedness certified under any provisions of this act, by the superintendent of banks.

Advertisement of bonds as legal investment. Penalty for false advertisement.

It shall not be lawful for any individual, firm, association, bank, trust company, stock company, copartnership or corporation to advertise by newspaper or circular or in any other manner that any securities are legal investments for savings banks in this state or to use any advertisement which might lead the public to believe that any securities conform to the requirements of law relating to investments by savings banks unless such securities are such as are specified in paragraphs (a), (aa), (b), (c), (d), (e), (j), or (k) of subdivision three of this section or shall, in the manner provided in this act, have been certified by the superintendent of banks to come within and fully conform to the requirements of one or the other of paragraphs (f), (g), (h), or (i) of subdivision three of this section or unless such advertisement shall have been approved in writing by the superintendent of banks prior to publishing, circulating or otherwise issuing the same. Any individual, firm, association, bank, trust company, stock company, copartnership or corporation who shall advertise any securities in violation of the provisions of this paragraph shall be guilty of a misdemeanor and shall be punishable by a fine not exceeding one thousand dollars or by imprisonment in a county jail not exceeding one year or by both such fine and imprisonment. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 631.]

This section was also amended April 21, 1911, Stats. 1911, p. 1004; May 6, 1913, Stats. 1913 p. 161; June 3, 1915, Stats. 1915, p. 1113; and May 17, 1917, Stats. 1917, p. 586.

Superintendent of banks may investigate bonds.

§ 61a. The superintendent of banks shall have power, when any issue of bonds or securities is presented to him for that purpose, to investigate and ascertain whether such bonds or securities come within and fully conform to all the requirements of paragraphs (f), (g), (h), or (i) of subdivision three of section sixty-one of this act, or of either of said paragraphs.

Opinions of attorneys.

He may also investigate and ascertain for what period of time, and upon what conditions, any franchise granted to or held by any corporation issuing any such bonds or securities will remain in force, and any other facts or conditions bearing upon the value or sufficiency of such bonds. The superintendent of banks may accept and act upon the opinions and appraisements of any attorneys, engineers, or appraisers which may be presented by such person or corporation, so applying, and the reports of any of the executive officers of the corporation issuing such bonds or securities, on any question of fact concerning or affecting such bonds or securities, the security thereof, the franchise conditions herein mentioned, or the financial condition of the corporation issuing the same. In lieu of or in addition to such opinions, appraisements and reports, the superintendent of banks may, if he deems proper, have any or all such matters passed upon and certified to him by attorneys, engineers, appraisers or accountants of his own selection at the expense of the applicant. If the superintendent of banks shall find from such investigation that the bonds or securities so presented come within and fully conform to all the requirements of any of said paragraphs of subdivision three of section sixty-one of this act, and is satisfied from such investigation as to such franchise conditions, he shall so certify unless for any reason he shall be of the opinion that such bonds are not a safe or proper investment for saving banks, and in such event or if such bonds shall fail to meet the requirements of this act such certificate must be refused. The superintendent of banks also shall have power to investigate and ascertain the status and sufficiency as investments for savings banks of any bonds specified in paragraph (e) of subdivision three of section sixty-one of this act. If upon such investigation it shall be determined in the opinion of the superintendent of banks that any bond specified in said paragraph (e) of subdivision three of section sixty-one of this act constitutes a proper investment for savings banks he shall so certify.

Certificates revoked.

Any certificate issued by the superintendent of banks under authority of the provisions of this section may be revoked at any time in his discretion. Any certificate issued in relation to notes or bonds specified in paragraphs (f), (g) or (i) of subdivision three of section sixty-one of this act shall expire not later than three months after the end of the then current fiscal year of the corporation issuing such notes or bonds.

Renewal or extension of certificate.

Any such certificate so expiring may be renewed or extended by the superintendent of banks without application therefor from such corporation or other interested parties if he shall be satisfied that the notes or bonds referred to in said certificate are in conformity with the then requirements of section sixty-one of this act.

Expenses.

The actual expense of investigating any issue of bonds or securities so presented shall be paid by the person, district or corporation presenting the same for investigation, and the superintendent of banks, before making such investigation, may require a cash deposit of such amount as he may deem necessary to cover such expense. The superintendent of banks shall keep an official list of all bonds and securities certified by him. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 640.]

This was a new section added to the act May 6, 1913, Stats. 1913, p. 168; and it was amended June 3, 1915, Stats. 1915, p. 1121; and May 17, 1917. In effect July 27, 1917, Stats. 1917, p. 594.

Savings banks not to trade in real property.

§ 62. No savings banks shall, directly or indirectly, deal or trade in real or personal property in any other case or for any other purpose than is authorized by this act, and shall not contract any debt or liability for any purpose whatever other than for deposits, except as in this section provided.

Drafts.

Savings banks may pay regular depositors, when requested by them, by draft upon deposits to their credit with their banks, and charge current rate of exchange for such drafts.

Savings banks borrowing money. Savings banks may borrow public moneys.

No savings bank shall borrow money, or pledge or hypothecate any of its securities, except to meet the immediate demands of its own depositors, and then only in pursuance of a resolution adopted by a vote of a majority of its board of directors, duly entered upon their minutes, wherein shall be recorded the ayes and nays upon each vote; also with the written approval of the superintendent of banks, and he shall have the authority to fix the amount to be borrowed the amount and character of the securities to be pledged or hypothecated, and the term and rate of interest thereon; provided, that any savings bank may, for the purpose of performing its functions and transacting its business as authorized by this act, rediscount, with or without guarantee or endorsement, with the federal reserve bank, its acceptances, notes or any other securities, available for rediscount with a federal reserve bank, in any amount up to but not exceeding its capital and surplus or reserve without consent of the superintendent of banks, and shall not be considered as borrowed money within the meaning of this section; provided, also, that savings banks may, in the manner authorized by law, and without the previous approval of the superintendent of banks, borrow the public moneys of the United States, the state of California, the counties, cities and counties, and towns of said state of California and receive such public moneys on deposit; provided, also,

that savings banks may, in the manner authorized by law, and without the previous approval of the superintendent of banks, borrow postal savings moneys of the United States, and receive such postal savings moneys on deposit; and provided, further, savings banks may borrow any amount, in addition to the amounts authorized to be borrowed in this section, for the purpose of buying from the United States, United States bonds, United States treasury certificates, or notes or obligations of the United States, but only in pursuance of a resolution of a majority of its board of directors, duly entered upon their minutes, and without the previous approval of the superintendent of banks, but the fact of such transaction shall forthwith be reported in writing to the superintendent of banks. No excess loan made to any savings bank with or without pledge of assets shall be invalid or illegal as to the lender. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 641.]

This section was also amended April 21, 1911, Stats. 1911, p. 1013.

Certificates of deposit, issue of. Time certificates.

§ 63. Savings banks may issue general certificates of deposit, which are transferable, as in other cases, by indorsement and delivery; may issue, when requested by the depositor, special certificates, acknowledging the deposit by the person therein named of a specified sum of money, and expressly providing on the face of such certificate that the sum so deposited and therein named may be transferred only on the books of the bank; payment thereafter made by the bank to the depositor named in such certificate, or to his assignee named upon the books of the bank, or in case of death, to the legal representative of such person, of the sum for which such special certificate was issued, shall discharge the bank from all further liability on account of the money so paid.

All time certificates of deposit, issued by a savings bank, shall be subject to the same limitations and conditions as applied to other deposits, and notice thereof shall be given by the words "Subject to conditions of agreement with depositors" printed on the face of the certificate issued.

Time and condition of repayment of deposits. Reserve fund.

§ 64. Each savings bank must prescribe by its by-laws, or by contract with its depositors, the time and conditions on which repayment is to be made to depositors, except as in this act otherwise provided. In all cases the by-laws or contracts shall provide that notice of at least thirty days may, at the option of any such bank, be required to be given of intention to withdraw any deposit or part thereof, but whenever there is any call by depositors for repayment of a greater amount than the bank may have disposable for that purpose, the directors or officers thereof must not make any new loan or investment of the funds of the depositors or of earnings thereof until such excess of call has ceased. The directors of any such bank having no capital stock shall, before the declaration of any dividend, carry at least one-tenth part of the net profits of such bank, for the preceding half year, or for the period covered by said dividend, to its reserve fund. Subject to the provisions of section nineteen of this act, any losses sustained by any such bank may be charged to and paid out of its reserve fund. A larger reserve fund may be created and nothing herein contained shall be construed as prohibitory thereof. The assets of any such bank are a security to its depositors. Any such bank organized without capital stock, may provide by its by-laws for the disposal of any amount in its reserve fund in excess of the amount required by section nineteen of this act and may also provide for final disposal upon the dissolution of the bank of its reserve fund or the balance thereof remaining after payment of any losses of such bank. [Amendment approved May 6, 1913. Stats. 1913, p. 168.]

No loan to director or officer. Record of loan. Report of loan to superintendent of banks.

§ 65. No loan shall be made, for himself or as agent or partner of another, directly or indirectly, to any director or officer of any savings bank by such bank, or on the endorsement, surety or guaranty of any such officer or director, except that loans may be made to any corporation in which any director or officer of such savings bank may own or hold a minority number of shares of stock, upon authorization of a majority of all the directors of such savings bank and the affirmative vote of all directors of such savings bank present at the meeting authorizing such loan; provided, however, that such loan shall in all other respects conform to and comply with all other provisions of this act. Such interested director or officer shall not vote or participate in any manner in the action of the board on such loan; provided, also, that by and with the consent of the superintendent of banks previously obtained in writing, all directors may vote upon such a loan made by one bank to another bank where the entire capital stock of one is owned by or held in trust for the stockholders of the other bank and where all or a majority of the board of directors of each of said banks are composed of the same persons. Such authorization shall be entered upon the records or minutes of such savings bank. The fact of making such loan, the names of the directors authorizing such loan, the corporate name of the borrower, the name of each director or officer of such bank who is a member, stockholder, officer, or director of the corporation to which such loan is made, the amount of stock held by him in such borrowing corporation, the amount of such loan, the rate of interest thereon, the time when the loan will become due, the amount, character and value of security given therefor and the fact of final payment, when made, shall be forthwith reported in writing by the cashier or secretary of such savings bank to the superintendent of banks. No loan may be made to any corporation, a majority of the stock of which is owned or controlled by any one or more of the directors or officers of such savings bank, except with the previous consent of the superintendent of banks.

Loan to agent or employee. Record of loan. Report to superintendent of banks.

A loan may be made to any agent or employee, other than an officer or director, of any savings bank by such bank upon authorization of a majority of all the directors of such savings bank and an affirmative vote of all directors of such savings bank present at the meeting authorizing such loan; provided, however, that such loan shall in all respects conform to and comply with all other provisions of this act. Such authorization shall be entered upon the records or minutes of such savings bank. The fact of making such loan, the names of the directors authorizing such loan, the name of the borrower, the nature of his employment, the amount of such loan, the rate of interest thereon, the time when the loan will become due, the amount, character and value of the security given therefor, and the fact of final payment, when made, shall be forthwith reported in writing by the cashier or secretary of such savings bank to the superintendent of banks. Any officer or director of any savings bank, who knowingly procures a loan from such savings bank, contrary to the provisions of this section, shall be guilty of a felony. In case of the neglect or failure of the secretary or cashier of any such bank to report to the superintendent of banks, as herein provided, any of the facts so required to be reported, or in case of the neglect or failure of the secretary or cashier of any such bank to report to the superintendent of banks any loan made contrary to the provisions of this section, the bank shall be liable therefor and shall forfeit to the people of the state of California twenty-five dollars per day for each day, or part thereof, during which such neglect or failure continues.

Not applicable to what corporation.

This section shall not apply to any loan made to a religious corporation, club, or other membership corporation of which one or more directors, officers, agents or employees of such savings bank may be members or officers, but in which they have no financial interest.

Loans to director on security.

Loans may be made to any director, other than an officer, directly or indirectly, or to any agent or employee of a savings bank on the security of United States bonds, United States treasury certificates, or interest-bearing notes, or obligations of the United States or those for which the faith and credit of the United States are pledged for repayment of principal or interest, or those issued under authority of the United States, notwithstanding anything in this section contained, and such loans may be made in the usual manner of making loans in which no director of such bank is interested. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 642.]

This section was also amended May 6, 1913, Stats. 1913, p. 169; June 3, 1915, Stats. 1915, p. 1122; and May 17, 1917, Stats. 1917, p. 609.

No loan exceeding 50 per cent of stock. Renewal of loan.

§ 66. No savings bank shall hereafter make any loans to any person, firm, copartner-ship or corporation to an amount exceeding 50 per centum of the actual paid-up capital stock and surplus of such bank, or in the case of a bank organized without capital stock, to an amount exceeding 50 per centum of the reserve fund of such bank; provided, however, that any savings bank having a paid-up capital and surplus of less than fifty thousand dollars, but not less than twenty-five thousand dollars, may make any such loan on real estate security to an amount not exceeding twenty-five thousand dollars; and provided further, that any savings bank having a paid-up capital and surplus of less than twenty-five thousand dollars may make any such loan on real estate security to an amount not exceeding its paid-up capital and surplus, if each such loan in all other respects conforms to the provisions of this act. The renewal or extension of any loan heretofore legally made by any savings bank shall not be construed to be a "loan hereafter made" within the meaning of the provisions of this section. The legality of investments heretofore lawfully made pursuant to the provisions of this act as it existed on and subsequent to July 1, 1909, shall not be affected by the provisions of this section. For the purposes of this section an endorser or guarantor shall be deemed to be a borrower. [Amendment of May 6, 1913. Stats. 1913, p. 170.]

Limitation on loans.

§ 67. 1. No savings bank shall loan money except on adequate security of real or personal property, and no such loan shall be made for a period longer than ten years. No such loan shall be made on unsecured notes; provided, that a savings bank may discount or purchase bankers' or trade acceptances, notes, drafts and bills of exchange of the kind and character and maturities defined and made eligible for rediscount with a federal reserve bank; provided, also, that the same are accepted or endorsed without qualification by a bank or trust company, which bank or trust company has a paid-in capital of at least one million dollars; and provided, also, that a savings bank may discount or purchase a bill which must comply with the following requirements:

Requirements for bill of exchange.

(a) It must be a bill issued by a solvent individual or firm or corporation engaged in mercantile or manufacturing business in the United States that makes statements of its condition duly ascertained and certified to by a public accountant. Copy of such a certified statement shall be on file in the office of the savings bank discounting or purchasing such bill in a file maintained for such purpose. Said statement shall have

been issued within the preceding fourteen months and shall be the latest issued by said individual or firm or corporation. Said statement shall consist of a balance sheet showing quick assets, slow assets, permanent or fixed assets, current liabilities and accounts, short term loans, long term loans, capital and surplus. Accompanying said balance sheet shall be a copy of a statement from the borrower or public accountant concerning the following:

- (1) The nature of the business.
- (2) All contingent liabilities such as endorsements or guarantees.
- (3) Particulars respecting any mortgage debts and whether there is any lien on current assets.
- (4) The maximum and minimum liabilities of the individual, firm or corporation during the twelve months previous to the date of audit.
- (b) It must be issued by an individual, firm or corporation whose net worth is not less than two times the amount of its outstanding liabilities, including any contingent liabilities arising from the rediscount of bills receivable or other accommodation endorsements, nor less than three hundred thousand dollars. The quick assets of said individual, firm or corporation, consisting of merchandise, finished, raw, and in the process of manufacture, accounts receivable, bills receivable, bonds or obligations of the government of the United States at the then market value of said bonds or obligations and cash, shall not be less than two times its outstanding quick liabilities including any contingent liabilities arising from the rediscount of bills receivable or other accommodation endorsements, as shown by said statement.
- (c) It must have a maturity of not more than six months.
- (d) It must have arisen out of actual commercial transactions; that is, be a bill which has been issued or drawn for industrial or commercial purposes or the proceeds of which have been or are to be used for such purposes.

Bills not eligible for discount or purchase.

No bill shall be eligible for discount or purchase by a savings bank, the proceeds of which have been used or are to be used for any of the following purposes:

- (1) For investments of a merely speculative character whether made in goods or otherwise.
- (2) Must not have been issued for carrying or trading in stocks, bonds or other investment securities, except bonds of the government of the United States, and must not cover merely investments.
- (3) Must not be a bill of any individual, firm or corporation which has under pledge or hypothecation any of its personal assets.

The word "bill," when used in this section, shall be construed to include notes, drafts, or bills of exchange, and the word "goods" shall be construed to include goods, wares or merchandise.

Credit reports.

Any savings bank purchasing or discounting such paper shall have a file maintained for the purpose, letters from banks and merchants or mercantile reports bearing upon the credit and standing of the person, firm, copartnership or corporation whose paper is under discount.

Limitation on amount.

No savings bank shall at any time acquire or hold, directly or indirectly, by discount or purchase, a combined total amount of bankers' and trade acceptances, drafts and bills of exchange and bills of the character defined and limited by this section, greater than twenty per centum of the deposits of such bank, nor shall any savings bank at any time acquire or hold, directly or indirectly, by discount or purchase, an amount of

bills, of the character defined and limited by this section, greater than twelve and one-half per centum of the deposits of such bank. No savings bank shall at any time acquire or hold, directly or indirectly, by discount or purchase, any such bankers' or trade acceptances, drafts and bills of exchange from any one acceptor in an amount which shall exceed five per centum of the capital and surplus or reserve of such savings bank nor shall any savings bank at any time acquire or hold, directly or indirectly, by discount or purchase, any such bills of any one person, firm, copartnership or corporation in an amount which shall exceed five per centum of the capital and surplus or reserve of such savings bank.

Loans on bonds.

2. No savings bank shall invest or loan an amount greater than fifty per centum of its actual paid-up capital and surplus on any one note or bond issue of the class specified in paragraph (h), or on the securities issued by any one mortgage insurance company of the class specified in paragraph (k) of subdivision three of section sixty-one of this act, nor more than five per centum of its assets on any one bond issue of any other class, except bonds of the United States, or interest-bearing notes or obligations of the United States, or bonds of the state of California, bonds for which the faith and credit of the United States or of the state of California are pledged, or bonds of any county, city and county, city or school district in this state, or bonds of any irrigation district such as are legal for investment by savings banks.

3. No savings bank shall loan money:

(a) On bonds of the character specified in paragraphs (a), (aa), (b), (c) and (d) of subdivision three of section sixty-one of this act, or on bonds of the character specified in paragraph (e) of subdivision three of section sixty-one of this act the principal and interest of which are to be paid in whole or in part by taxes levied upon the property in the district issuing such bonds, unless such bonds shall have a market value at least ten per centum in excess of the amount loaned thereon; or,

(b) On bonds of the character specified in paragraphs (f), and (g) or on bonds or notes of the character specified in paragraph (i) of subdivision three of section sixty-one of this act, when eligible as investments for savings banks pursuant to said section, or on bonds of the character specified in paragraph (e) of subdivision three of section sixty-one of this act other than those specified in the preceding paragraph of this section, unless such bonds or notes shall have a market value at least fifteen per centum in excess of the amount loaned thereon; or,

(c) On bonds legal for investment by savings banks in the states of New York or Massachusetts, unless such bonds shall have a market value at least fifteen per centum in excess of the amount loaned thereon; or,

(d) On notes or bonds of the character specified in paragraph (h) of subdivision three of section sixty-one of this act when certified as legal investments for savings banks under the provisions of section sixty-one or on securities of the character specified in paragraph (k) of subdivision three of said section eligible for investment by savings banks, unless such bonds, notes or securities shall have a market value at least ten per centum in excess of the amount loaned thereon; or,

(e) On personal property unless such personal property shall have a market value at least fifty per centum in excess of the amount loaned thereon; or,

(f) On other bonds, or on capital stock of any corporation, unless such bonds or stock shall have a market value at least fifty per centum in excess of the amount loaned thereon; provided, however, that no loan shall be made upon the capital stock of any bank unless such bank has been in existence at least two years and has earned and paid a dividend on its capital stock.

Loans on real estate.

4. No savings bank shall make any loan on security of real estate, except it be a first lien, and in no event to exceed sixty per centum of the market value of any real estate taken as security except for the purpose of facilitating the sale of property owned by such savings bank; provided, that a second lien may be accepted to secure the repayment of a debt previously contracted in good faith; and provided, also, that any savings bank holding a first mortgage or deed of trust on real estate may take or purchase and hold or loan upon another and immediately subsequent mortgage or deed of trust thereon, but all such loans shall not exceed in the aggregate sixty per centum of the market value of the real estate securing the same; provided, further, that a savings bank may loan not to exceed ninety per centum of the face value of a mortgage which constitutes a first lien upon real estate, but in no event shall any such loan exceed ninety per centum of sixty per centum of the market value of the real estate covered by said mortgage or deed of trust.

Loans on capital stock of corporations.

5. No savings bank shall loan to any one borrower on the security of the capital stock of any corporation an amount exceeding ten per centum of the capital stock and surplus of such savings bank; provided, that all loans on the capital stock of any one corporation shall not exceed in the aggregate twenty-five per centum of the capital stock and surplus of such savings bank.

No loans on mining stock.

6. No savings bank shall purchase, invest or loan its capital, surplus or the money of its depositors, or any part of either, in mining shares or stock and any president or managing officer who knowingly consents to a violation of any provision of this paragraph shall be guilty of a felony. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 644.]

This section was also amended May 6, 1913, Stats. 1913, p. 170; June 3, 1915, Stats. 1915, p. 1123; and May 17, 1917, Stats. 1917, p. 595.

Total reserves of savings banks. Deposit of reserves.

§ 68. Every savings bank or savings department of a bank shall at all times maintain total reserves equivalent to five per centum of the aggregate amount of its deposits, exclusive of United States, postal savings bank, state, county and municipal, and other public money deposits, which are secured as is required by law; at least two and one-half per centum of such deposits shall be maintained as reserves on hand, which shall consist of gold bullion or any form of money or currency authorized by the laws of the United States, and two and one-half per centum of such deposits may be maintained as reserves on hand, which shall consist of bonds, or interest bearing obligations of the United States, of gold bullion, or any form of money or currency authorized by the laws of the United States or may be maintained as reserves on deposit subject to call with any reserve depositary provided for in sections twenty and forty-three of this act; provided, however, that all or any part of the reserves may be deposited, subject to call, with a federal reserve bank in the district in which such bank is located; provided, also, that no savings bank or savings department shall be required to maintain reserves on hand in excess of four hundred thousand dollars, and when such reserves on hand reach that amount, the balance of total reserves necessary to make up the five per centum may be kept as reserves on deposit, subject to call, with any reserve depositary provided for in sections twenty and forty-three of this act.

Reserves of member of federal reserve bank.

If any bank shall have become a member of a federal reserve bank, it shall at all times maintain the reserves required by the federal reserve act for time deposits, and

in addition thereto shall be required to maintain a reserve of at least two per centum of its aggregate deposits, exclusive of United States, postal savings, state, county and municipal, and other public money deposits, which are secured as is required by law, which two per centum shall consist of gold bullion, or any form of money or currency authorized by the laws of the United States.

Failure to maintain reserves.

If any savings bank shall fail to maintain its total reserves in the manner authorized by this section, it shall be subject to the penalty provided for in section twenty of this act for commercial banks.

Dealings with commercial banks.

No new loan shall be made during any deficiency in the total reserves. Deposits with any commercial bank, or commercial department of a bank, on open account, as provided in this section, shall be permitted and shall not be construed as loans. Not more than five per centum of the deposits of any savings bank shall be deposited with any one bank, except with the consent of the superintendent of banks. Not more than fifteen per centum of the deposits of any savings bank shall be deposited with all commercial banks, except with the consent of the superintendent of banks. No savings bank or savings department shall receive deposits of other banks other than savings deposits and such deposits shall not be treated or considered as a part of the reserves on deposit of such depositing bank; provided, the sum so deposited shall not exceed thirty per centum of the paid-in capital and surplus of the depositing bank nor more than fifteen per centum of the paid-in capital and surplus of the depository bank. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 647.]

This section was also amended April 21, 1911, Stats. 1911, p. 1007; May 6, 1913, Stats. 1913, p. 171; June 3, 1915, Stats. 1915, p. 1125; and May 17, 1917, Stats. 1917, p. 611.

Deposits of deceased persons may remain in savings banks.

§ 68½. Where a decedent, at the time of his or her death, left moneys on deposit with a savings bank, it shall be lawful for any public administrator, who shall become the administrator of the estate, to allow such deposit to remain in said savings bank, and also, it shall be lawful for him to deposit therein to the account of said decedent, any and all moneys of said estate not required for the current expenses of administration. Such deposit, whether made by the decedent or a public administrator, shall relieve the public administrator from depositing the same with the county treasurer. Moneys so deposited, whether by the decedent or by a public administrator, may be drawn upon demand without notice, upon the order of said administrator, countersigned by a judge of a superior court, when required for the purpose of administration or otherwise. [New section approved April 21, 1911. Stats. 1911, p. 1007.]

Savings banks to be conducted under provisions of this act.

§ 69. Every savings bank, and the business of every savings department of every other bank, must be conducted under and in accordance with the provisions of this act.

Power to receive liberty bonds.

§ 70. Every savings bank shall have power to receive as depository, or as bailee for safe keeping and storage, liberty bonds or other bonds or securities issued by the United States government for war purposes or otherwise. [New section added May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 648.]

ARTICLE III.
Commercial Banks.

§ 80. LOANS.

Without Security.

With Security.

Bills of Exchange. Restrictions Not Applicable To.

Liberty Bonds. Restrictions Not Applicable To.

Computing Liabilities to Bank.

§ 81. LOANS.

Securities of Corporations.

§ 82. CAPITAL STOCK.

In Places of Not More Than 5000 Persons;

In Places of More Than 5000 and Not Over 25,000 Persons;

In Places of More Than 25,000 and Not Over 100,000 Persons;

In Places of More Than 100,000 and Not Over 200,000 Persons;

In Places of Over 200,000 Persons.

§ 83. LOANS TO.

Officer.

Director, Agent or Employee.

Report to Superintendent of Banks.

Penalty.

Not Applicable to Certain Corporations, Etc.

Corporations, Owned or Controlled by Directors.

Consent of Superintendent of Banks.

Directors, etc., on Security.

§ 84. INVESTMENT IN BUILDING.**§ 85. FUNDS DEPOSITED, LIMITATION OF.****Loans of commercial banks.**

§ 80. No commercial bank shall make any loans, directly or indirectly, to any person, firm, copartnership or corporation, in an amount which, including therein any extension of credit to such person, firm, copartnership or corporation, by means of letters of credit, or by acceptance of drafts for, or the discount or purchase of the notes, bills of exchange or other obligations of, such person, firm, copartnership or corporation, shall exceed the following percentage of its capital and surplus:

Without security.

1. Ten per centum without security, except where such capital stock and surplus is not more than twenty-five thousand dollars, in which event an amount not to exceed twenty per centum of such capital stock and surplus may be loaned without security, and where such capital stock and surplus is greater than twenty-five thousand dollars and does not exceed fifty thousand dollars, a sum not exceeding five thousand dollars may be loaned without security. Nothing herein shall prohibit any commercial bank from taking or receiving any kind, character or amount of security whatsoever, either real or personal, for the protection of any loan made under the provisions of this subdivision, but no such loan or any part thereof shall be considered or construed as a secured loan unless the whole thereof is loaned upon security worth at least fifteen per centum more than the amount of such loan; or,

With security.

2. Fifteen per centum, in addition to the amount that may be loaned under the provisions of subdivision one of this section, upon security worth at least fifteen per centum more than the amount of such loan so secured; provided, the total amount which can be loaned under subdivisions one and two hereof can not exceed twenty-five per centum in all; provided, however, that a separate note or notes shall be taken for the unsecured loans and a separate note or notes shall be taken for the secured loans, and the secured and unsecured loans shall not be combined in any way within one note, or notes; or,

3. Twenty-five per centum upon security worth at least fifteen per centum **more** than the amount of its loans so secured; provided, however, that when secured loans to this amount or any amount in excess of fifteen per centum are made, **then no** unsecured loans shall be permitted in addition to such secured loans; or,

Restrictions not applicable to bills of exchange.

4. Forty per centum, provided such loans are upon commercial or business paper actually owned by the person negotiating the same to such bank, and are endorsed by such person without limitation; provided, however, that in addition to the amounts permitted to be loaned by subdivisions one, two or three of this section, an amount may be loaned on the securities fixed by subdivision four of this section, which taken with the amounts so permitted by said subdivisions one, two or three will not exceed forty per centum; provided, also that the restrictions under this section shall not apply to bills of exchange or drafts, with bills of lading attached, drawn in good faith against actual existing values; provided, further, that any commercial bank, having first obtained in writing the consent of the superintendent of banks so to do and under such conditions and regulations as may be prescribed by him, may accept drafts or bills of exchange drawn upon it running for a period of not longer than six months, but no commercial bank shall accept such drafts or bills of exchange in an amount greater at any time in the outstanding aggregate than one-half of its capital and surplus; but such acceptance or acceptances must be drawn by a person, firm, copartnership or corporation engaged in agricultural, industrial or commercial business directly connected with the production, manufacture, purchase, sale or consignment of the goods involved in the transaction in which the acceptance originated; provided, however, that no such acceptance or acceptances to any one person, firm, copartnership or corporation shall exceed ten per centum of the capital and surplus of such bank.

Restrictions not applicable to liberty bonds.

None of the limitations or restrictions contained in the previous subdivisions of this section shall apply to loans, discounts or other extensions of credit secured by liberty bonds or by other bonds or securities issued by the United States government, if the market value of such liberty bonds or other securities exceeds by ten per centum the amount of any such loan, discount or other extension of credit.

Loans which are made upon security available for loans in a savings bank may be made in a commercial bank upon the same margin of security as is permitted to savings banks anything in this section to the contrary notwithstanding, and all such loans shall be deemed to be secured loans within the meaning of this section.

Computing liabilities to commercial banks.

In computing the total liabilities of any person to a commercial bank there shall be included all liabilities to the bank of any copartnership or unincorporated association of which he is a member, and any loans made for his benefit or for the benefit of such copartnership or unincorporated association; of any firm, copartnership or unincorporated association to a commercial bank there shall be included all liabilities of its individual members and all loans made for the benefit of such copartnership or unincorporated association or any member thereof; and of any corporation to a commercial bank there shall be included all loans made for the benefit of the corporation. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 649.]

This section was also amended April 21, 1911, Stats. 1911, p. 1014; May 6, 1913, Stats. 1913, p. 172; June 3, 1915, Stats. 1915, p. 1125; and May 17, 1917, Stats. 1917, p. 611.

Loans; securities of corporations.

§ 81. No loan shall be made by any commercial bank upon the securities of one or more corporations, the payment of which is undertaken, in whole or in part, severally, but not jointly, by two or more individuals, firms, or corporations:

(a) If the borrower or underwriters be obligated absolutely or contingently to purchase the securities, or any of them, collateral to such loan, unless the borrowers or underwriters shall have paid on account of the purchase of such securities an amount in cash, or its equivalent, equal to at least twenty-five per centum of the several amounts for which they remain obligated in completing the purchase of such securities;

(b) If the commercial bank making such loan be liable, directly or indirectly, or contingently, for the repayment of such loan or any part thereof;

(c) If its term, including any renewal thereof by agreement, express or implied, exceed the period of one year;

(d) Or to an amount under any circumstances in excess of twenty-five per centum of the capital and surplus of the commercial bank making such loan.

Capital stock. Not applicable to existing banks.

§ 82. Every commercial bank hereafter organized must have paid up in cash a capital stock of not less than,

(a) Twenty-five thousand dollars if its principal place of business is located in any locality the population of which does not exceed five thousand persons;

(b) Fifty thousand dollars if its principal place of business is located in any city the population of which is more than five thousand persons but does not exceed twenty-five thousand persons;

(c) One hundred thousand dollars if its principal place of business is located in any city the population of which is more than twenty-five thousand persons but does not exceed one hundred thousand persons;

(d) Two hundred thousand dollars if its principal place of business is located in any city the population of which is more than one hundred thousand persons but does not exceed two hundred thousand persons;

(e) Three hundred thousand dollars if its principal place of business is located in any city the population of which is more than two hundred thousand persons.

The foregoing classification shall not apply to any commercial bank already in existence which has received its certificate to do a banking business from the superintendent of banks; nor to any bank the location of which shall have been included by annexation or consolidation within the limits of a city of a class requiring a larger capitalization, but no bank thus excepted shall be permitted to establish any new branch office as provided in section nine of this act or to remove its place of business from the original limits of the city or township wherein it was located prior to such annexation or consolidation until it shall have the capital required of banks in such city not within said exception. Such excepted banks may not in any case decrease their capital stock but may increase the same in the manner provided by law to an amount either greater or less than that required of banks in such city not within said exception; provided, that nothing herein shall be construed to affect the provisions of section nineteen of this act relative to the proportion of capital and surplus to deposits or of section twenty-three of this act relative to the capital stock required of banks doing a departmental business. The provisions of section twenty-three of this act, as to population, shall apply to any bank organized under the provisions of this section. [Amendment approved May 6, 1913. Stats. 1913, p. 173.]

This section was also amended April 21, 1911, Stats. 1911, p. 1014.

Loans to officer of commercial bank. Loans to director, agent or employee. Credit to directors, etc. Report to superintendent of banks. Penalty.

§ 83. No loan shall be made for himself or as agent or partner of another, directly or indirectly, to any officer of any commercial bank by such bank or on the endorsement, surety, or guaranty of any such officer; provided, that a loan may be made to a corporation of which any officer of a commercial bank, proposing to make such loan, is a minority stockholder, director, officer, agent or employee. Loans to any director, agent or employee other than an officer, or to any firm, copartnership or corporation of which any director, agent or employee other than an officer is a member, stockholder, director, officer, agent or other employee, or to any person, firm, copartnership or corporation on the endorsement, surety, or guaranty of any such director other than an officer, agent or other employee, can be made by any commercial bank; and provided, further, that a loan may be made or a line of credit may be given to any member of an advisory board or body of a commercial bank, not otherwise an officer of such bank, or a loan may be made to any firm, copartnership or corporation of which any member of such advisory board or body is a member, stockholder, director, officer, agent or other employee, or to any person, firm, copartnership, or corporation on the endorsement, surety, or guaranty of any such member of such advisory board or body upon such conditions as are herein fixed for a loan, directly or indirectly, or a line of credit and the report thereof to any director of such bank. Loans herein authorized can be made only on authorization of or confirmation within thirty days after making such loan, by a majority of all the directors of such bank and the affirmative vote of all directors of such bank present at the meeting authorizing or confirming such loan. Such interested director shall not vote or participate in any manner in the action of the board on such loan; provided, that by and with the consent of the superintendent of banks previously obtained in writing, all directors may vote upon such a loan made by one bank to another bank where the entire capital stock of one is owned by or held in trust for the stockholders of the other bank and where all or a majority of the board of directors of each of said banks are composed of the same persons. The board of directors of any such bank may fix the total amount of credit that may at any one time during the twelve months next succeeding be given to any director, agent, or other employee, other than an officer, or to any firm, copartnership, or corporation in which any director, agent, or other employee other than an officer is a member, stockholder, director, officer, agent or other employee or to any corporation of which any officer of a commercial bank, proposing to fix such total amount of credit, is a minority stockholder, director, officer, agent or employee, and any or all loans made within or up to the total amount of such authorized credit may at any time during said twelve months be renewed from time to time, in whole or in part, by the officers of the bank without any further vote or action on the part of the board of directors. Each such authorization shall be entered upon the records or minutes of said bank. No director shall vote or participate in any manner in such action of the board fixing the total amount of credit that may at any one time be given to himself or to any firm, copartnership or corporation in which he is a member, stockholder, director, officer, agent or other employee. The fact of making such loan, the names of the directors authorizing such loan, the name of the director, agent or employee, obtaining such loan, or the name of the firm, copartnership or corporation in which such director, agent or employee is interested, or the name of the corporation, of which any officer of a commercial bank is a minority stockholder, director, officer, agent or employee, obtaining such loan, the amount of such loan, the rate of interest thereon, the time when the loan will become due, the amount, character and value of security given therefor, if any, and the fact of final payment when made shall forthwith be reported in writing by the cashier or secretary of such bank to the superintendent of banks. In case a loan is made to a

corporation there shall be reported in the same manner the name of each director and officer of such bank who is a member, stockholder, director, officer or employee of such borrowing corporation and the amount of stock held by him in such borrowing corporation. All the provisions of this section relating to reports shall apply to the granting of credit and all loans made under any credit given and payments made thereon shall also be reported immediately after the same is made. In case of a loan made without the previous authorization of the directors, the fact of making such loan shall forthwith be reported and the action of the board of directors, in confirming or refusing to confirm such loan within thirty days thereafter, and the fact of final payment when made shall be reported in the same manner as herein required for loans made under previous authorization. Any officer, director, agent, or employee of a commercial bank, who knowingly procures a loan from such commercial bank contrary to the provisions of this section, shall be guilty of a felony. In case of the neglect or failure of the secretary or cashier of any such bank to report to the superintendent of banks, as herein provided, any of the facts so required to be reported, or in case of the neglect or failure of the secretary or cashier of any such bank to report to the superintendent of banks any loan made contrary to the provisions of this section, the bank shall be liable therefor and shall forfeit to the people of the state of California twenty-five dollars per day for each day, or part thereof, during which such neglect or failure continues.

Not applicable to what corporations.

This section shall not apply to any loan made to a religious corporation, club, or other membership corporation of which one or more directors, officers, agents or employees of such commercial bank may be members or officers but in which they have no financial interest.

Loan to corporation owned or controlled by directors.

No loan may be made to any corporation, a majority of the stock of which is owned or controlled by any one or more of the directors or officers of such commercial bank, except with the previous consent of the superintendent of banks.

Loans to directors, etc., on security.

Loans may be made to any director, other than an officer, directly or indirectly, or to any agent or employee of a commercial bank, on the security of United States bonds, United States treasury certificates, or interest-bearing notes, or obligations of the United States, or those for which the faith and credit of the United States are pledged for repayment of principal or interest, or those issued under authority of the United States, notwithstanding anything in this section contained, and such loans may be made in the usual manner of making loans in which no director of such bank is interested. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 650.]

This section was also amended April 21, 1911, Stats. 1911, p. 1015; May 6, 1913, Stats. 1913, p. 174; June 3, 1915, Stats. 1915, p. 1127; and May 17, 1917, Stats. 1917, p. 613.

Investment in building.

§ 84. No commercial bank shall invest an amount exceeding its paid-up capital and surplus in the lot and building in which the business of the bank is carried on, furniture and fixtures, vaults and safe deposit vaults and boxes necessary or proper to carry on its banking business; and hereafter the authority of a two-thirds vote of all the directors shall be necessary to authorize the purchase of such lot and building or the construction of such building. [Amendment approved May 6, 1913. Stats. 1913, p. 175.]

This section was added to the act April 21, 1911, Stats. 1911, p. 1016.

Limitation on funds deposited by commercial bank.

§ 85. The superintendent of banks shall have power to limit the amount of funds that may be deposited by any commercial bank with any other commercial bank. [New section added June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1129.]

ARTICLE IV.

Trust Companies.

- § 90. **TRUST COMPANIES.**
 Qualifications.
 Deposits, May Receive.
 Segregation of Capital and Surplus.
 In Cities of Less Than 100,000 Persons;
 In Cities of More Than 100,000 Persons.
 Separate Kinds of Capital.
 Oath May Be Taken by Officer For.
 As Member of Federal Reserve Bank.
 Foreign Corporation, Authority Of.
- § 91. **DEPOSIT OF TRUST FUNDS BY EXECUTOR.**
- § 92. **DEPOSIT OF TRUST FUNDS BY PUBLIC ADMINISTRATOR.**
- § 93. **COURT MAY ORDER DEPOSIT.**
- § 94. **NO BOND REQUIRED.**
- § 95. **INTEREST ON DEPOSITS.**
- § 96. **SECURITY DEPOSIT WITH STATE TREASURER.**
 In Place Not Over 100,000 Persons;
 In Place Over 100,000 Persons.
 Securities.
 Approval of Superintendent of Banks.
 Exchange Of.
- § 97. **MORTGAGE OF BUILDING.**
- § 98. **TRUST FUNDS, REQUIREMENTS AS TO DEPOSITS OF.**
 Securities, Deposit of With State Treasurer.
 When Trust Fund Amounts to \$500,000;
 When Trust Fund Amounts to \$1,000,000.
 Treasurer's Receipt.
 "Trust Funds," Defined.
 Penalty for Non-Compliance.
 Validity of Act Not Affected by Non-Compliance.
- § 99. **SECURITIES.**
 Evidence of Title to Accompany.
 Fees to Be Paid by Company.
- § 100. **REPEALED.**
- § 101. **CLASSIFICATION.**
 Court Trust.
 Private Trust.
 When Court Trust Deemed to Include.
- INSPECTION AND SUPERVISION.**
 Private Trusts Not Subject To.
- REPORT TO SUPERINTENDENT OF BANKS.**
- MONEY IN ESCROW.**
- § 102. **DISCONTINUANCE OF TRUST BUSINESS.**
- § 103. **COMMUNICATIONS AND WRITINGS AS TO PRIVATE TRUST.**
 Inviolability Of.
 Exceptions.
- § 104. **REPEALED.**
- § 105. **INVESTMENT OF CAPITAL.**
- § 106. **TRUST COMPANY DOING COMMERCIAL OR SAVINGS BANK BUSINESS.**
- § 107. **DEPARTMENTAL BUSINESS AS TITLE INSURANCE AND AS TRUST COMPANY.**

Trust companies. May receive deposits. Segregation of capital and surplus in cities of less than 100,000. In cities of more than 100,000. Separate kinds of capital. Oath may be taken by officer.

§ 90. Any corporation which has been or shall be incorporated under the laws of this state, which is authorized by its articles of incorporation to act as executor, adminis-

trator, guardian of estates, assignee, receiver, depositary or trustee, under appointment of any court or by authority of any law of this state, or as trustee for any purpose permitted by law, which has its principal place of business in a city in which the population does not exceed one hundred thousand persons and which has a capital of not less than one hundred thousand dollars actually paid in, in cash, assigned to or available for the purpose of conducting business in any such capacity, or trust business of any character permitted by law, and which has made with the state treasurer the deposit of money or securities of the character and in the amount required by the terms of section ninety-six of this act, and which has received from the superintendent of banks the certificate of authority required by the terms of section one hundred twenty-seven of this act, to transact such business, and any corporation which has been or shall be incorporated under the laws of this state, which is authorized by its articles of incorporation to act as executor, administrator, guardian of estates, assignee, receiver, depositary or trustee, under appointment of any court or by authority of any law of this state, or as trustee for any purpose permitted by law, which has its principal place of business in a city in which the population exceeds one hundred thousand persons and which has a capital of at least two hundred thousand dollars actually paid in, in cash, assigned to or available for the purpose of conducting business in any such capacity, or trust business of any character permitted by law, and which has made with the state treasurer the deposit of money or securities of the character and in the amount required by the terms of section ninety-six of this act, and which has received from the superintendent of banks the certificate of authority required by the terms of section one hundred twenty-seven of this act, to transact such business, may act, or may be appointed by any court to act, in any such capacity in like manner as an individual and when so qualified shall be known as a trust company. Any such trust company may, as provided in this act, accept or receive any deposit of money or personal property authorized, directed or permitted to be made with any such corporation by any court or law of this state, and may accept and execute any trust provided for in this act, or permitted by any law of this state, to be taken, accepted or executed by an individual. Any such trust company, if located in a city the population of which does not exceed one hundred thousand persons must segregate that portion of its capital and surplus assigned to or available for its trust business and must apportion and set aside at least fifty thousand dollars of such paid-up capital as security for the faithful performance and execution of all private trusts accepted by it and must also apportion and set aside at least fifty thousand dollars of such paid-up capital as security for the faithful performance and execution of all court trusts accepted by it and whenever such trust company shall, under the provision of sections ninety-six and ninety-eight of this act, be required to make the first additional deposit of securities with the state treasurer, such trust company must also apportion and set aside an additional fifty thousand dollars of paid-up capital as security for the faithful performance and execution of all private trusts accepted by it and must also apportion and set aside an additional fifty thousand dollars of paid-up capital as security for the faithful performance and execution of all court trusts accepted by it, and any such trust company, if located in a city, the population of which exceeds one hundred thousand persons, must segregate that portion of its capital and surplus assigned to or available for its trust business and must apportion and set aside at least one hundred thousand dollars of such paid-up capital as security for the faithful performance and execution of all private trusts accepted by it and must also apportion and set aside at least one hundred thousand dollars of such paid-up capital as security for the faithful performance and execution of all court trusts accepted by it; provided, that no such trust company shall at any time be required to apportion and set aside any portion of its surplus as security for the faithful performance and execution of such private trusts, nor shall it be prohibited from so doing; and provided, further, that the respective amounts of capital or capital

and surplus so apportioned and set aside shall be treated in all respects as the separate capital or capital and surplus of each respective kind or class of business, as though the same were conducted by separate and distinct corporations, and each shall be kept, held, used and disposed of wholly for the exclusive benefit, protection and security of the respective classes of trust business to which the same were respectively so apportioned and set aside. In all cases in which it is required that an executor, administrator, guardian of estates, assignee, receiver, depository or trustee, shall qualify by taking and subscribing an oath, or in which an affidavit is required, it shall be a sufficient qualification by such corporation if such oath be taken and subscribed or such affidavit be made by the president, vice president, secretary, manager, trust officer, assistant trust officer or regularly employed attorney thereof, and such officer or employee shall be liable for the failure of such trust company to perform any of the duties required by law to be performed by an individual acting in like capacity and subject to like penalties; provided, any such appointment as guardian shall apply to the estate only, and not to the person.

Trust company as member of federal reserve bank.

Any trust company upon becoming a member of a federal reserve bank is authorized and empowered:

To continue to administer, execute, enjoy and exercise all court and private trusts as defined in the bank act, powers, rights, privileges, and other fiduciary relations, appointments and business it may have at the time of becoming such trust company member, and also to take, execute and administer all new court and private trusts as defined in said bank act, including the right to the appointment of all fiduciary capacities in which it may be named in wills theretofore and thereafter executed and probated, and other appointments, powers, privileges and business, of every kind and nature, as may be then or thereafter permitted to, but subject to the same requirements and limitations as may be imposed upon any corporation under all of the provisions of the bank act.

To hold, administer, execute, and in all respects generally handle, manage and dispose of, without charge, restriction, limitation or impairment of any nature, all of its investments, rights, interests, titles to property, contractual, legal and other rights, obligations or liabilities, of every kind or nature, court and private trusts as defined in the bank act, and other powers which it may be then permitted to exercise by law.

Authority of foreign corporation as trustee.

A foreign corporation may be authorized to act in this state as trustee for the following purposes:

- (1) To deliver bonds, and receive payment therefor.
- (2) To deliver permanent bonds in exchange for temporary bonds of the same issue.
- (3) To deliver refunding bonds in exchange for those of a prior issue or issues.
- (4) To register bonds, or to exchange registered bonds for coupon bonds, or coupon bonds for registered bonds.
- (5) To pay interest on such bonds, and to take up and cancel coupons representing such interest payments.
- (6) To redeem and cancel bonds when called for redemption, or to pay and cancel bonds when due.
- (7) The certification of registered bonds for the purpose of exchanging registered bonds for coupon bonds.
- (8) To act as trustee under any mortgage, deed of trust, or other instrument securing notes or bonds issued by any corporation. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 653.]

This section was also amended May 6, 1913, Stats. 1913, p. 175; and June 3, 1917, Stats. 1917, p. 615.

Deposit of trust funds by executor, etc.

§ 91. Any court having jurisdiction of any executor, administrator, guardian, assignee, receiver, depository or trustee, upon the application of any such officer or trustee, or upon the application of any person having an interest in the estate or property administered by such officer or trustee, after such notice to the other parties in interest as the court may direct, and after a hearing upon such application, may authorize such officer or trustee to deposit any moneys then in his hands, or which may come into his hands thereafter, until the further order of said court, with any such trust company, and upon deposit of such money, and its receipt and acceptance by such trust company, the said officer or trustee shall be discharged from further care or responsibility therefor. Such deposit shall be paid out only upon the order of said court. [Amendment approved May 6, 1913. Stats. 1913, p. 178.]

Deposit of trust funds by public administrator.

§ 92. Any public administrator may deposit any or all moneys of any estate upon which he is administering, not required for the current expenses of such administration, with any such trust company having its principal place of business in the county, or city and county in which he is acting as such administrator. Any court having jurisdiction of an estate being administered by a public administrator, may direct such administrator to deposit all or any part of the moneys of said estate with any such trust company. Such deposit shall relieve the public administrator from depositing with the county treasurer the moneys so deposited with such trust company. Moneys so deposited by a public administrator may be drawn, upon the order of such administrator, countersigned by a judge of the superior court, when required for the purposes of administration, or otherwise. [Amendment approved May 6, 1913. Stats. 1913, p. 178.]

Court may order deposit.

§ 93. Any court having jurisdiction of any estate in process of administration, or any other proceeding, may, on application of any person interested therein, or the person who has been selected by said court, or a judge thereof, as executor, administrator, guardian, assignee, receiver, depository or trustee, after such notice to the parties in interest as the court shall direct, or without notice if all parties in interest consent thereto, and a hearing on such application, order any executor, administrator, guardian, assignee, receiver, depository or trustee so selected or appointed, whether such person has duly qualified or not to deposit with any such trust company, for safekeeping, such portion or all of the personal assets of said estate as the court shall deem proper, and upon such deposit being made, the court shall by an order of record reduce the bond to be given or theretofore given by such officer or trustee, so as to cover only the estate remaining in the hands of said officer or trustee; and the property so deposited shall thereupon be held by such trust company, under the order and direction of said court. [Amendment approved May 6, 1913. Stats. 1913, p. 178.]

No bond required.

§ 94. Such trust company shall not be required to give any bond or security in case of any appointment or deposit of moneys or other personal assets hereinbefore provided for, except as provided in this act, but shall be responsible for all investments which shall be made by it of the funds which may be entrusted to it for investment by such court, and shall be liable to the same extent as an individual, and as hereinafter provided. [Amendment approved May 6, 1913. Stats. 1913, p. 179.]

Interest on deposits.

§ 95. Such trust company shall pay interest upon all moneys so deposited with it at such rate as may be agreed upon at the time of its acceptance of any such deposit, or as

shall be provided by the order of court and agreed to by such trust company. [Amendment approved May 6, 1913. Stats. 1913, p. 179.]

Security deposit with state treasurer. Securities acceptable.

§ 96. Any such trust company, if its principal place of business is situated in a city the population of which does not exceed one hundred thousand persons, before accepting any such appointment or deposit, shall deposit with the state treasurer, as herein provided, at least fifty thousand dollars as security for the faithful performance and execution of all court trusts accepted by it, and shall also deposit with the state treasurer at least fifty thousand dollars as security for the faithful performance and execution of all private trusts accepted by it; and whenever any such trust company shall under the provisions of section ninety-eight of this act be required to make the first additional deposit of securities with the state treasurer such trust company must also deposit with the state treasurer an additional fifty thousand dollars as security for the faithful performance and execution of all private trusts accepted by it; and any trust company if its principal place of business is situated in a city the population of which exceeds one hundred thousand persons, before accepting any such appointment or deposit, shall deposit with the state treasurer, as herein provided at least one hundred thousand dollars, as security for the faithful performance and execution of all court trusts accepted by it, and shall also deposit with the state treasurer at least one hundred thousand dollars as security for the faithful performance and execution of all private trusts accepted by it. Any such deposit may be made either in lawful money of the United States, or in securities of either or any of the following classes:

(a) Bonds issued by the United States or by this state or by any county, city and county, city or school district of this state, or bonds of any irrigation district such as are legal for investment by savings banks;

(b) Bonds for the payment of which the faith and credit of the United States or of this state are pledged;

(c) Notes or bonds secured by mortgage or deed of trust constituting a first lien on improved and productive real estate in the state of California; such improved real estate being worth at least double the amount of such lien.

(d) Notes or bonds secured by mortgage or deed of trust, payment of which is guaranteed by a policy of mortgage insurance, and mortgage participation certificates, issued by a mortgage insurance company in accordance with the provisions of chapter VIII of title II of part IV of division first of the Civil Code; provided, that such notes or bonds shall constitute, and such mortgage participation certificates shall evidence the ownership of, or participation in, notes or bonds which constitute, a first lien on improved and productive real estate in the state of California, such improved real estate being worth at least double the amount of such lien.

Approval by superintendent of banks. Exchange of securities.

Such money or securities shall be first approved by the superintendent of banks and, upon his written order, deposited with the state treasurer for the respective purposes herein specified, and said treasurer shall give his receipt therefor, and thereafter, subject to the provisions of this act, shall hold such deposits of money or securities separately, each for the sole benefit of the beneficiaries of the class of trust business, for the security and protection of which the same was deposited, and said treasurer shall give his receipt therefor and the state shall be responsible for the custody and safe return of any money or securities so deposited. Said securities or money so deposited may with the approval of the superintendent of banks, be withdrawn or exchanged from time to time for other like securities, or lawful money, receivable as aforesaid, and so long as the trust company so depositing said money or securities shall continue solvent, it shall have the right and shall be permitted by the state treas-

urer to receive the interest and dividends on any securities so deposited. Said securities and money shall be subject to sale and transfer, and to the disposal of the proceeds by said treasurer, only on the order of a court of competent jurisdiction and for the benefit respectively of the beneficiaries of that class of trust business for the security and protection of which the same were deposited. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1129.]

This section was also amended April 21, 1911, Stats. 1911, p. 1015; and May 6, 1913, Stats. 1913, p. 179.

Mortgage of building.

§ 97. Any such trust company, having a capital and surplus of two hundred thousand dollars or more apportioned and set aside as security for the faithful performance and execution of all court trusts accepted by it, as provided in this act, and which is wholly or in part invested in the lot and building in which its business is carried on, may be permitted by the superintendent of banks to mortgage such lot and building to the state treasurer for such sum, up to its full market value, as the superintendent of banks may determine, and such mortgage may be deposited with said treasurer, and when so deposited it shall be included in the amount of securities herein required to be deposited with said treasurer as security for the faithful performance of all such court trusts. [Amendment approved May 6, 1913. Stats. 1913, p. 180.]

When trust funds amount to \$500,000. When trust funds amount to \$1,000,000. Treasurer's receipt. "Trust funds." Penalty. Withdrawal of securities. Validity of act.

§ 98. Whenever any trust company, the principal place of business of which is located in a city the population of which does not exceed one hundred thousand persons, receives from court trusts accepted by it, trust funds, as herein defined, to the amount of five hundred thousand dollars, it shall forthwith notify in writing the superintendent of banks of such fact, and within thirty days thereafter shall deposit with the state treasurer additional money or securities of the character mentioned and defined in section ninety-six of this act, approved as therein provided, in the amount of fifty thousand dollars; and whenever any trust company receives from court trusts such funds to the amount of one million dollars it shall further notify in writing the superintendent of banks of such fact and within thirty days thereafter shall deposit with the state treasurer additional money or securities of the character mentioned and defined in section ninety-six of this act, approved as therein provided, in the amount of fifty thousand dollars; and for each additional five hundred thousand dollars of such trust funds thereafter received by any trust company from court trusts a similar notification in writing shall forthwith be given to the superintendent of banks, and a further deposit in the amount of twenty-five thousand dollars of such money or securities or of securities provided for in section ninety-seven of this act likewise approved, shall be made, within thirty days thereafter, but such trust company with said state treasurer, until five hundred thousand dollars of such securities have been so deposited. The treasurer shall give his receipt for any money or securities so deposited and each and all of such deposits of money or securities, shall be held by said state treasurer for the sole benefit of the beneficiaries of the class of business for the security and protection of which same were deposited. The state shall be responsible for the custody and safe return of any money or securities so deposited with said state treasurer. The term "trust funds" when used in this section shall be deemed to mean and shall mean personal property and cash, whether received with the original trust property or as rent, income or proceeds thereof, or otherwise, in connection with the trust, and shall not be deemed to include and shall not include real property. Any trust company failing to comply with the provisions of this section shall forfeit to the state of California one hundred dollars a day for each day during which such failure or default shall continue. Upon

making a request in writing to the superintendent of banks, any such trust company shall be entitled to withdraw from the state treasurer, from time to time, a sufficient amount of such securities so that at all times the amount of such securities so deposited shall conform to the requirements of this act, and so that at no time shall such trust company be required to have on deposit with the state treasurer an amount of securities in excess of the requirements of this act. Upon receiving such request in writing, and satisfactory proof of the facts warranting such withdrawal, it shall be the duty of the superintendent of banks to forthwith deliver to the state treasurer a written order directing the withdrawal of said securities so as to conform with the provisions of this section, and it shall be the duty of the state treasurer to comply with such written order. The validity or legality of any act or proceeding done or taken by any such trust company, relating to or in connection with the administration of any such trusts, shall not be affected or impaired by the neglect or failure of such trust company, or of any officer or employee thereof, to comply with any of the provisions of this act, but all such acts and proceedings done or taken prior to the revocation of its certificate of authority to do such business by the superintendent of banks, under the provisions of this act, or the revocation by any court or judge thereof of the appointment, order or decree theretofore entered in such trust matter shall be as valid and effective for all purposes as if any such neglect or failure had not occurred. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 617.]

This section was also amended May 6, 1913, Stats. 1913, p. 181; and June 3, 1915, Stats. 1915, p. 1130.

Evidence of title to accompany securities. Fees.

§ 99. When any part of the securities so deposited with the state treasurer consists of notes or bonds secured by mortgage or deed of trust, it shall be accompanied by a "Registrar of Titles" certificate as to the condition of the title if the notes or bonds are secured by mortgages covering property which has been brought under the operation of the Land Title Law, commonly called the Torrens Title Law, or a policy of mortgage insurance, or a complete abstract of title or an unlimited certificate of title or a policy of title insurance prepared or issued by a person, company or corporation designated or approved by the superintendent of banks and authorized by law or otherwise found by the superintendent of banks to be competent to issue such evidence of title, which shall be examined and approved by or under the direction of said superintendent of banks. The fees for an examination of such evidence of title by council to be paid by the trust company making the deposit shall not exceed twenty dollars for each title examined, and the fee for each appraiser not exceeding two, shall not exceed five dollars for each mortgage or deed of trust. [Amendment of May 3, 1919. In effect July 22, 1919. Stats. 1919, p. 185.]

This section was also amended May 6, 1913, Stats. 1913, p. 182; and June 3, 1915, Stats. 1915, p. 1132.

Paid-up capital required.

§ 100. Repealed May 6, 1913. Stats. 1913, p. 182.

Classification of trusts.

§ 101. For the purposes of this act, all trusts permitted to be accepted or executed by any trust company, under any provision of this act are hereby classified and defined as either:

- (a) Court trusts; or,
- (b) Private trusts.

Court trusts.

A court trust is one in which any such trust company acts under appointment, order or decree of any court, as executor, administrator, guardian, assignee, receiver, deposi-

tary or trustee, or in which it receives on deposit from a public administrator, under any provision of this act, or from any executor, administrator, guardian, assignee, receiver, depository or trustee, under any order or decree of any court, money or property.

Private trust. When court trust deemed to include private trust.

Any other trust is a private trust; provided, that the creator of any private trust of which a trust company shall be made, or at any time come to be, the trustee, may, at the time of the creation of such trust, or the creator of any such private trust, or his successors in interest, and the beneficiaries thereof may, at any time, by their joint consent, direct that such trust shall be subject to and entitled to the benefit of all of the provisions of this act relating to court trusts and thereafter such trust shall for all the purposes of this act be deemed to be a court trust and wherever in this act the words "court trust" are used they shall be deemed to include private trusts which are subject to supervision except in so far as any of the provisions of this act relating to court trusts may, by their nature, be inapplicable to such private trust. Such direction shall be in writing addressed to the trustee and a copy thereof, certified by the trustee, delivered to the superintendent of banks.

Inspection and supervision.

In case such direction shall be made after the acceptance of the trust, the trustee shall have the right to resign as such and a new trustee shall be appointed as provided in the trust instrument or by law. The inspection and supervision of the superintendent of banks shall extend only to court trusts as herein defined and to private trusts subjected to the provisions of this act relating to court trusts as above provided.

Private trusts, except as in this section provided, shall not be subject to the inspection or supervision of the superintendent of banks, his attorneys, examiners or other assistants.

Additional matters in reports to superintendent of banks.

In making the reports to the superintendent of banks required by this act, every trust company shall, in addition to the other facts to be reported by it, furnish only a list and brief description of the court trusts and private trusts, which are subject to supervision, held by it, the source of appointment thereto, the authority by which the appointment or deposit was made, and the amount of real or personal property held by such trust company by virtue thereof.

Receiving money in escrow.

Nothing in this act contained shall make it unlawful for any person or corporation not subject to the supervision of the superintendent of banks to engage in the business of receiving and holding in escrow money or its equivalent pending investment in real estate or securities for or on account of his or its principal, or of acting as trustee under deeds of trust given solely for the purpose of securing obligations for the repayment of money other than corporation bonds. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1132.]

This section was also amended May 6, 1913, Stats. 1913, p. 182.

Discontinuance of trust business.

§ 102. Any corporation which desires to withdraw from and discontinue doing a trust business shall furnish to the superintendent of banks satisfactory evidence of its release and discharge from all the obligations and trusts hereinbefore provided for, and thereupon the superintendent of banks shall revoke his certificate of authority to do a trust business theretofore issued to such corporation, and the state treasurer shall return to said corporation all the securities deposited by such corporation and shall

cancel any mortgage made by such corporation to said state treasurer as a part of such securities and thereafter such corporation shall not be permitted to use and shall not use the word "trust" in its corporate name or in connection with its business. [Amendment approved May 6, 1913. Stats. 1913, p. 183.]

Secrecy of communications concerning private trusts.

§ 103. Any trust company exercising the powers and performing the duties provided for in this act, shall, except as herein otherwise provided, keep inviolate all communications and writings made to or by said trustee touching the existence, condition, management and administration of any private trust confided to it; and no creditor or stockholder of any such trust company shall be entitled to disclosure or knowledge of any such communication or writing; provided, however, that the president, vice-president, manager, trust officer, secretary or regularly employed attorney of any such trust company shall be entitled to knowledge of any such communication or writing; and provided further, that in any suit or proceeding touching the existence, condition, management or administration of any such trust, the court wherein the same is pending may require disclosure of any communication or writing. [Amendment approved May 6, 1913. Stats. 1913, p. 183.]

Word "trust" prohibited to whom. Effect of use of word "trust."

§ 104. Repealed May 6, 1913. Stats. 1913, p. 183.

Investment of capital, etc.

§ 105. Every trust company shall, except as otherwise provided by law, invest its capital and surplus and any trust funds received by it in connection with its trust business, in accordance with the laws relative to the investment or loan of funds deposited with savings banks, unless a specific agreement to the contrary is made between the trust company and the party creating the trust, or unless it is otherwise ordered by the court, in connection with any court trust. [Amendment approved May 6, 1913. Stats. 1913, p. 183.]

Trust company doing commercial business.

§ 106. Any such trust company desiring to do, or doing, a commercial banking business or a savings bank business, or both, in addition to its trust business shall have actually paid up, in cash, the amount of capital provided in section twenty-three of this act. Any title insurance company authorized by its articles of incorporation to do, or doing a trust business, in addition to its title insurance business, shall comply with all the requirements of any law governing trust companies, and shall have a capital stock actually paid in, in cash, of not less than two hundred thousand dollars, and in addition thereto, the capital stock required by law for doing a title insurance business. Such capital for each such department or class of business shall be increased from time to time in the same manner and to the same extent as though each such department or class of business was conducted by a separate bank, trust company or title insurance company, instead of as separate departments or classes of business. Any trust company and any title insurance company doing a departmental business as above provided shall comply with the provisions of this act governing each of such departments and with the provisions of any law governing each such class of business as to its deposits, reserve, surplus, investments and loans. [Amendment approved May 6, 1913. Stats. 1913, p. 184.]

Departmental business as title insurance company and as trust company.

§ 107. Any corporation doing a departmental business as a title insurance company and as a trust company, shall, as to its trust department, be subject to the supervision and inspection of the superintendent of banks, and as to its trust department must make

all reports to the superintendent of banks required to be made by trust companies by the provisions of this act, and as to its trust department such corporation shall also be subject to, and shall have the benefit of all other provisions and requirements of this act applicable to trust companies, and shall also be subject to and shall have the benefit of all of the banking laws and rules and regulations of the banking department of this state applicable to trust companies. The proportionate part of the state banking fund provided for by section one hundred twenty-three of this act, that shall be payable by such corporation, shall be based on the amount of capital and surplus of such corporation apportioned to its trust department. [New section approved May 6, 1913. Stats. 1913, p. 184.]

ARTICLE V

State Banking Department.

- § 120. SUPERINTENDENT APPOINTED BY GOVERNOR.
- § 121. EMPLOYEES.
 - Compensation.
 - Vacancies.
 - Borrowing From Banks Forbidden.
- § 122. PRINCIPAL OFFICE.
- § 123. STATE BANKING FUND CREATED.
 - PROPORTIONATE PAYMENT BY EACH BANK.
 - REVOLVING FUND.
- § 124. INSPECTION OF BANKS.
 - EXTRA EXAMINATIONS.
 - ADMINISTRATION OF OATHS.
 - AUDIT.
- § 125. EXAMINER, OATH OF OFFICE OF.
- § 126. NEGLECT OF DUTY.
- § 127. ORGANIZATION OF BANKS.
 - Written Consent of Superintendent of Banks.
 - Certificate.
 - Examination of Capital, Etc. Fee.
- § 128. ORGANIZATION OF BANKS.
 - Certificate of Authorization, Issue Of.
- § 129. REPORTS OF BANK DOING DEPARTMENTAL BUSINESS.
- § 130. REPORT TO SUPERINTENDENT OF BANKS.
 - Foreign Corporations.
- § 130a. SPECIAL REPORTS.
- § 131. NUMBER OF REPORTS ANNUALLY.
- § 132. STATEMENT.
 - Publication.
 - Contents.
- § 133. IMPAIRED CAPITAL.
 - Assessment.
 - Sale of Stock.
 - Public.
 - Private.
- § 134. VIOLATION OF LAW BY BANK.
- § 135. STOCKHOLDERS' MEETING, SUPERINTENDENT OF BANKS MAY CALL.
- § 135a. ACTION TO DISSOLVE BANK FOR VIOLATION OF LAW.
- § 136. SUPERINTENDENT MAY TAKE POSSESSION OF BANK VIOLATING LAW.
 - RESUMPTION OF BUSINESS.
 - COLLECTION OF DEBTS.
 - ACTION AGAINST STOCKHOLDERS.
 - LIQUIDATION AND DISTRIBUTION OF ASSETS.
- § 136a. BANK CEASING TO EXIST.
- § 136b. JURISDICTION IN SUPERIOR COURT.
- § 137. RIGHT TO DISSOLVE.
 - DISCHARGE OF RECEIVER.
 - UNCLAIMED MONEYS ESCHEAT.
 - Investment Of.

- § 138. PENALTY FOR FAILURE TO REPORT.
- § 139. BOARD OF DIRECTORS.
 - Duty of.
 - Report Of.
 - Contents.
 - No Examination Made.
 - Special Examination by Superintendent of Banks.
 - Report.
- § 140. REPORT OF SUPERINTENDENT TO GOVERNOR.
- § 141. WEEKLY BULLETIN POSTED.
 - Items Of.
 - File Of.
- § 142. RECORDS DEEMED PUBLIC DOCUMENTS.
OFFICIAL REPORTS PRIMA FACIE EVIDENCE.
- § 143. REPEALED.
- § 144. ACTION TO RECOVER FORFEITURES.
FINES MAY BE COMPROMISED.
- § 145. POWERS ABRIDGED, ENLARGED OR MODIFIED.
- § 146. CONFLICTING LAWS REPEALED.
- § 147. ACT TAKES EFFECT, WHEN.

State banking department superintendent appointed by governor.

§ 120. There is hereby created a state banking department. The chief officer of such department shall be the superintendent thereof, and be known as the superintendent of banks. He shall be appointed by the governor, and shall hold office at the pleasure of the governor. He shall not, either directly or indirectly, be interested in any commercial bank, savings bank or trust company, or as an individual banker. He shall receive an annual salary of ten thousand dollars, to be paid monthly out of the state treasury on a warrant of the controller. He shall, within fifteen days from the time of notice of his appointment, take and subscribe to the constitutional oath of office, and file the same in the office of the secretary of state, and execute to the people of the state a bond in the penal sum of fifty thousand dollars, with corporate surety or two or more sureties to be approved by the governor of the state, conditioned for the faithful discharge of the duties of his office. [Amendment approved February 6, 1911. Stats. 1911, p. 7.]

Employees of superintendent of banks. Compensation. In case of vacancy. Not to borrow from banks.

§ 121. The superintendent of banks shall employ a chief deputy, attorney and such examiners and other assistants as he may need to discharge in a proper manner the duties imposed upon him by law, none of which examiners or assistants or attorney shall be interested in any bank in this state as director, stockholder, officer or employee, and they shall perform such duties as he shall assign to them. He shall fix the compensation of the chief deputy, attorney, examiners and other assistants, which compensation shall be paid monthly on his certificate and on the warrant of the controller out of the state treasury. The chief deputy shall within fifteen days from the time of his appointment take and subscribe to the constitutional oath of office and file the same in the office of the secretary of state. No person shall be appointed a chief deputy who has not had at least three years' active banking experience, either as an executive officer or employee of some bank in this state. In case of the absence or inability to act, or vacancy in the office of the superintendent of banks for thirty consecutive days, the chief deputy shall execute to the people of the state a bond in the penal sum of fifty thousand dollars, with corporate surety or two sureties to be approved by the controller and treasurer of the state, conditioned for the faithful discharge of the duties of the superintendent while such deputy acts as superintendent, and upon filing such bond such deputy shall have all the power and duties of superintendent of banks, until the inability of the superintendent shall be removed, or until a new superin-

tendent of banks shall have been appointed by the governor. No superintendent of banks, chief deputy, or bank examiner, shall be or shall become indebted, directly or indirectly, either as borrower, endorser, surety, or guarantor, to any bank under his supervision or subject to his examination. [Amendment approved May 6, 1913. Stats. 1913, p. 184.]

This section was also amended April 21, 1911, Stats. 1911, p. 1017.

Principal office.

§ 122. The superintendent of banks shall have his principal office in the city of San Francisco, and may also have suitable rooms in the city of Los Angeles, wherein to conduct the business of the state banking department. The superintendent shall, from time to time, obtain the necessary furniture, stationery, fuel, lights, and other proper conveniences for the transaction of such business; the expense of which shall be paid out of the state treasury on the certificate of the superintendent and the warrants of the controller.

State banking fund created. Proportionate payment of each bank into fund. Revolving fund.

§ 123. A fund is hereby created to be known as the state banking fund, and out of said fund shall be paid all the expenses incurred in and about the conduct of the business of the banking department, including the salary of the superintendent, chief deputy, attorney, examiners and other assistants, traveling expenses, furnishing of rooms and rent. Each bank shall pay annually its share of one hundred and ten thousand dollars, to be determined by the proportion which the capital and surplus which shall include all reserve and contingent funds, of any incorporated bank or the surplus, reserve and contingent funds of any bank organized without a capital stock bear to the capital, surplus, reserve and contingent funds in the aggregate of all such banks receiving certificates of authorization from the superintendent of banks, as shown by the last report of such bank to the superintendent of banks; provided, that the superintendent of banks may, in any fiscal year and in the exercise of his discretion, collect from each bank a less sum to be determined by the proportion established in this section, if such less sum be sufficient to pay all the expenses incurred in and about the conduct of the business of the banking department, including the salary of the superintendent, chief deputy, attorney, examiners and other assistants, traveling expenses, furnishing of rooms and rent. All money collected or received by the superintendent of banks, under and by virtue of the provisions of this act, shall be by him delivered to the treasurer of the state, who shall deposit the same to the credit of said banking fund, and the unexpended balance of all moneys heretofore paid into the state treasury by any of the bank commissioners or the superintendent of banks, shall be retained and become a part of said fund; provided, however, that the superintendent shall have authority to retain in his possession and under his control the sum of two thousand dollars to be used by him as a revolving fund for the benefit of the state banking department until the end of the fiscal year at which time he shall make full settlement with the treasurer of the state. If any such bank shall fail to pay such charges as are herein required, the superintendent shall forthwith cancel the certificate of said bank. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 655.]

This section was also amended April 21, 1911, Stats. 1911, p. 1015; and May 6, 1913, Stats. 1913, p. 185.

Inspection of banks. Extra examinations. May administer oaths. Audit.

§ 124. Every bank and the trust department of every title insurance company doing a trust business, shall be subject to the inspection of the superintendent of banks. The superintendent of banks, the chief deputy, or some competent person or persons

to be appointed by the superintendent of banks, to be known as examiners, shall visit and examine every bank at least once each fiscal year. On every such examination inquiries shall be made by him as to the condition and resources of the bank, the mode of conducting and managing its affairs, the action of its directors, the investment and disposition of its funds, the safety and prudence of its management, the security afforded to those by whom its engagements are held and whether the requirements of its articles of incorporation and the law have been complied with in the administration of its affairs, and as to such other matters as the superintendent may prescribe. Whenever, in the judgment of the superintendent of banks, the condition of any bank renders it necessary or expedient to make an extra examination or to devote any extraordinary attention to its affairs the superintendent of banks shall have authority to make any and all necessary extra examinations and to devote any necessary extra attention to the conduct of its affairs; and such bank shall pay for all such extra services rendered by the superintendent of banks at a price to be fixed by the superintendent of banks but not to exceed twenty dollars per day for the examination of the principal office of such bank and twenty dollars a day for the examination of each branch office of each bank. The superintendent of banks shall also have power to examine, or cause to be examined, every agency located in this state of any foreign bank or banking corporation, for the purpose of ascertaining whether it has complied with the laws of this state, and for such other purposes and as to such other matters as the superintendent may prescribe. The superintendent, chief deputy, and every such examiner shall have the power to administer an oath to any person whose testimony he may require on the examination of any bank, or on the examination of any agency of any foreign bank or banking corporation, and to compel appearance and attendance of any such person for the purpose of any such examination. When a bank shall have been examined by any examiner, and he finds securities therein which are, in his judgment, of doubtful value, he shall report the same to the superintendent of banks, who thereupon shall be authorized to employ appraisers at the expense of such bank to appraise said securities, at a compensation to be fixed by the superintendent of banks. The superintendent of banks shall, whenever required to do so by any bank, provide an auditor to make an audit of the affairs of such bank. The compensation for making such audit shall be paid by the bank direct to the person making the audit. Nothing herein shall be deemed to authorize or require the superintendent of banks to inspect or supervise the private trust business or title insurance business of any corporation doing a trust business. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 656.]

This section was also amended April 21, 1911, Stats. 1911, p. 1016; and May 6, 1913, Stats. 1913, p. 186.

Examiner: oath of office of.

§ 125. Every examiner appointed by the superintendent of banks shall, before entering upon the discharge of his duties, take the constitutional oath of office and cause the same to be filed in the office of the secretary of state. No such examiner shall be appointed receiver of any bank whose books, papers and affairs he shall have examined pursuant to his appointment.

Neglect of duty.

§ 126. If the chief deputy or any examiner shall have knowledge of the insolvency or unsafe condition of any bank mentioned in this act, and that it is unsafe or inexpedient to permit said bank to continue business, and shall neglect to forthwith report such fact in writing over his signature to the superintendent of banks, he shall be guilty of felony.

Written consent for organizing banks. Certificate to transact business. Examination of capital, etc. Fee.

§ 127. When any number of persons desire to organize a corporation to conduct any one or more or all of the businesses mentioned in divisions (a), (b), and (c) of section two of this act or to circulate stock subscription lists for any such proposed corporation the previous written consent of the superintendent of banks to such proposed organization must be obtained. No bank shall transact any business in this state without the written approval of the superintendent of banks, and without his written certificate stating that it has complied with the provisions of this act, and all the requirements of law, and that it is authorized to transact, within this state, the business specified therein; which certificate may be withheld by the superintendent of banks whenever he has reason to believe that the bank is being formed for any other than the legitimate objects contemplated by this act, or whenever he has reason to believe that the public convenience and advantage will not be promoted by the opening of such bank, or whenever he has reason to believe that the corporate name assumed by such bank resembles, so closely as to be likely to cause confusion, the name of any other bank previously formed under the laws of this state. Before issuing such certificate the superintendent of banks shall examine, or cause an examination to be made, in order to ascertain whether the requisite capital of such bank has been paid up in cash or the requisite reserve or surplus fund has been accumulated. The superintendent of banks shall not authorize such bank to commence business until it appears from such examination, or other evidence satisfactory to him, that the requisite capital has been, in good faith, subscribed and paid in, in cash, or that the requisite surplus or reserve fund has been accumulated or paid in, in cash, and until said bank shall have paid a fee of fifty dollars for each department to be operated by said bank. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1133.]

This section was also amended May 6, 1913, Stats. 1913, p. 187.

Certificate of authorization issued.

§ 128. When the certified copy of articles of incorporation of any bank shall have been filed with the secretary of state, and application made for the issuance of a certificate to do business as a bank, the superintendent of banks, provided he has not withheld granting his certificate for any of the reasons set forth in section one hundred twenty-seven hereof, shall ascertain, from the best sources of information at his command, whether the character and general fitness of the persons named as stockholders are such as to command the confidence of the community in which such bank is proposed to be located, and, if so satisfied, he shall, within sixty days after such application has been made to him, issue, under his hand and official seal, the certificate of authorization required by this act. The superintendent of banks shall file a duplicate of such certificate in his own office. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 619.]

Reports.

§ 129. Every bank doing a departmental business shall render to the superintendent of banks for each department conducted by it, a separate report showing in detail as required by section one hundred thirty of this act, the actual financial condition of such department and shall at the time of furnishing said report separately publish the statement for each department as provided in section one hundred thirty-two of this act.

Report to superintendent of banks. Report of foreign corporation.

§ 130. Every bank, organized under the laws of this state, shall, whenever required by the superintendent of banks, make a report in writing to him, verified by the oath

of its president and its secretary or cashier, or two principal officers. Such reports shall show the actual financial condition of the bank making the report, at the close of any past day designated by the superintendent, and shall specify the following:

1. The amount of its capital stock and the number of shares into which it is divided.
2. The names of the directors and the number of shares of stock held by each.
3. The total amount of capital actually paid in, in cash, and the total amount of surplus, reserve and any other funds.
4. The total amount due the depositors.
5. The total amount and character of any other liabilities it may have.
6. The amount at which the lot and building occupied by the bank for the transaction of its regular business stands debited on its books; also the market value of all other real estate held, whether acquired in settlement of loans or otherwise, the original cost to the bank, the date when acquired, the amount at which it stands debited on the bank-books, in what counties situated, and in what name the title is vested, if not in the name of the bank itself.
7. The amount loaned on real estate, specifying the amount secured on real estate in each county separately; also specifying the name of the person in whose name the property is held in trust or as security, in case it is held in any name other than that of the bank and the instrument creating the security does not itself disclose the name of the bank.
8. The amount invested in bonds, designating the name and amount of each particular kind.
9. The amount loaned on stocks and bonds, designating each particular class and the amount thereof.
10. The amount of money loaned on other securities, with a particular designation of each class and the amount loaned on each.
11. The amount and kind of money on hand or deposited in any other bank or place, with the name of the place where deposited and the amount in each place.
12. Any other property held, or any amount of money loaned, deposited, invested or placed, not otherwise herein enumerated, and the place where situate and the value of said property, and the amount so loaned, deposited or placed.
13. The date on which examination of the bank was last made by its board of directors and the date on which report of such examination was filed, as required by section one hundred thirty-nine of this act.
14. The outstanding and unpaid amounts of any loans made by the bank, which under the provisions of either section sixty-five or eighty-three of this act are required to be reported to the superintendent of banks.
15. Any overdrafts and any loans, investments, acts or omissions violative of or not in conformity with any provision of this act which may be specifically called for.

Every foreign corporation transacting the business of banking in this state shall make the report herein required as far as such report may relate to the affairs of such corporation in this state, and every foreign corporation must particularly render the report required by subdivisions three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen and fifteen of this section. Such report shall be made in writing and verified by the oath of one of its duly authorized officers or managers residing in this state. The oaths of the officers and the statements above required shall state that they and each of them have a personal knowledge of the matters therein contained and that they believe every allegation, statement, matter, and thing therein contained is true. Any wilful false statement in the premises shall be perjury and shall be punished as such. [Amendment approved May 6, 1913. Stats. 1913, p. 188.]

Special reports.

§ 130a. In addition to the information obtained from the report required by the provisions of section one hundred thirty of this act, the superintendent of banks shall also have the power to require any bank to furnish a special report in writing verified as required by section one hundred thirty of this act, whenever in his judgment such special report is necessary to inform him fully of the actual financial condition and affairs of such bank. Any wilful false statement in the premises shall be perjury and shall be punished as such. [New section approved May 6, 1913. Stats. 1913, p. 189.]

Three reports each year.

§ 131. The superintendent of banks shall call for the reports specified by section one hundred thirty of this act at least three times each year. The "past day designated by the superintendent" of banks under the provisions of section one hundred thirty of this act shall for at least three times be the day designated by the comptroller of currency of the United States for reports of national banking associations. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 657.]

This section was also amended May 6, 1913, Stats. 1913, p. 189.

Publication of statement. Shall show, what.

§ 132. At the time of furnishing such report to the superintendent of banks, every bank shall also publish a condensed statement of its financial condition, at least once in some newspaper of general circulation, published in the city or town where its principal place of business is located, and, if no paper is published in such town, then in some newspaper of general circulation in the county where its principal place of business is located. Such published statement shall show the total amount of loans, the total amount of overdrafts, the total amount invested in bonds and other securities, the total amount due from banks, the total amount of checks and other cash items, the total amount of cash on hand, capital paid in, surplus funds; undivided profits, less expenses and taxes paid; due to other banks and bankers, due to trust companies and savings banks; individual deposits subject to checks; demand certificates of deposit; time deposits; certified checks; cashier's checks outstanding; and such other items as will show the actual financial condition of the bank making the report.

When capital is impaired. Assessment. Public sale. Private sale.

§ 133. Whenever it shall appear from the report of any bank, or the superintendent of banks shall have reason to believe that the capital of any bank is impaired or reduced below the amount required by law, it shall be the duty of the superintendent of banks and he shall have the power to examine said bank and ascertain the facts, and in case he finds such impairment or reduction of capital, he shall require such bank to make good the deficiency so appearing within sixty days after the date of such requisition. The directors of every such bank, upon which such requisition shall have been made, shall levy an assessment upon the stock thereof to repair such deficiency, and shall cause notice of such requisition to be given to each stockholder of the bank and of the amount of the assessment which he must pay for the purpose of making good such deficiency, by a written or printed notice mailed to such stockholder at his last known address or served personally upon him. If any stockholder shall refuse or neglect to pay the assessment specified in such notice within thirty days from the date of mailing or serving such notice as aforesaid, the directors of such bank shall have the right to sell to the highest bidder at public auction the stock of such stockholder, after giving a previous notice of such sale for ten days in a newspaper of general circulation published in the county where the principal place of business of such bank is located, and a copy of such notice of sale shall also be served on the

owner of such stock by being served personally on him or by mailing to his last known address ten days before the day fixed for such sale; or such stock may be sold at private sale and without such public notice; provided, however, that before making such private sale thereof an offer in writing shall first be obtained and a copy thereof served upon the owner of record of the stock sought to be sold, either personally or by mailing a copy of such order to his last known address; and if, after service of such offer, such owner shall still refuse or neglect to pay such assessment within two weeks from the time of the service of such offer, the said directors may accept such offer and sell such stock to the person making such offer, or to any other person or persons making a larger offer than the amount named in the offer submitted to the stockholder; but such stock shall in no event be sold for a smaller sum than the valuation put on it by the superintendent of banks in his determination and requisition as to said assessment, nor for less than the amount of said assessment so called for and the expense of sale. Out of the avails of the stock so sold, the director shall pay the amount of assessment levied thereon, and the necessary costs of sale, and the balance, if any, shall be paid to the person or persons whose stock has thus been sold. A sale of stock as herein provided shall effect an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold, and shall make the same null and void, and a new certificate shall be issued by the bank to the purchaser thereof. [Amendment approved May 6, 1913. Stats. 1913, p. 189.]

This section was also amended April 21, 1911, Stats. 1911, p. 1016.

Violation of law by bank.

§ 134. If it shall appear to the superintendent of banks that any bank has violated or failed to comply with the provisions of its articles of incorporation, or any law of this state, he may, by an order under his hand and official seal, which seal must be adopted by him, addressed to such bank, direct such bank to discontinue such violation and to comply with the law; or, if it shall appear to the superintendent of banks that such bank is conducting business in an unsafe or injurious manner, he may, in like manner direct the discontinuance of any such unsafe or injurious practices. Such order shall require such bank to show cause, before the superintendent of banks, at a time and place to be fixed by him, why said order should not be observed. If upon such hearing it shall appear to the superintendent of banks that such bank is conducting business in an unsafe or injurious manner, or is violating or failing to comply with the provisions of its articles of incorporation, or any law of this state, then the superintendent of banks shall make such order final, and such bank shall immediately comply with such order made by the superintendent of banks. Such banks shall have ten days after any such order is made final in which suit may be commenced to restrain enforcement of such order, and unless such action be so commenced and enforcement of said order be enjoined within ten days, by the court in which such suit is brought, then such bank shall comply with such order. [Amendment approved May 6, 1913 Stats. 1913, p. 191.]

Superintendent of banks may call stockholders' meeting.

§ 135. Whenever the superintendent of banks shall deem it expedient he may call a meeting of the stockholders of any bank organized under the laws of this state, by a personal notice of such meeting for fifteen days previous thereto. All necessary expense incurred in the serving of such notice shall be borne by the bank whose stockholders are required to convene. [New section added May 6, 1913. Stats. 1913, p. 191.]

The original section was repealed May 6, 1913, Stats. 1913, p. 191.

Action to dissolve bank violating law.

§ 135a. If the capital of any bank shall be impaired, or if any bank shall refuse to submit its books, papers and concerns to the inspection of any examiner, or if any

officer thereof shall refuse to be examined upon oath touching the concerns of such bank, or if such bank shall violate the provisions of its articles of incorporation, or any law of this state, or if such bank shall suspend payment of its obligations, or if such bank shall conduct its business in an unsafe or unauthorized manner, or if from any examination or report provided for by this act the superintendent of banks shall conclude that such bank is in an unsound or unsafe condition to transact the business for which it is organized, or that it is unsafe and inexpedient for it to continue business, an action to procure a judgment dissolving such corporation may be maintained by the superintendent of banks. [New section approved May 6, 1913. Stats. 1913, p. 191.]

Superintendent of banks may take possession of bank violating law. Resumption of business. Collection of debts. Action against stockholders. Liquidation and distribution.

§ 136. Whenever it shall appear to the superintendent of banks that any bank has violated the provisions of its articles of incorporation or any law of this state, or is conducting its business in an unsafe or unauthorized manner, or if the capital of any bank is impaired, or if any bank shall refuse to submit its books, papers and concerns to the inspection of any examiner, or if any officer thereof shall refuse to be examined upon oath touching the concerns of any such bank, or if any bank shall suspend payment of its obligations, or if from any examination or report provided for by this act the superintendent of banks shall have reason to conclude that such bank is in an unsound or unsafe condition to transact the business for which it is organized, or that it is unsafe and inexpedient for it to continue business, or if any bank shall neglect or refuse to observe any order of the superintendent of banks specified in sections one hundred thirty-three or one hundred thirty-four of this act, the superintendent of banks may forthwith take possession of the property and business of such bank and retain such possession until such bank shall resume business, or its affairs be finally liquidated as herein provided. On taking possession of the property and business of any such bank the superintendent of banks shall forthwith give notice of such fact to any and all banks, trust companies, associations and individuals, holding or in possession of any assets of such bank. No bank, trust company, association or individual knowing of such taking possession by the superintendent of banks, or notified as aforesaid, shall have a lien or charge for any payment, advance or clearance thereafter made, or liability thereafter incurred against any of the assets of the bank of whose property and business the superintendent of banks shall have taken possession as aforesaid. Such bank may, with the consent of the superintendent of banks, resume business upon such conditions as may be approved by him. Upon taking possession of the property and business of any such bank the superintendent of banks shall have authority to collect moneys due to such bank and do such other acts as are necessary to conserve its assets and business, and shall proceed to liquidate the affairs thereof as hereinafter provided. The superintendent of banks shall collect all debts due and claims belonging to it, and upon the order of the superior court may sell or compound any bad or doubtful debts. If a purchaser for any bad or doubtful debts can not be obtained and it appears improbable that recovery thereon can be had and that the costs of actions to enforce collection of the same would probably be lost, the court may direct that suits thereon need not be brought. On like order he may sell any real or personal property of such bank on such terms as the court shall direct; and may, if necessary to pay the debts of such bank, enforce the constitutional individual liability of stockholders by action to be brought within three years after the date of his taking possession of the affairs of such bank. The superintendent of banks shall determine the necessity of such action and the amount necessary to recover from the stockholders to fully pay all liabilities of such bank. Such action may be in equity and against all stockholders upon whom service of process in the state of

California can be had, and the court may therein determine and provide for any equities as between the stockholders including the proportions of each stockholder to any surplus of money or assets that may remain after the payment of all liabilities and the expenses of liquidation. The superintendent of banks may also maintain an action against any stockholder residing out of the state or upon whom service of process can not be had within the state, in any court of the United States or of any state or country. Any judgment so obtained by the superintendent of banks against such or any of such stockholders which is of doubtful value may be compromised and compounded by the superintendent of banks on such terms and conditions as the superior court may direct or authorize. The superintendent of banks shall file a notice of pendency of action in the county recorder's office of the county where such action is brought. At any time prior to the trial of any such action, any creditor may serve upon the superintendent of banks and file with the court wherein such action is pending, notice that he elects to maintain an action against the stockholders or any of them, in his individual capacity and thereupon the amount sued for in such action shall be reduced accordingly and such creditor shall not be entitled to share in the proceeds resulting from such action brought by the superintendent of banks. For the purpose of executing and performing any of the powers and duties hereby conferred upon him, the superintendent of banks may, in the name of the delinquent bank or in his own name, prosecute and defend any and all suits and other legal proceedings and may, in the name of the delinquent bank or in his own name as trustee execute, acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary and proper to effectuate any sale of real or personal property or sale or compromise or compound authorized by order of the court as herein provided; and any deed or other instrument, executed pursuant to the authority hereby given, shall be valid and effectual for all purposes, as though the same had been executed by the officers of the delinquent bank by authority of its board of directors. In case any of the real property so sold is located in a county other than the county in which the application to the court for leave to sell the same is made, the superintendent of banks shall cause a certified copy of the order authorizing or ratifying such sale to be filed in the office of the recorder of the county in which the said real property is located. The superintendent of banks may, under his hand and official seal, appoint one or more special deputy superintendents of banks, as agent or agents, with the powers specified in the certificate of appointment hereinafter mentioned, to assist him in the duty of liquidation and distribution, the certificate of appointment to be filed in the office of the superintendent of banks, and a certified copy in the office of the clerk of the county in which the principal office of such bank is located.

The superintendent of banks may from time to time, by a certificate of appointment under his hand and official seal, specifying the powers conferred, authorize a special deputy superintendent to perform such duties connected with such liquidation and distribution as the superintendent of banks may deem proper. Such certificate of appointment shall be filed in the office of the superintendent of banks and a certified copy in the office of the clerk of the county in which the principal office of such bank is located. The superintendent of banks may employ such counsel and procure such expert assistance and advice as may be necessary in the liquidation and distribution of the assets of such bank, and for that purpose may retain such of the officers or employees of such bank as he may deem necessary. The superintendent of banks shall require from a special deputy superintendent and from such assistants such security for the faithful discharge of their duties as he may deem proper. The superintendent of banks shall cause notice to be given by advertisement, in such newspapers as he may direct, weekly for three consecutive months, calling on all persons who may have claims against such bank to present the same to the superintendent of banks,

and make legal proof thereof at a place and within a time, not earlier than the last day of publication, to be therein specified. The superintendent of banks shall mail a similar notice to all persons whose names appear as creditors upon the books of the bank. If the superintendent of banks doubts the justice and validity of any claim, he may reject the same, and serve notice of such rejection upon the claimant, either by mail or personally. An affidavit of the service of such notice, which shall be prima facie evidence thereof shall be filed with the superintendent of banks. Any action upon a claim so rejected must be brought within six months after such service. Claims presented after the expiration of the time fixed in the notice to creditors shall be entitled to share in the distribution only to the extent of the assets in the hands of the superintendent of banks equitably applicable thereto. Upon taking possession of the property and assets of any bank, the superintendent of banks shall make an inventory of the assets of such bank in duplicate, one to be filed in the office of the superintendent of banks, and one with the papers in said proceeding in the office of the clerk of the county in which the principal office of such bank is located; upon the expiration of the time fixed for the presentation of claims the superintendent of banks shall make in duplicate a full and complete list of the claims presented, including and specifying such claims as have been rejected by him, one to be filed in the office of the superintendent of banks, and one with the papers in said proceeding in the office of the clerk of the county in which the principal office of such bank is located. Thereafter he shall make and file in said offices as above provided at least fifteen days before each application to the court for leave to declare a dividend a supplemental list of the claims presented since the last preceding list was filed, including and specifying such claims as have been rejected by him, and in any event he shall make and file as above provided such a list at least once every six months after the filing of the original list, as long as he shall remain in possession of the property and business of any such bank. Such inventory and list of claims shall be open at all reasonable times to inspection. The compensation of the special deputy superintendents, counsel and other employees and assistants, and all expenses of supervisions and liquidation, shall be fixed by the superintendent of banks and shall upon the certificate of the superintendent of banks be paid out of the funds of such bank in the hands of the superintendent of banks. All such expenses must be reported by the superintendent of banks to the superior court of the county where the principal place of business of such bank is located and settled by such court upon notice of such bank. The moneys collected by the superintendent of banks shall be from time to time deposited in one or more state banks of deposit, savings banks or trust companies, and, in case of the suspension or insolvency of the depository, such deposits shall be preferred before all other deposits. At any time after the expiration of the date fixed for the presentation of claims the superior court may by order authorize the superintendent of banks to declare out of the funds remaining in his hands after the payment of expenses one or more dividends, and after the expiration of one year from the first publication of notice to creditors he may declare a final dividend, such dividends to be paid to such persons, and in such amounts, and upon such notice, as may be directed by the superior court of the county in which the principal office of such bank is located. Objections to any claim not rejected by the superintendent of banks may be made by any party interested in filing a copy of such objections with the superintendent of banks, who shall present the same to the superior court at the time of the next application to declare a dividend. The court to which such application is made shall thereupon dispose of said objections or may order a reference for that purpose, and should the objections to any claim be sustained by the court or by the referee, such claim shall not be allowed by the superintendent of banks until the claimant shall have established his claim by the judgment of a court of competent jurisdiction. The court must make proper provision for unproved or unclaimed deposits.

Should any bank at the time the superintendent of banks takes possession of its property and business, have in its possession, as bailee for safekeeping and storage, any jewelry, plate, money, specie, bullion, stocks, bonds, securities, valuable papers or other valuable personal property or should it have rented any vaults, safes or safe deposit boxes or any portion thereof for the storage of property of any kind, the superintendent of banks may at any time thereafter cause to be mailed to the person claiming to be or appearing upon its books to be the owner of such property, or the person in whose name the safe, vault or box stands, a notice in writing in a securely closed, postpaid registered letter, directed to such person at his postoffice address as recorded upon its books, notifying such person to remove, within a period fixed by said notice and not less than sixty days from the date thereof, all such personal property and upon the date fixed by said notice, the contract, if any, between such person and bank for the storage of said property or for the use of the said safe, vault or box shall cease and determine, and the amount of the unearned rent or charges, if any, paid by such person shall become a debt of the bank to said person. If the property be not removed within the time fixed by the notice, the superintendent of banks may make such disposition of said property as the superior court, upon application thereto, shall direct. And the superintendent of banks may cause any safe, vault or box to be opened in his presence or in the presence of one of the special deputy superintendents of banks, and of a notary public not an officer or in the employ of the bank or of the superintendent of banks, and the contents thereof, if any, to be sealed up by such notary public in a package upon which such notary public shall distinctly mark the name and address of the person in whose name such safe, vault or box stands upon the books of the bank and shall attach thereto a list and description of the property therein; and the package so sealed and addressed, together with the list and description, may be kept by the superintendent of banks in one of the general safes or boxes of the bank until delivered to the person whose name it bears, or until otherwise disposed of as directed by the court. Whenever any such bank of whose property and business the superintendent of banks has taken possession as aforesaid, deems itself aggrieved thereby, it may, at any time within ten days after such taking possession, apply to the superior court in the county in which the principal office of such bank is located to enjoin further proceedings; and said court, after citing the superintendent of banks to show cause why further proceedings should not be enjoined, and hearing the allegations and proofs of the parties and determining the facts may, upon the merits, dismiss such application or enjoin the superintendent of banks from further proceedings, and direct him to surrender such business and property to such bank. An appeal as above provided shall operate as a stay of the judgment of the superior court, and no bond need be given if the appeal be taken by the superintendent of banks; but if the appeal be taken by such bank, a bond shall be given, as required by section nine hundred forty-three of the Code of Civil Procedure. Whenever the superintendent of banks shall have paid to each and every depositor and creditor of such bank whose claim or claims as such creditor or depositor shall have been duly proved and allowed, the full amount of such claims, and shall have made proper provision for unclaimed and unpaid deposits or dividends, and shall have paid all the expenses of the liquidation, the superintendent of banks shall call a meeting of the stockholders of such bank giving notice thereof for thirty days in one or more newspapers published in the county where the principal office of such bank is located. At such meeting the stockholders shall determine whether the superintendent of banks shall be continued as liquidator and shall wind up the affairs of such bank, or whether an agent or agents shall be elected for that purpose, and in so determining the said stockholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the majority of the stock shall be necessary to a determination. In case it is determined to continue the liquidation

under the superintendent of banks, he shall complete the liquidation of the affairs of such bank, and after paying the expenses thereof, shall distribute the proceeds among the stockholders in proportion to the several holdings of stock in such manner and upon such notice as may be directed by the superior court. In case it is determined to appoint an agent or agents to liquidate, the stockholders shall thereupon select such agent or agents by ballot, a majority of the stock present and voting, in person or by proxy, being necessary to a choice. Such agent or agents shall execute and file with the superintendent of banks a bond to the people of the state in such amount, with such sureties and in such form as shall be approved by the superintendent of banks, conditioned for the faithful performance of all the duties of his or their trust, and thereupon the superintendent of banks shall transfer and deliver to such agent or agents all the undivided and uncollected or other assets of such bank then remaining in his hands; and upon such transfer and delivery, the said superintendent of banks shall be discharged from any and all further liability to such bank and its creditors. Such agent or agents shall convert the assets coming into his or their possession into cash, and shall account for and make distribution of the property of said bank as is herein provided in the case of distribution by the superintendent of banks, except that the expenses thereof shall be subject to the direction and control of a court of record of competent jurisdiction. In case of the death, removal or refusal to act of any such agent or agents, the stockholders, on the same notice, to be given by the superintendent of banks upon proof of such death, removal or refusal to act being filed with him, and by the same vote hereinbefore provided, may elect a successor, who shall have the same powers and be subject to the same liabilities and duties as the agent originally elected. Dividends and unclaimed deposits remaining unpaid in the hands of the superintendent of banks for six months after the order for final distribution shall be by him deposited with the state treasurer in the same manner and subject to the same disposition as provided for in section one thousand two hundred thirty-four of the Code of Civil Procedure. The superintendent of banks may pay over the moneys so held by him to the persons respectively entitled thereto upon being furnished satisfactory evidence of their right to the same. In cases of doubt or conflicting claims he may require an order of the superior court authorizing and directing the payment thereof. [Amendment approved May 6, 1913. Stats. 1913, c. 192.]

Bank ceasing to exist.

§ 136a. Any bank which has ceased to do a banking business whether through voluntary action on its part or through expiration of its corporate existence, shall immediately liquidate its affairs and any unclaimed deposits or dividends shall be paid into the state treasury in the manner and for the purposes provided in section one hundred thirty-six of this act within six months after the date such bank ceased to conduct a banking business, and in case the superintendent of banks shall have reason to conclude that the liquidation of such bank is not being safely or expeditiously conducted, he may take possession of the property of such bank and liquidate its affairs in the same manner as provided in section one hundred thirty-six of this act. Whenever any bank of whose property the superintendent of banks has taken possession as aforesaid, deems itself aggrieved thereby, it may within the time and in like manner and effect as provided in section one hundred thirty-six of this act apply to the superior court to enjoin further proceedings. [New section approved May 6, 1913. Stats. 1913, p. 198.]

Jurisdiction in superior court.

§ 136b. In any action or proceeding brought under any provision of this act, exclusive original jurisdiction shall be vested in the superior court of the county in which

is located the principal place of business of the bank affected thereby, and all proceedings relating to the same matter, under any provision of this act, including proceedings for liquidation of the affairs of any such bank, shall be filed with and treated as a part of the record in such original proceedings, and all papers relating to any such action or proceeding, including the copy of certificate of appointment of any special deputy and the inventories required to be filed in the matter of any such liquidation, shall be filed with and made a part of the record of such original proceeding without the payment of any additional fees therefor, and in any such action no damage may be awarded, but the action otherwise shall be tried and determined according to the provisions of the Code of Civil Procedure. [New section approved May 6, 1913. Stats. 1913, p. 198.]

Right to dissolve. Discharge of receiver. Unclaimed moneys escheat. Invested.

§ 137. 1. Any bank shall have the right, on application of the stockholders or members, to apply to the superior court of the county wherein its principal place of business is situated, to dissolve said bank in the manner provided for in title six, part three of the Code of Civil Procedure.

2. At the expiration of four months after the settlement of the final account of the receiver of any bank appointed prior to July 1, 1909, any dividends due depositors, or other creditors, or stockholders of such bank and remaining unpaid or uncalled for and in the hands of such receiver may be paid by him into the treasury of the county in which such bank is situated which money shall be held in the treasury of said county, and at the same time it shall be the duty of such receiver to furnish to the county treasurer of said county a list of names of all depositors or other persons to whom such money belongs or who are entitled thereto and thereupon such receiver shall be entitled to his discharge.

3. The moneys referred to in subdivision two of this section shall be paid out on the order of the court appointing such receiver.

4. All moneys paid under subdivision two of this section, uncalled for within five years after being paid in, shall by operation of law, and without action had, escheat to the state. All moneys held by any county treasurer under subdivision two of this section, when such moneys have escheated to the state as hereinbefore provided, shall be paid by the county treasurer into the state treasury, and thereafter only be drawn out in such manner as may be provided for by law for the estates of deceased persons escheated to this state.

5. The state board of control must invest such moneys in the same manner that the state school land fund is invested as provided by law. But any claimant shall be entitled to recover as herein provided only the principal so paid into the state treasury. [Amendment approved May 6, 1913. Stats. 1913, p. 198.]

This section was also amended April 21, 1911, Stats. 1911, p. 958.

Penalty for failure to report.

§ 138. If any bank shall fail to make any report required by the provisions of section one hundred thirty or one hundred thirty a of this act, within ten days from the day designated for the making thereof by the superintendent of banks, or to include therein any matter required by the provisions of either of said sections, it shall forfeit to the people of the state the sum of one hundred dollars for each day that any such report shall be so delayed or withheld by the failure or neglect of such bank. In the event of the failure of any such bank to make any such report required from it, the superintendent of banks may, in his discretion, immediately cause the books, papers and affairs of such bank to be examined at the expense of such bank. [Amendment approved May 6, 1913. Stats. 1913, p. 199.]

Duty of board of directors. Report.

§ 139. It shall be the duty of the board of directors of every bank to examine fully, or to cause a committee of at least three of its members, none of whom shall be an officer of the bank, to examine fully into the books, papers and affairs of the bank of which they are directors, and particularly into the loans and discounts thereof, with a special view to ascertaining the value and security thereof, and of the collateral security, if any given, in connection therewith, and into such other matters as the superintendent of banks may require; such examination to be made at least once a year, but no such subsequent yearly examinations shall be made within three months of the next preceding examination. Such directors shall have power to employ such assistance making such examinations as they may deem necessary. Within thirty days after the completion of such examination, a report in writing thereof, sworn to by the directors making the same, shall be made by the board of directors of such bank and placed on file with the records of said bank, and shall be subject to examination by the superintendent of banks.

Contents of report.

Such report shall particularly contain a statement of the assets and liabilities of the bank examined, as shown by its books, together with any deductions from the assets, or additions to liabilities which such directors or committee, after such examination, may determine to make. It shall also contain a statement, in detail, of loans, if any, which in their opinion are worthless or doubtful, together with their reasons for so regarding them; also a statement of loans made on collateral security, which in their opinion are insufficiently secured, giving in each case the amount of the loan, the name and market value of the collateral, if it has any market value, and, if not, a statement of that fact, and its actual value as nearly as possible. Such report shall also contain a statement of overdrafts, of the names and amounts of such as they consider worthless or doubtful, and a full statement of such other matters as affect the solvency and soundness of the bank.

When no examination made.

If the directors of such bank shall fail to make such examination or fail to cause it to be made, or shall fail to file such report of such examination in the manner and within the time specified, the superintendent of banks shall have authority to make or cause to be made an extra examination of such bank, at the expense of such bank.

Special examination by superintendent of banks.

Whenever the board of directors of any bank may determine by resolution, duly entered in its minutes, that a special examination shall be made or caused to be made by the superintendent of banks in lieu of the examination herein required to be made by the board of directors of such bank, a certified copy of such resolution shall be transmitted to the superintendent of banks, whereupon it shall be the duty of the superintendent of banks to make or cause to be made a special examination of the affairs of such bank in lieu of the examination of such bank by the board of directors thereof. Such special examination shall be made at such time as the superintendent of banks may determine but in any event such examination shall be made within sixty days after the receipt by the superintendent of banks of the resolution hereinbefore referred to. The cost of making such examination shall be a charge against the bank for which such examination is made.

Report.

Upon the completion of such examination the superintendent of banks shall cause a report thereof in writing to be prepared and delivered to the board of directors of

such bank at such time as may be fixed by the superintendent of banks, but not later than thirty days after the completion of such examination. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 619.]

This section was also amended May 6, 1913, Stats. 1913, p. 200.

Report of superintendent to governor.

§ 140. The superintendent of banks shall report during the month of October of each year, to the governor, for submission to the next ensuing session of the legislature:

1. A summary of the state and condition of every bank required to report to him, and from which reports have been received the preceding year, with an abstract of the whole amount of capital returned by them, the whole amount of their debts and liabilities, and the total amount of means and resources, specifying the amount of specie held by them at the time of the last report to him, and such other information in relation to such banks as, in his judgment, may be useful.

2. A statement of all banks authorized by him to do business during the previous year, with their names and locations and dates of incorporation, and particularly designated such as have commenced business during the year.

3. A statement of the banks whose business has been closed during the year.

4. Any amendments to the banking law, which, in his judgment, may be desirable.

5. The names and compensation of all persons employed by him, and the whole amount of the receipts and expenses of the department during the year.

6. The names of banks placed in his hands in process of liquidation, and the amount of dividends paid thereon.

Such report, and the usual number of copies for the use of the legislature, shall be printed and in readiness for distribution by the state printer, and one thousand copies shall be printed for the use of the department, the expense of which shall be charged among the general expenses of the department.

Weekly bulletin to be posted by superintendent: items of. Bulletins, file of.

§ 141. 1. The superintendent of banks shall keep in his office, in a place accessible to the general public, a bulletin-board upon which he shall cause to be posted at noon on Friday of each week a detailed statement, signed by him or, in case of his absence from San Francisco or inability to act, by the deputy superintendent in charge, giving the following items of general information with regard to the work of the department since the preceding statement:

- (a) The name of every bank that has filed in the banking department an application for authorization to commence business, its location and the date of filing of such application.

- (b) The name and location of every bank authorized by the superintendent of banks to commence business, its capital, surplus, and the date of authorization.

- (c) The name of every bank to which a certificate of authorization has been refused by the superintendent of banks, and the date of notice of refusal.

- (d) The name and residence of every person appointed by the superintendent of banks as a deputy, examiner or employee in the banking department, the title of the office to which appointed, the compensation paid, and the date of appointment.

- (e) The date on which a call for a report by banks was issued by the superintendent of banks, and the day designated as the day with reference to which such report should be made.

- (f) The name and location of every bank whose creditors or depositors have been paid in full by the superintendent of banks and a meeting of whose stockholders shall have been called, together with date of notice of meeting and date of meeting.

- (g) The name and location of every bank subject to the banking law whose affairs and business shall have been finally liquidated, or in course of liquidation.

(h) The name and location of every bank which has applied for approval of a change of name, and the name proposed.

2. Every such bulletin, after having been posted as aforesaid for one week, shall be placed on a file for such statements, to be kept in the office of the superintendent of banks. All such statements shall be public documents, and at all reasonable times shall be open to public inspection during usual banking hours.

Records deemed public documents. Official reports prima facie evidence.

§ 142. None of the records of the state banking department shall be deemed to be public documents nor shall any of such records be open to the inspection of the public. Every official report made by the superintendent of banks and every report duly verified of an examination made, shall be prima facie evidence of the facts therein stated, for all purposes in any action or proceedings wherein the superintendent of banks is a party. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 658.]

This section was also amended May 17, 1917, Stats. 1917, p. 620.

Neglect of duty by superintendent.

§ 143. [Repealed May 6, 1913. Stats. 1913, p. 200.]

Action for recovering forfeitures. Fines may be compromised.

§ 144. Whenever by the terms of this act a penalty or forfeiture is imposed, the same shall be recovered in an action brought at the request of the superintendent of banks by the attorney general, in the name of the people of the state, and the sum recovered shall be paid into the state banking fund and used in payment of claims against the said fund. Any fine or pecuniary penalty, which may be incurred by any bank on account of the violation of any provision of this act, may be compromised and a less amount than that prescribed by this act accepted by the superintendent of banks at any time prior to the institution of action to recover the same. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1134.]

Powers abridged, enlarged or modified. Investments made prior to July 1, 1909.

§ 145. The powers, privileges, duties and restrictions conferred and imposed upon any corporation or individual existing and doing business under the laws of this state are hereby abridged, enlarged or modified as each particular case may require to conform to the provisions of this act, notwithstanding anything to the contrary in their respective articles of incorporation or charters. All the provisions of this act shall apply with equal force and effect to all corporations which are now doing or which may hereafter do a banking business in this state, except where express exception or exemption may be made herein, and to such other persons, associations, copartnerships or corporations who shall, by violating any of its provisions, become subject to the penalties provided herein. The legality of investments heretofore made, or title to property heretofore acquired or conveyed through transactions heretofore had by any bank pursuant to any provision of law in force when such investments were made or transactions had, shall not be affected by the provisions of this act, except that any such investments made prior to July 1, 1909, when not complying with the provisions hereof, shall be changed to conform hereto; but such change shall be made gradually and in such manner as to prevent loss or embarrassment in the business of such bank, or unnecessary loss or injury to the borrowers on such security; provided, that the legality of any investments heretofore lawfully made, pursuant to the provisions of this act as it existed on and subsequent to July 1, 1909, shall not be affected by the provisions of this section. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 620.]

This section was also amended May 6, 1913, Stats. 1913, p. 200; and June 3, 1915, Stats. 1915, p. 1134.

Conflicting laws repealed.

§ 146. All acts, or parts of acts, in conflict with this act are hereby repealed.

Act takes effect when.

§ 147. This act shall take effect July first, 1909.

I. THE BANK ACT.*a. Constitutionality.*

- 1, 2. Title of "bank commissioners act."
3. Act of 1903.
4. Due process—Equal protection.
5. Same—Initial taking.
6. Police power.
7. Same—Business of banking.
8. Depriving superior court of jurisdiction in insolvency—Privileges and immunities—Special legislation.
9. Limitation of ten days to bring action.
10. Same.
11. Liability of stockholders under the act.

II. CONSTRUCTION AND EFFECT.

12. Act applies to all banks, whenever incorporated.
- 13, 14. Insolvent act superseded by "bank commissioners act."
15. Act of 1876 not repealed by "bank commissioners act."

III. STATE BANKING DEPARTMENT.*a. Commissioners—Powers—Duties.*

16. Power to supervise.
17. Examination of banks.
18. Vacancy in office of commissioner.
19. Commissioner not invested with sovereignty of state—Laches imputed.

b. Regulations.

20. Loan in excess of statutory limit.
21. Withdrawal of savings bank deposit by public administrator.
22. Power to contract debt for borrowed money.
23. Deposit of bonds as trustee, withdrawal.
- 23a. Escheat of bank deposit unclaimed for twenty years.
- 23b. Non-demand of bank deposit for twenty years—Jurisdictional fact.
- 23c. Joint bank deposits—Inheritance tax.
- 23d. Same—Right of survivorship.

IV. UNSAFE CONDITION OF BANK.*a. Superintendent of banks—Attorney general.*

24. Statutory custodian.
25. Attorney general, action by.
26. Same—Motion for new trial by bank.
27. Same—Procedure.
28. Same—Negligence, incompetence, mismanagement, fraud.

V. INSOLVENCY.*a. Proceedings, commencement of.*

29. Action for debt against insolvent bank.
30. Complaint—Allegation of insolvency.

b. Jurisdiction of superior court.

31. Source and scope of jurisdiction.

Gen. Laws—15

32. Possession of directors can not be ousted.

33. Jurisdiction to fill vacancies on board of directors.

- 33a, 34. Injunction from transacting further business.

35. Same—Until further order.

36. Until in liquidation, bank independent of court.

c. Directors as trustees.

37. Failure to perform trust only cause of action against directors.

- 37a. Action against directors in own name.

38. Directors are responsible for closing up affairs of bank.

39. Personal conduct by commissioners not contemplated by act.

d. Stockholders' liability.

40. Suit to enforce.

41. No part of assets of bank.

42. Meaning of act.

- 42a. Dismissal of action to enforce—Laches.

e. Assessments on unpaid stock.

43. Levy of assessment—Failure to pay.

44. Power of directors to assess—Statute of limitations.

- 45-47. Statutory provisions as to assessments—Not affected by by-laws.

48. Unpaid subscriptions to stock as assets.

49. Same—Same—Directors may assess.

50. Same—Constitute equitable fund.

51. Accrual of right of action—Statute of limitations.

52. Same—Notice to pay.

53. Recovery from transferee of stock.

54. Set off—Amounts paid on stockholder's liability.

- 54a. Assessment to pay debts.

- 54b. Same—Injunction not to transact further business.

f. Judgment.

55. When final.

56. Same—Repeal of act.

57. Same—Same—Pending new trial proceedings.

58. Same—Same—Abatement of proceedings.

59. Same—Same—New trial—Stay of proceedings.

60. Same—Same—Power of directors to levy assessment.

g. Appeal and error.

61. Superintendent of banks, appeal by.

- 62, 63. Same—Stay bond by.

64. Bank, appeal by.

h. Sale of bank property.

65. Judicial sale—Caveat emptor.

66. Conveyance of bank property by superintendent of banks—Taxes.

VI. MISCELLANEOUS.

a. Attachment.

- 67. Right of against insolvent bank does not exist.
- 68. Same—Code provisions inconsistent.

b. Receiver.

- 69. Act itself notice of appointment.

c. Finding of insolvency.

- 70. Sustained by evidence.

d. Number of employees.

- 71. Maximum number—Minimum salaries.

e. Non-stockholding depositor.

- 72. Preference—Act of 1862.

a. Constitutionality.

1. **The title of the "bank commissioners act"** sufficiently expresses the subject of the act and is sufficiently general in its scope. It need not embrace an abstract of the contents of the act.—*People ex rel. Gerberding v. Superior Court*, 100 Cal. 105, 34 Pac. 492.

2. **Same.**—Title of act is sufficient, within the requirements of section 24, article IV of the constitution.—*People v. Bank of San Luis Obispo*, 154 Cal. 194, 97 Pac. 306.

3. **Act is constitutional.**—The bank act of 1903 is constitutional.—*People v. Bank of San Luis Obispo*, 154 Cal. 194, 97 Pac. 306; *Same v. Same*, 159 Cal. 65, Ann. Cas. 1912B, 1148, 37 L. R. A. (N. S.) 934, 112 Pac. 866.

4. **Due process—Equal protection.**—The summary seizure and liquidation provided for in the banking act does not render that act invalid as in violation of the due process and equal protection clauses of the fourteenth amendment to the federal constitution.—*State, etc., Bank v. Anderson*, 165 Cal. 437, 440, L. R. A. 1915E, 675, 132 Pac. 755.

5. **Same.**—The initial taking authorized by the banking act is not intended as a permanent divestment of the title of the bank to its property.—*State, etc., Co. v. Anderson*, 165 Cal. 437, 447, L. R. A. 1915E, 675, 132 Pac. 755.

6. **Police power.**—The bank act deals solely with a matter pertaining to the public welfare, and within the police power of the state to regulate, and the regulations provided have a substantial relation to and are reasonably designed to protect and safeguard the state against insecure banking.—*State, etc., Bank v. Anderson*, 165 Cal. 437, 449, L. R. A. 1915E, 675, 132 Pac. 755.

7. **Same—Business of banking.**—The business of banking is a proper and legitimate subject of legislative regulation by the state in the exercise of its police power.—*State, etc., Co. v. Anderson*, 165 Cal. 437, 442, L. R. A. 1915E, 675, 132 Pac. 755.

8. **Depriving superior court of jurisdiction in insolvency—Privileges and immunities—Special legislation.**—The "bank commissioners act" is not unconstitutional as depriving the superior court of jurisdiction in insolvency matters, nor in granting special and exclusive rights, privileges or immunities to particular corporations, nor as special or local legislation.—*People ex rel.*

Gerberding v. Superior Court, 100 Cal. 105, 34 Cal. 492.

9. **The limitation of ten days to bring action** provided by the bank act is not unreasonable.—*State, etc., Bank v. Anderson*, 165 Cal. 437, 447, L. R. A. 1915E, 675, 132 Pac. 755.

10. **Same.**—The limitation of ten days within which to bring an action provided for in section 136 of the banking act is not violative of the due process and equal protection clauses of the federal constitution.—*State, etc., Bank v. Anderson*, 165 Cal. 437, 440, L. R. A. 1915E, 675, 132 Pac. 755.

11. **Liability of stockholders under the act.**—If section 136 of the banking act was intended by the legislature to include the constitutional liability of the stockholders within the phrase "individual liability of the stockholders," it would be obnoxious to section 24, article IV of the constitution.—*Williams v. Carver*, 171 Cal. 658, 663, 154 Pac. 472. Constitutionality of state banking statutes. See 32 L. R. A. (N. S.) 1065.

II. CONSTRUCTION AND EFFECT.

12. **Act applies to all banks, whenever incorporated.**—Bank commissioners act applies to all banks whenever incorporated.—*People v. Bank of San Luis Obispo*, 154 Cal. 194, 97 Pac. 306. See *McGowan v. McDonald*, 111 Cal. 57, 43 Pac. 418.

13. **Insolvent act superseded by "bank commissioners act,"** as to banking corporations.—*People v. Bank of San Luis Obispo*, 154 Cal. 194, 97 Pac. 306.

14. **Same.**—The bank commissioners act held to supersede the insolvent act so far as banking corporations are concerned.—*People ex rel. Gerberding v. Superior Court*, 100 Cal. 105, 34 Pac. 492.

15. **Act of 1876 not repealed by "bank commissioners act."**—The act of April 1, 1876, requiring banking corporations to file in recorder's office sworn statements as to capital, assets and liabilities, was not repealed by the bank commissioners act.—*Bank of British North America v. Cahn*, 79 Cal. 463, 21 Pac. 863.

III. STATE BANKING DEPARTMENT.

a. Commissioners—Powers—Duties.

16. **Power to supervise.**—Power of commissioners to supervise the affairs of an insolvent bank during liquidation is the same as their power of supervision of banks in general, and the "bank commissioners act" confers no power to assume personal charge of such bank to the exclusion of its directors.—*Long v. Superior Court*, 102 Cal. 449, 36 Pac. 807.

17. **Examination of banks.**—Under the act of 1878, commercial banks are subject to examination by the bank commissioners.—*Wells, Fargo & Co. v. Coleman*, 53 Cal. 416.

18. **Vacancy in office of commissioner.**—In the absence of a provision to the contrary, when there is a vacancy the powers and duties of the commission may be performed by three commissioners constituting a majority of the board, and may make the unanimous decision that "it is unsafe" for a

bank "to continue business."—*People v. Bank of San Luis Obispo*, 154 Cal. 194, 97 Pac. 306.

19. **Commissioner not invested with sovereignty of state—Laches imputed.**—The state bank commissioner is not invested with the sovereignty of the state, and can not invoke the rule against imputing laches to the state on a motion to dismiss an action brought by him under section 136 of the bank act, for unreasonable delay in serving the summons.—*Anderson v. Nawa*, 25 Cal. App. 151, 143 Pac. 555.

b. Regulations.

20. **Loan in excess of statutory limit** may be enforced against both maker and guarantor, and against mortgaged property given as security therefor, notwithstanding §§ 1607 and 1667, Civil Code.—*Blochman, etc., Bank v. F. G. Investment Co.*, 177 Cal. 762, 171 Pac. 943.

21. **Withdrawal of savings bank deposits by public administrator.**—The provision as to withdrawal of funds of a decedent by the public administrator on the order of the judge of the superior court, creates a special right, with which the bank must comply, without regard to any conditions required by the contract of deposit between the bank and the depositor, provided compliance would not impose upon the bank a liability for which it is not provided that the bank shall be indemnified.—*Bryson v. Security, etc., Bank*, 29 Cal. App. 596, 156 Pac. 987.

22. **Power to contract debt for borrowed money.**—A bank incorporated under the act of April 11, 1862, has no power to contract debt for borrowed money, nor for money paid out at its request by a stockholder to discharge its obligation to a stockholder, and such a contract is ultra vires and void, regardless of the relation of the stockholder to the bank.—*Laidlaw v. Pacific Bank*, 137 Cal. 392, 70 Pac. 277.

23. **Deposit of bonds as trustee—Withdrawal.**—A corporation organized to act as trustee, guardian, etc., and do a general banking business, brought itself within the scope of the act of 1891 (490) and the subsequently enacted bank act; and having deposited bonds for the purpose of obtaining a certificate of authority, can not thereafter withdraw such bonds without divesting itself of its powers to do business, in the manner prescribed by section 19 of the act of 1891 and section 102 of the bank act.—*Spalding Co. v. Roberts*, 170 Cal. 175, 178, 149 Pac. 41.

23a. **Escheat of bank deposit unclaimed for twenty years.**—Until the attorney general brings an action for such deposit on behalf of the state, a claimant may bring suit as well after the expiration of the twenty-year period as before.—*Mathews v. Savings, etc., Co.*, (Cal.) 184 Pac. 418.

23b. **Non-demand of bank deposit for 20 years is jurisdictional fact.**—*Mathews v. Savings, etc., Co.*, (Cal.) 184 Pac. 418.

23c. **Joint bank deposits—Inheritance tax.**—Joint bank account not subject to in-

heritance tax.—*Estate of Gurnsey*, 177 Cal. 211, 170 Pac. 402.

23d. **Same—Right of survivorship.**—Under the provisions of section 16 of the bank act, joint deposits created under the conditions therein prescribed belong to the survivor.—*Williams v. Savings Bank*, 33 Cal. App. 655, 166 Pac. 366; *McDougald v. Boyd*, 172 Cal. 753, 159 Pac. 168.

IV. UNSAFE CONDITION OF BANK.

a. Superintendent of banks—Attorney general.

24. **Statutory custodian.**—The superintendent of banks takes and holds property, under the banking act, as a statutory custodian until either the bank brings an action to test the validity of his finding that it is in an unsafe or unsound condition, under which he justifies the taking, or, through a failure to do so within the ten day limit, the bank admits that he was warranted in making the seizure, and consents to liquidation, or until a suit to enjoin further proceedings and for the restitution of the property and business of the bank.—*State, etc., Bank v. Anderson*, 165 Cal. 437, 447, L. R. A. 1915E, 675, 132 Pac. 755.

25. **Action by attorney general.**—The right of the attorney general to bring the action authorized by section 10 of the bank commissioners act is not affected by the unconstitutionality of the provisions of that section authorizing the bank commissioners, on their own determination, and without notice, to take and hold possession of the assets of an insolvent bank, admitting such unconstitutionality.—*People v. Bank of San Luis Obispo*, 154 Cal. 194, 97 Pac. 306.

26. **Same—Motion for a new trial by bank** in an action by the attorney general under section 10 of the bank commissioners act may be made by the bank, there being nothing in the act denying that right, and procedure provided by the Code of Civil Procedure governing.—*People v. Bank of San Luis Obispo*, 152 Cal. 261, 92 Pac. 481.

27. **Same—Procedure.**—In the absence of provisions for a special method in the bank commissioners act the action provided for in section 10 is to be commenced and prosecuted according to the provisions of the Code.—*People v. Bank of San Luis Obispo*, 152 Cal. 261, 92 Pac. 481.

28. **Same—Negligence, incompetence, mismanagement, fraud.**—Attorney general has no power under the bank commissioners act to bring an action to enjoin a bank from further transaction of business on the ground of negligence, incompetence, mismanagement and fraud, on behalf of individual stockholders or creditors.—*People, etc., Bank v. Superior Court*, 103 Cal. 27, 36 Pac. 1015.

V. INSOLVENCY.

a. Proceedings, commencement of.

29. **Action for debt against insolvent bank.**—Action for debt against an insolvent bank in process of liquidation under the "bank commissioners act" can not be maintained.—*Argues v. Union, etc., Bank*, 133 Cal. 139, 65 Pac. 307.

30. Complaint—Allegation of insolvency.

—An allegation that the bank commissioners unanimously found and determined that the bank was insolvent and unable to pay its obligations, when and payable, out of its own funds, in the ordinary course of business, and that it was insolvent, is a sufficient allegation that "it is unsafe" for the bank "to continue business" within the meaning of the "bank commissioners act."—*People v. Bank of San Luis Obispo*, 154 Cal. 194, 97 Pac. 306.

b. Jurisdiction of superior court.**31. Source and scope of jurisdiction.**—

Jurisdiction of superior court in a proceeding under the "bank commissioners act" by the attorney general against an insolvent bank is derived from that act and is limited by that act.—*Long v. Superior Court*, 102 Cal. 449, 36 Pac. 807.

32. Possession of directors can not be ousted.—

The court has no power under the "bank commissioners act" of 1878, to oust the directors from possession of the assets of an insolvent bank, or deprive them of the management of its affairs during liquidation.—*Long v. Superior Court*, 102 Cal. 449, 36 Pac. 807.

33. Jurisdiction to fill vacancies on board of directors.—

The superior court has jurisdiction to fill vacancies on the board of directors of an insolvent bank pending liquidation under the "bank commissioners act."—*Braslan v. Superior Court*, 124 Cal. 123, 56 Pac. 792.

33a. Injunction from transacting further business.—

In an action by the attorney general against an insolvent bank, brought under the "bank commissioners act," the superior court has jurisdiction to enjoin the bank from further transacting new business.—*Long v. Superior Court*, 102 Cal. 449, 36 Pac. 807.

34. Same.—

The court has no jurisdiction to issue an injunction or other order in an action under the "bank commissioners act" of 1878, by the attorney general against an insolvent bank, until after a hearing and an opportunity to the bank to contest.—*Peoples, etc., Bank v. Superior Court*, 103 Cal. 27, 36 Pac. 1015.

35. Same—Until further order.—

The fact that the injunction not to transact further business is in terms until further order of the court can not affect its character as a part of the final judgment, and the injunction can not be dissolved prior to the final closing and settlement of the bank's affairs.—*People v. Bank of Mendocino Co.*, 133 Cal. 107, 65 Pac. 124.

36. Until in liquidation, bank independent of court.—

Until a bank goes into liquidation under the provisions of section 11 of the "bank commissioners act" (amendment of 1887) it is independent of the courts, and, largely, of the bank commissioners, and it is no defense to an action by a depositor for the amount of his deposit that the bank is in course of liquidation, voluntary, but by the advice of the bank commissioners.—

Lanz v. Fresno, etc., Bank, 125 Cal. 456, 58 Pac. 63.

c. Directors as trustees.**37. Failure to perform trust only cause of action against directors.**—

Directors are trustees for creditors and no right of action can arise in favor of a creditor against the bank or the directors, except for failure to perform the duties of the trust.—*Argues v. Union, etc., Bank*, 133 Cal. 139, 65 Pac. 307.

37a. Action against directors in their own name, or under the corporate name,

may be maintained by a creditor for the disallowance of a claim, as a breach of their duty, but not before such disallowance.—*Argues v. Union, etc., Bank*, 133 Cal. 139, 65 Pac. 307.

38. Directors are responsible for closing up affairs of bank.—

The responsibility of closing up the affairs of the bank rests upon the officers under the supervision of the bank commissioners.—*Bank of Mendocino v. Brown*, 8 Cal. App. 566, 97 Pac. 533.

39. Personal conduct by commissioners not contemplated by act.—

The "bank commissioners act" does not contemplate a personal conduct of the liquidation of an insolvent bank by the commissioners, but merely a supervision of the directors for the purpose of safeguarding the depositors and stockholders against an extravagant or fraudulent administration of the business.—*Bank of Mendocino v. Brown*, 8 Cal. App. 566, 97 Pac. 533.

d. Stockholders' liability.**40. Suit to enforce.**—

Section 136 of the banking act does not confer a right upon the superintendent of banks to bring a suit to enforce the constitutional liability of the stockholders of an insolvent bank.—*Williams v. Carver*, 171 Cal. 658, 661, 154 Pac. 472.

41. No part of assets of bank.—

The constitutional liability of the stockholders of a bank for its debts is no part of its assets, and the superintendent of banks has no power to act for its creditors in enforcing such liability.—*Williams v. Carver*, 171 Cal. 658, 662, 154 Pac. 472.

42. Meaning of bank act.—

The individual liability of the stockholders referred to in section 136 of the banking act is the amount due the bank and arising from assessments made or subscriptions to corporate stock.—*Williams v. Carver*, 171 Cal. 658, 662, 154 Pac. 472.

42a. Dismissal of action to enforce.—

Laches.—Dismissal of action by state bank commissioner against stockholders under the provisions of section 136 of the bank act, for unreasonable delay in service of summons.—*Anderson v. Nawa*, 25 Cal. App. 151, 143 Pac. 555.

e. Assessments on unpaid stock.**43. Levy of assessment—Failure to pay.**—

Assessment may be levied by board of directors of insolvent bank in liquidation under the "bank commissioners act" in a sum sufficient to pay creditors, in accordance with the provisions of the Civil Code, and if the assessment is not paid, they may bring

action to enforce payment.—*Union Savings Bank v. Leiter*, 145 Cal. 696, 79 Pac. 441.

See, also, *Union Savings Bank v. Dunlap*, 135 Cal. 628, 67 Pac. 1034.

44. Power of directors to assess—Statute of limitations.—Power of directors of an insolvent bank to levy assessments on unpaid capital stock to pay creditors can not be impaired by lapse of time so long as the corporation is a going concern for purposes of liquidation under the "bank commissioners act," and the statute does not begin to run in favor of a stockholder until the levy is made.—*Union Savings Bank v. Leiter*, 145 Cal. 696, 79 Pac. 441.

45. Statutory provisions as to assessments—Not affected by by-laws.—A banking corporation can not yield up its statutory power to levy assessments on unpaid capital stock to pay creditors by contract with its stockholders, evidenced by law limiting the amount of such assessments, or otherwise.—*Union Savings Bank v. Leiter*, 145 Cal. 696, 79 Pac. 441.

46. Same—Same.—A by-law limiting the amount of an assessment of unpaid capital stock must be construed in connection with statutory provisions relating to such assessments, and so construed the statute and by-law enter together into the contract of subscription of the stockholders.—*Union Savings Bank v. Leiter*, 145 Cal. 696, 79 Pac. 441.

47. Same—Same.—A by-law limiting the amount that may be taken from stockholders of a banking corporation, by an assessment on unpaid capital stock, when properly attacked, has no force as against creditors, certainly not against creditors without notice.—*Union Savings Bank v. Leiter*, 145 Cal. 696, 79 Pac. 441.

48. Unpaid subscription to stock as assets.—The board of directors may, after adjudication in insolvency under the bank commissioners act, collect the corporate assets, including unpaid subscriptions to stock, and their authority to do so does not rest upon an order of the bank commissioners.—*People's Home Savings Bank v. Rauer*, 2 Cal. App. 445, 84 Pac. 329.

49. Same—Same—Directors may assess.—Unpaid balances due on capital stock are assets and where the money or other property of an insolvent bank are insufficient to meet the demands of the creditors, resort may be had to them; and after an adjudication under the "bank commissioners act," the directors of the bank may assess such unpaid subscriptions to pay debts, without first obtaining authority to do so from the court.—*Union, etc., Bank v. Dunlap*, 135 Cal. 628, 67 Pac. 1034.

50. Same—Constitute equitable fund to secure creditors.—Unpaid subscriptions to stock constitute an equitable fund for the security of creditors, and may be resorted to, in case of necessity, by the liquidators, during the liquidation of an insolvent bank.—*Bank of National City v. Johnston*, 133 Cal. 185, 65 Pac. 383.

51. Accrual of right of action—Statute of limitations.—Right of action on unpaid cap-

ital stock does not accrue until a call is made, and the amount is determined with time and conditions of payment, and does not arise in favor of an insolvent bank upon adjudication of insolvency, but only when its board of directors makes an authorized call.—*Union Savings Bank v. Leiter*, 145 Cal. 696, 79 Pac. 441.

52. Same—Notice to pay.—Where the resolution of the board of directors of an insolvent bank in process of liquidation requiring payment of unpaid balances due on stock did not provide when notice of call should be mailed, notice mailed on the day that, under the resolution, proceedings to enforce payment might be commenced, is sufficient, where it was published and served long before proceedings were commenced.—*People's Home Savings Bank v. Rauer*, 2 Cal. App. 445, 84 Pac. 329.

53. Recovery from transferee.—Unpaid subscriptions to stock may be collected from a transferee whose name stands on the books as such transferee without anything to indicate that he took the stock in pledge, though he in fact did so.—*People's Home Savings Bank v. Rauer*, 2 Cal. App. 445, 84 Pac. 329.

54. Set-off—Amounts paid on stockholder's liability.—In an action by an insolvent bank in liquidation under the "bank commissioners act" against a stockholder for an assessment on unpaid capital stock to pay creditors, the defendant can not set off amounts paid by him on judgments in stockholders' liability suits.—*Union Savings Bank v. Leiter*, 145 Cal. 696, 79 Pac. 441.

54a. Assessment to pay debts, levied pending proceedings under the "bank commissioners act," though approved by the bank commissioners can not be enforced as a call for the payment of unpaid subscriptions.—*Bank of National City v. Johnston*, 133 Cal. 185, 65 Pac. 383.

54b. Same—Injunction not to transact further business.—Assessment to pay debts levied pending proceedings under the "bank commissioners act," but not delinquent until an adjudication of insolvency and its directors enjoined from transacting further business except liquidation is, in effect, set aside by the judgment, and the power to enforce it ended.—*Bank of National City v. Johnston*, 133 Cal. 185, 65 Pac. 383.

f. Judgment.

55. When final.—Judgment in suit against an insolvent bank brought by the attorney general under the "bank commissioners act," declaring the bank insolvent and restraining it from transacting further business and requiring liquidation is a final judgment, and after the expiration of the time for appeal has expired, without appeal, the court has no jurisdiction to modify it.—*People v. Bank of Mendocino County*, 133 Cal. 107, 65 Pac. 124.

56. Same—Repeal of act.—A judgment under the act of 1903, that had become final on appeal, is not rendered ineffectual by the repeal of the act by the banking act of 1909, pending an appeal from the order denying

a new trial, without continuing in force pending litigation under the repealed act.—*Crittenden v. Superior Court*, 166 Cal. 340, 345, 136 Pac. 287.

57. Same—Same—Pending new trial proceedings.—Repeal of act after judgment has been affirmed on appeal and thus become final does not destroy the judgment, notwithstanding pending appeal from order on motion for new trial, without supersedeas or stay bond.—*People v. Bank of San Luis Obispo*, 159 Cal. 65, Ann. Cas. 1912B, 1148, 37 L. R. A. (N. S.) 934, 112 Pac. 866.

58. Same—Same—Abatement of proceedings.—An action by the bank commissioners on behalf of an insolvent bank instituted under the act of 1903, did not abate on the repeal of that act, and the court has jurisdiction to substitute the receiver in liquidation, as plaintiff, and allow the action to be continued in his name.—*Crittenden v. Superior Court*, 166 Cal. 340, 346, 136 Pac. 287.

59. Same—Same—New trial—Stay of proceedings.—A judgment under the act of 1903, declaring a bank insolvent, and ordering it into liquidation, and appointing a receiver for that purpose, affirmed on appeal, was in no way stayed in law by virtue of pending proceedings under a motion for a new trial.—*Crittenden v. Superior Court*, 166 Cal. 340, 344, 136 Pac. 287.

60. Same—Same—Power of directors to levy assessment.—The repeal of the bank commissioners act of 1903, without a saving clause, could not affect a prior judgment under its provisions decreeing the insolvency of a banking corporation and its liquidation; nor could the repeal affect the power of the directors to levy an assessment on unpaid capital stock.—*Union Savings Bank v. Leiter*, 145 Cal. 696, 79 Pac. 441.

g. Appeal and error.

61. Superintendent of banks, appeal by.—The superintendent of banks, in custody of the assets of an insolvent bank and engaged in liquidating its business, is a proper party, where the bank is a holder of a portion of a bond issue, and had contested the legality of the remaining bonds, to an action to foreclose the mortgage given to secure such bonds, and entitled to appeal in his official capacity from a judgment in such action adverse to the interests of such bank.—*Mercantile Trust Co. v. Miller*, 166 Cal. 563, 569, 137 Pac. 913.

62. Same—Stay bond by.—Under section 120 of the banking act, the state superintendent of banks is a state officer, when performing the duties of his office under the provisions of said act, within the meaning of section 1058, Code of Civil Procedure, and is exempt from the necessity of giving a stay bond on appeal.—*Mercantile Trust Co. v. Miller*, 166 Cal. 563, 566, 137 Pac. 913.

63. Same—Same.—The superintendent of banks when acting in his official capacity as the custodian of the assets of an insolvent bank, is a "trustee" and also a person acting in "another's right," within the meaning of section 946, Code of Civil Procedure, and the court is authorized, in its discretion, to

limit or dispense with a stay bond on appeal by such officer.—*Mercantile Trust Co. v. Miller*, 166 Cal. 563, 567, 137 Pac. 913.

64. Bank, appeal by.—Action by attorney general authorized by section 10 of the bank commissioners act is a special proceeding of a civil nature, and, there being no provision in the act denying the right of the bank to appeal from the judgment therein, that right exists under section 939, Code of Civil Procedure.—*People v. Bank of San Luis Obispo*, 152 Cal. 261, 92 Pac. 481.

h. Sale of bank property.

65. Judicial sale—Caveat emptor.—A sale by the superintendent of banks, of property of an insolvent bank, by the order of the superior court, under the "bank act," is a judicial sale, and the rule of caveat emptor applies.—*National Bank v. Williams*, 31 Cal. App. 705, 161 Pac. 504.

66. Conveyance of bank property by superintendent of banks—Taxes.—Where neither the order of court authorizing the conveyance nor the deed conveying the right, title and interest of the insolvent bank made any mention of taxes, the grantee can not maintain an action for taxes paid him to protect the property from sale for delinquent taxes, against the superintendent of banks, although such taxes were a lien on the property, but not due, at the date of the conveyance.—*National Bank of Bakersfield v. Williams*, 31 Cal. App. 705, 161 Pac. 504.

VI. MISCELLANEOUS.

a. Attachment.

67. Right of against insolvent bank does not exist.—Right of attachment against insolvent bank does not exist, the effect of the repealing clause of the bank commissioners act being to repeal the inconsistent provisions of the Code of Civil Procedure relating to attachment.—*Crane v. Pacific Bank*, 106 Cal. 64, 27 L. R. A. 562, 39 Pac. 215.

68. Same—Code provisions inconsistent.—The provisions of the Code of Civil Procedure relating to attachment, in so far as they have effect to give the attaching creditor of an insolvent bank an advantage over other creditors in the collection of their debts, is inconsistent with the provisions of the bank commissioners act.—*Crane v. Pacific Bank*, 106 Cal. 64, 27 L. R. A. 562, 39 Pac. 215.

b. Receiver.

69. Act itself notice of appointment.—The bank commissioners act itself is full notice that a receiver will be appointed in the event of a determination of insolvency, and no other is required.—*People v. Bank of San Luis Obispo*, 154 Cal. 194, 97 Pac. 306.

c. Finding of insolvency.

70. Sustained by evidence.—Evidence held to sustain finding of insolvency.—*People v. Bank of San Luis Obispo*, 159 Cal. 65, Ann. Cas. 1912B, 1148, 37 L. R. A. (N. S.) 934, 112 Pac. 866.

d. Number of employees.

71. Maximum number—Minimum salaries.—When the commissioners have fixed the

maximum number of employees and the maximum limit of their salaries, the directors may fix the number and the amount of their salaries within these limits.—*Bank of Mendocino v. Brown*, 8 Cal. App. 566. 97 Pac. 533.

e. Non-stockholding depositor.

72. Preference—Act of 1862.—Under the act a non-stockholding depositor of an insolvent bank must be paid out of its assets before a general creditor, whether stockholder or not.—*Laidlaw v. Pacific Bank*, 137 Cal. 392, 394, 70 Pac. 277.

Incorporation of banks, capital stock, etc.

—See *Kerr's Cyc. Civil Code*, tit. "Corporations."

Investment of funds in bonds of particular public corporations.—See title of particular corporation, and *Kerr's Cyc. Political Code*, § 3480.

License of bankers.—See *Kerr's Cyc. Political Code*, § 3379.

Savings and loan corporations.—See *Kerr's Cyc. Civil Code*, §§ 571, et seq.

Taxation of banks.—See *Kerr's Cyc. Political Code*, §§ 3664, et seq.

Taxation of shares of stock.—See *Kerr's Cyc. Political Code*, §§ 3608-3610.

INVOLUNTARY LIQUIDATION OF BANKS.

ACT 410—An act relating to the liquidation of banks by the superintendent of banks; empowering him to levy assessments against the members and stockholders of any bank in process of liquidation by him to an amount which he may determine to be necessary to promptly pay the creditors of such bank in full; to enforce such assessments by suit and empowering the superior court to determine the equities of the members and stockholders of any such bank to any surplus which may remain after the payment of the creditors of such bank in full and to award and distribute the same accordingly.

History: Approved May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 581.

Assessment of stockholders to pay creditors.

§ 1. Whenever the superintendent of banks shall hereafter take possession of the business and property of any bank doing business in this state for the purpose of liquidating its affairs, as provided by law, he may at any time during the process of such liquidation determine whether it shall be necessary to assess the members or stockholders of such bank in order to promptly pay the claims of the creditors of such bank in full and he shall make such assessments as he may determine to be necessary for that purpose.

Complaint.

§ 2. Such determination shall be evidenced by a complaint or petition against all of the members and stockholders of such bank filed by the superintendent of banks in the superior court of the county where the principal place of business of such bank is or was located at the time of the taking of such possession.

Further assessments.

§ 3. If such assessment first made, shall prove inadequate to pay all of the creditors of such bank in full the superintendent of banks may make further assessment or assessments by filing supplemental complaints or petitions in the same proceeding.

Proceeds applied.

§ 4. In any such proceeding such assessment shall be enforced and collected and the proceeds thereof shall be added to the funds of such bank and applied by the superintendent of banks for the payment of just claims against the same.

Payment of surplus.

§ 5. If after the payment of all just claims against such bank and the cost of liquidation any surplus shall remain said court shall determine the equities of the respective members and stockholders of such bank thereto and direct the payment thereof by the superintendent of banks accordingly.

Action to collect assessments.

§ 6. The superintendent of banks shall have power to maintain an action in any other state or country to enforce and collect such assessments against any of such members or stockholders and the proceeds thereof shall become a part of the fund and be subject to the same disposition as if collected in the proceedings provided for in this act.

§ 7. This act shall not affect any action or proceeding instituted by the superintendent of banks prior to its enactment.

Constitutionality.

§ 8. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional or its operation or application is or may be limited or controlled by any constitutional provision.

BANNING.

See Act 3094, note.

CHAPTER 26.**BATHING RESORTS.****CONTENTS OF CHAPTER.**

- ACT 433. BATHING RESORTS ON RIVERS AND STREAMS.
- 434. BATHING RESORTS ON SEACOAST AND LAKES.
- 435. GENERAL SANITATION ACT.

BATHING RESORTS ON RIVERS AND STREAMS.

ACT 433—An act to regulate the keeping of bathing places and swimming resorts on rivers and streams.

History: Approved April 6, 1911, Stats. 1911, p. 685.

Keepers of public bathing resorts to provide for safety of bathers. Violation of statute a misdemeanor.

§ 1. It shall be unlawful for any person, firm or corporation to maintain any public bathing or swimming place or resort on the rivers and streams of this state unless they shall carefully sound the depths of water and locate the eddies and pools and determine the presence and nature of dangerous currents or sunken logs, rocks or obstructions in such streams or rivers. Signs indicating in plain letters the depth of water, the location of pools or eddies, and the presence and direction of currents of water shall be placed and maintained in the streams and rivers during the season when bathing and swimming is permitted or invited in said streams or rivers. Safety ropes shall be stretched wherever necessary to show the line of eddies, pools, sunken obstructions and other hidden dangers to bathers in such streams and rivers. Any violation of this act shall be a misdemeanor.

Public safety at bathing resorts on sea-coast or lake.—See, post, Act 434.

Sanitation of bathing resorts.—See, post, Act 435.

BATHING RESORTS ON SEACOAST AND LAKES.

ACT 434—An act to secure the safety of the public at bathing places upon the seacoast and lakes. (Approved March 10, 1909. Stats. 1909, p. 261.)

History: Approved March 10, 1909, Stats. 1909, p. 261.

Lifeboats. Duty to keep. Requirements for.

§ 1. Every person, firm of persons, or corporation, owning or conducting within this state a bathhouse, or other public place for the purpose of accommodating bathers, bordering upon or adjoining the seacoast or a lake where the public resort for the purpose of bathing in the open sea or lake shall keep one or more lifeboats fully equipped with oars, oarlocks, and not less than two life-preservers, and two hundred feet of rope, always in good repair and near the bathhouse or resort. Such boat or boats shall have the words "lifeboat" plainly printed or painted upon them, and they shall be used for no other purpose than for saving of life or for other cases of emergency.

Penalty.

§ 2. Any person, firm or persons, or corporation who fails to comply with the provisions of this act is guilty of a misdemeanor and upon conviction shall be sentenced to pay a fine of not less than ten nor more than two hundred dollars or be imprisoned in the county jail not less than ten days nor more than six months, or by both fine and imprisonment.

§ 3. This act shall take effect thirty days after its passage.

Public safety at bathing resorts on rivers and streams.—See, ante, Act 433. **Sanitation at bathing resorts.—See, post, Act 435.**

GENERAL SANITATION ACT.

ACT 435—An act providing for the sanitation, healthfulness and cleanliness and safety of swimming pools, public bathhouses, swimming and bathing places; regulating the granting and revocation of permits therefor from the state board of health; providing for the inspection of such places; declaring places and things in violation of this act to be nuisances dangerous to health and providing for the abatement of the same; making violations of this act misdemeanors; and providing for the punishment of the same.

History: Approved April 6, 1917. In effect July 27, 1917. Stats. 1917, p. 70.

Swimming pools under supervision of state board of health.

§ 1. The state board of health shall have supervision over the sanitation, healthfulness and cleanliness and safety of swimming pools, bathhouses, public swimming and bathing places and all related appurtenances and is hereby empowered to make and enforce such rules and regulations pertaining thereto as it shall deem proper.

Permit to construct or operate swimming pool.

§ 2. It shall be unlawful for any person, persons, firm, corporation, institution or municipality in any district, town, city, county, or city and county to construct or to add to or modify, or to operate or to continue to operate any swimming pool, public bathhouse, bathing or swimming place, or any structure intended to be used for swimming or bathing purposes without an unrevoked permit so to do from the state board of health. This permit shall be obtained in the following manner: any person, persons, firm, corporation, institution or municipality desiring to construct, add to or modify, or to operate and maintain any swimming pool, public bathhouse, bathing or swimming places or structures intended to be used for swimming or bathing purposes within the state of California shall file application for permission so to do with the state board of

health, which application shall be accompanied by detailed maps, drawings, specifications and description of the structure, its appurtenances and operation, description of the source or sources of water supply, amount and quality of water available and intended to be used, method and manner of water purification, treatment, disinfection, heating, regulating and cleaning; life-saving apparatus, and measures to insure safety of bathers; measures to insure personal cleanliness of bathers; method and manner of washing, disinfecting, drying and storing bathing apparel and towels, and all other information and statistics that may be required by the state board of health; whereupon, the state board of health shall cause an investigation to be made of the proposed or existing pool or public bathing places and if it shall determine as a fact that the same is or may reasonably be expected to become unclean or insanitary or may constitute a menace to public health, it shall deny the application for permit; if it shall determine as a fact that the same is or may reasonably be expected to be conducted continuously in a clean and sanitary manner, and will not constitute a menace to public health, it shall grant the application for permit under such restrictions as it shall deem proper.

Authority to inspect.

§ 3. For the purpose of this act the state board of health or its inspectors shall at any and all reasonable times have full power and authority to, and shall be permitted to enter upon any and all parts of the premises of such bathing and swimming places to make examination and investigation to determine the sanitary condition of such places and whether the provisions of this act or the rules and regulations of the state board of health pertaining thereto are being violated. The state board of health may from time to time at its discretion publish the reports of such inspections in its monthly bulletin.

Revocation of permit.

§ 4. Any permit granted by the state board of health as provided in this act shall be revocable or subject to suspension at any time by formal action of the state board of health if it shall determine as a fact that the swimming or bathing place or places are being conducted in a manner insanitary, unclean or dangerous to public health.

Swimming pools operated contrary to act nuisances.

§ 5. Any swimming pool, public swimming or bathing place or places, constructed, operated or maintained contrary to the provisions of this act are hereby declared to be public nuisances, dangerous to health. Such nuisances may be abated or enjoined in an action brought by the local or state board of health or they may be summarily abated in the manner provided by law for the summary abatement of public nuisances dangerous to health.

Penalty.

§ 6. Any person, firm or corporation, whether as principal or agent, employer or employee, who violates any of the provisions of this act shall be guilty of a misdemeanor, and each day that conditions or actions, in violation of this act, shall continue, shall be deemed to be a separate and distinct offense, and for each offense, upon conviction, he shall be punishable by a fine of not less than twenty-five dollars nor more than five hundred dollars, or shall be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment.

Public safety at bathing resorts on rivers and streams.—See, ante, Act 433.

Public safety at bathing resorts on sea-coast.—See, ante, Act 434.

BEAUMONT.

See Act 3094, note.

BELVEDERE.

See Act 3094, note.

CHAPTER 26a.

BENEFIT SOCIETIES.

CONTENTS OF CHAPTER.

- ACT 440. FRATERNAL INSURANCE ACT.
441. UNINCORPORATED SOCIETIES MAY HOLD REAL ESTATE.
442. FRATERNAL FIRE INSURANCE.
443. FAMILY PROTECTION.
444. CHANGE OF FRATERNAL TO REGULAR LIFE PLAN.
445. CONSOLIDATION, MERGER OR REINSURANCE.

FRATERNAL INSURANCE ACT.

ACT 440—An act for the regulation and control of fraternal benefit societies.

History: Approved May 1, 1911, Stats. 1911, p. 1320. Amended June 7, 1915. In effect August 8, 1915. Stats. 1915, p. 1273; April 24, 1917. In effect July 27, 1917. Stats. 1917, p. 164; May 21, 1917. In effect July 27, 1917. Stats. 1917, p. 785; June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1651.

Fraternal benefit society defined.

§ 1. Any corporation, society, order, or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative form of government, and which shall make provision for the payment of benefits in accordance with section five hereof, and any mutual life association whose membership is limited to a secret fraternity, profession or guild, and which elects its officers and directors by direct vote of its members, either in person or by proxy, is hereby declared to be a fraternal benefit society. [Amendment of June 7, 1915. In effect August 8, 1915. Stats. 1915, p. 1273.]

Lodge system.

§ 2. Any society having a supreme governing or legislative body and subordinate lodges or branches by whatever name known, into which members shall be elected, initiated and admitted in accordance with its constitution, laws, rules, regulations, and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required by the laws of such society to hold regular or stated meetings at least once in each month, shall be deemed to be operating on the lodge system.

Representative form of government.

§ 3. Any such society shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members as may be prescribed by its constitution and laws; provided, that the elective members shall constitute a majority in number and have not less than two-thirds of the votes, nor less than the votes required to amend its constitution and laws; and provided, further, that the meetings of the supreme or governing body, and the election of officers, representatives or delegates shall be held as often as once in four years. The members, officers, representatives or delegates of a fraternal benefit society shall not vote by proxy.

Societies exempt.

§ 4. Except as herein provided, such societies shall be governed by this act and shall be exempt from all provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no law hereafter enacted shall apply to them, unless they be expressly designated therein.

Benefits.

§ 5. Subsection 1. Every society transacting business under this act shall provide for the payment of death benefits, and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident or old age; provided, the period of life at which the payment of benefits for disability on account of old age shall commence, shall not be under seventy years, and may provide for monuments or tombstones to the memory of its deceased members and for the payment of funeral benefits. Such society shall have the power to give a member, when permanently disabled or on attaining the age of seventy, all or such portion of the face value of his certificate as the laws of the society may provide; provided, that nothing in this act contained shall be so construed as to prevent the issuing of benefit certificates for a term of years less than the whole of life which are payable upon the death or disability of the member occurring within the term for which the benefit certificate may be issued. Such society shall, upon written application of the member, have the power to accept a part of the periodical contributions in cash, and charge the remainder, not exceeding one-half of the periodical contribution, against the certificate with interest payable or compounded annually at a rate not lower than four per cent per annum; provided, that this privilege shall not be granted except to societies which have readjusted or may hereafter readjust their rates of contributions and to contracts affected by such readjustment.

Society to maintain reserve.

Subsection 2. Any society which shall show by the annual valuation hereinafter provided for that it is accumulating and maintaining the reserve necessary to enable it to do so, under a table of mortality not lower than the American experience table and four per cent interest, may grant to its members, extended and paid-up protection or such withdrawal equities as its constitution and laws may provide; provided, that such grants shall in no case exceed in value the portion of the reserve to the credit of such members to whom they are made.

Beneficiaries of fraternal benefit societies.

§ 6. The payment of death benefits shall be confined to wife, husband, relative by blood to the fourth degree, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepchildren, children by legal adoption, or to a person or persons dependent upon the member; provided, that if there is not living any person above designated, the member may designate any friend as his beneficiary or may direct that said benefit be paid to his estate; provided, further, that if after the issuance of the original certificate the member shall become dependent upon an incorporated charitable institution, he shall have the privilege, with the consent of the society, to make such institution his beneficiary. Within the above restrictions each member shall have the right to designate his beneficiary, and, from time to time, have the same changed in accordance with the laws, rules or regulations of the society, and no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable upon the death of said member; provided, that any society may, by its laws, limit the scope of beneficiaries within the above classes. [Amendment of May 21, 1917. In effect July 27, 1917. Stats. 1917, p. 785.]

Membership.

§ 7. Any society may admit to beneficial membership any person not less than sixteen and not more than sixty years of age, who has been examined by a legally qualified physician and whose examination has been supervised and approved in accordance with the laws of the society; provided, that any beneficiary member of such society who shall apply for a certificate providing for disability benefits, need not be required to pass an

additional medical examination therefor. Nothing herein contained shall prevent such society from accepting general or social members.

Certificate to specify amount of benefit.

§ 8. Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation, or, if a voluntary association, the articles of association, the constitution and laws of the society and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof and any changes, additions or amendments to said charter or articles of incorporation, or articles of association, if a voluntary association, constitution or laws duly made or enacted subsequent to the issuance of the benefit certificate shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership.

Funds.

§ 9. Subsection 1. Any society may create, maintain, invest, disburse and apply an emergency, surplus or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested, and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in subsection 2 of section 5 of this act. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed, shall be derived from periodical or other payments by the members of the society and accretions of said funds; provided, that no society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this state, which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the national fraternal congress table of mortality as adopted by the national fraternal congress, August 23, 1899, or any higher standard with interest assumption not more than four per cent per annum, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with an interest assumption not higher than four per cent per annum.

Deferred payments considered fixed liabilities.

Subsection 2. Deferred payments or installments of claims shall be considered as fixed liabilities on the happening of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities.

Investment of funds.

§ 10. Every society shall invest its funds only in securities permitted by the laws of this state for the investment of the assets of life insurance companies; provided, that any foreign society permitted or seeking to do business in this state, which invests its funds in accordance with the laws of the state in which it is incorporated, shall be held to meet the requirements of this act for the investment of funds.

Distribution of funds.

§ 11. Every provision of the laws of the society for payment by members of such society, in whatever form made, shall distinctly state the purpose of the same and the

proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions of either or any of said funds shall be used for expenses.

Organization of society.

§ 12. Seven or more persons, citizens of the United States, and a majority of whom are citizens of this state, who desire to form a fraternal benefit society, as defined by this act, may make and sign (giving their addresses) and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

First—The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or to lead to confusion.

Second—The purpose for which it is formed—which shall not include more liberal powers than are granted by this act, provided, that any lawful social, intellectual, educational, charitable, benevolent, moral or religious advantages may be set forth among the purposes of the society—and the mode in which its corporate powers are to be exercised.

Third—The names, residences and official titles of all the officers, trustees, directors or other persons who are to have and exercise the general control and management of the affairs and funds of the society for the first year, or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body which election shall be held not later than one year from the date of the issuance of the permanent certificate.

Papers to be filed with insurance commissioner. Must secure at least five hundred applications to complete organization. Advance payments. Insurance commissioner may examine. Preliminary certificate. Constitution.

Such articles of incorporation and duly certified copies of the constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such society, and a bond in the sum of five thousand dollars, with sureties approved by the insurance commissioner conditioned upon the return of the advanced payments, as provided in this section, to applicants, if the organization is not completed within one year, shall be filed with the insurance commissioner, who may require such further information as he deems necessary, and if the purposes of the society conform to the requirements of this act, and all provisions of law have been complied with, the insurance commissioner, shall so certify and retain and file the articles of incorporation, and furnish the incorporators a preliminary certificate authorizing said society to solicit members as hereinafter provided. Upon receipt of said certificate from the insurance commissioner said society may solicit members for the purpose of completing its organization and shall collect from each applicant the amount of not less than one regular monthly payment, in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. But no such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examinations have been duly filed and approved by the chief medical examiner of such society, nor until there shall be established ten subordinate lodges or branches into which said five hundred applicants have been initiated, nor until there has been submitted to the insurance commissioner, under

oath of the president and secretary, or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions which shall be sufficient to provide for meeting the mortuary obligation contracted, when valued for death benefits upon the basis of the national fraternal congress table of mortality, as adopted by the national fraternal congress August 23, 1899, or any higher standard at the option of the society, and for disability benefits by tables based upon reliable experience and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent per annum, nor until it shall be shown to the insurance commissioner by the sworn statement of the treasurer, or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly payment as herein provided per one thousand dollars of indemnity to be effected, which payments in the aggregate shall amount to at least twenty-five hundred dollars, all of which shall be credited to the mortuary or disability fund on account of such applicants, and no part of which may be used for expenses. Said advanced payments shall, during the period of organization, be held in trust, and, if the organization is not completed within one year as hereinafter provided, returned to said applicants. The insurance commissioner may make such examination and require such further information as he deems advisable, and upon presentation of satisfactory evidence that the society has complied with all the provisions of law he shall issue to such society a certificate to that effect. Such certificate shall be prima facie evidence of the existence of such society at the date of such certificate. The insurance commissioner shall cause a record of such certificate to be made and a certified copy of such record may be given in evidence with like effect as the original certificate. No preliminary certificate granted under the provisions of this section shall be valid after one year from its date, or after such further period, not exceeding one year, as may be authorized by the insurance commissioner upon cause shown, unless the five hundred applicants herein required have been secured and the organization has been completed as herein provided, and the articles of incorporation and all proceedings thereunder shall become null and void in one year from the date of said preliminary certificate, or at the expiration of said extended period, unless such society shall have completed its organization and commenced business as herein provided. When any domestic society shall have discontinued business for the period of one year, or has less than four hundred members, its charter shall become null and void. Every such society shall have the power to make a constitution and by-laws for the government of the society, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to or amend such constitution and by-laws and shall have such other powers as are necessary and incidental to carry into effect the objects and purposes of the society.

Powers retained.

§ 13. Any society now engaged in transacting business in this state may exercise, after the passage of this act, all of the rights conferred thereby, and all of the rights, powers and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent with this act, if incorporated; or, if it be a voluntary association, it may incorporate hereunder. But no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided therein or in its constitution and laws and all such amendments shall be filed with the insurance commissioner, and shall become operative upon such filing, unless a later time be provided in such amendments or in its articles of incorporation, constitution or laws.

Mergers and transfers.

§ 14. No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and filed with the insurance commissioner of this state, together with a sworn statement of the financial condition of each of said societies, by its president and secretary, or corresponding officers, and a certificate of such officers, duly verified under oath of said officers of each of the contracting societies, that such merger or transfer has been approved by a vote of two-thirds of the members of the supreme legislative or governing body of each of said societies. Upon the submission of said contract, financial statements and certificates, the insurance commissioner shall examine the same, and, if he shall find such financial statements to be correct and the said contract to be in conformity with the provisions of this section, and that such merger or transfer is just and equitable to the members of each of said societies, he shall approve said merger or transfer, issue his certificate to that effect, and thereupon the said contract of merger or transfer shall be of full force and effect. In case such contract is not approved, the fact of its submission and its contents shall not be disclosed by the insurance commissioner.

Annual license.

§ 15. Societies which are now authorized to transact business in this state may continue such business until the first day of July next succeeding the passage of this act, and the authority of such societies may thereafter be renewed annually, but in all cases to terminate on the first day of the succeeding July; provided, however, the certificate of authority shall continue in full force and effect until the new certificate of authority be issued or specifically refused. For each such certificate of authority or renewal the society shall pay the insurance commissioner ten dollars. A duly certified copy or duplicate of such certificate of authority shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this act.

Foreign societies must secure certificates. Same qualifications required of foreign as of domestic societies.

§ 16. No foreign society now transacting business organized prior to the passage of this act, which is not now authorized to transact business in this state, shall transact any business herein without a certificate of authority from the insurance commissioner. Any such society shall be entitled to a certificate of authority to transact business within this state upon filing with the insurance commissioner a duly certified copy of its charter or articles of association; a copy of its constitution and laws, certified by its secretary or corresponding officer, a power of attorney to the insurance commissioner as hereinafter provided; a statement of its business under oath of its president and secretary, or corresponding officers, in the form required by the insurance commissioner, duly verified by an examination made by the supervising insurance official of its home state or other state satisfactory to the insurance commissioner of this state; a certificate from the proper official in its home state, province or country that the society is legally organized; a copy of its contract, which must show that benefits are provided for by periodical, or other payments, by persons holding similar contracts, and upon furnishing the insurance commissioner such other information as he may deem necessary to a proper exhibit of its business and plan of working and upon showing that its assets are invested in accordance with the laws of the state, territory, district, province or country where it is organized, he shall issue a certificate of authority to such society to do business in this state until the first day of the succeeding July and such certificate of authority shall, upon compliance with the provisions of this act, be renewed annually, but in all cases to terminate on the first day of the succeeding July;

provided, however, that certificate of authority shall continue in full force and effect until the new certificate of authority be issued or specifically refused. Any foreign society desiring admission to this state shall have the qualifications required of domestic societies organized under this act and have its assets invested as required by the laws of the state, territory, district, country, or province where it is organized. For each such certificate or renewal the society shall pay the insurance commissioner twenty dollars. When the insurance commissioner refuses to issue a certificate of authority to any society, or revokes its certificate of authority to do business in this state, he shall reduce his ruling, order or decision to writing and file the same in his office, and shall furnish a copy thereof, together with a statement of his reasons, to the officers of the society, upon request, and the action of the insurance commissioner shall be reviewable by proper proceedings in any court of competent jurisdiction within the state; provided, however, that nothing contained in this or the preceding section shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this state during the time such society was legally authorized to transact business herein.

Power of attorney and service of process.

§ 17. Every society, whether domestic or foreign, now transacting business in this state shall, within thirty days after the passage of this act, and every such society hereafter applying for admission; shall, before being licensed, appoint in writing the insurance commissioner and his successors in office to be its true and lawful attorney, upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the society and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of such appointment, certified by said insurance commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service shall only be made upon such attorney, must be made in duplicate upon the insurance commissioner or in his absence upon the person in charge of his office and shall be deemed sufficient service upon such society; provided, however, that no such service shall be valid or binding against any such society when it is required thereunder to file its answer, pleading or defense in less than thirty days from the date of mailing the copy of such service to such society. When legal process against any such society is served upon said insurance commissioner he shall forthwith forward by registered mail one of the duplicate copies prepaid and directed to its secretary or corresponding officer. Legal process shall not be served upon any such society except in the manner provided herein.

Meetings.

§ 18. Any domestic society may provide that the meetings of its legislative or governing body may be held in any state, district, province or territory wherein such society has subordinate branches and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state. But its principal office shall be located in this state.

No personal liability.

§ 19. Officers and members of the supreme, grand or any subordinate body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such society, but the same shall be payable only out of the funds of such society and in the manner provided by its laws.

Subordinate body must not waive constitution.

§ 20. The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of laws and constitution of the society, and the same shall be binding on the society and each and every member thereof and on all beneficiaries of members.

Benefits may not be attached.

§ 21. No money or other benefit, charity or relief or aid to be paid, provided or rendered by any such society shall be liable to attachment, garnishment or other process, or be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any person who may have a right thereunder, either before or after payment.

Amendments to constitution filed with insurance commissioner.

§ 22. Every society transacting business under this act shall file with the insurance commissioner a duly certified copy of all amendments of or additions to its constitution and laws within ninety days after the enactment of the same. Printed copies of the constitution and laws as amended, changed or added to, certified by the secretary or corresponding officer of the society shall be prima facie evidence of the legal adoption thereof.

Annual reports. Report on valuation of certificates. Valuation certified by actuary.**When society is considered solvent. Report mailed to members.**

§ 23. Every society transacting business in this state shall annually, on or before the first day of March, file with the insurance commissioner in such form as he may require, a statement under oath of its president and secretary, or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and of its transactions for the year ending on that date and also shall furnish such other information as the insurance commissioner may deem necessary to a proper exhibit of its business and plan of working. The insurance commissioner may at other times require any further statement he may deem necessary to be made relating to such society. In addition to the annual report herein required, each society shall annually report to the insurance commissioner a valuation of its certificates in force on December 31st, last preceding, excluding those issued within the year for which the report is filed, in cases where the contributions for the first year in whole or in part are used for current mortality and expenses, provided the first report of valuation shall be made as of December 31, 1912. Such report of valuation shall show, as contingent liabilities, the present mid-year value of the promised benefits provided in the constitution and laws of such society under certificates then subject to valuation; and, as contingent asset, the present mid-year value of the future net contributions provided in the constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided and said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years. Such valuation shall be certified by a competent accountant or actuary, or at the request and expense of the society, verified by the actuary of the department of insurance of the home state of the society, and shall be filed with the insurance commissioner within ninety days after the submission of the last preceding annual report. The legal minimum standard of valuation for all certificates, except for disability benefits, shall be the national fraternal congress table of mortality as adopted by the national fraternal congress August 23, 1899, at the option of the society, any higher table, or, at its option, it may use a table based upon the society's own experi-

ence of at least twenty years and covering not less than one hundred thousand lives with interest assumption not more than four per centum per annum. Each such valuation report shall set forth clearly and fully the mortality and interest basis and the method of valuation. Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society; provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experience and in such case a separation of the funds shall not be required. The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the society, but each society shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured liabilities. Beginning with the year 1914 a report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each beneficiary member of the society not later than June 1st of each year, or, in lieu thereof, such report of valuation and showing of the society's condition as thereby disclosed may be published in the society's official paper and the issue containing the same mailed to each beneficiary member of the society. The laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full and to provide for the creation and maintenance of the funds required by its laws, additional increased or extra rates of contribution shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five per centum per annum.

Provisions to insure future security.

§23a. If the valuation of the certificates, as hereinbefore provided, on December 31, 1917, shall show that the present value of future net contributions, together with the admitted assets, is less than the present value of the promised benefits and accrued liabilities, such society shall thereafter at least maintain said financial condition at each succeeding triennial valuation in respect of the degree of deficiency as shown in the valuation as of December 31, 1917. If at any succeeding triennial valuation such society does not show at least the same condition, the insurance commissioner shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the receipt of such notice shall show that the society has failed to maintain the condition required herein, the insurance commissioner may, in the absence of good cause shown for such failure, institute proceedings for the dissolution of such society, in accordance with the provision of section 24 of this act, or in the case of a foreign society, its license may be canceled in the manner provided in this act.

Any such society shown by any triennial valuation, subsequent to December 31, 1917, not to have maintained the condition herein required, shall, within two years thereafter, make such improvement as to show a percentage of deficiency not greater than as of December 31, 1917, or thereafter, as to all new members admitted, be subject, so far as stated rates of contributions are concerned, to the provisions of section 12 of this act, applicable in the organization of new societies; provided, that the net mortuary or beneficiary contributions and funds of such new members shall be kept separate and apart from the other funds of the society. If such required improvement is not shown by the succeeding triennial valuation, then the said new members may be placed in a separate class and their certificates valued as an independent society in respect of contributions and funds. [Amendment of April 24, 1917. In effect July 27, 1917. Stats. 1917, p. 164.]

Valuation of certificates on "accumulation basis."

§ 23b. In lieu of the requirements of sections twenty-three and twenty-three a, any society accepting in its laws the provisions of this section may value its certificates on a basis, herein designated "accumulation basis," by crediting each member with the net amount contributed for each year and with interest at approximately the net rate earned and by charging him with his share of the losses for each year, herein designated "cost of insurance" and carrying the balance, if any, to his credit. The charge for the cost of insurance may be according to the actual experience of the society applied to a table of mortality recognized by the law of this state, and shall take into consideration the amount at risk during each year, which shall be the amount payable at death less the credit to the member. Except as specifically provided in its articles or laws or contracts no charge shall be carried forward from the first valuation hereunder against any member for any past share of losses exceeding the contributions and credit. If, after the first valuation, any member's share of losses for any year exceeds his credit including the contribution for the year, the contribution shall be increased to cover his share of the losses, and if the credit at the time any benefit becomes payable during the lifetime of the member, including any available funds does not equal such benefit, the contributions to be made by him or on his behalf shall be increased by the difference. Any such excess share of losses chargeable to any member may be paid out of a fund or contributions especially created or required for such purpose.

Any member may transfer to any plan adopted by the society with net rates on which tabular reserves are maintained and on such transfer shall be entitled to make such application of his credit as provided in the laws of the society.

Value of certificate on "tabular basis."

Certificates issued, rerated or readjusted on a basis providing for adequate rates with adequate reserves to mature such certificates upon assumptions for mortality and interest recognized by the law of this state shall be valued on such basis, herein designated the "tabular basis"; provided, that if on the first valuation under this section a deficiency in reserve shall be shown for any such certificate, the same shall be valued on the accumulation basis.

Whenever in any society having members upon the tabular basis and upon the accumulation basis, the total of all costs of insurance provided for any year shall be insufficient to meet the actual death and disability losses for the year, the deficiency shall be met for the year from the available funds after setting aside all credits in the reserve; or from increased contributions or by an increase in the number of assessments applied to the society as a whole or to classes of members as may be specified in its laws. Savings from a lower amount of death losses may be returned in like manner as may be specified in its laws.

If the laws of the society so provide, the assets representing the reserves of any separate class of members may be carried separately for such class as if in an independent society, and the required reserve accumulation of such class so set apart shall not thereafter be mingled with the assets of other classes of the society.

Table of rates and credits.

A table showing the rates being paid by and the credits to individual members at each age and year of entry, and showing opposite each credit the tabular rates and the tabular reserve required, or at the option of the society the required reserve on a level rate equivalent to that being paid, according to assumptions for mortality and interest recognized by the laws of this state and adopted by the society, and, in either case, including any benefit payable at a specified age or on account of old age disability shall be filed by the society with each annual report and also be furnished to each member before July first of each year.

In lieu of the aforesaid statement there may be furnished to each member within the same time a statement giving the data aforesaid for such member. No table or statement need be made or furnished when the reserves are maintained on the tabular basis.

For this purpose, individual bookkeeping accounts for each member shall not be required and all calculations may be made by actuarial methods.

Nothing herein contained shall prevent the maintenance of such surplus over and above the credits on the accumulation basis and the reserves on the tabular basis as the society may provide by or pursuant to its laws; nor be construed as giving to the individual member any right or claim to any such reserve or credit other than in manner as expressed in the contract and its laws; nor as making any such reserve or credits a liability in determining the legal solvency of the society. [New section added April 24, 1917. In effect July 27, 1917. Stats. 1917, p. 165.]

Examination of domestic societies by insurance commissioner. Expense of examination.

Action when societies fail to reach required standard. Proceedings only after notice.

§ 24. The insurance commissioner, or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic society. He may employ assistants for the purpose of such examination, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society and may summon and qualify as witness under oath and examine its officers, agents and employees or other persons in relation to the affairs, transactions and condition of the society. The expense of such examination shall be paid by the society examined, upon statement furnished by the insurance commissioner, and the examination shall be made at least once in three years. Whenever after examination the insurance commissioner is satisfied that any domestic society has failed to comply with any provisions of this act, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently, or whenever any domestic society, after the existence of one year or more, shall have a membership of less than four hundred (or shall determine to discontinue business), the insurance commissioner may present the facts relating thereto to the attorney general, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and such court shall thereupon notify the officers of such society of a hearing, and it shall then appear that such society should be closed, said society shall be enjoined from carrying on any further business and some person shall be appointed receiver of such society, and shall proceed at once to take possession of the books, papers, moneys and other assets of the society and shall forthwith, under the direction of the court, proceed to close the affairs of the society and to distribute its funds to those entitled thereto. No such proceedings shall be commenced by the attorney general against any such society until after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it, on a date to be named in said notice, to show cause why such proceedings should not be commenced.

Application for receiver.

§ 25. No application for injunction against or proceedings for the dissolution of, or the appointment of a receiver for, any such domestic society or branch thereof shall be entertained by any court in this state unless the same is made by the attorney general.

Examination of foreign societies.

§ 26. The insurance commissioner, or any person whom he may appoint, may examine any foreign society transacting or applying for admission to transact business in this state. The said insurance commissioner may employ assistants, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate

to the business of the society, and may summon and qualify as witness under oath and examine its officers, agents and employees and other persons in relation to the affairs, transactions and condition of the society. He may, in his discretion, accept in lieu of such examination the examination of the insurance department of the state, territory, district, province or county where such society is organized. The actual expenses of examiners making any such examination shall be paid by the society upon statement furnished by the insurance commissioner. If any such society or its officers refuse to submit to such examination or to comply with the provisions of the section relative thereto, the authority of such society to write new business in this state shall be suspended or license refused until satisfactory evidence is furnished the insurance commissioner relating to the condition and affairs of the society, and during such suspension the society shall not write new business in this state.

Insurance commissioner not to publish statement pending investigation.

§ 27. Pending, during or after an examination or investigation of any such society, either domestic or foreign, the insurance commissioner shall make public no financial statement, report or finding, nor shall he permit to become public any financial statement, report or finding affecting the status, standing or rights of any such society, until a copy thereof shall have been served upon such society, at its home office, nor until such society shall have been afforded a reasonable opportunity to answer any such financial statement, report or finding and to make such showing in connection therewith as it may desire.

Revocation of license.

§ 28. When the insurance commissioner on investigation is satisfied that any foreign society transacting business under this act has exceeded its powers, or has failed to comply with any provisions of this act, or is conducting business fraudulently, or is not carrying out its contracts in good faith, he shall notify the society of his findings, and state in writing the grounds of his dissatisfaction, and after reasonable notice require said society, on a date named, to show cause why its license should not be revoked. If on the date named in said notice such objections have not been removed to the satisfaction of the said insurance commissioner, or the society does not present good and sufficient reasons why its authority to transact business in this state should not at that time be revoked, he may revoke the authority of the society to continue business in this state. All decisions and findings of the insurance commissioner made under the provisions of this section may be reviewed by proper proceedings in any court of competent jurisdiction, as provided in section 16 of this act.

Certain societies exempt.

§ 29. Nothing contained in this act shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the insurance department of the supreme lodge Knights of Pythias), and the Junior Order of United American Mechanics (exclusive of the beneficiary degree or insurance branch of the national council Junior Order United American Mechanics) or societies which limit their membership to any one hazardous occupation, nor to similar societies which do not issue insurance certificates, nor to an association of local lodges of a society now doing business in this state which provides death benefits not exceeding three hundred dollars to any one person, or disability benefits not exceeding three hundred dollars in any one year to any one person, or both, nor to any contracts of reinsurance business on such plan in this state, nor to domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house or corporation, nor to domestic lodges, orders or associations of a purely religious, charitable and benevolent description, which do not provide for a death benefit of more than one hun-

dred dollars, or for disability benefits of more than one hundred and fifty dollars to any one person in any one year; provided, always, that any such domestic order or society which has more than five hundred members, and provides for death or disability benefits, and any such domestic lodge, order or society which issues to any person a certificate providing for the payment of benefits, shall not be exempt by the provisions of this section, but shall comply with all the requirements of this act. The insurance commissioner may require from any society such information as will enable him to determine whether such society is exempt from the provisions of this act. No society which is exempt by the provisions of this section from the requirement of this act shall give or allow, or promise to give or allow, to any person any compensation for procuring new members. Any fraternal benefit society, heretofore organized and incorporated and operating within the definition set forth in sections 1, 2 and 3 of this act, providing for benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this act, and shall have all the privileges and shall be subject to all the provisions and regulations of this act, except that the provisions of this act requiring medical examination, valuations of benefit certificates, and that the certificate shall specify the amount of benefits, shall not apply to such society.

Taxation.

§ 30. Every fraternal benefit society organized or licensed under this act is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal and school tax, other than taxes on real estate and office equipment.

Penalties. Soliciting membership for societies not licensed.

§ 31. Any person, officer, member or examining physician of any society authorized to do business under this act who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days nor more than one year, or both, in the discretion of the court; and any person who shall willfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such society for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall willfully make any false statement in any verified report or declaration under oath required or authorized by this act, shall be guilty of perjury, and shall be proceeded against and punished as provided by the statutes of this state in relation to the crime of perjury. Any person who shall solicit membership for, or in any manner assist in procuring membership in, any fraternal benefit society not licensed to do business in this state, or who shall solicit membership for, or in any manner assist in procuring membership in any such society not authorized as herein provided, to do business as herein defined in this state shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty nor more than two hundred dollars. Any society, or any officer, agent or employee thereof neglecting or refusing to comply with or violating any of the provisions of this act, the penalty for which neglect, refusal or violation is not specified in this section, shall be fined not exceeding two hundred dollars upon conviction thereof.

Penalty for officer, etc., borrowing funds.

§ 31a. Any officer, director, agent or employee of any fraternal benefit society who shall directly or indirectly for himself or as partner or agent of others borrow any of

the funds of such society or become endorser or surety for loans to others or in any manner be obligor for moneys borrowed or loaned by such society shall be guilty of a felony. [New section added June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1651.]

Penalty for officer, etc., receiving reward for aiding loan.

§ 31b. Any officer, trustee, agent or employee of a fraternal benefit society who asks or receives or consents or agrees to receive any commission, emolument, gratuity or reward or any money, property or thing of value for his own personal benefit, or of personal advantage, for procuring or endeavoring to procure for any person, firm or corporation any loans from the trust funds of, or funds belonging to, a fraternal benefit society shall be guilty of a felony. [New section added June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1651.]

§ 32. All acts and parts of acts inconsistent with this act are hereby repealed.

1. Constitutionality.—The act is not unconstitutional as in violation of the federal and state constitutions against impairment of the obligations of contracts.—*Machado v. Ellison*, 35 Cal. App. 337, 169 Pac. 917.

2. By-laws of fraternal insurance society must conform to the constitution and statutes of the state, and when the statute changes the by-laws must change with them.—*Machado v. Ellison*, 35 Cal. App. 337, 169 Pac. 917.

3. Contract of insurance.—A fraternal insurance contract is made up of the benefit certificate, the by-laws of the society, and the laws of the state, and a statute limiting the beneficiaries that may be named to a specified class binds the insured in a selection made after the statute became effective, although his contract of insurance was executed prior thereto.—*Machado v. Ellison*, 35 Cal. App. 337, 169 Pac. 917.

4. Cancellation of new certificate.—Mental incompetency of insured.—Where the evidence shows the insured to have been permanently insane at the time he delivered up a prior policy and obtained the issue of a

new policy on behalf of a new beneficiary, such new policy was cancelled at the suit of the beneficiary of the old policy, and the latter reinstated.—*Waters v. Conselho Supremo*, etc., 38 Cal. App. 360, 176 Pac. 368.

Change of fraternal insurance association into legal reserve and level premium life insurance company.—See, post, Act 444.

Consolidation of fraternal benefit societies.—See, post, Act 445.

Insurance and insurance companies in general.—See tit. "Insurance."

Liquidation of delinquent insurance associations.—See, post, Act 2199.

Organization of fraternal [fire] insurance associations.—See, post, Act 442.

Organization and management of mutual benefit and life associations.—See *Kerr's Cyc. Civil Code*, §§ 452a, 453.

Organization and management of mutual life, health and accident insurance corporations.—See *Kerr's Cyc Civil Code*, §§ 437, et seq.

Whole family protection for members of fraternal benefit societies.—See, post, Act 443.

ACT 441—An act authorizing and empowering unincorporated, benevolent or fraternal societies to purchase, receive, manage and sell real estate without incorporating.

History: Approved April 24, 1911, Stats. 1911, p. 1093.

Benevolent societies may hold real estate necessary for business.

§ 1. All unincorporated benevolent or fraternal societies or associations are and every lodge or branch of such society or association is hereby authorized and empowered, without incorporation, to purchase, receive, own, hold, mortgage, manage and sell all such real estate and other property as may be necessary for the business purposes and objects of the said society or association or lodge or branch, subject to the laws and regulations of said society or association or lodge or branch and of the grand lodge thereof; and also to take and receive by will or deed all property not so necessary, and to hold the same until disposed of within a period of ten years from the acquisition thereof; provided, that all conveyances transferring or in any manner affecting the title to real estate owned or held by said society or association shall be executed by its presiding officer and recording secretary under its seal after resolution duly adopted by said society or association authorizing such conveyance.

ACT 442—An act to regulate the organization of fraternal insurance associations.

History: Approved June 3, 1913. In effect August 10, 1913. Stats. 1913, p. 372.

Fraternal fire insurance associations.

§ 1. Secret, fraternal societies, having lodges, councils or granges in this state, and conducting their business and securing their membership on the lodge, council or grange system exclusively and having ritualistic work and ceremonies in their societies, lodges, councils or granges, may form an association of the members of their order or society, binding themselves to contribute to each other's loss by fire.

Formation.

§ 2. Such association shall be formed by filing a verified certificate in the office of the secretary of state and by filing a like certificate in the office of the clerk of each county in which a member has property insured in said association; such certificate shall state generally the objects of the association, and shall state its principal place of business, the names of its officers, who shall be members of said association having property insured therein; such certificates shall be signed by said officers and verified by at least three of them.

Limit on insurance. For members only. Seventy-five per cent cash value.

§ 3. An association formed as prescribed in sections one and two of this act may insure the property of its members against loss or damage by fire for an amount not exceeding forty-five hundred dollars on any one risk, and no risk of more than thirty-five hundred dollars shall be binding until risks to the amount of two hundred thousand dollars have been written and all premiums paid thereon, and no risk of more than fifteen hundred dollars shall be binding until risks to the amount of one hundred thousand dollars have been written and all premiums paid thereon, and no risk of any amount shall be binding until risks to the amount of seventy-five thousand dollars have been written and all premiums paid thereon. And no risk shall be written by such association except for members in good standing on the books of the order or society forming the association and a suspension or withdrawal from membership in such order or society will suspend the insurance risk until the member is restored to good standing in said order or society and in said association, provided, that a restoration to membership after suspension therefrom shall in no case be construed as extending the term of the risk. No risk written by such association shall be for an amount in excess of seventy-five per centum of the cash value of the property insured, and no concurrent or additional insurance shall be allowed.

Powers.

§ 4. Such association by and in its own name may sue and be sued, may loan such funds as it may have on hand in such manner as its articles of association and its by-laws have provided for; may own sufficient real estate for its business purposes, and such other real estate as may be necessary to purchase on foreclosure of its mortgages; provided, such real estate so obtained by foreclosure shall be sold and conveyed within five years from the time title vests in said association.

By-laws.

§ 5. Such association may make such by-laws, not inconsistent with the laws of this state, as may be necessary for its government and for the transaction of its business, and such association merely creating a mutual bond and agreement of its members to participate in each other's loss by fire does not come under the insurance laws of California. Outside of the requirements of this act, their own regulations and those of the order to which they belong are sufficient.

Obligation to pay pro rata.

§ 6. All persons insured shall give their obligation to the association, binding themselves, their heirs and assigns, to pay their pro rata share, proportioned to the amount of insurance in the association held by them, at the time of the loss to the association, of the necessary expenses and of loss by fire which may be sustained by any member thereof during the time for which their respective policies are written, and said policies may be cancelled by either party thereto, in which case settlement or adjustment shall be made in accordance with the terms of the by-laws of the association, and they shall also at the time of effecting the insurance pay such a percentage in cash, and such other charges, as may be required by the rules or by-laws of the association.

Classification of property. Not to insure property in cities.

§ 7. All such associations must classify the property insured therein at the time of issuing policies thereon under different rates, corresponding as nearly as may be to the greater or less risk from fire loss which may be attached to the several kinds of property insured. No such association shall issue policies of insurance on any property within the limits of cities of the first, first and a half, second, third, fourth, fifth and sixth classes; provided, that no dwelling shall be insured within the corporate limits of any city or town exposed by any other building within one hundred feet or by any risk other than a dwelling or private barn within two hundred feet of the risk assured.

Ascertainment of loss.

§ 8. Such association shall provide in its by-laws for the ascertainment of loss or damage by fire, and for the payment thereof.

Fire insurance.—The act deals with protection from fire, although the title does not so indicate.

FAMILY PROTECTION.

ACT 443—An act to provide whole family protection for members of fraternal benefit societies.

History: Approved April 20, 1917. In effect July 27, 1917. Stats. 1917, p. 144.

Fraternal benefit society may insure children. Total benefits payable.

§ 1. Any fraternal benefit society authorized to do business in this state and operating on the lodge plan, may provide in its constitution and by-laws, in addition to other benefits provided for therein, for the payment of death or annuity benefits upon the lives of children between the ages of two and eighteen years at next birthday, for whose support and maintenance a member of such society is responsible. Any such society may at its option, organize and operate branches for such children and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. The total benefits payable as above provided shall in no case exceed the following amounts at ages at next birthday at time of death, respectively, as follows: two, thirty-four dollars; three, forty dollars; four, forty-eight dollars; five, fifty-eight dollars; six, one hundred forty dollars; seven, one hundred sixty-eight dollars; eight, two hundred dollars; nine, two hundred forty dollars; ten, three hundred dollars; eleven, three hundred eighty dollars; twelve, four hundred sixty dollars; thirteen to fifteen, five hundred twenty dollars; and sixteen to eighteen years, where not otherwise authorized by law, six hundred dollars.

Conditions of benefit certificate.

§ 2. No benefit certificate as to any child shall take effect until after medical examination or inspection by a licensed medical practitioner, in accordance with the laws of the society, nor shall any such benefit certificate be issued unless the society shall

simultaneously put in force at least five hundred such certificates, on each of which at least one assessment has been paid, nor where the number of lives represented by such certificate falls below five hundred. The death benefit contributions to be made upon such certificate shall be based upon the "standard industrial mortality table" or the "English life table number six" and a rate of interest not greater than four per cent per annum, or upon a higher standard; provided, that contributions may be waived or returns may be made from any surplus held in excess of reserve and other liabilities, as provided in the by-laws; and, provided further, that extra contributions shall be made if the reserves hereafter provided for become impaired.

Reserve required.

§ 3. Any society entering into such insurance agreements shall maintain on all such contracts the reserve required by the standard of mortality and interest adopted by the society for computing contributions as provided in section two, and the funds representing the benefit contributions and all accretions thereon shall be kept as separate and distinct funds, independent of the other funds of the society, and shall not be liable for nor used for the payment of the debts and obligations of the society other than the benefits herein authorized; provided, that a society may provide that when a child reaches the minimum age for initiation into membership in such society, any benefit certificate issued hereunder may be surrendered for cancellation and exchanged for any other form of certificate issued by the society, provided that such surrender will not reduce the number of lives insured in the branch below five hundred, and upon the issuance of such new certificate any reserve upon the original certificate herein provided for shall be transferred to the credit of the new certificate. Neither the person who originally made application for benefits on account of such child nor the beneficiary named in such original certificate, nor the person who paid the contributions, shall have any vested right in such new certificate, the free nomination of a beneficiary under the new certificate being left to the child so admitted to benefit membership.

Separate financial statement.

§ 4. An entirely separate financial statement of the business transactions and of assets and liabilities arising therefrom shall be made in its annual report to the insurance commissioner by any society availing itself of the provisions hereof. The separation of assets, funds and liabilities required hereby shall not be terminated, rescinded or modified, nor shall the funds be diverted for any use other than as specified in section three, as long as any certificates issued hereunder remain in force, and this requirement shall be recognized and enforced in any liquidation, reinsurance, merger or other change in the condition of the status of the society.

Specified payments.

§ 5. Any society shall have the right to provide in its laws and the certificate issued hereunder for specified payments on account of the expense or general fund, which payments shall or shall not be mingled with the general fund of the society as its constitution and by-laws may provide.

Continuation of certificate.

§ 6. In the event of the termination of membership in the society by the person responsible for the support of any child, on whose account a certificate may have been issued, as provided herein, the certificate may be continued for the benefit of the estate of the child, provided the contributions are continued, or for the benefit of any other person responsible for the support and maintenance of such child, who shall assume the payment of the required contributions.

Insurance and insurance companies in general.—See tit. "Insurance."

Liquidation of delinquent insurance associations.—See, post, Act 2199.

Organization of fraternal [fire] insurance associations.—See, ante, Act 442.

Organization and management of mutual benefit and life associations.—See Kerr's Cyc. Civil Code, §§ 452a, 453.

Organization and management of mutual life, health and accident corporations.—See Kerr's Cyc. Civil Code, §§ 437, et seq.

CHANGE TO REGULAR LIFE PLAN.

ACT 444—An act providing that any domestic society, organization or company, providing life insurance for its members or their beneficiaries upon the assessment plan, including any domestic fraternal benefit society organized or operating under the act entitled "An act for the regulation and control of fraternal benefit societies," approved May 1, 1911, as amended, may change into a corporation to transact a life insurance business as a legal reserve or level premium company, not affecting existing suits, rights or contracts, for the protection of which business may be transacted of the kind transacted before reorganization, and for the protection of which a fund is to be created under conditions set forth herein.

History: Approved May 21, 1919. In effect July 22, 1919. Stats. 1919, p. 759.

Company transformed into legal reserve or level premium company.

§ 1. Any domestic society, organization or company providing life insurance for its members or their beneficiaries upon the assessment plan, including any domestic fraternal benefit society organized or operating under that certain statute entitled "An act for the regulation and control of fraternal benefit societies," approved May 1, 1911, as amended, may upon a majority vote of its trustees or directors, or in any lawful manner, amend its articles of incorporation and by-laws, if already incorporated, or if not incorporated, may incorporate, in such manner as to transform itself into a legal reserve or legal premium company, with the name by which it is already known or another name as its directors or trustees shall determine; and upon so doing and upon procuring from the commissioner of insurance a certificate of authority as prescribed by law to transact business in this state as a legal reserve or level premium life insurance company it shall incur the obligation and enjoy the benefits thereof the same as though originally thus incorporated; and such corporation under its articles and by-laws as so framed or amended shall be a continuation of the original organization, society or corporation and the officers thereof shall serve through their respective terms as provided in the original articles and by-laws, but their successors shall be elected and serve as the law and its articles and by-laws provide; but such incorporation, amendment or reincorporation shall not affect existing suits, rights or contracts.

The said society, organization or company so organized shall have the power after reorganization to transact business of the same nature transacted by it before reorganization, as well as the powers conferred hereby and contemplated by its articles of incorporation, in order to protect and perform rights and contracts existing before reorganization.

Capital stock of reorganized company. Fund when contributions not equal to benefits.

§ 2. Any society, organization or company so reorganized shall have a capital stock of which at least two hundred thousand dollars must be paid up previous to the issuance of any policies by it as a legal reserve or level premium company. All assets belong to any such society, organization or company so reorganized, prior to reorganization, or arising or accruing from policies, certificates or benefit certificates issued upon the assessment plan, shall be used only for the benefit of the holders of such policies, certificates or benefit certificates and no portion thereof shall be used or considered as any part of the capital stock provided for by this act. If at the time or reorganization, or at any time thereafter, it shall appear from the last preceding annual report of

any such society, organization or company filed with the commissioner of insurance, or as the result of any investigation made by said commissioner, that the present value of the contributions to be received from the holders of policies or benefit certificates on the assessment plan, together with all assets owned by the company that have been accumulated from assessments paid by members on that plan, are not equal to the present value of the benefits to be derived by members under the assessment plan, including all matured liabilities; then the society, organization or company so reorganized shall set aside and maintain a fund which with said present value of contributions and assets will equal the present value of said benefits together with all matured liabilities. Said fund shall be used for the payment of matured liabilities arising under the assessment plan when other assets applicable thereto are exhausted. Said fund may be derived from the capital stock of said reorganized company; provided, however, that the paid-up capital stock other than said fund shall not be less than two hundred thousand dollars. Said fund need not be maintained when the same is not required by conditions as herein expressed. Members in good standing of any such company prior to reorganization shall have the right after reorganization to transfer their insurance in said company to the legal reserve or level premium plan for the same amount without further medical examination, and at the legal reserve or level premium rates. The interest and the assets of the company of any person so transferring shall be transferred to and be a part of the assets of such company on the legal reserve or level premium plan.

Powers of reorganized company.

§ 3. The society, organization or company so reorganized and its officials shall exercise all the rights and powers and perform all the duties conferred or imposed by law upon organizations writing the kinds of insurance written by said society, organization or company so reorganized. Such organization and its officials shall exercise all the rights and powers and perform all the duties necessary to protect rights and contracts existing prior to reorganization. The commissioner of insurance shall exercise the powers and discharge the duties concerning any such society, organization or company so reorganized that are applicable to companies writing insurance or issuing policies of the same class organized or operating in the state of California. The commissioner of insurance must issue a certificate of authority to any such society, organization or company so reorganized which is in a solvent condition and has fully complied with the laws of this state to transact insurance business in this state.

Valuation of policies.

§ 4. Any assessment company or fraternal benefit society incorporated or reincorporated to transact a life insurance business as above provided shall value its assessment policies or certificates or benefit certificates according to the standard of valuation of assessment insurance used in this state, and its legal reserve or level premium policies according to the standard of valuation thereof in this state. The various kinds of insurance written shall be governed by the law applicable thereto.

Consolidation of fraternal benefit societies.
—See, post, Act 445.

Fraternal insurance act.—See, ante, Act 440.

Insurance and insurance companies in general.—See, post, tit. "Insurance."

Liquidation of delinquent insurance associations.—See, post, Act 2199.

Organization of fraternal [fire] insurance associations.—See, ante, Act 442.

Organization and management of mutual benefit and life associations.—See Kerr's Cyc. Civil Code, §§ 452a-453.

Organization and management of mutual life, health and accident insurance corporations.—See Kerr's Cyc. Civil Code, §§ 437, et seq.

CONSOLIDATION, MERGER, REINSURANCE.

ACT 445—An act to provide how fraternal benefit societies organized under the laws of this state may consolidate, merge or reinsure to their insurance risks, with any other fraternal benefit society, or assume or reinsure the risks of any other fraternal benefit society, and to provide penalties for the violation of the provisions hereof.

History: Approved May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1199.

Merging, etc., of fraternal benefit societies.

§ 1. No fraternal benefit society organized under the laws of this state to do the business of life, accident or health insurance, shall consolidate or merge with any other fraternal benefit society, or reinsure its insurance risks, or any part thereof, with any other fraternal benefit society, or assume or reinsure the whole or any portion of the risks of any other fraternal benefit society, except as herein provided. No fraternal benefit society or subordinate body thereof shall merge, consolidate with or be reinsured by any company or association not licensed to transact business as a fraternal beneficiary society.

Approval of contract by insurance commissioner.

§ 2. When any such fraternal benefit society shall propose to consolidate or merge its business or to enter into any contract of reinsurance, or to assume or reinsure the whole or any portion of the risks of any other fraternal benefit society the proposed contract in writing setting forth the terms and conditions of such proposed consolidation, merger or reinsurance shall be submitted to the legislative or governing bodies of each of said parties to said contract after due notice, and if approved, such contract as so approved, shall be submitted to the commissioner of insurance of this state for his approval and the parties to said contract shall at the same time submit a sworn statement showing the financial condition of each of such fraternal benefit societies as of the thirty-first day of December preceding the date of such contract; provided, that such insurance commissioner may, within his discretion, require such financial statement to be submitted as of the last day of the month preceding the date of such contract. The commissioner of insurance shall thereupon consider such contract of consolidation, merger or reinsurance, and if satisfied that the interests of the certificate holders of such fraternal benefit societies, are properly protected, and that such contract is just and equitable to the members of each of such societies, and that no reasonable objection exists thereto, shall approve said contract as submitted. In case the parties corporate to such contract shall have been incorporated in separate states, or territories, such contract shall be submitted as herein provided to the commissioner of insurance of each of such incorporating states, or territories, to be considered and approved separately by each of such commissioners of insurance. When said contract of consolidation, merger or reinsurance shall have been approved as hereinabove provided, such commissioner or commissioners of insurance shall issue a certificate to that effect, and thereupon the said contract of consolidation, merger or reinsurance shall be in full force and effect. In case such contract is not approved the fact of its submission and its contents shall not be disclosed by the commissioner of insurance.

Expenses of proceedings.

§ 3. All necessary and actual expenses and compensation incident to the proceedings provided hereby shall be paid as provided by such contract of consolidation, merger or reinsurance; provided, however, that no brokerage or commission shall be included in such expenses and compensation or shall be paid to any person by either of the parties to any such contract in connection with the negotiation therefor or execution thereof, nor shall any compensation be paid to any officer or employee of either of the

parties to such contract for directly or indirectly aiding in effecting such contract of consolidation, merger or reinsurance. An itemized statement of all such expenses shall be filed with the insurance commissioner, or commissioners, as the case may be, subject to approval, and when approved the same shall be binding on the parties thereto. Except as fully expressed in the contract of consolidation, merger or reinsurance, or itemized statement of expenses, as approved by the commissioner, or commissioners of insurance, as the case may be, no compensation shall be paid to any person or persons, and no officer or employee of the state shall receive any compensation, directly or indirectly, for in any manner aiding, promoting or assisting any such consolidation, merger or reinsurance.

Penalty.

§ 4. Any person violating the provisions of this act shall be guilty of a felony, and upon conviction shall be liable to a fine of not more than five thousand dollars, or to imprisonment for not more than five years, or to both fine and imprisonment.

Insurance and insurance companies in general.—See, post, tit. "Insurance."

Organization of fraternal [fire] insurance associations.—See, ante, Act 442.

Organization and management of mutual benefit and life associations.—See Kerr's Cyc. Civil Code, §§ 452a, 453.

Whole family protection for members of fraternal benefit societies.—See, ante, Act 443.

Organization and management of mutual life, health and accident insurance corporations.—See Kerr's Cyc. Civil Code, §§ 437, et seq.

CHAPTER 27.

BENICIA.

References: Incorporation, see, post, Act 3094, note.

Quieting title to certain lands in, see tit. "Titles."

CONTENTS OF CHAPTER.

ACT 450. CESSION OF WATER FRONT TO BENICIA.

CESSION OF WATER FRONT.

ACT 450—An act to cede certain property to the city of Benicia. (Approved May 3, 1855.)

History: Approved May 3, 1855, Stats. 1855, p. 239.

Title to certain lands in Benicia.—See act of 1859, p. 314. This and other acts affecting title to lands in Benicia are referred to in

Shirley v. City of Benicia, 118 Cal. 344, 50 Pac. 404.

Water front.—This act ceded to Benicia its entire water front.

CHAPTER 28.

BERKELEY.

CONTENTS OF CHAPTER.

ACT 456. FREEHOLDERS' CHARTER.

457. CREATING JUSTICE COURT.

458. GRANTING SALT MARSH AND TIDE LANDS.

FREEHOLDERS' CHARTER.

ACT 456—Freeholders' Charter of the city of Berkeley.

History: Adopted March 4, 1909, Stats. 1909, p. 1208. Amended January 29, 1913, Stats. 1913, p. 1502; January 27, 1917, Stats. 1917, p. 1814. Superseded the charter approved at the election of February 26, 1895. Adopted March 5, 1895, Stats. 1895, p. 406. Amended January 25, 1905, Stats. 1905, p. 829; which, in turn, superseded the act of incorporation of April 1, 1878, Stats. 1877-78, p. 888.

1. **Conflict with general law.**—The charter of 1895, having been adopted prior to the amendment of 1896 relieving provisions of freeholder charters in "municipal affairs" from the control of general laws, was subject to general laws, and a provision in that charter empowering the trustees to pass an ordinance fixing a penalty for the sale of liquor without a license, in conflict with the Penal Code, was ineffective and invalid, and its invalidity was not cured by the amendment.—*Ex parte Sweetman*, 5 Cal. App. 577, 90 Pac. 1069.

1a. **Constitutionality — Special law.**—Section 19, article V, of the Berkeley charter, is not a special law within the meaning of subdivision 28, section 25, article IV of the constitution.—*Stern v. City Council of Berkeley*, 25 Cal. App. 685, 145 Pac. 167.

2. **Inferior courts.**—In view of sections 1 and 13, article VI, and sections 15 and 16, article IV, of the constitution, inferior courts can not be established by a freeholders charter, approved by mere resolution, but requires an act of legislation, and an attempt to establish such courts and fix their jurisdiction without such formal act of legislation is unconstitutional.—*People v. Toal*, 85 Cal. 333, 24 Pac. 603, followed in *Miner v. Justice's Court of Berkeley*, 121 Cal. 264, 53 Pac. 795.

See, also, *Ex parte Fedderurtz*, 6 Cal. Unrep. 562, 62 Pac. 935.

3. **Justices of the peace.**—Provisions as to justices of the peace in cities of less than 10,000 inhabitants, in special charters granted prior to the adoption of the present constitution were not repealed by that in-

strument, nor by subsequent general legislation after its adoption.—*Ex parte Armstrong*, 84 Cal. 655, 24 Pac. 598.

4. **Reorganization.**—An attempt was made to reorganize under the general law of 1883, but the attempt failed, although the city exercised the franchise of a city of the fifth class under the abortive reorganization for some months.—See *People v. Berkeley*, 102 Cal. 298, 23 L. R. A. 838, 36 Pac. 591.

5. **School director** of the city of Berkeley is a municipal officer, whether the duties of his office are prescribed by the charter of general law, and the payment of his compensation is a "municipal affair."—*Stern v. City Council of Berkeley*, 25 Cal. App. 685, 145 Pac. 167.

6. **Same — Compensation — Conflict with general law.**—There is no general law with respect to compensating school directors, and no general law, limiting or restricting the right of a freeholder charter city to make provision for such compensation, and section 19, article V of the Berkeley charter, is valid, as in furtherance of the school system.—*Stern v. City Council of Berkeley*, 25 Cal. App. 685, 145 Pac. 167.

7. **Same — Compensation.**—Section 19, article V, of the Berkeley charter, providing for compensation of school directors, is not invalid under subdivision 2, section 8½, article XI, of the constitution, as it existed prior to the 1911 amendment, although that section of the constitution prior to such amendment contained no express provision for such compensation.—*Stern v. City Council of Berkeley*, 25 Cal. App. 685, 145 Pac. 167.

CREATING JUSTICE COURT.

ACT 457—An act to create a court in and for the town of Berkeley, state of California. (Approved March 27, 1895. Stats. 1895, p. 204.)

History: Approved March 27, 1895, Stats. 1895, p. 204.

Justice court in Berkeley—Unconstitutional.—This act created a justice court in Berkeley. It was declared unconstitutional

in *Miner v. Justice's Court*, 121 Cal. 264, 53 Pac. 795.

See, also, *Ex parte Armstrong*, 84 Cal. 655, 24 Pac. 598.

GRANT OF SALT MARSH AND TIDE LANDS.

ACT 458—An act granting to the city of Berkeley the salt marsh, tide and submerged lands of the state of California, including the right to wharf out therefrom to the city of Berkeley, and regulating the management, use and control thereof.

History: Approved June 11, 1913. In effect August 10, 1913. Stats. 1913, p. 705. Amended May 27, 1915. In effect August 8, 1915, Stats. 1915, p. 901; May 24, 1917. In effect July 27, 1917. Stats. 1917, p. 915; May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1089.

Tidelands granted to Berkeley.

§ 1. There is hereby granted to the city of Berkeley, a municipal corporation of the state of California, and to its successors, all the right, title and interest of the state of California, held by said state by virtue of its sovereignty in and to all tidelands and submerged lands, whether filled or unfilled, which are included within the present boundaries of the city of Berkeley, to be forever held by said city and by its successors in trust for the use and purposes, and upon the express conditions following, to wit:

Use of lands. Use of lands, city of Berkeley.

(a) That said lands shall be used by said city and its successors, only for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said city or its successors shall not, at any time, grant, convey, give or alien said lands or any part thereof, to any individual, firm or corporation, for any purposes whatever; provided, that said city or its successors may grant franchises thereon, for limited periods, but in no event exceeding fifty years for wharves and other public uses and purposes, and may lease said lands or any part thereof for limited periods, but in no event exceeding fifty years, for the purposes consistent with the trusts upon which said lands are held by the state of California, and with the requirements of commerce or navigation at said harbor.

Improvement of harbor.

(b) That said harbor shall be improved by said city without expense to the state, and shall always remain a public harbor for all purposes of commerce and navigation, and the state of California shall have at all times the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands, or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the state of California.

Rates, tolls, etc.

(c) That in the management, conduct or operation of said harbor, or any of the utilities, structures or appliances mentioned in paragraph (a), no discrimination in rates, tolls, or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or its successors.

Right to fish reserved to people.

(d) There is hereby reserved, however, in the people of the state of California the absolute right to fish in all the waters of said harbor, with the right of convenient access to said waters over said land for said purpose. [Amendment of May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1089.]

This section was also amended May 27, 1915, Stats. 1915, p. 902.

§ 2. [Repealed May 24, 1917. In effect July 27, 1917. Stats. 1917, p. 915.]

This section was amended May 27, 1915, Stats. 1915, p. 903.

BEVERLY HILLS.

See Act 3094, note.

BIG TREES.

See tits. "Growing Timber"; "Yosemite Valley."

BIGGS.

See Act 3094, note.

BILLS AND NOTES.

See Kerr's Cyc. Civil Code, §§ 3082, et seq.

CHAPTER 29.

BIRD AND ARBOR DAY.

CONTENTS OF CHAPTER.

ACT 471. CONSERVATION, BIRD, AND ARBOR DAY ACT.

CONSERVATION, BIRD AND ARBOR DAY ACT.

ACT 471—An act to establish a conservation, bird and arbor day, and to repeal an act entitled, "An act to establish a bird and arbor day," approved March 3, 1909.

History: Approved May 22, 1915. In effect August 8, 1915. Stats. 1915, p. 777. Prior act repealed: Act of March 3, 1909. Stats. 1909, p. 134.

Bird and arbor day. Suitable exercises for schools.

§ 1. March seventh of each year, being the anniversary of the birthday of Luther Burbank, is hereby set apart and designated conservation, bird and arbor day. All public schools and educational institutions are directed to observe conservation, bird and arbor day, not as a holiday, but by including in the school work of the day suitable exercises having for their object instruction as to the economic value of birds and trees, and the promotion of a spirit of protection toward them, and as to the economic value of natural resources, and the desirability of their conservation.

§ 2. An act entitled, "An act to establish a bird and arbor day," approved March 3, 1909, is hereby repealed.

BISHOP.

See Act 3094, note.

CHAPTER 29a.

BLIND.

References: See tit. "Home for Adult Blind."

CONTENTS OF CHAPTER.

ACT 472. COUNTY RELIEF FUND FOR NEEDY BLIND.

COUNTY RELIEF FUND.

ACT 472—An act to provide a relief fund in the several counties or any city and county of the state for the needy blind, providing for and prescribing the powers and duties of boards of supervisors in every county or city and county.

History: Approved May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 188.

Tax for relief of needy blind.

§ 1. The boards of supervisors of the several counties and cities and counties in this state are hereby authorized and permitted to levy, in addition to the taxes now levied by law for other purposes than those herein provided, a tax not exceeding two-tenths of one mill per dollar on the assessed value of the property of their respective counties and cities and counties to be levied and collected as now provided by law for the assessment and collection of taxes, for the purpose of creating a fund for the relief of the needy blind of their respective counties and cities and counties.

Needy blind person defined.

§ 2. A needy blind person shall be construed to mean any person who, by reason of loss of eyesight, is unable to provide himself with the necessities of life, and who has not sufficient means of his own to enable him to maintain himself.

Residence qualification.

§ 3. A needy blind person, in order to receive relief under this act, must be a resident of this state at the time this act takes effect, or become blind while a resident of this state, and shall be a resident of the county for one year next preceding the date of the application provided for herein.

Claims for relief. Amount.

§ 4. All persons claiming relief under this act shall file, at least ten days prior to action on said claims, with the board of supervisors a duly verified statement of the facts bringing him within the provisions of this act. The list of claims shall be filed in the order of filing in a book furnished for that purpose by the board of supervisors, and which record shall be open to the public. No certificate of qualification for drawing money under this act shall ever be granted until the board of supervisors shall be satisfied, from the evidence of at least two reputable residents of said county and city and county, one of whom shall be a duly and regularly licensed and practicing physician, that they know the applicant to be blind, and that he has the residential qualifications to entitle him to the relief asked for, which evidence shall be in writing, subscribed to by such witnesses, subject to the right of cross-examination by the board of supervisors or other persons. If the board of supervisors is satisfied upon such testimony that the applicant is entitled to relief hereunder, they shall issue an order therefor, in such sum as they find needed, not to exceed one hundred fifty dollars per annum, to be paid quarterly out of the fund herein provided for on the warrant of the county auditor, or auditor of the city and county, and such relief shall be in lieu of any other relief of a public nature.

Annual examination of blind list.

§ 5. The board of supervisors shall annually examine as to the qualifications of any one on the blind list and increase or decrease the allowance within the statutory limits, or if said board is not satisfied that the person so on the list is qualified to draw any money said board shall entirely remove him from the list and shall forthwith notify the auditor of such action.

Examination of applicants.

§ 6. The board of supervisors of every county and city and county shall meet within thirty days after this act takes effect and thereafter annually on such days as the board shall select and at such times as may be necessary and examine carefully the list of applications filed hereunder.

Transfer of money from poor fund.

§ 7. The board of supervisors of every county or city and county are hereby authorized and directed to transfer from any money in the poor fund of any county to the blind fund, herein provided, for the year 1919, sufficient money to carry out the purposes of this act.

False statement.

§ 8. Any person who shall make a false statement in order to secure for himself or another, the benefit herein provided, shall be guilty of perjury.

Rules and regulations.

§ 9. It is hereby declared to be the duty of the board of supervisors in each county and city and county to adopt such rules, regulations and ordinances necessary to carry into effect the purposes, aims and objects of this act. It shall be competent for the board of supervisors mentioned herein to appoint such person or persons to act for such board in carrying out the object or objects and purposes of this act.

CHAPTER 29b.

BLUE BOOK.

CONTENTS OF CHAPTER.

ACT 473. COMPILING, PUBLISHING, AND DISTRIBUTING.

COMPILATION, PUBLISHING AND DISTRIBUTION.

ACT 473—An act to provide for the compilation, printing, binding, publishing and distribution of a legislative manual and state blue book, or roster, and repealing conflicting acts.

History: Approved February 13, 1903, Stats. 1903, p. 19. Prior acts: March 31, 1891, Stats. 1891, p. 454. Repealed by Act of March 23, 1893, Stats. 1893, p. 218, which was repealed by the present act.

“Blue book.”

§ 1. The secretary of state is hereby authorized to compile, or cause to be compiled, published and distributed seven thousand five hundred copies of a legislative manual, state blue book, or roster. The volume shall be ready to distribute at the beginning of the next fiscal year, and at the same time biennially thereafter.

Distribution.

§ 2. The volumes shall be distributed as follows:

To the governor of the state, fifty copies.

To each elective state officer, senator and member of the assembly, twenty copies.

To the clerk, sheriff and district attorney of every county of the state, one copy each.

To every judge of the supreme court, supreme court commissioners, and judges of the superior court, one copy each.

To the mayor of every city, or chairman of its board of trustees in this state, one copy each.

To the state library, twenty copies.

To every public and every law library in this state, one copy each.

To the governor and secretary of state of every state in the union, one copy each.

To the congressional library at Washington, D. C., five copies.

To each high school in this state, one copy.

The remainder of the volumes shall be distributed at discretion by the secretary of state.

Acts repealed.

§ 3. The acts of March thirty-first, eighteen hundred and ninety-one, and March twenty-third, eighteen hundred and ninety-three, on same subject, and all other acts in conflict with the provisions of this act, are hereby repealed.

§ 4. This act shall take effect from and after its passage.

BLUE LAKE.

See Act 3094, note.

“BLUE SKY LAW.”

See tit. “Investment Companies.”

BLYTHE.

See Act 3094, note.

CHAPTER 30.

B'NAI B'RITH.

CONTENTS OF CHAPTER.

ACT 477. PERMISSION TO INCORPORATE UNDER THE ACT OF 1853.

PERMISSION TO INCORPORATE.

ACT 477—An act concerning the Independent Order of B'nai B'rith (Sons of the Covenant).

History: Approved March 25, 1868, Stats. 1867-68, p. 310.

This act extended to B'nai B'rith all May 18, 1853, relating to the formation and rights, privileges and immunities of the act management of corporations.

BOARD OF AGRICULTURE.

See tit. "Agriculture."

BOARD OF AUTHORIZATION.

See tit. "Taxation."

BOARD OF CHARITIES AND CORRECTIONS.

See tit. "Charities and Corrections."

BOARD OF COLTON HALL TRUSTEES.

See tit. "Colton Hall."

BOARD OF CONTROL.

See Kerr's Cyc. Political Code, §§ 654, et seq.

BOARD OF ELECTION COMMISSIONERS.

See tit. "Elections"; Kerr's Cyc. Political Code, §§ 1075, et seq.

BOARD OF EQUALIZATION.

See tit. "Taxation"; Kerr's Cyc. Political Code, tit. "Taxation."

BOARD OF EXAMINERS.

See Kerr's Cyc. Political Code, §§ 654, et seq.

BOARD OF FORESTRY.

See tit. "Forestry."

BOARD OF FREEHOLDERS.

See tits. "Elections"; "Municipal Corporations."

BOARD OF HARBOR COMMISSIONERS.

See tit. "Harbor Commissioners"; Kerr's Cyc. Political Code, tit. "Harbor Commissioners."

BOARD OF MEDICAL EXAMINERS.

See tit. "Medicine."

BOARD OF PHARMACY.

See tit. "Pharmacy."

BOARD OF REGENTS.

See tit. "University of California"; Kerr's Cyc. Political Code, §§ 1425, et seq.

BOARDS OF EDUCATION.

See tit. "Schools"; Kerr's Cyc. Political Code, §§ 1606, et seq.

BOARDS OF EXAMINATION.

See Kerr's Cyc. Political Code, §§ 1667, 1776, 1788-1792; Kerr's Cyc. Code Civil Procedure, § 276a.

BOARDS OF HEALTH.

See tit. "Public Health"; Kerr's Cyc. Political Code, §§ 2978, et seq.

BOARDS OF TRADE.

See "Chambers of Commerce."

CHAPTER 31.**BONDS.**

References: Highway bonds, public building bonds, harbor bonds, and other particular issues, see particular title.

Municipal bonds, street improvement bonds, irrigation and other district bonds, see particular title.

School bonds, see Kerr's Cyc. Political Code, §§ 1880, et seq.

Seawall bonds, see tit. "Harbor Commissioner."

Surety, official and judicial bonds, see Kerr's Cyc. Codes, particular title.

CONTENTS OF CHAPTER.**I. BONDS, SURETY.****II. BONDS, MONEY SECURITIES.****I. BONDS, SURETY.**

ACT 485. COST OF TRUST BONDS CHARGEABLE TO TRUST ESTATE.

487. COST OF OFFICIAL BONDS, CHARGEABLE TO STATE, COUNTIES, CITIES, CITIES AND COUNTIES.

488. DEPOSITS OF MONEYS AND ASSETS HELD BY BONDED FIDUCIARIES.

COST OF TRUST BONDS.

ACT 485—An act making the cost of certain bonds of receivers, assignees, trustees, guardians, administrators and executors chargeable to a certain extent against the trust estate.

History: Approved March 20, 1905, Stats. 1905, p. 477.

§ 1. Any receiver, assignee, trustee, guardian, administrator or executor required by law or by the order of court to give a bond as such, shall be allowed as part of the lawful expenses of executing his trust, the sum paid for such bond, not exceeding, however, one-half ($\frac{1}{2}$) of one (1) per cent of the amount of such bond, for each year that the same shall remain in force.

Construed.—Not retroactive to the impairment of vested rights.—Estate of Richmond, 9 Cal. App. 402, 99 Pac. 554.

Bail and other bonds.—See Kerr's Cyc. Penal Code, tits. "Bail," "Arrest," "Undertaking," "Bond."

Bonds of officers, in general.—See Kerr's Cyc. Political Code, §§ 947, et seq.

Corporations as sureties on bonds.—See Kerr's Cyc. Code Civil Procedure, §§ 1056,

1057; Kerr's Cyc. Political Code, § 955, subdivision 4.

Judicial bonds and undertakings.—See Kerr's Cyc. Code Civil Procedure, tits. "Bonds," "Surety Companies," "Undertakings."

Suretyship and guaranty, and indemnity, in general.—See Kerr's Cyc. Civil Code, tits. "Suretyship," "Guaranty," "Indemnity."

COST OF OFFICIAL BONDS.

ACT 487—An act to provide for the payment by the state, or counties, or cities, or cities and counties, of the premium or charge on official bonds when given by surety companies.

History: Approved March 20, 1903, Stats. 1903, p. 476.

Premium on official bonds a public charge.

§ 1. The premium or charge for bonds given by surety companies for state officials, county officials, city officials, or city and county officials, shall be paid by the state, county, city, or city and county respectively; provided, however, that no premium or charge shall exceed one-half of one per centum per annum on the amount of such bond; and provided, further, that this act shall not apply to notaries public.

§ 2. This act shall take effect from and after its passage.

1. Scope of act—"Surety companies."—The phrase "surety companies" as used in the act was intended to include any corporation organized for the purpose of carrying on the business of becoming surety on bonds and undertakings, which is authorized by sections 1056 and 1057, Code of Civil Procedure, and subdivision 4 of section 955, Political Code, to become surety on bonds and undertakings required by law.—County of San Luis Obispo v. Murphy, 162 Cal. 588, 590, Ann. Cas. 1913D, 712, 123 Pac. 808.

2. Constitutionality — Corporations as sureties on bonds.—Act authorizing held constitutional.—Cramer v. Tittle, 72 Cal. 12, 12 Pac. 869.

2. Same. — Act held constitutional.—County of San Luis Obispo v. Murphy, 162 Cal. 588, 590, Ann. Cas. 1913D, 712, 123 Pac. 808; County of San Luis Obispo v. Smith, 21 Cal. App. 55, 130 Pac. 858.

3. Same.—Presumption in support of constitutionality.—It will not be assumed for the purpose of nullifying the act that it was intended to discriminate against personal sureties or in favor of certain officers; and if a reasonable ground can be conceived for confining the operation of the act to bonds

given by surety companies, the courts must assume in support of the constitutionality of the act, that the classification was made on that ground.—County of San Luis Obispo v. Murphy, 162 Cal. 588, 591, Ann. Cas. 1913D, 712, 123 Pac. 808.

4. Same.—The act is not violative of section 11, article I, or of section 21, article II, or subdivision 9, section 25 of article IV, of the constitution.—County of San Luis Obispo v. Murphy, 162 Cal. 588, 590, Ann. Cas. 1913D, 712, 123 Pac. 808.

Corporations as sureties on bonds.—See Kerr's Cyc. Code Civil Procedure, §§ 1056, 1057; Kerr's Cyc. Political Code, § 955, subdv. 4.

Bail and other bonds.—See Kerr's Cyc. Penal Code, tits. "Arrest," "Bail," "Bond," "Undertaking."

Official bonds in general.—See Kerr's Cyc. Political Code, §§ 947, et seq.

Suretyship, guaranty and indemnity, in general.—See Kerr's Cyc. Civil Code, tits. "Suretyship," "Guaranty," "Indemnity."

Judicial bonds and undertakings.—See Kerr's Cyc. Code Civil Procedure, tits. "Bonds," "Surety Companies," "Undertakings."

DEPOSIT OF FUNDS HELD BY BONDED FIDUCIARIES.

ACT 488—An act relating to the deposit of moneys and assets held by bonded fiduciaries providing for agreements between surety and fiduciary as to place of deposit of such funds and assets.

History: Approved June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1438.

Deposit of money held by bonded fiduciaries.

§ 1. It shall be lawful for any party of whom a bond undertaking or other obligation is required to agree with his surety or sureties for the deposit of any or all moneys and assets for which such surety or sureties are or may be held responsible, with a bank, savings bank, safe deposit or trust company, authorized by law to do business as such, or other depository approved by the court, or a judge thereof, if such deposit is otherwise proper, for the safe-keeping thereof, and in such manner as to prevent the withdrawal of such money and assets or any part thereof, without the written consent of such surety or sureties, or an order of court, or a judge thereof, made on such notice to such surety or sureties as such court or judge may direct; provided, however, that such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of the said bond.

II. BONDS, MONEY SECURITIES.

ACT 493. STATE BONDS.

494. STATE FUNDED DEBT BOND.

495. STATE FUNDED INDEBTEDNESS, PAYMENT OF LOAN COMMISSIONERS.

501. COUNTY BONDS.

514. REGISTRATION OF BONDS.

515. STATE FISCAL AGENCY.

516. STATE BUILDING BONDS—SACRAMENTO.

518. FARM LOAN BONDS, LEGAL INVESTMENT.

519. SALE OF STATE LANDS, COMMISSION ON.

STATE BONDS.

ACT 493—An act to provide for the payment of interest on the outstanding bonds of the state held in trust for the university fund and the state school fund.

History: Approved March 3, 1893, Stats. 1893, p. 75. Amended March 11, 1899, Stats. 1899, p. 93. The amending act also amended the title.

The public debt.—Acts relating to the public debt, the issue of bonds to liquidate the same, and the issue of refunding bonds, when required or appropriate, are for the most part obsolete, having accomplished their purposes, and the debts and bonds having for the most part, or entirely, paid or taken up by the state for university or school endowment purposes. The first act was passed January 5, 1850, and was followed by two more acts by the legislature of that year. Practically every legislature from the first to the eighteenth session passed one or more acts bearing upon the subject. The legislature of 1871-72, which adopted the codes expressly continued all these acts in force. They dealt with many expenditures, expenses of the state government, civil war loan bonds, Indian war loan bonds, state capitol bonds, university construction bonds, railroad aid bonds, etc.

The most important of these acts were the refunding acts of April 28, 1857 (Stats. 1857, p. 300), April 30, 1860 (Stats. 1860, p. 352), and April 2, 1870 (Stats. 1869-70). The first authorized an issue of \$3,900,000, seven per cent, twenty-year bonds, for the purpose of liquidating, funding and paying outstanding claims against the state. The second authorized the issue of \$200,000, seven per cent, twenty-year bonds to take up outstanding bonds of the issues of 1852, 1853, 1855 and 1856, and certain outstanding warrants and unpaid claims. The third authorized the issuance of twenty-year bonds, not exceeding three million and

seven hundred thousand dollars. The proceeds from this bond issue were used for paying the prior outstanding bonds issued under acts of 1857 and 1860 respectively, and also outstanding soldiers' relief and soldiers' bounty bonds.—See Bickerdike v. State, 144 Cal. 681, 695, 78 Pac. 270.

Same—By the act of December 22, 1873, Stats. 1873-4, 6, ch. IX, the state treasurer and governor were authorized to dispose of sixty-five thousand dollars of United States five-twenty bonds then being held for the benefit of the University of California, and to purchase therewith state-funded-debt bonds; and by Stats. 1873-4, 235, ch. CLXXI, the loan commissioners created by the before-mentioned act of 1869-70, were empowered to dispose of such bonds as were authorized to be issued under that act, and not exchanged for other bonds, or purchased for the university and school funds, in any manner they might deem best. It is understood that these are the bonds authorized to be purchased (and that they were purchased) under the above cited act of 1873-4, 6, with funds arising from the sale of United States five-twenty bonds. These are the bonds referred to in the act which precedes this note.

The other outstanding bonds of the state of the issue of 1873-4, specifically referred to by number, were taken up under the act of 1893. See, post, Act 497.

As to state capitol bonds, see, post, Act 712.

STATE FUNDED DEBT.

ACT 494—An act to provide for the redemption and payment of certain funded debt bonds of this state, together with interest thereon, making an appropriation therefor, and authorizing the state controller and state treasurer to transfer the sum of one hundred and twenty thousand dollars from the general fund to the interest and sinking fund to carry out the provisions of this act. [Approved February 27, 1893. Stats. 1893, p. 49.]

History: Approved February 27, 1893, Stats. 1893, p. 49.

Public debt.—See note to ante Act 493.

LOAN COMMISSIONERS STATE FUNDED DEBT.

ACT 495—An act to provide for the payment of funded indebtedness of the state of California, and to contract a funded debt for that purpose. [Approved March 31, 1891. Stats. 1891, p. 210.]

History: Approved March 31, 1891, Stats. 1891, p. 210.

Loan commissioners.—This act created a board of commissioners for the purpose indicated, and provided for the sale and redemption of the bonds.

Public debt.—See note to ante, Act 493.

COUNTY BONDS.

ACT 501—An act to authorize the several counties of this state to create a bonded indebtedness for certain purposes.

History: Approved March 19, 1889, Stats. 1889, p. 348.

Issuance of bonds to pay county indebtedness, not created by law, to be submitted to a vote.

§ 1. Whenever it shall appear to the satisfaction of the board of supervisors of any county of this state that said county is justly indebted to any person or persons for money received into the treasury of said county, and used by said county, and which said indebtedness at the time of its creation was not authorized by law, they shall, by ordinance, declare that said county is justly indebted to the person or persons named in said ordinance, in a sum named therein, and that the question of issuing bonds in the sum therein named, for the purpose of paying said debt, shall be submitted to a vote of the legal voters of said county.

Notice of election.

§ 2. The supervisors of said county shall thereupon publish a notice calling an election to be held in said county, submitting to the voters of said county the question whether said bonds shall be issued or not. The notice shall state the amount of bonds to be issued, the purpose for which they are issued; said notice shall be published, and the election held as provided by section thirty-seven of an act of the legislature of the state of California, entitled "an act to establish a uniform system of county and township governments," approved March fourteen, eighteen hundred and eighty-three.

Return.

§ 3. If upon return of the election it shall appear that two-thirds of all the voters voting at such election have voted in favor of issuing said bonds, the supervisors are required to issue bonds in the sum named in the notice of election, payable to the creditors named in said ordinance; said bonds shall bear interest at the rate of five per cent per annum, and shall be payable at such time as the board of supervisors shall order, not exceeding twenty years from date. They shall be signed by the chairman of the board of supervisors and county clerk.

Tax levy to pay interest.

§ 4. It shall be the duty of the board of supervisors each year to levy a tax sufficient to pay the annual interest on said bonds, and to pay the principal as the same shall become due.

This act is to take effect from and after its passage.

County government act of 1897.—Compare this act with subdivision 13, § 25, county government act of 1897, and the superseding

provision in the code, Kerr's Cyc. Political Code, §§ 4088, 4088a.

REGISTRATION OF BONDS.

ACT 514—An act to provide for the registration of bonds issued by the state of California, or any county, city and county, municipal corporation, or other public corporation.

History: Approved April 14, 1913. In effect August 10, 1913. Stats. 1913, p. 23.

Registration of bonds. Transfer of bonds. Statement.

§ 1. Whenever the owner of any coupon bond, or of any bond payable to bearer, already issued or hereafter issued by the state of California, or any county, city and county, municipal corporation, or other public corporation, now or hereafter existing in this state, shall present any such bond to the treasurer or other officer of such corporation, who by law performs the duties of treasurer, with a request for the conversion of such bond into a registered bond, such treasurer, or such other officer, shall cut off and cancel the coupons of any such coupon bond so presented, and shall stamp, print, or write upon such coupon bond, or such other bond payable to bearer, so presented, either upon the back or upon the face thereof, as may be convenient, a statement to the effect that the said bond is registered in the name of the owner, and that thereafter the interest and principal of said bond are payable to the registered owner. Thereafter, and from time to time any such bond may be transferred by such registered owner in person, or by attorney duly authorized on presentation of such bond to such treasurer, or such other officer, and the bond be again registered as before, a similar statement being stamped, printed or written upon any such bond may be in substantially the following form:

(Date, giving month, year, and day.)

This bond is registered pursuant to the statute in such cases made and provided in the name of (Here insert name of owner) and the interest and principal thereof are hereafter payable to such owner.

.....
Treasurer (or such other officer.)

After any bond shall have been registered as aforesaid, the principal and interest of such bond shall be payable to the registered owner. Such treasurer, or such other officer, shall keep in his office a book or books which shall at all times show what bonds are registered and in whose names respectively.

Act applicable to all issues.

§ 2. Whenever under any statute of this state or any charter of any municipal corporation in this state, any bonds are issued, whether the proceedings for the issuance of such bonds have been had in whole or in part prior to the enactment of this statute, or whether the same have been had in whole or in part after the enactment of this statute, such bonds may be issued either in the form of coupon bonds, or in the form of registered bonds, or some in the form of coupon bonds, and some in the form of registered bonds, as has been or hereafter may be provided in the proceedings for the issuance of such bonds and notwithstanding any language or provision to the contrary contained in any such statute or charter authorizing the issuance of the bonds, or in any other law of the state. The provisions of section one of this act shall apply to coupon bonds so issued, as well as to other coupon bonds, or other bonds payable to bearer.

Fee of registering.

§ 3. The state treasurer or other treasurer or official performing the duties of treasurer shall be entitled for so registering a bond or bonds to charge and collect a fee of fifty cents for every \$1,000.00 of the par value thereof for the purposes of providing the additional supplies and clerical help necessary in complying with this act.

STATE FISCAL AGENCY.

ACT 515—An act to provide for the establishment of a fiscal agency for the state of California in the city of New York, in the state of New York, and prescribing the duties of such fiscal agency and the duties of the public officers in relation thereto.

History: Approved June 6, 1913. In effect immediately. Stats. 1913, p. 675.

Designation of fiscal agency in New York City.

§ 1. The governor of the state of California is, upon the recommendation of the state treasurer, authorized to designate some well known and responsible banking firm or association in the city of New York, or some well known and responsible incorporated banking institution in the city of New York in the state of New York, having a paid up capital and surplus of not less than one million dollars (\$1,000,000) as the fiscal agency for the payment of bonds and coupons issued by the state of California. Such banking firm or association, or incorporated banking institution designated by the governor as the fiscal agency under the terms of this act, shall thereafter continue to be the said fiscal agency until the like designation of another banking firm, association or incorporated institution as such fiscal agency. Any banking firm or association, or incorporated banking institution so designated as such fiscal agency, may be required by the state treasurer, at his discretion, and subject to the approval of the governor, to execute a bond or bonds, to the state of California, conditioned for the faithful performance of its duties as such fiscal agency, in such amount or amounts as may from time to time be fixed by the state treasurer with the approval of the governor.

Bonds payable at agency.

§ 2. Any and all bonds and coupons heretofore issued by the state of California, or hereafter to be issued, which by their terms are made payable at the office of the state treasurer, without further designation of a place of payment, shall at the option of the holder thereof also be payable at the fiscal agency to be designated by the governor under the terms of this act.

Remittances to agency.

§ 3. The controller of the state of California shall draw his warrant on the treasury for, and the state treasurer shall, out of any funds in the treasury available and appropriated for the payment of the principal and interest of the said debt, transmit or remit to the said fiscal agency, in the form of check or draft payable in the said city of New York, at such times as may be arranged by the state treasurer with such fiscal agency, subject to the approval of the governor, as hereinafter provided, sufficient funds out of any funds in the hands of such state treasurer, or other officer, applicable to such purposes for the redemption of such bonds and coupons; provided, however, that the time when such funds shall be transmitted or remitted to such fiscal agency shall be not less than thirty days before the maturity of any such bonds or coupons. Express charges and postage shall be a proper charge against the state and shall be paid said fiscal agency and be allowed the state treasurer or other officer in his settlement.

Receipt for funds sent.

§ 4. On receipt of any funds by the said fiscal agency, it shall be the duty of such agency to notify the officer from whom received of the receipt thereof and immediately on the payment of such bonds and coupons for which funds were transmitted or remitted said bonds and coupons shall be canceled and returned to the state treasurer or officer from whom such funds were received. The fiscal agency is hereby authorized to redeem such bonds and coupons when duly presented to it by the holder, whether the certificate herein provided for has been attached to said bonds or not.

Certificate attached to bonds.

§ 5. The state treasurer and any other officers of the state authorized to sell and deliver any bonds of the state, are hereby authorized at the time of delivery to the purchaser to attach to any bonds of the state which have been or shall be authorized to be issued by the state, whether such bonds have been heretofore signed, countersigned and sealed, or shall hereafter be signed, countersigned and sealed, a copy of this act and a certificate in the following terms: "Pursuant to the above act,
in the city of New York, state of New York, has been designated as the fiscal agency of the state of California in said city, to continue as such until the designation of another fiscal agency in said city. Attached before issuance to state of California.....
bond, dated, 19...., No.....

Sacramento, California,, 19....

.....
State Treasurer."

Notice of designation of agency to be published.

§ 6. It shall be the duty of the secretary of state immediately after the passage of this act and the designation of the fiscal agency provided herein, to publish a notice of the same in some paper of general circulation in the city of Sacramento, in the state of California, and in the said city of New York, in the state of New York, once a week for two weeks and thereafter all bonds and coupons of the state which are by their terms payable at the office of the state treasurer, shall also be payable at the said fiscal agency at the option of the holder.

Treasurer authorized to act.

§ 7. The state treasurer, subject to the approval of the governor, is hereby authorized to do all acts and things necessary or proper to carry the provisions of this act into effect, including among other things the making of such arrangements with the fiscal agency as may be deemed necessary including the compensation, if any, of such agency for services rendered under this act, and the time when funds for the redemption of bonds and coupons shall be transmitted or remitted to such fiscal agency.

Urgency measure.

§ 8. This act is hereby declared to be an urgency measure within the meaning of section 1, article IV, of the constitution and is deemed necessary for the immediate preservation of the public peace, health and safety. The following is a statement of the facts constituting such necessity: It is necessary for the purpose of promptly and immediately supplying funds for the construction and completion of highways and harbor improvements which have been authorized by the legislature and ratified by a vote of the people and have been begun, that this act be passed and that provision for the payment of bonds and coupons of the state be made in conformity with the requirements of financial usage and custom by providing for the payment thereof at a place and in a manner which will place the said bonds and coupons on an equality with the bonds of other states and of public bodies. The necessity of immediately obtaining and furnishing funds for said purpose to prevent loss to the state and to secure the completion without unnecessary delay of the said improvements for the preservation of the public peace, health and safety require that this act shall take immediate effect.

STATE BUILDING BONDS—SACRAMENTO.

ACT 516—An act to provide for the issuance and sale of state bonds to be known as "state building bonds," to provide for the erection and equipment of state buildings in the city of Sacramento for state purposes, creating a commission to determine the amount to be expended for furnishing and equipping said buildings and accepting a suitable site, creating a sinking and interest fund for the payment of interest on said bonds and the redemption of the same, making an appropriation therefor, making an appropriation of five thousand dollars for the expenses of printing and lithographing said bonds and providing for the submission of this act to a vote of the people.

History: Approved June 5, 1913. In effect August 10, 1913. Stats. 1913, p. 389.

Bonds for state buildings. Three million dollars. Interest. Run fifty years. How signed.

§ 1. For the purpose of creating and providing a fund for the indebtedness hereby authorized to be incurred, as hereinafter provided, the state treasurer shall immediately after the issuance of the proclamation of the governor, provided for in section ten hereof, prepare six thousand suitable bonds of the state of California, in the denomination of five hundred dollars each. The whole issue of said bonds shall not exceed the sum of three million dollars, and said bonds shall bear interest at the rate of four per centum per annum from the date of issuance thereof, and both principal and interest shall be payable in gold coin of the present standard of value, and they shall be payable at the office of the state treasurer, at the expiration of fifty years from their date. Said bonds shall bear date the second day of July, 1915, and shall be payable on the second day of July, 1965. The interest accruing on such of said bonds as are sold shall be due and payable at the office of the state treasurer on the second day of January and on the second day of July of each year after the sale of the same. At the expiration of fifty years from the date of said bonds all bonds sold shall cease to bear interest, and the state treasurer shall call in, forthwith pay and cancel the same out of the moneys in the sinking and interest fund provided for in this act. All bonds issued shall be signed by the governor, and countersigned by the controller, and shall be endorsed by the state treasurer, and the said bonds shall be so signed, countersigned, and endorsed by the officers who are in office on the second day of July, 1915, and each of said bonds shall have the seal of the state impressed thereon. The said bonds signed, countersigned, endorsed and sealed as herein provided when sold shall be and constitute a valid and binding obligation upon the state of California, though the sale thereof be made at a date or dates after the person signing, countersigning and endorsing, or any or either of them, shall have ceased to be the incumbents of such office or offices.

Interest coupons. Accrued interest not paid to purchaser.

§ 2. Interest coupons shall be attached to each of said bonds, so that such coupons may be removed without injury to or mutilation of the bond. Said bonds shall be consecutively numbered, and shall bear the lithographed signature of the state treasurer who shall be in office on the second day of July, 1915. But no interest on any of said bonds shall be paid for any time which may intervene between the date of any of said bonds and the issue and sale thereof to a purchaser, unless such accrued interest shall have been, by the purchaser of said bond, paid to the state at the time of such sale.

Appropriation.

§ 3. The sum of five thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated to pay the expenses that may be incurred by the state treasurer in having said bonds prepared.

Sale of bonds. Published notice. Further notice. "State buildings fund."

§ 4. When the bonds authorized to be issued under this act shall be duly executed, they shall be sold by the state treasurer at public auction to the highest bidder for cash in such parcels and numbers as shall be directed by the governor of the state; but the state treasurer must reject any and all bids for said bonds, or for any of them, which shall be below the par value of said bonds so offered plus the interest which has accrued thereon between the date of sale and the last preceding interest maturity date and he may, by public announcement, at the place and time fixed for the sale, continue such sale, as to the whole of the bonds offered, or any part thereof offered, to such time and place as he may select. When a sale is continued, as hereinabove provided, no notice need be given other than the public announcement of the continuance, as hereinabove provided. Before offering any of said bonds for sale, the said treasurer shall detach therefrom all coupons which have matured before the date fixed for such sale. Due notice of the time and place of sale of all bonds must be given by said treasurer by publication in one newspaper published in the city and county of San Francisco, and also by publication in one newspaper published in the city of Oakland, and by publication in one newspaper published in the city of Los Angeles, and by publication in one newspaper published in the city of Sacramento, once a week during four weeks prior to such sale. In addition to the notice last above provided for the state treasurer must give such further notice as he may deem advisable, but the expenses and costs of such additional notice shall not exceed five hundred dollars for each sale so advertised. The costs of such publications shall be paid out of any moneys in the state treasury not otherwise appropriated on controller's warrants duly drawn for such purpose. The proceeds of the sale of such bonds, except such amount as may have been paid as accrued interest thereon, shall be forthwith paid over by said treasurer into state treasury, and must be by him kept in a separate fund, to be known and designated as the "state buildings fund" which fund is hereby established. Any and all sums which may have been paid as accrued interest shall be forthwith paid over by said treasurer into the state treasury, and must be by him kept in a separate fund to be known and designated as the "state buildings sinking and interest fund," which fund is hereby established.

To construct state buildings in Sacramento. Board. Site to be donated.

§ 5. Any and all moneys derived from the sale of the bonds provided for in this act are hereby appropriated and shall be used exclusively for the following purposes to wit:

The constructing and equipping of state buildings in the city of Sacramento, state of California, for the various officers, boards and commissions of the state, at a cost not to exceed the total sum of three million dollars, such portion of said sum of three million dollars to be used for the furnishing and equipping of said state buildings as may be determined by a board consisting of the governor, the presiding justice of the supreme court, and the state librarian, which board for such purpose is hereby created; provided, however, that no moneys provided for by this act shall be used for such purpose until a site suitable for such purpose, and acceptable to the state board last above created, shall be donated or given to the state, the title thereto to be free and clear of all liens and encumbrances; the number of buildings and their location on the lands to be donated shall be determined by said board in this subdivision of this section mentioned; the plans and specifications for said buildings, and each of the same, shall be prepared under the direction and control of said board in this subdivision of this section provided for.

Annual interest appropriation. Annual principal appropriation. State revenue to be collected.

§ 6. There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, the sum of fifty thousand (\$50,000) dollars annually, to pay the

principal of the bonds issued and sold pursuant to the provisions of this act. Said annual appropriation to continue until the same, together with the accrued interest on the investment thereof, shall be sufficient to pay the principal of said bonds at the maturity thereof.

There is also hereby appropriated from any moneys in the state treasury not otherwise appropriated such sum annually as will be necessary to pay the interest on the bonds issued and sold pursuant to the provisions of this act.

There shall be collected annually in the same manner and at the same time as other state revenue is collected such a sum, in addition to the other revenues of the state, as shall be required to pay the principal and interest on said bonds as herein provided and it is hereby made the duty of all officers charged by law with any duty in regard to the collection of said revenue to do and perform each and every act which shall be necessary to collect such additional sum.

Semi-annual transfer of funds. Investment of funds. Payment of principal and interest. Annual report of controller and treasurer.

On the 2d day of January and on the 2d day of July of each year, after the sale of any bonds as herein provided for, the state treasurer and state controller shall transfer from the moneys hereby appropriated to the state buildings sinking and interest fund, a sufficient sum of money to pay all interest due and payable on any bonds sold and said transfer shall continue to be so made up to the date of maturity of such bonds and it shall be the duty of the state treasurer to pay the same when the same falls due. On the first Monday in July of each year, after the sale of any of the bonds as in this act provided the state controller and state treasurer are hereby authorized and directed to transfer the moneys hereby appropriated for the payment of the principal of said bonds to the said state buildings sinking and interest fund. The moneys so transferred to the said state buildings sinking and interest fund for the payment of the principal of said bonds, shall be invested from time to time by the state treasurer in United States or state bonds. All interest payable on such bonds so invested shall be paid into the said state buildings sinking and interest fund and be applied and held for the payment of the principal of said bonds or reinvested in other bonds for the payment of such principal, as herein provided.

The principal of all of said bonds sold shall be paid at the time the same becomes due, from the "state buildings sinking and interest fund" and the interest on all bonds sold shall be paid at the time said interest becomes due from said fund and the faith of the state of California is hereby pledged for the payment of the principal of said bonds so sold and the interest accruing thereon.

The state controller and the state treasurer shall keep full and particular account and record of all their proceedings under this act, and they shall transmit to the governor an abstract of all such proceedings thereunder, with an annual report, to be by the governor laid before the legislature biennially; and all books and papers pertaining to the matter provided for in this act shall at all times be open to the inspection of any party interested, or the governor, or the attorney general, or a committee of either branch of the legislature, or a joint committee of both, or any citizen of the state.

Redeemed bonds destroyed.

§ 7. When the bonds provided for by this act are redeemed, the state treasurer shall mark the same canceled, and shall, in the presence of the governor destroy the same by burning the said bonds.

In effect December 31, 1914.

§ 8. This act, if adopted by the people, shall take effect on the thirty-first day of December, 1914, as to all its provisions excepting those relating to and necessary for its submission to the people, and for returning, canvassing and proclaiming the votes, and

as to said excepted provisions this act shall go into effect ninety days after the final adjournment of the session of the legislature passing the same.

Submitted to people. Ballots.

§ 9. This act shall be submitted to the people of the state of California for their ratification at the next general election to be holden in the month of November, nineteen hundred and fourteen, and all ballots at said election shall have printed thereon the words "For the state's buildings bonds" and such other designation as may be necessary to properly identify this act. In a square immediately below the square containing said words there shall be printed on said ballot the words "Against the state buildings bonds." Opposite the words "For the state buildings bonds" and "Against the state buildings bonds," there shall be left spaces in which the voters may make or stamp a cross to indicate whether they vote for or against this act, and those voting for said act shall do so by placing a cross opposite the words "For the state buildings bonds" and those voting against said act shall do so by placing a cross opposite the words "Against the state buildings bonds." The governor of this state shall include the submission of this act to the people as aforesaid, in his proclamation calling for said general election.

Canvass of votes.

§ 10. The votes cast for or against this act shall be counted, returned and canvassed and declared in the same manner and subject to the same rule as votes cast for state officers; and if it appear that said act shall have received a majority of all the votes cast for and against it at said election as aforesaid, then the same shall have effect as hereinbefore provided, and shall be irrevocable until the principal and interest of the liabilities herein created shall be paid and discharged, and the governor shall make proclamation thereof; but if the majority of the votes cast aforesaid are against this act then the same shall be and become void.

State buildings.—See tit. "Public Buildings."

Gift to state, by cities, of site for public building, authorized.—See, post, Act 3664.

Memorial room in capitol extension.—See, post, Act 5465a.

Other state building bonds.—See tit. "Public Buildings."

State buildings at state capital.—An appropriation of \$300,000 for the erection and equipment of state buildings at Sacramento, in addition to the amount provided for this the above act was made by the act of May 27, 1919, Stats. 1919, p. 1288.

FARM LOAN BONDS.

ACT 518—An act making farm loan bonds a lawful investment for insurance companies and a lawful deposit for foreign insurance companies and a lawful investment for all public and trust funds, and a lawful security for the performance of certain acts.

History: Approved May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 270.

Insurance companies may buy farm loan bonds.

§ 1. Insurance companies organized under the laws of California may, in addition to the kinds and classes of securities defined in section four hundred twenty-one of the Civil Code, invest their capital and accumulations in farm loan bonds issued under the provisions of the federal farm loan act approved July 17, 1916, and that foreign insurance companies required by section five hundred ninety-four a of the Political Code to deposit securities, be and they are hereby permitted to deposit such farm loan bonds in lieu of any other securities now permitted to be deposited by said last-mentioned section.

Farm loan bonds may be purchased with public funds.

§ 2. Farm loan bonds issued under the federal farm loan act approved July 17, 1916, are hereby made a lawful investment in the state of California for all state, county,

city and county, city, school, municipal and all other public funds, and a lawful investment in said state for the funds of executors, administrators, guardians, receivers, and trustees of every kind and nature, and that whenever any bonds may by any law now or hereafter enacted be used as security for the performance of any act or acts, such farm loan bonds may be so used.

COMMISSIONS ON SALE OF STATE BONDS.

ACT 519—An act authorizing the state treasurer, upon approval of the governor and the board of control, to enter into agreements to pay commissions on the sale of certain bonds of the state of California, and providing for the funds from which such commissions shall be paid.

History: Approved May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 470.

Agreements to pay commissions on sale of harbor bonds authorized.

§ 1. The state treasurer, upon the approval of the governor and the board of control, is hereby authorized to enter into agreements to pay commissions for services rendered in the procuring of bids for all or any portion or portions of the state bonds issued under the provisions of an act entitled "An act for the issuance and sale of state bonds to create a fund for the improvement of San Francisco harbor by the construction by the board of state harbor commissioners of wharves, piers, state railroad, spurs, betterments and appurtenances, and necessary dredging and filling in connection therewith in the city and county of San Francisco; to create a sinking fund for the payment of said bonds; to define the duties of state officers in relation thereto; to make an appropriation of five thousand dollars for the expense of printing said bonds; and to provide for the submission of this act to a vote of the people," approved June 16, 1913.

Limitations.

No agreement shall be entered into by the state treasurer to pay a greater commission than ten per cent of the par value of the bonds sold, and no commission shall be paid for services rendered except to one who has procured and effected the sale and not until the money from the sale of such bonds has been paid into the state treasury, and no commission shall be paid on any sale of such bonds to any board, department or agency of the state authorized by law to purchase the same.

Application to resales.

Should any purchase of said bonds or any thereof, hereafter be made by any board, department or agency of the state authorized by law to make such purchase, on any resale of such bond so purchased or any thereof thereafter made by such board, department or agency, the foregoing provisions of the act as to entering into agreements to pay, and the payment of, commissions shall apply to such resales as well as to original sales of said bonds or any thereof.

Payment from harbor fund.

§ 2. All commissions herein provided to be paid shall be paid out of and from the San Francisco harbor improvement fund, and the state controller is hereby directed to draw his warrants on said fund in favor of the person entitled to such commissions and when entitled thereto, and sufficient money for such purpose is hereby appropriated from said San Francisco harbor improvement fund as and when said commissions become due.

Collection of money.

§ 3. The board of state harbor commissioners is hereby authorized and directed by the collection of dockage, tolls, rents, cranage and other port charges to collect a sum

of money sufficient for the purposes of this act, over and above the amount limited by section two thousand five hundred twenty-six of the Political Code of the state of California.

Sale without commission.

§ 4. Nothing herein contained shall be construed to prevent an original sale, or a resale by any board, department or agency of the state, of said bonds or any thereof without the payment of such commission.

BOOMS.

See Kerr's Cyc. Political Code, § 4041, subdv. 35.

CHAPTER 32.

BOUNDARIES OF STATE.

CONTENTS OF CHAPTER.

ACT 531. EASTERN BOUNDARY DEFINED AND ESTABLISHED.

EASTERN BOUNDARY.

ACT 531—An act to define and establish a portion of the eastern boundary of the state of California.

History: Became a law under constitutional provision, without governor's approval March 1, 1901, Stats. 1901, p. 89.

Eastern boundary line.

§ 1. That portion of the eastern boundary line of the state of California southeastward from Lake Tahoe, and extending to the Colorado river; that is to say: southeastward from the intersection of the thirty-ninth degree of north latitude, with the one hundred and twentieth degree of longitude west from Greenwich, to the Colorado river, as lately surveyed, established and marked by the United States coast geodetic survey, completed during the year nineteen hundred, is hereby declared to be the true, correct and legal boundary line of the state of California between Lake Tahoe and the Colorado river, and the said line as surveyed, established and marked aforesaid, shall now and hereafter be recognized and considered by the courts of this state as the boundary of this state between the two said points, viz.: Lake Tahoe and the Colorado river.

Inconsistent acts repealed.

§ 2. All acts and parts of acts inconsistent with this act are hereby repealed.

In effect.

§ 3. This act shall take effect and be in force from and after its passage.

An earlier act (Stats. 1889, p. 38) authorized the surveyor general to survey the same boundary, but the operation of the

act was limited to one year, after which time it became obsolete.

Boundary of state.—See constitution, article XXI, § 1.

BRANCIFORT.

See tit. "Titles."

BRAWLEY.

See Act 3094, note.

BRAZOS DEL RIO.

See tit. "Rio Vista."

BREA.

See Act 3094, note.

CHAPTER 33.

BRIDGES.

CONTENTS OF CHAPTER.

- ACT 551. DRAWBRIDGES ACROSS NAVIGABLE STREAMS, BY CITIES.**
552. BRIDGES ACROSS NAVIGABLE STREAMS.
553. FRANCHISES FOR BRIDGES ACROSS NAVIGABLE STREAMS.
554. BRIDGES ACROSS NAVIGABLE WATERS BETWEEN ADJOINING COUNTIES.
555. BRIDGE ACROSS COLORADO RIVER AT NEEDLES.
556. COUNTIES AND CITIES JOINING IN BRIDGE CONSTRUCTION, ETC.

DRAWBRIDGES.

ACT 551—An act authorizing cities to maintain drawbridges across navigable streams flowing through or penetrating the boundaries of such cities.

History: Approved March 13, 1883, Stats. 1883, p. 295.

§ 1. It shall be lawful for municipal corporations, and they are hereby authorized by their respective legislative body or bodies, to erect and maintain drawbridges across navigable streams that flow through or penetrate the boundaries of such cities when the public necessities require it. Such bridges shall in all respects be constructed in accordance with the provisions of section two thousand eight hundred and seventy-five of the Political Code.

Duty to bridge ditches across highway.—
 See Kerr's Cyc. Political Code, § 2737.

Erection and maintenance of bridges, in general.—See Kerr's Cyc. Political Code, §§ 2711, et seq.

BRIDGES ACROSS NAVIGABLE STREAMS.

ACT 552—An act concerning bridges across navigable streams.

History: Approved February 25, 1897, Stats. 1897, p. 21.

Relating to bridges across navigable streams.

§ 1. The board of supervisors of any county in this state now controlling or maintaining, by virtue of any statute, any bridge across any navigable stream wholly or in part within the boundary lines of any municipal corporation, is hereby authorized and empowered, whenever it may become necessary, in the interest of commerce or by reason of any such bridge being out of repair, to reconstruct and rebuild any part of such bridge, or replace such bridge by a new structure, or with the consent of the governing bodies of such municipalities change the location of such bridge to such place on such stream as may be better suited to its use, or to the use of such navigable stream; and the board of supervisors of any county is hereby authorized to abandon any such existing bridge and rebuild a new bridge at such changed location, and the board of supervisors of any such county so rebuilding and reconstructing said bridge may enter into an agreement with any person or corporation, now maintaining any bridge across any such navigable stream, for the building of a joint bridge for the purpose of preventing the impeding of commerce on such navigable streams, and of apportioning the expense between said county and said person or any corporation, in such manner as may be agreed upon between said county and said person, or corporation.

Division of expense of repair, etc.

§ 2. The expense of said reconstruction, or the building of a new bridge, to be payable out of the same fund as is now provided by law for the maintenance and repair of any such bridge; provided, that in case said county should make such agreement with said person or corporation for the building of any joint bridge, that only the county's portion of said joint bridge, as may be settled by said agreement, shall be paid from the

said funds; and, provided, that in no event shall the county pay more than one-half the cost of construction, repair or reconstruction of any such joint bridge.

Repeal of conflicting acts.

§ 3. All acts or parts of acts in conflict herewith are hereby repealed.

§ 4. This act shall take effect from and after its passage.

Erection and maintenance of bridges, in general.—See Kerr's Cyc. Political Code, §§ 2711, et seq.

BRIDGE FRANCHISES ACROSS NAVIGABLE STREAMS.

ACT 553— An act to provide for bridges across navigable streams, and across estuaries, ponds, swamps, or arms of bays that may be outside of the line of navigable waters.

History: Approved March 14, 1881, Stats. 1881, p. 76.

Power of supervisors to erect bridges.

§ 1. The power to erect bridges on public highways across navigable streams in this state, or to grant franchises to individuals, or corporations for the same, is hereby granted to the boards of supervisors of the several counties of the state, under the restrictions of this act.

Regulation of tolls, by whom exercised.

§ 2. The power to grant franchises to individuals or corporations to construct bridges, and the regulation of tolls thereon, shall be exercised by the county on the left bank of all streams.

Supervisors may join between counties.

§ 3. Where a navigable stream is the boundary line between the counties, the boards of supervisors of such counties may join in the construction of a bridge, upon such terms as may be agreed upon; provided, however, that in case of a failure to agree, either county may build the bridge and maintain control thereof.

Notify state engineer.

§ 4. Whenever the supervisors of any county or counties desire to erect a bridge on any public highway, or to grant the privilege so to do to any individual or corporation, across a navigable stream, under the provisions of this act, said board, or boards shall notify the state engineer of such purpose, and of the precise point where such bridge is proposed to be located. The state engineer shall, within ten days of the receipt of such notice, designate the width of the draw to be made in such bridge, and also the length of the spans necessary to permit the free flow of water.

Hearing before state engineer.

§ 5. The communication from the state engineer, fixing the draw and spans, shall be spread upon the minutes of the board, and any bridge constructed at that point shall be in conformity therewith; provided, however, that the state engineer may, upon hearing before him, had upon the application of any person or body interested, made within ten days after the receipt by said board of supervisors of said communication of said engineer, change his first plans, in which case the modified plans must be so spread upon the minutes, and shall stand in the place of the original; provided, however, that before such hearing is had, the said engineer must give ten days' notice by publication in some newspaper published in the county or counties from which the application came, of the time and place of the hearing.

Surveyor general, when may act.

§ 6. In case of the absence or inability of the state engineer to act, the duties devolving upon him under this act shall be performed by the state surveyor general.

Rates of toll, by whom fixed.

§ 7. When a bridge shall be built on a navigable stream by one county, or two counties, it may be absolutely free, or tolls sufficient to pay in whole or in part, for the construction, and to keep up the repairs and expenses thereof, may be charged; the rate to be fixed by the board of supervisors of the county in which the same is located, or, if located in two counties, then by the board of supervisors of the two counties, or if there be any disagreement between said boards, as to imposing or removing tolls, or the rate, the matter in dispute shall be referred to the board of supervisors of some neighboring county for determination, and its decision, communicated in writing to the clerks of the said boards respectively, shall be final; and if tolls are fixed or removed thereby, the same shall take effect on the tenth day from the date of such written determination.

Supervisors to declare necessity for building bridges.

§ 8. The board of supervisors, or other governing body of any city and county, or county, in this state, shall have power to declare that it is necessary for the public convenience to have a bridge or bridges built across any estuary, swamp, pond, or arm of a bay that may lie or extend into the county, or city and county, and prescribe the points between which said bridge or bridges shall be built, and when they shall have specified the points between which it is, in their judgment, necessary to build the said bridge or bridges, they may let contracts to build the bridges, as aforesaid, and pay for the same out of the general fund of the city and county, or county.

§ 9. This act shall take effect immediately.

1. **Repeal of code provision.**—Section 2782, Political Code, so far as it deprives boards of supervisors of power to license toll bridges over navigable rivers, was repealed by implication by the act of 1881.—*Chico Bridge Co. v. Sacramento Tr. Co.*, 123 Cal. 178, 55 Pac. 780.

2. **Superseded.**—This act was probably superseded, or, at least, limited, by section 25 of the county government acts as to intracounty bridges.—See *Croley v. California, etc., Co.*, 134 Cal. 557.

See, also, *Kerr's Cyc. Political Code*, 4041.

3. **Transfer of bridge property.**—The transfer of a property interest in a bridge across a navigable river by an electric railroad company to another electric railroad company will not be authorized where the transferee has not acquired the right to the use of the bridge in the manner prescribed by this act.—*In re Northern Electric Ry. Co., et al.*, 4 R. C. D. 735.

Erection and maintenance of bridges, in general.—*Kerr's Cyc. Political Code*, §§ 2711, et seq.

BRIDGES BETWEEN COUNTIES.

ACT 554—An act to enable adjoining counties to enter into agreements for the construction, rebuilding, replacing, or relocation of bridges over navigable waters between said counties, jointly with other persons or corporations.

History: Approved March 23, 1907, Stats. 1907, p. 982.

Bridges between two counties; provisions for joint construction and repair.

§ 1. In case it shall appear to the boards of supervisors of two adjoining counties that any bridge shall be necessary for highway purposes, over any navigable river, stream, or inlet of the sea, between said counties, or if any bridge existing thereover and used wholly or in part for highway purposes, (whether the same is owned by said counties or either of them, or used by them or either of them by agreement with the owner thereof), shall, in the interests of commerce, or by reason of such bridge being out of repair or deteriorated beyond reasonable repair, require reconstruction, or rebuilding, or replacing by a new structure, or its location to be changed to such place on such navigable river, stream, or inlet of the sea, as may be better suited to its use, or to the use of such navigable water, or may tend to prevent obstruction to commerce thereon, the boards of supervisors of such counties may, in their discretion, enter into an agreement with any person or corporation for the building of a joint bridge, or the reconstruction, or rebuilding, or replacing by a new structure of such existing bridge, or

the rebuilding thereof at another location, and the joint use of the same thereafter by such person or corporation, and said counties or the public, and for apportioning the expense of such joint reconstructed or relocated bridge between said counties and each of them and such person or corporation jointly using or to use the same, and to provide for the construction and use thereof in such manner and upon such terms and conditions as may be agreed upon between such counties and such person or corporation. In such case none of the provisions of subdivision 4 of section 25 of an act entitled "An act to establish a uniform system of county and township government," approved April 1, 1897, shall be applicable thereto; provided, that in no event shall either county agree to contribute more than one-third of the cost of construction, reconstruction, relocation, or repair of any such joint bridge.

§ 2. This act shall take effect immediately.

Erection and maintenance of bridges, in general.—Kerr's Cyc. Political Code, §§ 2711, et seq.

BRIDGE AT NEEDLES.

ACT 555—An act providing for the building of a bridge across the Colorado river at Needles, California, and making an appropriation therefor.

History: Approved April 29, 1915. In effect August 8, 1915. Stats. 1915, p. 300.

Appropriation: bridge across Colorado river.

§ 1. There is hereby appropriated out of any money in the state treasury not otherwise appropriated, not to exceed the sum of twenty-five thousand dollars, and in no event more than one-third of the sum that may be necessary for the construction of a bridge across the Colorado river, at or near Needles, in the state of California and near Topock in the state of Arizona, to be paid to and expended under the direction of the secretary of the interior of the United States in the construction of a bridge when and as recommended by said secretary of the interior.

California to pay half of maintenance.

§ 2. It is further provided that the state of California assumes responsibility for the payment of one-half the cost of the maintenance and repair of said bridge and the approaches thereto, it being understood and agreed that the state of Arizona assumes responsibility for the payment of one-half the cost of maintenance and repair of the bridge and the approaches thereto; and it being further understood that the county of San Bernardino will pay all cost of maintenance and repair of the approach to said bridge on the California side while the same remains under the jurisdiction of said county.

§ 3. The state controller is hereby authorized to draw his warrant on the general fund for said sum of twenty-five thousand dollars in favor of such person as the secretary of the interior may designate, and the state treasurer is hereby authorized and directed to pay the same.

JOINT BRIDGES.

ACT 556—An act authorizing any county and cities within such county to join in the acquisition, construction or maintenance of bridges or viaducts.

History: Approved May 19, 1915. In effect August 8, 1915. Stats. 1915, p. 688.

Counties may join with cities in acquiring bridges, etc.

§ 1. Any county may join with any city or cities located within such county in the acquisition, construction or maintenance of any bridge or viaduct within such county, whether such bridge or viaduct is or is to be located within or without any such city.

The cost of the acquisition, construction or maintenance of any such bridge or viaduct shall be borne by such county and such city or cities in such proportion as the legislative bodies thereof respectively shall determine by resolution or ordinance and may be paid out of any funds available therefor. The authority and responsibility for the acquisition, construction or maintenance of any such bridge or viaduct shall vest in such county or in such city as may be provided in said ordinances or resolutions apportioning the cost.

BROOKLYN.

See tit. "Oakland."

CHAPTER 34.

BUILDING AND LOAN ASSOCIATIONS.

CONTENTS OF CHAPTER.

ACT 568. "BUILDING AND LOAN COMMISSION" ACT.

BUILDING AND LOAN COMMISSION ACT.

ACT 568—An act creating a bureau of building and loan supervision; providing for the appointment of an administration official therefor to be known as the building and loan commissioner; prescribing his duties, powers and compensation; providing for a secretary, his powers and compensation; providing for the rental of offices for the use of the bureau and for traveling and office expenses; providing a system for licensing building and loan and other associations, and for assessing and collecting the license fees necessary to meet the salaries and other expenses of the bureau of building and loan supervision; providing a course of procedure where violations of law, or unsafe practices are found to exist, or are reported by the commissioner to the attorney general; providing for involuntary liquidation by trustees, and proceedings in connection therewith; providing for exemption of property of associations in liquidation from attachments, executions and liens, pending liquidation; providing for and requiring associations to procure licenses, pay assessments levied for pro rata of salaries and expenses, and to make and file reports; providing penalties for violations of law and orders of the commissioners; repealing an act approved March 21, 1905, entitled "An act creating a bureau of building and loan supervision; providing for the appointment of administration officials therefor to be known as the building and loan commissioners; prescribing their duties, powers and compensation; providing for a secretary, his powers and compensation; providing for the rental of offices for the use of the bureau and for traveling and office expenses; providing a system for licensing building and loan and other associations, and for assessing and collecting the license fees necessary to meet the salaries and other expenses; providing a course of procedure where violations of law, or unsafe practices are found to exist, or are reported by the commissioners to the attorney general; providing for involuntary liquidation by trustees, and proceedings in connection therewith; providing for exemption of property of associations in liquidation from attachments, executions and liens, pending liquidation; providing for and requiring associations to procure licenses, pay assessments levied for pro rata of salaries and expenses, and to make and file reports; providing penalties for violations of law and orders of the commissioners; providing for succession in office, and repealing all acts and parts of acts in conflict herewith"; also repealing an act approved March 23, 1907, entitled "An act to amend section sixteen (16) of an act entitled 'An act creating a bureau of building and loan supervision; providing for the appointment of administration officials therefor to be known as the building and loan commissioners; prescribing their duties, powers and compensation; providing

for a secretary, his powers and compensation; providing for the rental of offices for the use of the bureau and for traveling and office expenses; providing a system for licensing building and loan and other associations, and for assessing and collecting license fees necessary to meet the salaries and other expenses; providing a course of procedure where violations of law, or unsafe practices are found to exist or are reported by the commissioners to the attorney general; providing for involuntary liquidation by trustees, and proceedings in connection therewith; providing for exemption of property of associations in liquidation from attachments, executions and liens pending liquidation; providing for and requiring associations to procure licenses, pay assessments levied for pro rata of salaries and expenses, and to make and file reports; providing penalties for violations of law and orders of the commissioners; providing for succession in office, and repealing all acts and parts of acts in conflict herewith,' approved March 21, 1905, relating to and providing for reports to building and loan commissioners and the publication thereof"; also repealing an act approved March 20, 1909, entitled "An act to amend sections 3 and 11 of an act entitled 'An act creating a bureau of building and loan supervision; providing for the appointment of administration officials therefor to be known as the building and loan commissioners; prescribing their duties, powers and compensation; providing for a secretary, his powers and compensation; providing for the rental of offices for the use of the bureau and for traveling and office expenses; providing a system for licensing building and loan and other associations, and for assessing and collecting license fees necessary to meet the salaries and other expenses, providing a course of procedure where violations of law, or unsafe practices are found to exist or are reported by the commissioner to the attorney general; providing for involuntary liquidation by trustees, and proceedings in connection therewith; providing for exemption of property of associations in liquidation from attachments, executions and liens pending liquidation; providing for and requiring associations to procure licenses, pay assessments levied for pro rata of salaries and expenses, and to make and file reports; providing penalties for violations of law and orders of the commissioners; providing for succession in office, and repealing all acts and parts of acts in conflict herewith,' approved March 21, 1905, relating to the powers and duties and salaries of the state building and loan commissioners."

History: Approved April 5, 1911, Stats. 1911, p. 607. Amended December 18, 1911, Stats. 1911 (ex. sess.), p. 6; April 28, 1915. In effect August 8, 1915. Stats. 1915, p. 238; May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 992; May 11, 1917. In effect July 27, 1917. Stats. 1917, p. 426; and May 24, 1917. In effect July 27, 1917. Stats. 1917, p. 918.

Prior acts on same subject:

Act approved March 23, 1893, Stats. 1893, p. 229. Amended March 26, 1895, Stats. 1895, p. 103. Repealed March 21, 1905, Stats. 1905, p. 666.

Act approved March 21, 1905, Stats. 1905, p. 659. Amended March 23, 1907, Stats. 1907, p. 931; March 20, 1919, Stats. 1909, p. 544. Repealed April 5, 1911, Stats. 1911, p. 607.

Bureau of building and loan supervision.

§ 1. There is hereby created a bureau, to be known and designated as the "Bureau of Building and Loan Supervision," with powers of supervision, examination and license of all building and loan associations, mutual loan associations, co-operative home associations, and all other corporations, associations and societies whenever, wherever and however formed, which are based, or are operating on plans or methods similar to building and loan associations as defined in section 648 of the Civil Code. Said bureau is charged with the enforcement of all laws designed for the formation, government or operation, in this state, of any such association, corporation or society, and is vested with power to determine what associations, corporations and societies come within the

purview of the laws. [Amendment approved December 18, 1911. Stats. 1911, p. 6, extra session.]

Building and loan commissioner. Secretary.

§ 2. The administration of said bureau shall be vested in a commissioner, to be known and designated as the "building and loan commissioner," who shall be appointed by the governor and commissioner to hold office at the pleasure of the governor. He must be a citizen of this state; and he must not be in any way connected with any association, corporation or society coming under his supervision. He shall appoint a secretary who shall, ex officio, also be a deputy commissioner with full powers as such, and who must be a practical, skilled accountant, fully conversant with building and loan systems and accounts; he shall also appoint one deputy who shall be an accountant. [Amendment of May 24, 1917. In effect July 27, 1917. Stats. 1917, p. 918.]

This section was also amended May 29, 1915, Stats. 1915, p. 992.

Salaries. Office in San Francisco.

§ 3. The commissioner shall receive a salary of three thousand six hundred dollars per annum, the secretary shall receive a salary of two thousand four hundred dollars per annum, and the deputy one thousand eight hundred dollars per annum, and such salaries shall be in full for all services rendered. There shall also be allowed and paid the necessary traveling expenses of the commissioner and the secretary, incurred while traveling in the line of their duties, not to exceed the sum of one thousand two hundred dollars per annum. The commissioner shall procure and have an office in the city of San Francisco, which office shall be kept open for business every business day, during such hours as are commonly observed by the banks of that city as banking hours. For such office there shall be allowed and paid a total rental of not exceeding seventy-five dollars per month. Said commissioner may also provide such fuel, stationery, printing, postage, office help and other necessary conveniences as may be requisite in such office, at a cost not to exceed in the aggregate the sum of one thousand six hundred dollars per annum. All said salaries and expenses shall be audited and paid in the same manner as the salaries and expenses of other state officers. [Amendment of May 24, 1917. In effect July 27, 1917. Stats. 1917, p. 919.]

This section was also amended December 18, 1911, Stats. 1911 (Ex. Sess.), p. 6; and May 29, 1915, Stats. 1915, p. 993.

Bonds of commissioner and secretary.

§ 4. Before entering upon their duties, the commissioner and the secretary shall each execute an official bond in the penal sum of five thousand dollars, each of which bonds must be guaranteed by a duly authorized surety or bonding company, the premium on which shall be paid from the allowance for office expenses. Any bond executed under this section must be approved by the governor and filed and recorded in the office of the secretary of state, and such commissioner and secretary must take the oath of office as prescribed by the Political Code for the state officers in general. [Amendment approved December 18, 1911. Stats. 1911, p. 6, extra session.]

Duties. Report to governor.

§ 5. It shall be the duty of the commissioner to furnish to all associations, corporations or societies, which, in his judgment, legally come under his jurisdiction, and that have otherwise complied with the requirements of law, a license authorizing them to transact business for one year from the date of said license; to receive and place on file in his office the annual or other reports required by law to be made by building and loan associations or other corporations or societies licensed by him; to supply each with blank forms for such statement; and to make, on or before the first day of October in each year, a tabulated report to the governor of this state, showing the condition of all

such associations, corporations or societies reporting to him, with such recommendation as he may deem proper, accompanied by a detailed statement of all moneys received by him since his last report and the disposition thereof.

Duties. Power to administer oaths.

§ 6. It shall be the duty of the commissioner, in person, or the secretary at least once in each year, without previous notice, to visit and examine into the affairs of every such association, corporation or society licensed by him, incorporated or doing business in this state; on such occasions he shall have free access to all books, records, securities and papers of every such association, corporation or society, and shall first count the cash and check the bank balance of such corporation or association with the proper amount of funds as shown by the books to be on hand and at the date and hour of such examination, and shall then examine and verify the books, accounts, and securities, and, so far as possible and consistent, the values of all property owned or held as collateral security for moneys loaned, and otherwise use reasonable diligence to ascertain the financial condition and solvency thereof. He and the secretary shall have power to administer oaths in the line of duty, and to examine under oath the officers, employees and agents, or the custodian or receiver, relative to any or all the business thereof. Whenever the result of any such examination shall develop a condition demanding an extended audit of the books and affairs, the commissioner may, for such purpose, appoint a competent auditor at the expense of the association, corporation or society examined. The expense of such audit shall be fixed by the commissioner and shall not exceed fifteen dollars per diem, plus traveling and hotel expenses, for each day actually engaged in the making of the audit and the preparation of the report.

Foreign associations applying for license.

The commissioner or the secretary shall examine, or cause to be examined, the books and affairs of any such association, corporation or society formed under the laws of any other state, territory or foreign country applying for a license to enter this state for the transaction of business, prior to the granting of such license and annually thereafter, and for every such examination made outside the state the actual traveling and hotel expenses incurred shall be paid by the association, corporation or society so examined; provided, that the result of any similar examination made and certified by the duly constituted authorities of any state having similar laws of supervision may be accepted by the commissioner. [Amendment of May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 993.]

Books of associations. Revaluation of real estate.

§ 7. To facilitate the examination specified in the foregoing section, he shall require every such association, corporation, or society to keep its books in such form as to accurately show its assets and liabilities in detail and to keep records written in ink, showing the appraised values of the real estate security held in connection with each loan, and signed in each case by the appraiser, officer or committee charged with making such estimated valuations. The commissioner may make a revaluation of the real estate owned, and of the other securities of any such association, corporation or society licensed by him, on which the loan payments may be delinquent for six months or more, and may, for that purpose, appoint local appraisers, who shall be disinterested persons, at the expense of such association, corporation or society; the expense of such appraisement to be fixed by the commissioner, but not to exceed the sum of five dollars for property located outside of any incorporated limits and three dollars for property located inside of any incorporated limits for each property so examined and appraised. Each appraiser so appointed shall be required to make a sworn report to the commissioner of his estimated valuations of all property so examined and appraised.

May issue subpoenas, etc.

§ 8. The commissioner shall have power to issue subpoenas and require attendance of any or all trustees, or agents of any such association, corporation or society, and such other witnesses as they may deem necessary, in relation to its affairs, transactions and condition, and any such person so served with such subpoena may upon application of the commissioner be required by order of the superior court of the county where the corporation, association or society has its principal place of business to appear and answer such pertinent questions as may be put to him by such commissioner and be required to produce such books, papers or documents in his possession as may be required by such commissioner.

Violation of law by association. Duty of commissioner. Notice to attorney general.

Reference to superior court. Commissioner empowered to conduct business. Inventory. Notice to claimants. Liquidation. Report. Liability of stockholders. Surplus.

§ 9. If the commissioner, as the result of any examination, or from any report made to him or to the shareholders, shall find that any association, corporation or society licensed by him, is violating the provisions of its charter or of the laws of this state provided for its government, or is conducting its business in an unsafe or unauthorized manner, he may, by an order addressed to the association, corporation or society so offending, direct a discontinuance of such violations or unsafe practices and a conformity with all the requirements of law; and if such association, corporation or society shall refuse or neglect to comply with such order within the time specified therein; or if it shall appear to the commissioner that any such association, corporation or society is in an unsafe condition, or is conducting its business in an unsafe manner, such as to render its further proceeding hazardous to the public, or to those having funds in its custody; or if he shall find that its assets are impaired to such an extent that, after providing for all liabilities other than to shareholders, members and investors, they do not exceed in volume the dues or principal payments paid in by the shareholders, members and investors and credited to or on account of all classes of stock, shares, or certificates of investment, issued and outstanding, he shall, in order to prevent waste and diversion of assets, assume and take charge of the affairs and business of such association, corporation or society and possession and control of all its property and assets, and retain such possession pending action by the proper court. Upon taking such action, he may, under his hand and official seal, appoint a custodian, require from him a good and sufficient bond, and place him in charge as his representative. He shall immediately notify the attorney general of his action and of all the necessary facts in connection therewith; and thereupon it shall become the duty of the attorney general to at once apply to the superior court of the county in which such association, corporation or society has its principal place of business, for an order citing such association, corporation or society to show cause, if any it may have, within not exceeding ten days, why the action of the commissioner should not be approved and confirmed by the court, and made permanent. Such court may in such application, and after a full hearing, approve or disapprove of the action of the commissioner. If the court shall approve and confirm the action of the commissioner, such approval and confirmation shall operate as a permanent injunction against the further prosecution of business by such association, corporation or society, and the commissioner shall proceed immediately to liquidate the business and affairs thereof, and so continue until such liquidation has been completed. If the action of the commissioner shall be disapproved by the court, the commissioner shall cause all reasonable expenses incurred by him during his occupancy or possession, including not exceeding eight dollars per diem, for each business day, as the compensation of the custodian, to be paid from the funds of such association, corporation or society, and immediately

restore the balance of the property and assets thereof to the possession of the proper officers.

The approval and confirmation of the action of the commissioner, by the court, shall operate to empower the commissioner to collect all moneys, debts and claims due to or belonging to such association, corporation or society and to give full receipt therefor; to release or reconvey all real or personal property pledged as security for loans; to approve and pay all just and equitable claims; to prosecute all actions necessary to enforce liquidations; and, on the order of the court, to compound bad or doubtful debts and to sell and convey real and personal property.

As soon as practicable after the approval and confirmation of the action of the commissioner, by the court, he shall cause an inventory of all the assets of such association, corporation or society to be made in duplicate, the original to be filed with the proper court and the duplicate in the office of the commissioner. He shall cause due notice to be given by publication, weekly for four successive weeks, in some newspaper published at or near the principal place of business of such association, corporation or society, requesting all persons having claims against it as creditors, shareholders, members or investors, to present same and make legal proof thereof, at a place and within a time to be designated in such publication; and he shall cause a copy of such notice to be mailed to all persons whose names appear of record upon its books as creditors, shareholders, members or investors; and upon the expiration of the time fixed for the presentation of claims the commissioner shall prepare or cause to be prepared, in duplicate, a full and complete schedule of all claims presented, specifying by classes those that have been approved and those that have been disapproved, and file the original with the proper court and the duplicate in the office of the commissioner. Due notice shall be mailed to all claimants whose claims may have been rejected. Action to enforce the payment of any rejected claim must be brought and service had within thirty days from and after the date of filing of the schedule of claims with the proper court, otherwise all such actions shall be forever barred. The commissioner may, under his hand and official seal, appoint one or more special deputies to assist in the duties of liquidation and distribution under his direction, and may also employ such counsel and clerical assistance as may be needful and requisite, and fix the salaries and compensation to be allowed and paid to each. All such salaries, together with such other reasonable and necessary expenses as may be incurred in the liquidation, shall be paid by him from the funds of such associations, corporation or society in his hands, and from the net realization of assets, in excess of such salaries and expenses, the commissioner shall first pay all approved claims other than to stockholders, shareholders and members; and thereafter he shall distribute and pay dividends, in liquidation to the stockholders, other than guarantee, and to the shareholders and members, as fast as funds to the amount of ten (10) per cent of such approved claims are available therefor, and so continue until all the assets have been realized upon and a final dividend in liquidation shall be declared and paid. Upon the payment of a final dividend in liquidation, the commissioner shall prepare and file with the proper court a full and final statement of the liquidation, including a summary of the receipts and disbursements, and a duplicate thereof shall be filed in the office of the commissioner, and after due hearing and approval by the court the liquidation shall be deemed to be closed. The approval and confirmation of the action of the commissioner, in the manner herein provided, shall operate to dissolve or stay any or all actions or attachments initiated or levied within thirty days next preceding the date of notification of the attorney general by the commissioner; and, pending the process of liquidation, as herein provided, no attachment or execution shall be levied nor lien created upon any of the property of such association, corporation, or society.

In every case where any such association, corporation or society shall have a paid in guarantee capital, and the realization of assets shall be insufficient to meet the liabilities due to all other classes of stockholders, shareholders, members and investors, the commission shall enforce, by action or otherwise, the liability of each and every of the holders of the guarantee capital stock for his or their respective pro rata of any such deficiency. Whenever, in all cases where there shall be a paid in guarantee capital, the commissioner shall have fully liquidated all approved claims, and shall have made due provision for any and all known but unclaimed liabilities guarantee capital excepted, and shall have paid all expenses of liquidation, any surplus that may then remain in his hands, together with all the records and effects, shall be delivered over to the holders of the guarantee capital stock at a meeting thereof to be called by the commissioner for that purpose. [Amendment approved December 18, 1911. Stats. 1911, p. 6, extra session.]

Non-compliance with orders of commission. Penalty. Sheriff must enforce demands.

§ 9a. Whenever it shall become necessary for the commissioner to take action against any association because of unsafe practices and of conditions unsafe and hazardous to the public and to those having funds in its custody, as provided in section nine, the refusal of any officer or director to comply with his written demand for possession of the property and assets shall constitute a misdemeanor punishable by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment; and if such demand be not complied with within twenty-four hours after service the commissioner may call to his assistance the sheriff of the county in which the principal place of business of such association is located, by written demand under his hand and official seal, whereupon it shall become the duty of such official to enforce the demands of the commissioner. [New section added April 28, 1915. In effect August 8, 1915. Stats. 1915, p. 238.]

Schedule of property.

§ 10. Upon the approval of the action of the commissioner, in the manner and for the cause set forth in section 9, the commissioner shall require the president and secretary of such association, corporation or society to, and such officers shall, make a schedule of all its property and make oath that such schedule sets forth all the property which such association, corporation or society owns or to which it is entitled, and deliver such schedule, and the possession of any and all such property as may not have been so previously delivered, to the commissioner, who may at any time examine under oath such president and secretary, or other officers, to determine whether or not all the property which such association, corporation or society owns, or to which it is entitled, has been transferred and delivered into his possession. [Amendment approved December 18, 1911. Stats. 1911, p. 6, extra session.]

Report of receivers. Examination by commissioner.

§ 11. Receivers, heretofore or hereafter appointed, must, at least annually, make due report of all their doings and accounts to the proper court, and immediately thereafter file a copy thereof with the commissioner; and the commissioner shall, at least once in each year, and as much oftener as he may deem expedient, examine the accounts and doings of such receivers, and, for such purpose, shall have full and free access to all books, accounts and vouchers relating to such liquidation, and any defect, irregularity or misconduct on the part of such receivers as he may find to exist shall be, by the commissioner, reported to the proper court. [Amendment approved December 18, 1911. Stats. 1911, p. 6, extra session.]

Examination upon request of ten shareholders.

§ 12. Upon the certificate, under oath, of any ten or more officers, trustees, creditors, shareholders or depositors of any such association, corporation or society, setting forth their interest and the reason for the making of such examination, directed to the commissioner, and requesting him so to do, he shall forthwith make a full investigation of its affairs, in the manner provided.

Failure of commissioner to act.

§ 13. If the commissioner, having knowledge of the insolvent condition, or of any violation of law or unsafe practice of any such association, corporation or society under his supervision, such as renders, in his opinion, the conduct of its business hazardous to its shareholders, creditors or depositors, shall fail to take the proper action required by this act, or shall refuse or neglect to perform the official duties pertaining to his office, then upon conviction thereof the office of such commissioner shall be declared vacant by the governor, and a successor be appointed to fill the unexpired term.

Associations to pay pro rata assessment. Date of assessment. Minimum assessment.

§ 14. To meet the salaries and expenses provided for by this act, the commissioner shall require every association, corporation or society licensed by him or coming under his supervision to pay in advance, to him, and prior to the issuance of any license, its pro rata amount of all such salaries and expenses, and it is hereby made the duty of every such association, corporation or society to pay the same; such pro rata shall be fixed and determined by the proportion which its assets bear to the aggregate assets of all such associations, corporations, or societies, receiving licenses, as shown by the last reports of such corporations, associations, or societies to the commissioner. On or before the thirtieth day of December, in each year, the commissioner shall notify each of such associations, corporations or societies, through the United States mail, of the amount assessed and levied against it and that the same must be paid within twenty days thereafter; and should payment not be made to him within said twenty days, he shall then assess and collect a penalty, in addition thereto, of ten per cent per day for each day that such payment may be delayed or withheld; provided, however, that in the levy and collection of such assessment, no such association, corporation or society shall be assessed for, nor be permitted to pay less than ten dollars per annum, and any such association hereafter formed in this state, shall be required to pay not less than one dollar per month for the unexpired term ending December thirty-first, succeeding application; and in like manner any such association organized outside this state shall be required to pay not less than three dollars per month, for such unexpired term, for its first license.

License of associations. Commissioner may revoke license.

§ 15. It shall be the duty of the commissioner to require every such association, corporation or society coming under his supervision, to procure from him, prior to the transaction of any business, a certificate of authority or license to transact business in this state; and it is hereby made the duty of every association, corporation or society to comply with such requirement. To procure such license, there must be filed with and approved by the commissioner, a certified copy of its articles of incorporation, constitution and by-laws and all subsequent amendments thereto, accompanied by the license fee herein provided for; and after the expiration of the term for which a license may have been granted to it, no such association, corporation or society shall be permitted to continue to transact business without first procuring a renewal of such license on the terms provided in this act, and any such association, corporation or society violating the provisions hereof shall be subject to a penalty

of ten per cent per day of the amount of the license fee required to be paid under section 14 of this act, in addition thereto, for each day during the continuance of such offense. The commissioner is authorized and empowered to revoke the license of any such association, corporation or society under his supervision, the solvency whereof may have become imperiled by losses or irregularities; and immediately upon the revoking of any such license he shall report the facts to the attorney general, who shall thereupon take such proceedings as are provided in section 9 of this act.

License to act as agent for sale of stock, etc.

§ 15a. No person receiving compensation therefor, other than an officer, director or salaried employee, no part of whose compensation consists of commissions, or other than a local resident agent who has resided in the county in which he holds such local agency for a period of not less than one year prior to the time that he took such agency, of a building and loan association or other similar corporation or society which is duly licensed by the commissioner, shall act as solicitor or agent for the sale of the shares of stock, shares of membership, certificates or other securities or forms of investment issued by, or for the securing of loans from, any such association, corporation or society until he has first procured from the commissioner a license therefor. To obtain such license there must be filed with the commissioner a duplicate of the authorization or appointment issued to him by, together with a request from, a licensed association, corporation or society that a license be issued to him to act as an agent or solicitor for it, and accompanied by a fee of one dollar. All such licenses shall expire by limitation on the thirtieth day of June succeeding their issue, but may be renewed from time to time, for an additional period of one year upon a request therefor from the association, corporation or society originally applying, and payment of a renewal fee of one dollar. Any such license may be revoked at any time on the application of the association, corporation or society for whom it was issued, or may be revoked by the commissioner for cause.

List of persons holding licenses.

The commissioner shall keep an alphabetical list of the names of persons to whom such licenses are issued with the date of issue and renewal, and the name of the association, corporation or society for whom such licensee is authorized to act. All such licenses shall be issued under rules and regulations to be prescribed by the commissioner. [New section added May 24, 1917. In effect July 27, 1917. Stats. 1917, p. 919.]

Annual report of associations. Failure to make report.

§ 16. The commissioner shall require every association, corporation or society licensed by him, and including associations in liquidation, within thirty days after the close of its annual fiscal term to make a report to him in writing, verified by the oath of its president and secretary, showing accurately its financial condition at the close of such term; such report shall also include all the receipts and disbursements and income and expenses for the term, together with such statistical and other information as may be deemed essential; all and every of such reports shall be in such form as the commissioner may prescribe, and upon blanks to be by him furnished therefor. Every such association, corporation or society is hereby required to make and file all such reports within the time specified herein, and for failure or neglect so to do shall be subject to a penalty of ten dollars per day for each and every day the same shall be delayed or withheld.

Suit to collect assessments. Building and loan inspection fund.

§ 17. The collection of all moneys assessed, as herein provided, for the payment of salaries and annual expenses, or forfeitable as fines for failure to make payments of

assessments, procure licenses, or make and file reports as herein specified, and due from any such association, corporation or society coming within the provisions of this act, or imposed as a penalty for violation of any order or summons, may be enforced by the commissioner by action instituted in any court of competent jurisdiction; and all moneys collected or received by the commissioner under this act, shall be deposited with the state treasurer, to be credited to a fund to be known and designated as the "building and loan inspection fund"; which said fund shall only be used in defraying the salaries and expenses provided for by this act; provided, however, that the commissioner may retain in his possession and under his control a sum not exceeding three hundred dollars to be used for the benefit of his office, as a revolving fund, for making advance payment of office rent and office expenses prior to the presentation and allowance of the periodical claims therefor. [Amendment of May 11, 1917. In effect July 27, 1917. Stats. 1917, p. 426.]

Earlier acts repealed.

§ 18. An act approved March 21, 1905, entitled "An act creating a bureau of building and loan supervision; providing for the appointment of administration officials therefor to be known as the building and loan commissioners; prescribing their duties, powers and compensation; providing for a secretary, his powers and compensation; providing for the rental of offices for the use of the bureau and for traveling and office expenses; providing a system for licensing building and loan and other associations, and for assessing and collecting the license fees necessary to meet the salaries and other expenses; providing a course of procedure where violations of law, or unsafe practices are found to exist, or are reported by the commissioners to the attorney general; providing for involuntary liquidation by trustees, and proceedings in connection therewith; providing for exemption of property of associations in liquidation from attachments, executions and liens, pending liquidation; providing for and requiring associations to procure licenses, pay assessments levied for pro rata of salaries and expenses, and to make and file reports; providing penalties for violations of law and orders of the commissioners; providing for succession in office, and repealing all acts and parts of acts in conflict herewith." Also an act approved March 23, 1907, entitled "An act to amend section sixteen (16) of an act entitled 'An act creating a bureau of building and loan supervision; providing for the appointment of administration officials therefor to be known as the building and loan commissioners; prescribing their duties, powers and compensation; providing for a secretary, his powers and compensation; providing for the rental of offices for the use of the bureau and for traveling and office expenses; providing a system for licensing building and loan and other associations, and for assessing and collecting license fees necessary to meet the salaries and other expenses; providing a course of procedure where violations of law, or unsafe practices are found to exist or are reported by the commissioners to the attorney general; providing for involuntary liquidation by trustees, and proceedings in connection therewith; providing for exemption of property of associations in liquidation from attachments, executions, and liens pending liquidation; providing for and requiring associations to procure licenses, pay assessments levied for pro rata of salaries and expenses, and to make and file reports; providing penalties for violations of law and orders of the commissioners; providing for succession in office, and repealing all acts and parts of acts in conflict herewith,' approved March 21, 1905, relating to and providing for reports to building and loan commissioners and the publication thereof." Also an act approved March 20, 1909, entitled "An act to amend sections 3 and 11 of an act entitled 'An act creating a bureau of building and loan supervision; providing for the appointment of administration officials therefor to be known as the building and loan commissioners; prescribing their duties, powers and compensation; providing for a secretary, his powers and compensation; providing for the rental of offices for the use of the

bureau and for traveling and office expenses; providing a system for licensing building and loan and other associations, and for assessing and collecting license fees necessary to meet the salaries and other expenses, providing a course of procedure where violations of law, or unsafe practices are found to exist or are reported by the commissioners to the attorney general; providing for involuntary liquidation by trustees, and proceedings in connection therewith; providing for exemption of property of associations in liquidation from attachments, executions and liens pending liquidation; providing for and requiring associations to procure licenses, pay assessments levied for pro rata of salaries and expenses, and to make and file reports; providing penalties for violations of law and orders of the commissioners; providing for succession in office, and repealing all acts and parts of acts in conflict herewith,' approved March 21, 1905, relating to the powers and duties and salaries of the state building and loan commissioners,' and all acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

Commissioner successor of commissioners.

§ 19. The building and loan commissioner provided for by this act shall be the successor in interest of, and shall succeed to all the rights, powers and privileges possessed by, the building and loan commissioners under and by virtue of that certain act entitled An act approved March 21, 1905, as amended March 23, 1907, and as amended March 20, 1909, entitled "An act creating a bureau of building and loan supervision; providing for the appointment of administration officials therefor to be known as the building and loan commissioners; prescribing their duties, powers and compensation; providing for a secretary, his powers and compensation; providing for the rental of offices for the use of the bureau and for traveling and office expenses; providing a system for licensing building and loan and other associations, and for assessing and collecting the license fees necessary to meet the salaries and other expenses; providing a course of procedure where violations of law or unsafe practices are found to exist, or are reported by the commissioners to the attorney general; providing for involuntary liquidation by trustees, and proceedings in connection therewith; providing for exemption of property of associations in liquidation from attachments; executions and liens, pending liquidation; providing for and requiring associations to procure licenses, pay assessments levied for pro rata of salaries and expenses, and to make and file reports; providing penalties for violations of law and orders of the commissioners; providing for succession in office and repealing all acts and parts of acts in conflict herewith"; and any and all actions or proceedings taken or commenced by the said building and loan commissioners, under the act aforesaid, shall continue in full force and effect and the said actions and proceedings shall not abate, and the said building and loan commissioner provided for by this act shall be substituted for and continue in the place and stead of the said building and loan commissioners under the act aforesaid, and likewise all books, documents, records and property of every kind and description obtained or possessed by the building and loan commissioners or their secretary or clerks, examiners or employees under the provisions of the said act of March 21, 1905, shall immediately be turned over and delivered to the said building and loan commissioner herein provided for.

Title of act.

§ 20. This act shall be known as the building and loan commission act.

§ 21. This act shall take effect immediately.

1. Compensation of custodian.—Under section 9 of the building and loan commission act the custodian appointed by the commissioner has no right of action to recover his compensation so long as an
Gen. Laws—19

appeal is pending to test the propriety of the order under which he is acting.—*Brandon v. Anglo-California Trust Co.*, 177 Cal. 699, 701, 171 Pac. 956.

2. Constitutionality.—Section 19 of the

building and loan commission act held unconstitutional on the ground that its provisions are not embraced in the title.—*Provident, etc., Ass'n v. Davis*, 143 Cal. 253, 76 Pac. 1034.

3. **Attachment.**—The property of a building and loan association remains subject to attachment or execution until the commencement of the action by the attorney general, without regard to the date of the report to the attorney general by the commissioners as to the unsafe conditions covered by the act.—*Bories v. Union B. & L. Association*, 141 Cal. 74, 74 Pac. 552.

4. **Attachment, lien of.**—The lien of an attachment attaching prior to the bringing of the suit by the attorney general against the association under the act is not affected by possession of the receiver appointed in such suit.—*Bories v. Union B. & L. Ass'n*, 141 Cal. 74, 74 Pac. 552.

5. **Bankruptcy under federal act.**—A state building and loan association, not claiming to be either bankrupt or insolvent, can not have a writ of prohibition to restrain proceedings against it under the building and loan commission act on the ground of the exclusive jurisdiction of the federal courts under the federal act.—*Continental, etc., Association v. Superior Court*, 163 Cal. 579, 586, 126 Pac. 476.

6. **Bankruptcy—Jurisdiction of federal court.**—Under section 9, if investigation of the affairs of a building and loan association discloses the fact that the corporation is bankrupt or insolvent the proceedings are suspended by force of the federal act, and under subdivision 4, section 3, further proceedings are taken under the latter act.—*Continental, etc., Association v. Superior Court*, 163 Cal. 579, 584, 126 Pac. 476.

7. **Jurisdiction of state court.**—The act known as "the building and loan commission act," while in certain features a bankruptcy act, contains provisions entirely foreign to the national bankruptcy act or to the legal concept of bankruptcy, and the power of the state court to proceed in conformity with the state law, where the corporation is neither bankrupt nor insolvent under the federal act, is not to be questioned.—*Continental, etc., Association v. Superior Court*, 163 Cal. 579, 586, 126 Pac. 476.

8. **Same—Similarity to proceedings in bankruptcy.**—If a state takes charge of the affairs of a corporation, for good reasons of its own, for acts, not within the contemplation of the bankruptcy law, it is futile to argue that because the procedure it adopts for the payment of creditors is similar to or identical with the procedure adopted in case of bankruptcy, therefore the proceedings are in bankruptcy.—*Continental, etc., Association v. Superior Court*, 163 Cal. 579, 583, 126 Pac. 476.

9. **Power of state.**—The state may prevent a person or corporation from conducting business, and in so preventing it take control of its affairs, terminate its business and pay its creditors for acts entirely foreign to and absolutely without the contemplation of bankruptcy.—*Continental, etc., Association v. Superior Court*, 163 Cal. 579, 583, 126 Pac. 476.

10. **Receiver.**—The act does not imperatively require the appointment of a receiver, regardless of the general principles of equity, but only permits it, in the discretion of the court.—*People v. Union B. & L. Ass'n*, 127 Cal. 400, 58 Pac. 822, 59 Pac. 692.

CHAPTER 45.

BUILDINGS.

References: See titles "Architecture"; "Dwelling Houses"; "Hotels"; "Lodging Houses"; "Public Buildings"; "Tenement Houses."

CONTENTS OF CHAPTER.

ACT 570. BUILDING ZONE ACT.

571. BUILDING LINE ACT.

BUILDING ZONE ACT.

ACT 570—An act to provide for the establishment within municipalities of districts or zones within which the use of property, height of improvements and required open spaces for light and ventilation of such buildings, may be regulated by ordinance.

History: Approved May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1419.

Cities may create districts within which buildings and trades regulated.

§ 1. For the public interest, health, comfort, convenience, preservation of the public peace, safety, morals, order and the public welfare, the city council, board of trustees or other legislative body of any incorporated city and town of California, hereinafter referred to as the council, may by ordinance create or divide the city into districts within some of which it shall be lawful and within others of which it shall be unlawful

to erect, construct, alter or maintain certain buildings, or to carry on certain trades or callings or within which the height and bulk of future buildings shall be limited.

Restriction on location of industries, etc.

§ 2. The council may by ordinance regulate, restrict and segregate the location of industries, the several classes of business, trades or callings, the location of apartment or tenement houses, club houses, group residences, two-family dwellings, single family dwellings and the several classes of public and semipublic buildings, and the location of buildings or property designed for specified uses, and may divide the city into districts of such number, shape and area as the council may deem best suited to carry out the purposes of this act, subject to the provisions of section four hereof. For each such district regulations may be imposed designating the class of use that shall be excluded or subjected to special regulations and designating the uses for which buildings may not be erected or altered, or designating the class of use which only shall be permitted. Such regulations shall be designed to promote the public health, safety and general welfare. The council shall give reasonable consideration, among other things, to the character of the district, its peculiar suitability for particular uses, the conservation of property values and the direction of building development in accord with a well considered plan.

Regulations of height of buildings. Area of courts, etc. Uniform throughout district.

§ 3. The council may place reasonable regulations and limitations upon the height and bulk of buildings hereafter erected and regulate and determine the area of yards, courts and other open spaces, having due regard to the nature of the use and occupancy in such case. The council may divide the city into districts of such number, shape and area as the council may deem best suited to carry out the purpose of this act, subject to the provisions of section four hereof. The regulations as to the height and bulk of buildings and the area of yards, courts and other open spaces shall be uniform for each class of building throughout each district. The regulations in one or more districts may differ from those in other districts. Such regulations shall be designed to secure safety from fire and other dangers and to promote the public health and welfare, and to secure provision for adequate light, air and reasonable access. The council shall pay reasonable regard to the character of buildings now erected in each district, the value of the land, and the use to which it may be put to the end that such regulations may promote public health, safety and welfare.

Cities with planning commission. Hearing.

§ 4. In municipalities having a city planning commission the council shall require such commission to recommend the boundaries of such districts and appropriate regulations and restrictions to be enforced therein. Such commission shall make a tentative report and hold public hearings thereon at such times and places as said council shall require before submitting its final report. Said council shall not hereafter determine the boundaries of any district or impose any regulations until after the final report of the city planning commission is filed with the city clerk. Upon receiving such final report said council shall afford persons particularly interested, and the general public, an opportunity to be heard, at a time and place to be specified in a notice of hearing to be published in a newspaper to be designated for that purpose. Said newspaper to be a local newspaper, if there be one, otherwise a newspaper of general circulation within the municipality, and to be published not less than three times in any daily, or not less than once in any other newspaper of general circulation within the municipality, and within the week within which said meeting is to be held.

Cities without planning commission.

§ 5. In municipalities where there is no city planning commission the council may proceed in the manner prescribed in section four hereof and shall make the tentative

report, arrange for and hold such public hearings, make such final report and afford all persons particularly interested and the general public, and opportunity to be heard at the time and place and in the manner prescribed in section four hereof.

Penalties.

§ 6. The council may establish penalties for violations of such an ordinance once established and in effect.

BUILDING LINES.

ACT 571—An act authorizing and empowering municipalities to provide a procedure for the fixing and establishing of setback lines on private property bordering on the whole or part of any street, avenue or highway, to prohibit the erection of buildings, fences or other structures between such setback lines and the lines of any such street, avenue or highway, and to condemn any and all property necessary or convenient for that purpose.

History: Approved May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1421.

City council may establish setback lines.

§ 1. Whenever public interest or convenience may require, the city council of any municipality shall have full power and authority to provide a procedure for the fixing and establishing of setback lines on private property bordering on the whole or part of any street, avenue or other highway, to prohibit the erection of buildings, fences or other structures between such setback lines and the lines of any such street, avenue or other highway, and to condemn any and all property necessary or convenient for that purpose.

Procedure.

§ 2. The ordinance prescribing such procedure shall provide, among other things, for the passage of a resolution of intention describing the land deemed necessary to be taken or damaged therefor, also the exterior boundaries of the district of lands to be benefited by said work or improvement and to be assessed to pay the damages, costs and expenses thereof, and shall require that a written protest signed by the owners of a majority of the frontage upon the streets and parts of streets within the district to be assessed, and filed with such city council, shall be a bar to such proceeding for a period of six months from the date of the filing of such protest. The procedure shall provide for due notice and hearing to property owners liable to be assessed, also a method for the assessment and collection of benefits and the payment of damages, together with such other matters as may be necessary or convenient to promote the objects hereof.

CHAPTER 35.

BUOYS AND BEACONS.

CONTENTS OF CHAPTER.

ACT 575. PROTECTION OF BUOYS AND BEACONS.

PROTECTION OF BUOYS AND BEACONS.

ACT 575—An act for the protection of buoys and beacons.

History: Approved March 26, 1874, Stats. 1873-74, p. 619.

Damages to buoys and beacons.

§ 1. Any person or persons who shall moor any vessel or boat of any kind, or any raft or scow, to any buoy or beacon placed in the waters of California by authority of the United States lighthouse board, or shall in any manner hang on to the same,

with any vessel, boat, raft, or scow, or shall willfully remove, damage, or destroy any such buoy or beacon, or any part of the same, or shall cut down, remove, damage, or destroy any beacon or beacons erected on land in this state by the authority aforesaid, shall, for every such offense, be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months; one-third of the fine in such case to be paid to the informer, and two-thirds thereof to the lighthouse board, to be used in repairing said buoys and beacons.

Cost of repairs, and lien for.

§ 2. The cost of repairing or replacing any such buoy or beacon which may have been misplaced, damaged, or destroyed by any vessel, boat, raft, or scow being made fast to the same, shall, when said cost shall have been legally ascertained, be a lien upon such vessel, boat, raft, or scow, and recovered against the same, and the owner or owners thereof, in an action of debt, in any court of competent jurisdiction in this state.

Act takes effect when.

§ 3. This act shall take effect from and after its passage.

Codified in part.—This, and a prior act on same subject (Stats. 1861, p. 224), were apparently codified, at least in part, by the Penal Code.—See Kerr's Cyc. Penal Code, §§ 609, 614.

BURBANK.

See Act 3094, note.

CHAPTER 36.

BURLINGAME.

References: Incorporation, see post Act 3094, note.

CONTENTS OF CHAPTER.

ACT 578. GRANT OF TIDE LANDS TO CITY.

ACT 578—An act granting to the city of Burlingame the salt marsh, tide and submerged lands of the state of California, including the right to wharf out therefrom, and regulating the management, use and control thereof.

History: Approved May 27, 1915. In effect August 8, 1915. Stats. 1915, p. 904.

Tide lands granted to Burlingame. Conditions of grant. Franchises for wharves, etc. Persons in possession to have first right.

§ 1. There is hereby granted to the city of Burlingame, a municipal corporation of the state of California, and to its successors, all the right, title and interest of the state of California, held by said state by virtue of its sovereignty, in and to all the salt marsh, tide and submerged lands, whether filled or unfilled, within the present boundaries of said city, and situated below the line of mean high tide of the Pacific ocean, or of any harbor, estuary, bay or inlet within said boundaries, to be forever held by said city, and by its successors, in trust for the uses and purposes, and upon the express conditions following, to wit: That said lands shall be used by said city and its successors, solely for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said city, or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof,

to any individual, firm or corporation for any purpose whatever; provided, that said city, or its successors, may grant franchises thereon, for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, for purposes consistent with the trusts upon which said lands are held by the state of California and with the requirements of commerce or navigation at said harbor, for a term not exceeding twenty-five years, and on such other terms and conditions as said city may determine, including a right to renew such lease or leases for a further term not exceeding twenty-five years or to terminate the same on such terms, reservations and conditions as may be stipulated in such lease or leases, and said lease or leases may be for any and all purposes which shall not interfere with navigation or commerce, with reversion to the said city on the termination of such lease or leases of any and all improvements thereon, and on such other terms and conditions as the said city may determine, but for no purpose which will interfere with navigation or commerce; subject also to a reservation in all such leases or such wharfing out privileges of a street, or of such other reservation as the said city may determine for sewer outlets, and for gas and oil mains, and for hydrants, and for electric cables and wires, and for such other conduits for municipal purposes, and for such public and municipal purposes and uses as may be deemed necessary by the said city; provided, however, that each person, firm or corporation or their heirs, successors or assigns now in possession of land or lands abutting on said lands, within the boundaries of the city of Burlingame, shall have a right to obtain a lease for a term of twenty-five years from said city of said land and wharfing out privileges therefrom with a right of renewal for a further term of twenty-five years pursuant to the provisions of this act and on such terms and conditions as said city may determine and specify, subject to the right of said city to terminate said lease at the end of the first twenty-five years or refuse to renew the same, or to terminate the lease so renewed during the term of such renewed lease on such just and reasonable terms for compensation for improvements at the then value of said improvements as said city may determine and specify. Upon obtaining such lease and wharfing out privileges such person, firm or corporation, their heirs or assigns, shall quitclaim to said city any right they or any of them may claim or have to the said lands hereby granted. This grant shall carry the right to such city of the rents, issues and profits in any manner hereafter arising from the lands or wharfing out privileges hereby granted.

Right to use wharves, etc., reserved to state. No discrimination in rates. Right to fish reserved.

The state of California shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the state of California. No discrimination in rates, tolls or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or its successors in the management, conduct or operation of any of the utilities, structures or appliances mentioned in this section. There is hereby reserved in the people of the state of California the right to fish in the waters on which said lands may front with the right of convenient access to said waters over said lands for said purpose.

Must issue \$100,000 bonds within five years. Lands may revert to state.

§ 2. The foregoing conveyance is made upon the condition that the city of Burlingame shall, within five years from the time this act shall go into effect, exclusive of such time, as said city may be restrained from so doing by injunction, issued out of any court of this state or of the United States, and exclusive of such further delay as may be caused by unavoidable misfortune or great public or municipal calamity, issue

its bonds for harbor improvement purposes in an amount of money of not less than one hundred thousand dollars, and shall, within five years after this act shall go into effect, exclusive of the time in this section hereinbefore mentioned, commence the work of such harbor improvement, and the said work and improvement shall be presecuted with such diligence that not less than one hundred thousand dollars shall be expended thereon within five years from the time this act shall go into effect, exclusive of the time in this section hereinbefore mentioned. If said bonds be not issued or said work be not prosecuted and completed as and in the manner herein provided, then, the lands by this act conveyed, to the city of Burlingame, shall revert to the state of California.

CHAPTER 37.

BURNT OR DESTROYED RECORDS OR DOCUMENTS.

References: Abstract of title, admission in evidence when records are burnt or destroyed, see Kerr's Cyc. Code Civil Procedure, § 1855a.

Articles of incorporation, burnt or destroyed, see Kerr's Cyc. Civil Code.

Corporate bonds, burnt or destroyed, see Kerr's Cyc. Civil Code, § 329.

Corporate records, stock certificates, etc., see Kerr's Cyc. Civil Code, § 365.

"McEnerny Act" and supplement, see post Acts 5192, 5193.

Nunc pro tunc filing of papers, where burnt or destroyed, see Kerr's Cyc. Code Civil Procedure, § 1046a.

Plant of title abstract company, condemnation of, to replace burnt or destroyed public records, see Kerr's Cyc. Code Civil Procedure, § 1238, subd. 15.

Private writings, burnt or destroyed, reissue of, see Kerr's Cyc. Civil Code, § 3415.

Proof of contents of burnt or destroyed records, see Kerr's Cyc. Code Civil Procedure, § 1855a.

CONTENTS OF CHAPTER.

ACT 580. "BURNT RECORD ACT."

581. NEW TRIAL ACT.

583. REGISTERS OF STATE BOARDS, REPRODUCTION OF.

584. ASSESSMENT ROLLS, RESTORATION OF.

585. MUNICIPAL SECURITIES, DUPLICATION OF.

586. PUBLIC CERTIFICATES, DUPLICATION OF.

587. PUBLIC DOCUMENTS, COPYING.

"BURNT RECORD ACT."

ACT 580—An act relating to the restoration of court records which have been lost, injured or destroyed by conflagration or other public calamity.

History: Approved June 16, 1906, Stats. 1906 (ex. sess.), p. 73.

Court records, restoration of those lost or destroyed by conflagration.

§ 1. Whenever in any action or special proceedings, civil or criminal, in any court of this state, any judgment, decree, order, document, record, paper, process, or file, or any part thereof, shall have been or shall hereafter be lost, injured or destroyed by reason of conflagration or other public calamity, any party or person interested therein may, on application by a duly verified petition in writing to such court, and on showing to the satisfaction of such court that the same has been lost, injured or destroyed by conflagration or other public calamity, without fault or négllect of the party or person making such application, obtain an order from such court upon notice given as provided in section ten hundred and ten to ten hundred and seventeen inclusive of the Code of Civil Procedure, authorizing such defect to be supplied by a duly certified copy of such original, where the same can be obtained, which certified copy shall thereafter have the same effect in all respects as such original would have had.

Same.

§ 2. Whenever in any action or special proceeding, civil or criminal, in any court of this state any judgment, decree, order, document, record, paper, process or file,

or any part thereof, shall have been or shall hereafter be lost, injured or destroyed by reason of conflagration or other public calamity, and such defect can not be supplied as provided in the last section, any party or person interested therein may make written application to the court in which the same belongs, verified by affidavit or affidavits, showing such loss, injury or destruction, and that certified copies thereof can not be obtained by the party or persons making such application, and that such loss, injury or destruction occurred by conflagration, or other calamity, without the fault or neglect of the party making such application, and that such loss, injury or destruction, unless supplied or remedied will or may result in damage to the party or person making such application, and thereupon such court shall cause notice of such application to be given, as provided in section ten hundred and ten to ten hundred and seventeen inclusive of the Code of Civil Procedure. If, upon such hearing the court shall be satisfied that the statements contained in such written application are true, the court shall make an order reciting what was the substance and effect of such lost, injured or destroyed judgment, decree, order, document, record, paper, process or file, which order shall have the same effect that such original would have had if the same had not been lost, injured or destroyed, so far as concerns the party or persons making such application, and the persons who shall have been notified, as provided for in this section. The judgment, decree, order, document, record, paper, process, or file in all cases where the proceeding is in rem, including probate, guardianship and insolvency proceedings, may be supplied in like manner upon like notice to all persons who have appeared therein, and notice by publication or postings to all persons who have not appeared for not less than ten days, as the court may order, and the same when restored shall have the same effect upon all persons who have been personally served with notice of such application as the original, and as to all other persons the same shall be prima facie evidence of the contents of such original.

Appeal.

§ 3. If an appeal shall have been taken in any action or special proceeding in any superior court in which the record shall have been subsequently lost or destroyed by conflagration or other public calamity, to a district court of appeal or to the supreme court, and a transcript of such record has been filed in such district court of appeal or in the supreme court, any party or person interested in the action or special proceeding may obtain a certified copy of such transcript, or of any portion thereof, from the clerk of the district court of appeal, attested by the presiding judge thereof, or from the clerk of the supreme court, attested by the chief justice, and may file such certified and attested copy of such transcript or of any part or portion thereof in the office of the clerk of the superior court from which such appeal was taken. Thereupon such certified and attested copy of such transcript or of any part or portion thereof may be made the basis of any further proceedings or processes in such superior court in such action or special proceeding to all intents and purposes as if the original record so copied, certified and attested, or the part or portion thereof so copied, certified and attested, were on file.

§ 4. This act shall take effect immediately.

1. Constitutionality.—"Burnt record act" not special legislation.—*People v. Fallon*, 154 Cal. 743, 99 Pac. 202.

2. Deficiency judgment—Restoration of judgment roll unnecessary.—In an action on a deficiency judgment, where the judgment roll in the foreclosure suit was destroyed in the conflagration of 1906, and the jurisdiction of the court in that suit is admitted, it is unnecessary to restore the en-

tire judgment roll, but it is sufficient to prove the contents of the judgment of foreclosure and of the deficiency judgment.—*Hibernia, etc., Soc. v. Boyd*, 155 Cal. 193, 100 Pac. 239.

3. Dismissal of action—Discretion of court.—The trial court has jurisdiction to dismiss an action the records in which have been burnt or destroyed, and it is not an abuse of discretion so to do, where there

has been a delay of two years in having such records restored.—*Bell v. Solomons*, 162 Cal. 105, 121 Pac. 377.

4. Dismissal of action for unreasonable delay in restoring records.—Discretion of court.—Held that there was no abuse of discretion in dismissing the action for the unreasonable delay shown under the circumstances of the present case.—*Gray v. Times-Mirror*, 11 Cal. App. 155, 104 Pac. 481.

5. Dismissal of appeal.—Inexcusable delay in restoring record.—An appeal will be dismissed where appellant's attorneys were guilty of inexcusable lack of diligence in initiating and prosecuting proceedings to restore records, resulting upwards of two years delay in filing transcript.—*Estate of Heywood*, 154 Cal. 312, 97 Pac. 825.

6. Duty of restoration.—It was the duty of appellant to initiate proceedings under the restoration act to restore the record of the orders appealed from, and not the respondent.—*Estate of Heywood*, 154 Cal. 312, 97 Pac. 825.

7. Impossibility of restoration.—Bill of exceptions.—Under the restoration act of 1906 a judgment creditor may maintain an action to restore the judgment roll where the entire record was destroyed in the conflagration of April, 1906, notwithstanding that at the time of such destruction a motion for a new trial and the settlement of a bill of exceptions were pending, and it is impossible to restore the contents of such bill of exceptions.—*Foerst v. Kelso*, 163 Cal. 436, 439, 125 Pac. 1054.

8. Judgment roll, effect of, not involved.—On an application for the restoration of the judgment roll, no question as to the effect of such judgment roll when restored, are involved in the application for such restoration, or on an appeal from an order therefor.—*Foerst v. Kelso*, 163 Cal. 436, 439, 125 Pac. 1054.

9. Jurisdiction of court.—Abuse of discretion.—Under the circumstances of this case, and in view of the fact that the court had the power of its own motion to restore its own records, upon no reasonable theory can it be said that the court abused its discretion in restoring the record.—*In re Jones*, 17 Cal. App. 327, 119 Pac. 670.

10. Jurisdiction to order restoration of record of criminal appeal.—After transfer by the supreme court to the district court of appeals, the latter has complete jurisdiction of a criminal appeal to make orders under the restoration act relating to the restoration of court records therein.—*People v. Garnett*, 9 Cal. App. 194, 98 Pac. 247.

11. Oral proof of destruction.—Rule of evidence.—The restoration does not provide an exclusive remedy, or forbid all other proof of lost judicial records, or abrogate the rule of evidence admitting oral proof of their contents.—*Hibernia, etc., Soc. v. Boyd*, 155 Cal. 193, 100 Pac. 239.

12. Purpose of act is to provide conclusive evidence of the contents of the record, and dispense with the necessity of secondary evidence.—*In re Jones*, 17 Cal. App. 327, 119 Pac. 670.

13. Same.—Other issues.—The ends of justice would not be promoted by complicating the restoration contemplated by the act with other issues.—*In re Jones*, 17 Cal. App. 327, 119 Pac. 670.

14. Printed copy for original transcript.—Jurisdiction to order substitution.—The district court of is empowered to order the substitution of a printed copy for the original transcript on appeal in a criminal case.—*People v. Garnett*, 9 Cal. App. 194, 98 Pac. 247.

15. Right to remedy.—Apparent interest.—A divorced wife who has an apparent interest under the will of her deceased former husband is entitled to have a restoration of the decree of distribution under such will, without regard to the question as to whether, by remarriage or otherwise, prior to the death of the deceased she forfeited such interest.—*In re Jones*, 17 Cal. App. 327, 119 Pac. 670.

Copying public documents.—See, post, Act 587.

Duplicate municipal securities.—See, post, Act 585.

Duplicate public certificates.—See, post, Act 586.

New trial act.—See, post, Act 581.

Reproduction of records of state boards.—See, post, Act 583.

Restoration of assessment rolls.—See, post, Act 584.

NEW TRIAL ACT.

ACT 581—An act providing for the disposition of actions and proceedings in which bills of exceptions and statements on motion for a new trial have been lost or destroyed by conflagration or other public calamity.

History: Approved March 23, 1907, Stats. 1907, p. 998.

New trial may be had if bill of exceptions lost.

§ 1. When any proposed bill of exceptions, or statement of the case on motion for a new trial, in action or proceedings, is lost or destroyed by reason of conflagration or other public calamity, and no other record of the proceedings upon the trial thereof can be obtained, and such action or proceeding is subject to review by motion for new trial, pending at the time of such loss or destruction, and it is by the court in which such action or proceeding is pending deemed impossible or impracticable to restore

such proceedings (and to settle a bill of exceptions or statement of the case containing such proceedings) so as to enable the court to review the judgment or order therein by motion for new trial, the court may grant a new trial of such action or proceeding if at the time of such loss or destruction a motion for new trial be pending therein, and such action or proceeding shall thereupon be tried anew. In order to grant such new trial, it shall be unnecessary to have any bill of exceptions or statement of the case settled, but upon the facts above recited being shown to the satisfaction of the court by affidavit or otherwise, the court shall have power in its discretion to grant such new trial.

Extension of time pending hearing of motion.

§ 2. Pending the hearing of a motion under the preceding section to grant such new trial, the time within which a bill of exceptions might be prepared, served or presented for settlement, shall be extended, and shall not commence to run until the decision upon such motion. (The motion provided for by this act must be made within thirty days after the loss or destruction of such records; provided, that in any case now pending such motion may be made at any time within sixty days after the passage of this act.)

§ 3. This act shall take effect immediately.

1. Constitutionality—Subject matter expressed in title—More than one subject.—The statute is not unconstitutional as in violation of section 24, article IV of the constitution, on the ground that the subject is not expressed in the title and that more than one subject is embraced in the title.—*Bassford & Earl, 172 Cal. 653, 659, 158 Pac. 124.*

2. Same—Not special legislation.—The statute does not contravene section 25, article IV, of the constitution, prohibiting special legislation.—*Bassford v. Earl, 172 Cal. 653, 660, 158 Pac. 124.*

3. Same—Impairment of obligation of contracts.—The statute merely changes a remedy applicable to a special proceeding, and does not impair the obligation of a contract.—*Bassford v. Earl, 172 Cal. 653, 661, 158 Pac. 124.*

4. Application of act—Appellate court.—The act applies to the trial court in which the action is pending, and not to the appellate court where an appeal from a new trial order is pending.—*People v. Napoli, 7 Cal. App. 79, 93 Pac. 500.*

5. Construction of act—Remedial.—Act is remedial, and was intended to have a retro-active operation, and not to be limited to conditions arising after its passage.—*Bassford v. Earl, 172 Cal. 653, 656, 158 Pac. 124.*

6. Same—No bill of exceptions required—Affidavits.—The act does not require a bill of exceptions, but the court may hear the motion on "affidavits or otherwise."—*Fisher v. Western Fuse, etc., Co., 12 Cal. App. 299, 107 Pac. 332.*

7. Condition of relief—Restoration impossible or impractical.—The condition which must exist to authorize the relief provided by the act exists when the court, at the time the application is made, deems

it impossible or impractical to restore the proceedings.—*Bassford v. Earl, 172 Cal. 653, 657, 158 Pac. 124.*

8. Negligent delay—Failure to obtain record.—The statute contemplates diligence and if, by the moving party's neglect a means of obtaining another transcript is lost, by death or otherwise, when, by due diligence he might have caused the restoration of the record, he should not be permitted to contend, at the hearing for the new trial provided in proper cases by the statute that no other record can be obtained, for in such case his inability to obtain a bill of exceptions would be the result of his neglect and not of the conflagration and the destruction of the original.—*Bassford v. Earl, 172 Cal. 653, 657, 158 Pac. 124.*

9. Power of court discretionary.—Where the official reporter furnished the moving party with a full copy of the proceedings required to prepare a new bill of exceptions, in place of a destroyed proposed bill of exceptions, the granting of a new trial under the act would not have been in plain violation of the statute, and it was not an abuse of discretion to continue the motion for the preparation of a new bill.—*Fisher v. Western Fuse, etc., Co., 12 Cal. App. 299, 107 Pac. 332.*

Burnt record act.—See, ante, Act 580.

Copying public documents.—See, post, Act 587.

Duplicate municipal securities.—See, post, Act 585.

Duplicate public certificates.—See, post, Act 586.

Reproduction of records of state boards.—See, post, Act 583.

Restoration of assessment rolls.—See, post, Act 584.

REPRODUCTION OF REGISTERS OF STATE BOARDS.

ACT 583—An act to provide for the reproduction of the register of the board of medical examiners, the board of dental examiners, or the board of pharmacy, where the same has been destroyed by conflagration or other public calamity.

History: Approved June 16, 1906, Stats. 1906 (ex. sess.), p. 82.

State medical examiners, powers of.

§ 1. Whenever the register or book of registration of the board of medical examiners of the state of California, the board of dental examiners of California, or the board of pharmacy, has been or may hereafter be destroyed by fire or other public calamity, the board whose duty it is to keep such register or book is hereby authorized to reproduce such register or book so that the same may show as nearly as possible the record existing in the original register or book at the time of such destruction.

Reproduction of lost records.

§ 2. For the reproduction of the destroyed register or book the board shall make use of such existing official printed registers, books, or matter, certificates, affidavits to be presented, or other official information as may be available and which may appear to said board to be authentic, and upon the completion of the said reproduction said board shall by resolution adopt such reproduced register or book as the register or book of said board, and thereafter the same shall be taken and used to all intents and purposes as well for evidence as otherwise as if the same were the original register or book.

§ 3. This act shall take effect immediately.

Burnt record act.—See, ante, Act 580.

Copying public documents.—See, post, Act 587.

Duplicate municipal securities.—See, post, Act 585.

Duplicate public certificates.—See, post, Act 586.

New trial act.—See, ante, Act 581.

Restoration of assessment roll.—See, post, Act 584.

RESTORATION OF ASSESSMENT ROLL.

ACT 584—An act enabling the restoration of an assessment roll when the same has been destroyed.

History: Approved June 16, 1906, Stats. 1906 (ex. sess.), p. 83.

Lost assessment roll, restoration of. Proviso.

§ 1. Wherever, through loss by fire, or other public calamity, the assessment roll of a city, city and county, county or other political subdivision of the state in course of preparation by the assessor of any city, city and county, county or other political subdivision of the state, shall have been or shall be destroyed and such burnt or destroyed record shall have been reconstructed from such data as is available, it shall be lawful for the assessor at any time prior to the sale for delinquent taxes after such assessment is compiled, to correct any assessment erroneously made; provided, however, that any correction so made shall at once be certified to in writing by the assessor, to the tax collector, the auditor and the state controller, and provided, further, that the assessor shall enter opposite said assessment on the assessment roll, the date and nature of said correction. Such change shall be recognized by any city, city and county, county or state official whose duty it is to make or exact a financial statement based on said assessment roll, and in making such settlement any alterations resulting from such changes shall be recognized by such officials.

§ 2. This act shall take effect immediately.

Burnt record act.—See, ante, Act 580.

Copying public documents.—See, post, Act 587.

Duplicate municipal securities.—See, post, Act 585.

Duplicate public certificates.—See, post, Act 586.

New trial act.—See, ante, Act 581.

Reproduction of register of state boards.—See, ante, Act 583.

DUPLICATE MUNICIPAL SECURITIES.

ACT 585—An act to provide for the issuance of duplicates of bonds, warrants and other municipal securities which have become defaced or mutilated.

History: Approved February 23, 1907, Stats. 1907, p. 53.

Mutilated municipal bonds, duplicates may be issued.

§ 1. Whenever it shall be made to appear to the legislative body of any county, city and county, city, town, irrigation district, school district or other municipal corporation, by clear and unequivocal proof, that any bond, warrant, or other evidence of indebtedness of said county, city and county, city, town, irrigation district, school district, or other municipal corporation has, without bad faith upon the part of the owner, been so mutilated or defaced as to impair its value to the owner, and such instrument is capable of being identified by number and description, such legislative body shall, under such regulations and with such restrictions as to time and retention for security or otherwise, as it may prescribe, and upon the conditions hereinafter provided, issue or cause to be issued a duplicate thereof, having the same time to run, bearing like interest, and having the same number as the evidence of indebtedness so proved to have been mutilated or defaced.

Procedure to procure duplicates.

§ 2. The owner of such bonds or other evidences of indebtedness desiring to have issued duplicates for the same shall make a written application therefor to the legislative body of such municipal corporation, setting forth the facts provided by section 1, and shall accompany such request with a deposit of such sum of money as shall be deemed sufficient by such legislative body to cover the cost of printing or lithographing, or otherwise preparing such duplicate, and all other expenses connected with the issuance thereof, and if required by such legislative body, shall also file therewith a bond in such sum as may be required, with good and sufficient sureties, to be approved by such legislative body, with condition to indemnify and save harmless such municipal corporation from any claim upon such mutilated or defaced security.

Duty of municipal legislature. Cancellation of original decision.

§ 3. The legislative body of such municipal corporation shall thereupon pass a resolution, setting forth the fact of said application and the compliance with the conditions herein prescribed, and with such further conditions as shall have been required by said legislative body in accordance herewith, and directing the officer or officers who had charge, in the first instance, of causing to be printed, lithographed, or otherwise prepared the original bond, warrant, or other evidence of indebtedness, to cause to be issued a duplicate thereof, as herein provided. Such duplicate bond, warrant, or other evidence of indebtedness shall be signed by the same officers, and issued in all respects as nearly as possible as the original instrument, and when so prepared and issued shall be delivered in exchange for the original bond, warrant, or other evidence of indebtedness; provided, that no exchange shall be made unless such defaced or mutilated bond, together with any coupons thereon for which duplicates shall be issued in accordance with this act, shall be capable of identification, and shall first be surrendered by the owner thereof. When surrendered, the legislative body of such municipal corporation shall cause proper record to be made of the cancellation of such original security, and thereafter the duplicate issued in accordance with the provisions of this act, shall have all the force, effect and validity of the original evidence of indebtedness.

§ 4. This act shall take effect immediately.

Burnt record act.—See, ante, Act 580.

Copying public documents.—See, post, Act 587.

Duplicate public certificates.—See, post, Act 586.

New trial act.—See, ante, Act 581.

Reproduction of registers of state boards.—See, ante, Act 583.

Restoration of assessment roll.—See, ante, Act 584.

DUPLICATE PUBLIC CERTIFICATES.

ACT 586—An act providing for the issuance of duplicate certificates, where certificates issued under authority of law have been lost or destroyed by conflagration or other public calamity.

History: Approved June 16, 1906, Stats. 1906 (ex. sess.), p. 71.

Certificates issued by public officer, duplicate to those lost.

§ 1. Whenever any public board or officer is authorized by law to issue any certificate of any kind, and the records in the office of such board or officer show the issuance of such certificate, and it is made to appear by affidavit that such certificate has been lost or destroyed by conflagration or other public calamity, such board or officer may issue a duplicate of such certificate, which shall recite the issuance and loss or destruction of such original certificate, and shall have the same force and effect as such original certificate; provided, that this act shall not apply to certificates of acknowledgments.

§ 2. This act shall take effect immediately.

Burnt record act.—See, ante, Act 580.

New trial act.—See, ante, Act 581.

Copying public documents.—See, post, Act 587.

Reproduction of register of state boards.—See, ante, Act 583.

Duplicate municipal securities.—See, ante, Act 585.

Restoration of assessment roll.—See, ante, Act 584.

COPYING PUBLIC DOCUMENTS.

ACT 587—An act to provide for the copying of books, documents, maps or records required by law to be kept or preserved by city, county, or city and county officers which have been damaged by conflagration or other public calamity.

History: Approved June 16, 1906, Stats. 1906 (ex. sess.), p. 72.

Damaged records, books, maps, etc., copied, transcribed and bound by order of supervisors.

§ 1. Whenever any book, document, map or record required by law to be kept or preserved by any city, county, or city and county officer has been or may hereafter be damaged by conflagration or other public calamity, it shall be lawful for the board of supervisors, or board of trustees, of the city, county, or city and county in which the same is required to be kept or preserved, to cause such book, document, map or record to be copied and transcribed into a new and well bound book.

Compared with original and affidavits attached. Authenticated by officer having custody thereof.

§ 2. Said book, document, map, or record, when so copied or transcribed, shall be carefully compared with the original thereof, and when the same shall have been so copied and compared with the original thereof, the persons who have done such comparing shall each make an affidavit which shall be incorporated into the book, document, map or record as copied, that said book, document, map or record and each and every part thereof is a true copy of the original book, document, map or record, and each and every part thereof; that the matter of record which appears on every page of the original appears also upon the same page of the copy; and that no matter of record appears upon any page of the copy which is not to be found upon the same page of the original. Said book, document, map or record shall also be authenticated under the hand of the officer having the custody thereof, to the effect that the same is a true copy of the original book, document, map or record so damaged.

Prima facie evidence.

§ 3. Any such new book, document, map or record copied and authenticated as above provided, shall be prima facie evidence of the contents of the original book, document,

map or record; and it shall bear the same name and designation as the original thereof, and certified copies of any instrument so copied into it shall have the same force and effect as certified copies of the original made from the original book.

Expenses, how met.

§ 4. The board of supervisors or board of trustees of such city, county, or city and county, may make such provision for the payment for copying and transcribing the books, documents, maps and records under this act, out of the city, county, or city and county treasury, as to them may seem reasonable, not exceeding the amount now authorized to be received for copying and recording the originals thereof, and the same shall be a charge against the city, county, or city and county.

§ 5. This act shall take effect immediately.

Burnt record act.—See, ante, Act 580.

New trial act.—See, ante, Act 581.

Duplicate municipal securities.—See, ante, Act 585.

Reproduction of register of state boards.—See, ante, Act 583.

Duplicate public certificates.—See, ante, Act 586.

Restoration of assessment rolls.—See, ante, Act 584.

CHAPTER 38.

BUTTE COUNTY.

CONTENTS OF CHAPTER.

ACT 593. "NO FENCE LAW."

596. **LAWFUL FENCE ACT.**

597. **HUNTING IN PRIVATE GROUNDS.**

602. **TRANSCRIBING RECORDS, AND LEGALIZING SAME.**

603. **CERTIFIED COPIES OF RECORDS.**

613. **CHARTER OF BUTTE COUNTY.**

"NO FENCE LAW."

ACT 593—An act to protect agriculture in the county of Butte.

History: Approved March 10, 1874, Stats. 1873-74, p. 310. Amended March 16, 1876, Stats. 1875-76, p. 314.

Necessity of fencing—Construction of act.
—This act does not compel an owner to fence his land against the stock of another, but it may be a necessity for fencing in his own cattle.—Butte Co. v. Boydston, 64 Cal. 110, 29 Pac. 511.

This act provided against animals trespassing on cultivated land.

See Editor's note to chapter on "Estrays."
See chapter on "Trespassing Animals," in general.

Continued in force by the code.—See Kerr's Cyc. Political Code, § 19.

LAWFUL FENCE.

ACT 596—An act defining a lawful and partition fence in the counties of Butte and Yolo.

History: Approved March 30, 1872, Stats. 1871-72, p. 700.

Continued in force by the code.—See Kerr's Cyc. Political Code, § 19.
See, post, chapter on "Fences."

See, also, Kerr's Cyc. Civil Code, § 841, and notes.

HUNTING IN PRIVATE GROUNDS.

ACT 597—An act to prohibit the hunting or shooting of game within certain private grounds in the county of Butte.

History: Approved March 22, 1872, Stats. 1871-72, p. 477.

This act made it a misdemeanor to hunt or shoot game in any enclosure within 500

yards of a dwelling belonging to another person.

TRANSCRIBING RECORDS.

ACT 602—An act authorizing and empowering the county clerk of Butte county to transcribe certain records, and to legalize the same.

History: Approved March 16, 1859, Stats. 1859, p. 119.

CERTIFIED COPIES OF RECORDS.

ACT 603—An act authorizing and empowering the county recorder of Butte county to make certified copies of certain records and indexes of records of said county, and fixing the amount of his compensation therefor.

History: Approved April 2, 1858, Stats. 1858, p. 108.

ACT 613—Charter of Butte county.

History: Voted for and ratified at the general election held November 7, 1916. Filed with the Secretary of State January 27, 1917. Stats. 1917, p. 1791.

CHAPTER 39.

BUTTER.

References: See tits. "Adulteration"; "Dairies."

CONTENTS OF CHAPTER.

- ACT 617. MARKING PACKAGES LESS THAN SIX AND MORE THAN ONE-HALF POUND IN WEIGHT.
- 618. RENOVATED BUTTER, DECEPTION IN SALE OF.
- 620. SHORT WEIGHT BUTTER.
- 621. IMITATION BUTTER AND CHEESE.
- 624. IMPORTED BUTTER.

MARKING PACKAGES.

ACT 617—An act requiring the marking of packages of butter containing less than six pounds and more than one-half pound so as to advise the purchaser or others as to the weight of butter contained in such package.

History: Approved March 20, 1905, Stats. 1905, p. 316.

Unconstitutional: Ex parte Dietrich, 149 Cal. 104, 5 L. R. A. (N. S.) 873, 84 Pac. 770.

RENOVATED BUTTER.

ACT 618—An act to prevent deception in the sale of renovated butter and to license manufacturers and dealers in the same.

History: Approved March 20, 1905, Stats. 1905, p. 468. This act repealed the prior act on same subject, of February 23, 1899, Stats. 1899, p. 25; which was subsequently re-enacted as § 383a, Penal Code. See Kerr's Cyc. Penal Code, § 383a.

Sale of renovated butter prohibited unless stamped.

§ 1. No person or persons, firms or corporations, by themselves or their agents or employees, shall sell, offer for sale or expose for sale or have in his or their possession for sale any renovated butter unless the same shall have printed upon each and every package, roll, print, square, or any container of such renovated butter the words "renovated butter" in letters not less than one-half inch in height, or who shall not have secured from the state dairy bureau, now existing under the laws of this state, a license as provided hereinafter.

Renovated butter defined.

§ 2. The term renovated butter as used in this act is hereby defined to mean and include butter that has been reduced to a liquid state by melting, and drawing of such liquid or butter oil and churning or otherwise manipulating it in connection with milk or any product thereof.

License to manufacture or deal in renovated butter. License. Wholesalers and retailers, who are. Record of sales.

§ 3. Any person or persons, firms or corporations, desiring to manufacture or deal in renovated butter shall make application to the state dairy bureau for a license and upon payment of a license fee of the amount mentioned herein, to the state dairy bureau, said bureau shall issue to the applicant a license. All such licenses shall expire December 31st of each year and may be issued in periods of one year or six months, upon payment of a proportionate part of the license fee. Manufacturers of renovated butter within this state shall pay an annual license fee of one thousand dollars; wholesale dealers shall pay an annual license fee of four hundred dollars; retail dealers shall pay an annual license fee of fifty dollars; hotels, restaurants, boarding houses and all other places where meals are served and payment is received therefor, either immediately or by the day, week or month, and which use or furnish renovated butter in connection with said meals, shall pay an annual license fee of ten dollars. The term wholesale dealers as used herein includes all persons, firms or corporations, who shall sell renovated butter in quantities of ten pounds or more. The term retail dealers includes all persons who sell in quantities of less than ten pounds. All licenses while in force shall be conspicuously displayed in the place of business of the party or parties to whom they have been issued. The state dairy bureau shall require all persons holding a manufacturer's or wholesaler's license, as provided in this act, to keep a record in a form separate from all other business in which every sale of renovated butter shall be recorded, giving the quantity sold, the name and location of the buyer and the place to which it was shipped. Such record shall be accessible at all times to duly authorized representatives of the state dairy bureau.

Disposition of license fees.

§ 4. All license fees paid to the state dairy bureau under this act shall be paid by said bureau into the state treasury, the same to be added to the appropriation made for the same fiscal year for the bureau and its expenditure shall be at the disposal of said bureau for its use.

Violations of this act, punishment.

§ 5. Whoever shall violate any of the provisions or sections of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished for the first offense by a fine of not less than twenty dollars nor more than one hundred dollars; or by imprisonment in the county jail for not less than ten days and not exceeding thirty days; and for each subsequent offense by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment in the county jail for not less than twenty days nor more than one hundred days, or by both such fine and imprisonment, at the discretion of the court.

Duty of district attorney. Disposition of fines.

§ 6. It shall be the duty of the district attorney of each and every county in this state, upon application, to attend to the prosecution in the name of the people of any action brought for the violation of any of the provisions of this act within his district. One-half of all the fines imposed for the violation of any of the provisions of this act shall be paid to the county in which the fine is imposed. The other one-half shall be paid to the state dairy bureau, and by said bureau to the state treasurer, and the same shall become a part of the appropriation made by law for the use of said state dairy bureau.

Repeal of former and inconsistent acts.

§ 7. An act which became a law under constitutional provision without the governor's approval, February 23, 1899, entitled "An act to prevent deception in the sale

of process or renovated butter'' and all other acts or parts of acts inconsistent with this act are hereby repealed.

§ 8. This act shall take effect thirty days after its passage.

Adulteration of dairy products.—See, post, Act 1165.

Duty of state dairy bureau, as to use of inaccurate or fraudulent butter tests.—See Kerr's Cyc. Penal Code, § 381b.

Imitation Butter—Constitutionality of statutes regulating the manufacture and sale of.—See 35 L. R. A. 844; 57 L. R. A. 181; 118 Fed. 56, 47 C. C. A. 195.

Same—Original packages from other states.—See 30 L. R. A. 396.

Same—Prohibiting sale of.—See 15 L. R. A. 889. Unless colored pink.—See 1 L. R. A. 51; 35 L. R. A. 844.

Same—Regulating traffic in.—See notes 1 L. R. A. 52; 6 L. R. A. 533; 11 L. R. A. 532; briefs in 15 L. R. A. 839 and 30 L. R. A. 397. As affecting interstate commerce, see briefs in 10 L. R. A. 830; 22 L. R. A. 156; 30 L. R. A. 397.

Manufacture and sale of adulterated food products in general.—See tit. "Adulteration."

Use of inaccurate or fraudulent butter tests.—See Kerr's Cyc. Penal Code, § 381a.

See Kerr's Cyc. Penal Code, § 383a and notes.

SHORT-WEIGHT BUTTER.

ACT 620—An act entitled an act to prevent the sale of short-weight rolls of butter.

History: Approved March 11, 1893, Stats. 1893, p. 151.

Short-weight butter.

Any person or persons, firm or corporation, who offers for sale roll-butter not of full weight to each roll, shall be guilty of a misdemeanor.

Act takes effect when.

This act shall go into effect sixty days after its passage.

IMITATION BUTTER AND CHEESE.

ACT 621—An act to prevent deception in the manufacture and sale of butter and cheese, to secure its enforcement, and to appropriate money therefor.

History: Approved March 4, 1897, Stats. 1897, p. 65. Prior acts: Act approved March 2, 1881, Stats. 1881, p. 14, which was superseded by the act of March 9, 1895, Stats. 1895, p. 41, which was, in turn, superseded by the present act.

Imitation butter. Imitation cheese.

§ 1. That for the purposes of this act, every article, substance, or compound, other than that produced from pure milk or cream from the same, made in the semblance of butter, and designed to be used as a substitute for butter made from pure milk or cream from the same, is hereby declared to be imitation butter; and that for the purposes of this act, every article, substance, or compound, other than that produced from pure milk or cream from the same, made in the semblance of cheese, and designated [designed] to be used as substitute for cheese made from pure milk or cream from the same, is hereby declared to be imitation cheese; provided, that the use of salt, rennet, and harmless coloring-matter for coloring the product of pure milk or cream, shall not be construed to render such product an imitation; and provided, that nothing in this section shall prevent the use of pure skimmed milk in the manufacture of cheese.

Manufacture and sale of imitation butter, etc.

§ 2. No person, by himself or his agents or servants shall render or manufacture, sell, offer for sale, expose for sale, or have in his possession with intent to sell, or use, or serve to patrons, guests, boarders, or inmates, in any hotel, eatinghouse, restaurant, public conveyance or boardinghouse, or public or private hospital, asylum, or eleemosynary or penal institution, any article, product, or compound made wholly or partly out of any fat, oil, or oleaginous substance or compound thereof, not produced directly and at the time of manufacture from unadulterated milk or cream from the same, which

article, product, or compound shall be colored in imitation of butter or cheese produced from unadulterated milk or cream from the same; provided that nothing in this section shall be construed to prohibit the manufacture or sale, under the regulations hereinafter provided, of substances or compounds, designed to be used as an imitation, or as a substitute for butter or cheese made from pure milk or cream from the same, in a separate and distinct form, and in such a manner as will advise the consumer of its real character, free from coloration, or ingredients, that causes it to look like butter or cheese made from pure milk or cream, the product of the dairy.

Imitation product must be branded.

§ 3. Each person who, by himself or another, lawfully manufactures any substance designed to be used as a substitute for butter or cheese, shall mark by branding, stamping, or stenciling upon the top and sides of each tub, firkin, box, or other package in which such article shall be kept, and in which it shall be removed from the place where it is produced, in a clear and durable manner, in the English language, the words "substitute for butter," or "substitute for cheese," as the case may be, in printed letters in plain Roman type, each of which shall not be less than one inch in height by one-half inch in width, and in addition to the above shall prepare a statement, printed in plain Roman type, of a size not smaller than pica, stating in the English language its name, and the name and address of the manufacture, the name of the place where manufactured or put up, and also the names and actual percentages of the various ingredients used in the manufacture of such imitation butter or imitation cheese; and shall place a copy of said statement within and upon the contents of each tub, firkin, box, or other package, and next to that portion of each tub, firkin, box, or other package as is commonly and most conveniently opened; and shall label the top and sides of each tub, firkin, box, or other package by affixing thereto a copy of said statement, in such manner, however, as not to cover the whole or any part of said mark of "substitute for butter," or "substitute for cheese."

Duty of common carriers.

§ 4. No person, by himself or another, shall knowingly ship, consign, or forward by any common carrier, whether public or private, any substance designed to be used as a substitute for butter or cheese, unless the same be marked and contain a copy of the statement, and be labeled as provided by section three of this act; and no carrier shall knowingly receive the same for the purpose of forwarding or transporting, unless it shall be manufactured, marked, and labeled as hereinbefore provided, consigned, and by the carrier receipted for by its true name; provided, that this act shall not apply to any goods in transit between foreign states and across the state of California.

Descriptive statement must be exposed.

§ 5. No person, or his agent, shall knowingly have in his possession or under his control any substance designed to be used as a substitute for butter and cheese unless the tub, firkin, box, or other package containing the same, shall be clearly and durably marked and contain a copy of the statement and be labeled as provided by section three of this act; and if the tub, firkin, box, or other package be opened, then a copy of the statement described in section three of this act shall be kept, with its face up, upon the exposed contents of said tub, firkin, box, or other package; provided, that this section shall not be deemed to apply to persons who have the same in their possession for the actual consumption of themselves or family.

Imitation product must be sold as such.

§ 6. No person, by himself or another, shall sell, or offer for sale, or take orders for the future delivery of, any substance designed to be used as a substitute for butter

or cheese, under the name of or under the pretense that the same is butter or cheese; and no person, by himself or another, shall sell any substance designed to be used as a substitute for butter or cheese, unless he shall inform the purchaser distinctly, at the time of the sale, that the same is a substitute for butter or cheese, as the case may be, and shall deliver to the purchaser, at the time of the sale, a separate and distinct copy of the statement described in section three of this act; and no person shall use in any way, in connection or association with the sale, or exposure for sale, or advertisement, of any substance designed to be used as a substitute for butter or cheese, the words "butterine," "creamery," or "dairy," or the representation of any breed of dairy cattle, or any combination of such words and representation, or any other words or symbols, or combinations thereof, commonly used by the dairy industry in the sale of butter or cheese.

Duty of restaurant-keepers.

§ 7. No keeper or proprietor of any bakery, hotel, boarding-house, restaurant, saloon, lunch-counter, or other place of public entertainment, or any person having charge thereof, or employed thereat, or any person furnishing board for others than members of his own family, or for any employees where such board is furnished as the compensation or as a part of the compensation of any such employee, shall place before any patron or employee, for use as food, any substance designed to be used as a substitute for butter and cheese, unless the same be accompanied by a copy of the statement described in section three of this act, and by a verbal notification to said patron that such substance is a substitute for butter or cheese.

§ 8. No action can be maintained on account of any sale or other contract made in violation of, or with intent to violate, this act by or through any person who was knowingly a party to such wrongful sale or other contract.

Presumptive evidence.

§ 9. Every person having possession or control of any substance designed to be used as a substitute for butter or cheese which is not marked as required by the provisions of this act, shall be presumed to have known, during the time of such possession or control, that the same was imitation butter, or imitation cheese, as the case may be.

Erasure of label.

§ 10. No person shall efface, erase, cancel, or remove any mark, statement, or label provided for by this act, with intent to mislead, deceive, or to violate any of the provisions of this act.

Use of pure article in state institutions.

§ 11. No butter or cheese not made wholly from pure milk or cream, salt, harmless coloring-matter, shall be used in any of the charitable or penal institutions that receive assistance from the state.

Penalties.

§ 12. Whoever shall violate any of the provisions or sections of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished, for the first offense, by a fine of not less than fifty dollars, nor more than one hundred and fifty dollars, or by imprisonment in the county jail for not exceeding thirty days; and for each subsequent offense, by a fine of not less than one hundred and fifty dollars, nor more than three hundred dollars, or by imprisonment in the county jail not less than thirty days, nor more than six months, or by both such fine and imprisonment, in the discretion of the court. One-half of all the fines collected under the provisions of this act shall be paid to the person or persons furnishing information upon which conviction is procured.

Possession presumptive evidence. Samples for analysis.

§ 13. Whoever shall have possession or control of any imitation butter or imitation cheese, or any substance designed to be used as a substitute for butter or cheese, contrary to the provisions of this act, shall be construed to have possession of property with intent to use it as a means of committing a public offense, within the meaning of chapter three, of title twelve, of part two, of an act to establish a Penal Code; provided, that it shall be the duty of the officer who serves a search-warrant issued for imitation butter or imitation cheese, or any substance designed to be used as a substitute for butter or cheese, to deliver to the agent of the dairy bureau, or to any person by such dairy bureau authorized in writing to receive the same, a perfect sample of each article seized by virtue of such warrant, for the purpose of having the same analyzed, and forthwith to return to the person from whom it was taken the remainder of each article seized as aforesaid. If any sample be found to be imitation butter or imitation cheese, or substance designed to be used as a substitute for butter or cheese, it shall be returned to and retained by the magistrate as and for the purpose contemplated by section fifteen hundred and thirty-six of an act to establish a Penal Code; but if any sample be found not to be imitation butter or imitation cheese, or a substance designed to be used as a substitute for butter or cheese, it shall be returned forthwith to the person from whom it was taken.

Duty of district attorney.

§ 14. It shall be the duty of the district attorney, upon the application of the dairy bureau, to attend to the prosecution, in the name of the state, of any suit brought for the violation of any of the provisions of this act within his district.

State dairy bureau. Tenure of office. Organization. Report.

§ 15. The governor shall, on or before the first day of July, eighteen hundred and ninety-seven, appoint three resident citizens of this state, who shall have practical experience in the manufacture of dairy products, to constitute a state dairy bureau, and which shall succeed the one now in existence in every respect. Members of this bureau shall hold office for the period of four years from and after the first day of July, eighteen hundred ninety-seven, and until their successors are appointed and qualified; provided, that the first members appointed under the provisions of this act shall at their first meeting so classify themselves by lot as that one shall go out of office at the expiration of two years, one at the expiration of three years, and the other at the expiration of four years. Any vacancy shall be filled by appointment by the governor for the unexpired term. The members of said bureau shall serve without compensation, and within twenty days after their appointment, shall take the oath of office as required by the constitution, and they shall thereupon meet and organize by electing a chairman and treasurer. Any one of them may be removed by the governor, for neglect or violation of duty. They shall make a report in detail to the legislature not later than the first day of December next preceding the meeting thereof.

This section was expressly continued in force by the act of 1911. See, post, Act 1167.

Agent, and salary.

§ 16. It shall be the duty of the state dairy bureau to secure, as far as possible, the enforcement of this act. The state dairy bureau shall have power to employ an agent at a salary of twelve hundred dollars a year, and such assistants or chemists, as from time to time may be necessary therefor.

Appropriations.

§ 17. [Repealed April 21, 1911. Stats. 1911, p. 959.]

Inconsistent acts repealed.

§ 18. All acts and parts of acts inconsistent with this act are hereby repealed.

Act takes effect when.

§ 19. This act shall take effect immediately.

This act is for the most part substantially reproduced in Stats. 1911, p. 959.—See, post, Act 1167.

Definition of butter.—See, post, Act 1165.

Definitions of imitation butter and cheese. See, post, Act 1167.

Section 15 of this act was expressly con-

tinued in force by.—Stats. 1911, p. 977, § 45, post, Act 1167.

Section 17 of this act was expressly repealed by Stats. 1911, p. 977, § 46, post, Act 1167.

Fraud in manufacture, packing and sale of certain goods and products, see Kerr's Cyc. Penal Code, §§ 381, et seq.

IMPORTED BUTTER.

ACT 624—An act to regulate the sale of butter that has been shipped or imported into the state of California from any point or place outside of the United States, requiring the marking thereof by all persons selling or offering same for sale, and fixing penalties for the violation of the same or of any of the provisions thereof.

History: Approved May 19, 1915. In effect August 8, 1915. Stats. 1915, p. 689.

Definitions.

§ 1. For the purposes of this act the words "person, firm, company, or corporation," shall include wholesalers, retailers, jobbers, and every place where butter that has been shipped or imported into the state of California from any point or place outside of the United States is sold or offered for sale.

Butter from outside United States to be marked "imported."

§ 2. Every person, firm, company, or corporation who sells, offers for sale, or has in his, or their, possession for sale, or consigns, ships or presents to any dealer, commission merchant, consumer, or other person any butter that has been shipped or imported into the state of California from any point or place outside of the United States shall, before doing so, cause to be stamped, marked or printed upon the wrapper, or other container thereof in black-face letters not less than one-eighth of an inch in height the word "imported."

Sign indicating importation.

§ 3. Every person, firm, company, or corporation selling or offering for sale any butter that has been shipped or imported into the state of California from any point or place outside of the United States, shall display in a conspicuous place in his or their public salesroom a sign, which shall be not less than one foot in height and two feet in length, bearing the words "imported butter sold here" in black-face letters not less than three inches in height and one-half inch in width upon a white ground.

Penalty for non-compliance.

§ 4. Every person, firm, company or corporation who shall fail to comply with any of the provisions of this act, and, upon conviction thereof, shall be punished by imprisonment in the county jail for not more than six months; or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment in the discretion of the court.

CHAPTER 40.

CALAVERAS COUNTY.

CONTENTS OF CHAPTER.

ACT 630. "NO FENCE LAW."

631. BONDED INDEBTEDNESS, REDEMPTION Or.

"NO FENCE LAW."

ACT 630—An act to protect agriculture in the county of Calaveras.

History: Approved March 24, 1874, Stats. 1873-74, p. 579. Supplemented April 3, 1876, Stats. 1875-76, p. 901.

The supplementary act of 1876 made it a misdemeanor to permit cattle to trespass on the premises of another.

This act related to trespassing animals on cultivated land.

This act applied only to a portion of Calaveras county.

See editor's note to chapters on "estrays" and "trespassing animals."

REDEMPTION OF BONDED INDEBTEDNESS.

ACT 631—An act to provide for the redemption of the bonded indebtedness of Calaveras county.

History: Approved March 30, 1872, Stats. 1871-72, p. 716.

This act provided for the redemption by the state of the county's bonded indebtedness and the levy of a tax, not less than ten nor more than twenty-five cents on each one

hundred dollars of real and personal property annually until the state was reimbursed.

CALEXICO.

See Act 3094, note.

CALIFORNIA HOME FOR CARE AND TRAINING OF FEEBLE-MINDED CHILDREN.

See tit. "Feeble-minded Children."

CHAPTER 41.

CALIFORNIA INDUSTRIAL FARM.

References: See tits. "California School for Girls"; "California State Reformatory"; "Parole of Prisoners"; "Preston School of Industry"; "Whittier State School."

CONTENTS OF CHAPTER.

ACT 640. "CALIFORNIA INDUSTRIAL FARM."

CALIFORNIA INDUSTRIAL FARM.

ACT 640—An act to establish an institution for the confinement, care and reformation of delinquent women, to provide for its maintenance, conduct and government, to provide for commitment and admission thereto, and to make an appropriation therefor.

History: Approved May 3, 1919. In effect, except as to sections 8 and 9, July 22, 1919. As to sections 8 and 9, see section 19. Stats. 1919, p. 246.

California industrial farm for women.

§ 1. There shall be established within this state an institution for the confinement, care and reformation of delinquent women, to be known as the California industrial farm for women.

Purpose.

§ 2. The purpose of said institution shall be to provide custody, care, protection, industrial and other training and reformatory held for delinquent women.

Board of trustees.

§ 3. Said institution shall be under the management and control of a board of trustees of five members appointed by the governor, three of whom shall be women. The terms of office of said trustees shall be five years each; provided, that the terms of office of those first appointed shall be one, two, three, four and five years, respectively, and the governor in making such appointments shall indicate the respective terms for which the appointments are made.

Oath.

Before entering upon the discharge of their duties, the trustees shall take an oath in writing to faithfully discharge the same.

Expenses.

The members of the board of trustees shall be entitled to their reasonable expenses, including traveling expenses, incurred in the discharge of their duties.

Duties of board.

§ 4. The duties of said board of trustees shall be:

Organization.

(a) To organize itself, adopt general rules for the holding of its meetings and the transaction of its business, and for the administration and conduct of the institution.

Select site.

(b) To select, purchase and procure with all reasonable dispatch a suitable site of not less than two hundred acres, with the necessary appurtenances, for said institution. Such site shall be of such character as to afford ample opportunity for agricultural work and training to those committed to the institution. If there be already owned by the state land suitable for such site or as a part thereof, and not used, or in the opinion of the state board of control not necessary for use by the state for another purpose, such land may be appropriated by the board of trustees with the consent of the state board of control as the site, or part of the site, of said institution.

Construct buildings.

(c) To construct and equip in connection with or appurtenant to the site so procured or appropriated the buildings, improvements and plant necessary for the accomplishment by said institution of the purposes for which it is established.

Temporary accommodations.

The board of trustees are authorized, if they deem it advisable, pending the construction of the permanent buildings, improvements and plant, to construct and equip temporary accommodations and to commence and carry on the work of the institution.

Supervision and control.

(d) To conduct, supervise and administer the institution for the purposes for which it is established, together with the right to possess, control and administer any and all property given or appropriated to or for the benefit of said institution, either by way of endowment, public or private, or otherwise.

Superintendent.

(e) The board of trustees shall employ a skilled superintendent, who shall be a woman, not one of their number, and who shall reside at and have the immediate charge

and management of the institution, subject to the control and supervision of the board of trustees. The board shall authorize the employment of such other assistants, officers or employees as may be necessary.

Report to governor.

(f) The board of trustees shall report biennially to the governor.

Meetings.

§ 5. The board of trustees shall meet at said institution in regular session once a month and in special session as they may deem necessary, and the office of any member who is absent from two consecutive regular sessions, or from more than three regular sessions, in the course of any calendar year, shall, unless such absences are excused by the governor in writing, filed with the board, ipso facto become vacant.

Bond of superintendent.

§ 6. The superintendent shall give a bond to the state in such sum as may be prescribed by the board of trustees, but not less than ten thousand dollars, conditioned upon the faithful discharge by her of her duties.

Women assistants.

§ 7. All regularly employed assistants, officers and employees, whose duties bring them in contact with the inmates of the institution, shall be women as far as practicable.

Commitment to institution.

§ 8. (a) When any woman, eighteen years of age or over is found guilty by any court within this state of prostitution, soliciting for prostitution, keeping a house of ill fame or residing in such house, frequenting any dance hall, hotel, rooming house, or other public place, for the purpose of prostitution, or of vagrancy because of being a common prostitute or a common drunkard, she shall in lieu of any other sentence or disposition provided by law, be committed by the court in which she is so found guilty to said institution for an indeterminate period of not less than six months nor more than five years.

Admission refused, when.

(b) The said board of trustees shall not be required to receive for admission any woman committed to said institution, if, in its opinion the accommodations at said institution or the state of its finances is such as not to justify her reception.

Transfer from penal or reformatory institution.

§ 9. Any woman, eighteen years of age or over, confined under a sentence or commitment in any penal or reformatory institution or prison within this state, may be transferred therefrom for the serving of her sentence or the term of her commitment, or the balance thereof, to the said institution, with the consent of the trustees thereof, by order of the governing official or board of officials of the institution or prison in which she is confined.

Admission on request of woman.

§ 10. Any woman, eighteen years of age or over, may, upon her written request, be admitted to said institution by the board of trustees thereof if it believes that she is or is in danger of becoming a prostitute, common drunkard, or a criminal. Such person shall be discharged by order of the trustees at any time upon her written request therefor in writing, unless she has been adjudged to be feeble-minded, as hereinafter provided.

Delivery to institution.

§ 11. Upon the commitment or transfer of any woman to said institution under the preceding sections it shall be the duty of the officer having custody of her, or required

to take custody of her, to deliver her to said institution, receiving therefor the fees payable for the transportation of prisoners to the state prison. Such officer shall at the same time deliver to said institution a certified copy of the judgment of conviction and of the order of commitment or order of transfer.

Woman attendant.

Every woman so committed or transferred under this act shall be accompanied by a woman attendant from the place of commitment or transfer until delivered to the institution.

Care of children.

§ 12. If any woman received by or admitted to the institution have a child under two years of age, or gives birth to a child while an inmate of said institution, such child may be admitted to and retained in the institution until it reaches the age of two years, at which time the board of trustees may arrange for its care elsewhere; and provided, that at their discretion in exceptional cases the board of trustees may retain such child for a longer period of time.

History of inmates.

§ 13. There shall be kept at the institution a record of the history and progress of every woman received by it during the period she is under its control and, so far as practically possible, prior and subsequent thereto, and all judges, court officials and employees, district attorneys, sheriffs, chiefs of police and peace officers shall furnish such institution with all data in their possession or knowledge relative to any inmate that said institution may request. If upon the arrest of any woman it be discovered that she was theretofore an inmate of said institution, it shall be promptly notified of her arrest.

Examination and training. Discharge.

§ 14. (a) Every woman received by said institution shall be examined mentally and physically and shall, if retained by said institution, be given the care, treatment and training adapted to her particular condition. Such care, treatment and training shall be along the lines best suited to develop her mentality, character and industrial capacity to a point where she can be honorably discharged from the institution with reasonable safety and benefit to herself and to the public at large. Upon her reaching such point, in the judgment of the board of trustees, she shall be honorably discharged from the institution, unless she has been transferred to it under section ten hereof and has not fully served her sentence, in which case she shall be recommended by the board of trustees to the governor of the state for pardon.

Transfer to Pacific Colony.

(b) If any woman, upon her admission to said institution and examination and observation thereat, is found by the board of trustees thereof to be feeble-minded or moron within the meaning of section sixteen of the act of the legislature of the state of California approved June 1, 1917, creating an institution to be known as the Pacific Colony, such board of trustees may institute proceedings to have such person adjudged to be feeble-minded, and in case of such adjudication shall thereafter have the custody and control over her as a feeble-minded person until discharged or transferred from said institution. The proceedings for the adjudication of any such person as feeble-minded shall conform to those provided in that behalf by said act creating the Pacific Colony. Any such person so adjudicated to be feeble-minded may, by order of the board of trustees of said institution, be transferred to said Pacific Colony or other institution provided by the state for the care of the feeble-minded, with the consent of the governing board of such latter institution and upon such transfer such governing

board shall have the same authority and control over such person as theretofore possessed by the board of trustees of the institution created by this act.

Discharge on expiration of maximum term.

(c) Any person committed to said institution under sections eight or nine hereof shall in any case be discharged therefrom upon the expiration of the maximum period for which she has been committed to said institution unless she has been theretofore adjudged to be feeble-minded as hereinbefore provided.

Parole.

§ 15. The board of trustees shall have the right to parole any inmate of the institution at such time and upon such terms as it may deem wise and to recall such parole in its discretion and to retake her into custody of the institution. The board of trustees shall have the power to employ parole agents for the purpose of affording protection, assistance and guidance to women on parole.

Sale of articles. Employment of inmates.

§ 16. (a) The said institution may manufacture or raise for sale supplies or produce for use in any state institution, and the board of trustees may in their discretion, pay to any inmate producing or assisting in the production of such article the proceeds, or a part of the proceeds, of the sale thereof. The board of trustees shall also have the power to employ inmates in actual work in the institution and to fix their compensation, if any, therefor and to pay the same at such times and in such manner as the board of trustees may see fit.

Disposition of moneys received from sales.

(b) All moneys received from the sale of articles of any description, supplies or produce as provided in section sixteen, subdivision (a) of this act, shall be paid to the state treasurer, to be placed in the contingent fund to the credit of the said institution for its use.

Penalty for aiding in escape.

§ 17. Any person who aids in or connives at the escape of any inmate from said institution, or in or at her eluding of pursuit in case she has escaped or her parole has been recalled, or in or at any breach of her parole, shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not less than one hundred dollars or more than one thousand dollars, or by imprisonment in the county jail for not less than three months or more than one year, or by both fine and imprisonment.

Fees of court officers.

§ 18. In all proceedings relating to commitments under this act the fees and compensation of the sheriff and other officers of the court shall be such as are allowed by law for like proceedings and services in criminal cases.

Proclamation by governor.

§ 19. When said institution is ready for the admission of women thereto, the board of trustees thereof shall certify such fact to the governor, who shall make due proclamation thereof, and thereupon, but not before, sections eight and nine hereof shall become effective.

State commission in lunacy not to supervise.

§ 20. The California industrial farm for women, its inmates, trustees, officers, employees and property, shall be exempt from the operation of chapter one, title five, part three, of the Political Code, and free from the supervision, inspection or control of the state commission in lunacy.

Appropriation.

§ 21. There is hereby appropriated out of any money in the state treasury not otherwise appropriated the sum of one hundred fifty thousand dollars for the purposes of this act, and the controller of the state is hereby directed, on requisition of the board of trustees, duly audited by the state board of control, to draw his warrant on the state treasurer in favor of said board of trustees for any moneys duly appropriated to meet any expenditures under this act.

CHAPTER 42.**CALIFORNIA AND OREGON RAILROAD COMPANY.****CONTENTS OF CHAPTER.**

ACT 648. GIVING EFFECT TO ACT OF CONGRESS.

GIVING EFFECT TO ACT OF CONGRESS.

ACT 648—An act giving effect to the act of Congress relating to the California and Oregon Railroad Company.

History: Approved March 30, 1868, Stats. 1867-68, p. 655.

This act was in effect both an expressed consent of the state to the grants made to the railroad company by the act of con-

gress of July 25, 1866, and a grant of a franchise to construct, maintain and operate its railroad and telegraph lines in the state.

CHAPTER 43.**CALIFORNIA PACIFIC RAILROAD COMPANY.****CONTENTS OF CHAPTER.**

ACT 653. GRANT OF RIGHTS AND PRIVILEGES.

GRANT OF RIGHTS AND PRIVILEGES.

ACT 653—An act granting certain rights and privileges to California Pacific Railroad Company.

History: Approved March 30, 1868, Stats. 1867-68, p. 671.

This was a ratification and confirmation of the grant of April 24, 1858, of a half mile of water front on Napa bay or the Carquinez straits, made to the San Francisco and Marysville Railroad Company, to the California Pacific Railroad Company, its successor, as well as a grant of additional

privileges as to the building and maintenance of bridges across the Sacramento river at or near Sacramento, and at or near Knights landing.

Toll bridge over Carquinez strait, not permitted, see Kerr's Cyc. Political Code, § 2872.

CHAPTER 44.**CALIFORNIA PIONEERS.****CONTENTS OF CHAPTER.**

ACT 658. MEMORIAL MONUMENT AT DONNER LAKE.

MEMORIAL AT DONNER LAKE.

ACT 658—An act making an appropriation to assist in the erection of a monument to the memory of the pioneers of California, near Donner Lake, Nevada county, state of California, and providing for the payment thereof.

History: Approved May 1, 1911, Stats. 1911, p. 1367

This act appropriated five thousand dollars for the purpose indicated.

CALIFORNIA POLYTECHNIC SCHOOL.

See tit. "Schools."

CHAPTER 45.

CALIFORNIA REDWOOD PARK.

References: See tits. "Highways," "Parks."

CONTENTS OF CHAPTER.

ACT 670. MANAGEMENT. COMMISSION.
672. ENLARGEMENT OF PARK.

MANAGEMENT, COMMISSION.

ACT 670—An act providing for the management of the California Redwood Park and creating a board of five commissioners with power to manage said California Redwood Park.

History: Approved February 6, 1911. Stats. 1911, p. 8. Amended April 5, 1913. In effect August 10, 1913. Stats. 1913, p. 19. Former acts, for the creation and management of the California Redwood Park, approved March 16, 1901, Stats. 1901, p. 517, which was superseded by the act approved March 25, 1903, Stats. 1903, p. 424, which was in turn superseded by the present act.

Redwood Park commission.

§ 1. The governor of the state of California shall appoint four commissioners, who with himself, shall constitute the California Redwood Park commission. The term of office of the members of said commission shall be four years from and after the date of their appointment. The commission shall select from its members a president and secretary. The members of the commission shall serve without compensation. They shall be allowed and paid out of the funds available therefor, all reasonable traveling expenses which may be incurred by the members of said commission in the performance of their various duties.

Powers. Warden.

§ 2. The said California Redwood Park commission shall have full power and control over the said park and over any and all funds provided for the care, preservation, maintenance, and improvement of the same and shall make and enforce all necessary rules and regulations for the care, preservation, maintenance and improvement of the same, and shall have power to employ a warden and necessary assistants for the preservation of said park and for any and all purposes herein specified. The compensation of such warden and his assistants shall be fixed by the said commission. The compensation of the warden, however, shall not exceed the sum of one thousand five hundred dollars per annum.

Commission may accept gifts.

§ 2½. The said California Redwood Park commission shall have the right, power and authority to receive and accept, either in the name of said commission or in the name of the people of the state, by gift, devise, grant or other conveyance, real property or any interest therein, including water, water rights, roads, trails and rights of way, to be added to or used in connection with said California Redwood Park; also to receive and accept, by gift, donation, contribution, or bequest, money to be used in acquiring or improving real estate as a part of or in connection with said California Redwood Park; also to receive and accept personal property in the same manner for purposes connected with said park; also to acquire by purchase, or by condemnation proceedings brought either in the name of said California Redwood Park commission or in the name of the people of the state of California, such real and personal property as shall be necessary or proper for the extension, improvement or development of said

California Redwood Park. [New section approved April 5, 1913. Stats. 1913, p. 19. In effect August 10, 1913.]

Repeal of inconsistent acts.

§ 3. All acts or parts of acts inconsistent with the provisions of this act, are hereby repealed.

Time of taking effect.

§ 4. This act shall take effect immediately.

The act of 1901 appropriated \$250,000 for the purchase of the Big Basin situated in Santa Clara county; and the act of 1903 appropriated \$10,000 for management purposes.

ENLARGEMENT OF PARK.

ACT 672—An act providing for the enlargement of the California Redwood Park, making an appropriation for the purchase of additional land therefor, and granting power to the California Redwood Park commission to purchase the same.

History: Approved May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1281.

Appropriation: enlargement of California Redwood Park.

§ 1. The sum of one hundred fifty thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the state treasury not otherwise appropriated, and which shall be used for the purchase by the California Redwood Park commission of land contiguous to the California Redwood Park suitable for the enlargement of said park. Said appropriation shall be available at the rate of fifteen thousand dollars a year.

Power of park commission to purchase land.

§ 2. The California Redwood Park commission shall have the power to purchase said land, or any portion thereof, as in its judgment shall seem most suitable for an addition to and enlargement of said California Redwood Park, considering the protection of said California Redwood Park from forest fires, and the conserving of the headwaters of the streams draining said California Redwood Park, and of the stand of timber or trees of the species known as *Sequoia sempervirens* on said lands to be purchased; or it may proceed by action at law to condemn the same, or any portion thereof.

Examination of abstracts of title.

§ 3. No payment of any part of said sum shall be made until an abstract or abstracts of title shall have been furnished to the attorney general of the state of California, showing that the lands purchased, and the whole thereof, are free from any valid liens or encumbrances thereon, and it is hereby made the duty of the said attorney general to examine said abstract or abstracts of title and render and deliver to said commission his opinion in writing, certifying that no valid liens or encumbrances exist thereon and that the title to said lands, and the whole thereof, is good and valid. Said opinion of the attorney general, together with said abstract or abstracts of title shall be filed in the office of the secretary of state.

CHAPTER 46.

CALIFORNIA SCHOOL FOR GIRLS.

References: See tits. "California Industrial Farm"; "California State Reformatory"; "Juvenile Court"; "Parole of Prisoners"; "Preston School of Industry"; "Whittier State School."

CONTENTS OF CHAPTER.

ACT 676. STATE TRAINING SCHOOL FOR GIRLS.

TRAINING SCHOOL FOR GIRLS.

ACT 676—An act to establish a state training school for girls; to provide for the maintenance and management of the same, and to make an appropriation therefor.

History: Approved June 14, 1913. In effect August 10, 1913. Stats. 1913, 857. Amended April 12, 1915. In effect August 8, 1915. Stats. 1915, p. 53; May 14, 1917. In effect July 27, 1917. Stats. 1917, p. 473.

California school for girls.

§ 1. There is hereby established a state training school for the confinement, discipline, and instruction of such girls as may be committed to it by law, to be known as the California school for girls.

Trustees. Vacancies.

§ 2. The government and management of said school shall be vested in a board of five trustees, who shall be appointed by the governor for a term of four years and until their successors are appointed and qualified; provided, that of the trustees first appointed two shall be for a term of four years, one for a term of three years, one for a term of two years and one for a term of one year, commencing within thirty days after this act becomes effective. Whenever a vacancy occurs the appointment to fill the same shall be made by the governor for the remainder of the term. Such trustees shall receive no compensation for their services, but shall be allowed their reasonable traveling and other official expenses.

Officers of board of trustees.

§ 3. The board of trustees shall elect annually a president, a vice president and a secretary, whose terms of office shall be one year or until their successors are elected and qualified. No one but a member of the board shall be elected president or vice president thereof. The board shall appoint a superintendent, not of their own number, who shall be a woman qualified by training and experience for the character of work to be done at this school, and fix her salary at not to exceed three thousand six hundred dollars per annum. Such superintendent shall hold office at the pleasure of the board. [Amendment of May 14, 1917. In effect July 27, 1917. Stats. 1917, p. 474.]

This section was also amended April 12, 1915, Stats. 1915, p. 53.

Rules and regulations.

§ 4. The board of trustees shall make all needful rules and regulations for the transaction of its business and for the management and government of said school. It shall determine the number, title and duties of all other officers and employees, and fix the salaries thereof. It shall see that discipline is maintained and that proper education is provided, to the end that those committed to its charge shall be prepared to become honorable, self-supporting members of society. It is authorized and required to make all contracts for the operation and maintenance of said school that may be necessary, subject to the limitations prescribed by law.

Not to be interested in contract.

§ 5. No trustee or employee of such school shall be interested personally, directly or indirectly, in any contract, purchase or sale made, or any business carried on in behalf of, or for such institution, and any money so paid on such contracts or sales may be recovered by civil suit, and it shall be the duty of the governor or the board of trustees, as the case may be, upon proof of the fact of such interest, to remove immediately such trustee or employee.

Superintendent's bond, duties, etc.

§ 6. The superintendent shall, before entering upon the discharge of her duties, make and file with the board of trustees an oath that she will faithfully and impar-

tially discharge the same, and file a bond in the sum of ten thousand dollars running to the state of California, and with sureties to be approved by said board, conditioned upon the faithful performance of her said duties. She shall thereupon, subject to the regulations prescribed by the board, be invested with the custody of the lands, buildings and all other property belonging to and under the control of said school, subject to the direction of said board, and shall account to it in such manner as it may require for all property entrusted to her and all moneys received by her as such superintendent, for said school or any of its inmates. She shall appoint, except as hereinbefore provided, all officers and employees of said school, who shall hold office at her pleasure.

Bond of officers.

§ 7. The board of trustees shall require such officers as may be entrusted with money belonging to the school or its inmates, or as may be placed in a position of trust and responsibility in the custody of property, or in the handling of supplies belonging to the school, to give bond with sureties to be approved by the board, in such sum as it may determine, conditioned upon the faithful performance of the duties required, and the faithful accounting for all money and property coming into their hands or under their control, by virtue of such office.

Conduct of school.

§ 8. The board of trustees shall cause said school to be conducted as may seem best calculated to carry out the intentions of this act. There shall be organized a course of study corresponding as far as practicable with the course of study in the public schools of the state. There shall also be provided in said school the proper facilities and equipment for vocational training such as domestic science, dressmaking, horticulture, agriculture and such business instruction as may be practicable for women, and such instruction and training given to each and every inmate committed to said school to the end that every inmate may, upon discharge, be qualified for honorable and profitable employment.

Superintendent to reside at school.

§ 9. The superintendent shall reside at the school and shall be furnished suitable quarters, furniture, food supplies, and laundry for herself and family. The board may make similar provision for such other officers and employees as the interests of the school may require to reside on the premises.

Commitments.

§ 10. The said school shall receive into its custody all girls who may be committed to it in accordance with law.

Merit system. Parole.

§ 11. There shall be established in said school a system of marking based upon merit or attainments and general conduct, by which any girl committed hereto may work out her way to parole and honorable discharge. When, in the opinion of the superintendent, a girl, according to the regulations, has earned the right to a parole, a reputable home or place of employment shall be provided for her, where she may be employed and earn an honorable living, and said superintendent shall then recommend her to the board for parole, which shall grant it if deemed for her welfare, under such conditions as the board may deem best. This parole shall continue until she has proved her ability for honorable self-support, whereupon she shall be discharged. Any girl, who, while on parole, violates the conditions thereof, may be returned to the school.

Girls incapable of reformation.

§ 12. Any girl committed to said school who after due trial, is in the opinion of the superintendent, incapable of reformation, or so morally deficient as to render her detention detrimental to the interests of said school, or who has misrepresented her age to the court which committed her, or has been previously convicted of a felony may be returned to the committing court, and said court may thereupon revoke the previous judgment committing her to said institution and resume proceedings where the same were suspended when such commitment was made.

Aiding inmate to escape.

§ 13. Any person who knowingly permits or aids any inmate to escape from said school, or conceals her with the intent of enabling her to elude pursuit, shall be guilty of a misdemeanor. Any fugitive from said school, or from the parties with whom she has been placed on parole, may be arrested and returned to said school by any person, upon written order of said superintendent.

Commission on location. Appropriation.

§ 14. A commission consisting of the state engineer and four members to be appointed by the governor, is hereby created, and it shall, as soon as practicable, with the approval of the board of control, establish a location for said school, purchase a site therefor to consist of not less than one hundred acres of good agricultural land, and the state department of engineering shall, in conformity to law, erect, construct and equip the necessary buildings therefor. For the purposes of paying the expenses of the provisions incurred by this act there is hereby appropriated out of the state treasury the sum of two hundred thousand dollars, one-half of which shall be available immediately after this act becomes effective, and one-half available January 1st, 1914.

Trustees to have control of girls' department at Whittier.

§ 15. Immediately after this act becomes effective, or as soon thereafter as a majority of the persons appointed as trustees shall have qualified and organized the said board, it shall take possession of and assume the control and management of the girls' department of the Whittier State School, and the board of trustees of the Whittier State School shall turn over to the board of trustees of the California school for girls hereby created, the custody and management of said girls' department, including the buildings now occupied by, and all property, records and papers now used by or belonging to, said girls' department or any of its inmates. When the said school for girls is located and the buildings constructed ready for occupancy, the board of trustees of said school for girls shall remove all girls from the said girls' department of the Whittier State School, whereupon all buildings and property, except such personal property as has been purchased for the express use of the girls, shall revert to the Whittier State School.

Controller's warrant.

§ 16. The controller of the state is hereby directed on requisition of said board, duly audited by the state board of control, to draw his warrant on the state treasurer in favor of said board for any moneys duly appropriated to pay for the necessary expenditures in the establishment and maintenance of said school, and the said treasurer is directed to pay the same from the appropriations provided therefor.

Construction of act. Pay to inmates authorized.

§ 17. This act shall be construed in conformity with the intent as well as the express provisions thereof, and shall confer upon the board authority to do all those lawful acts which it deems necessary to promote the prosperity of the school and the well being and education of its inmates, including the organization of trade schools, pur-

chase of materials for use therein, the doing of all other things, not prohibited, which are required to carry out the purposes of this act. The board is further authorized to pay those committed to said school small weekly or monthly sums in lieu of clothing and other necessary articles, if in its judgment, such a course would better promote discipline and training. Nothing herein contained, however, shall permit said board to incur any indebtedness in excess of the appropriations allowed by law for the establishment of said school.

Girls' department at Whittier superseded.

§ 18. It is the purpose of this act that the school hereby established shall supersede and supplant the girls' department of the Whittier State School and that all commitments of girls authorized by law shall be made to the California School for Girls, but girls so committed shall be kept under the control of the said California School for Girls at the present girls' department of the Whittier State School until the school provided for by this act is ready for the reception of girls.

The amending act of May 14, 1917, contained the following:

Penalty for aiding escapes.

§ 2. Any person who knowingly permits or aids any inmate of the California School for Girls to escape therefrom or conceals her with the intent of enabling her to elude pursuit, shall be guilty of a misdemeanor. Any fugitive from said school, or from the parties with whom she has been placed on parole, may be arrested and returned to said school by any person, upon the written order of the superintendent thereof.

Pensions for teachers in California School for Girls, see, post, Act 4550b.

CHAPTER 47.

CALIFORNIA STATE REFORMATORY.

References: See tits. "California Industrial Farm"; "California School for Girls"; "Parole of Prisoners"; "Preston School of Industry"; "Whittier State School."

CONTENTS OF CHAPTER.

ACT 681. "CALIFORNIA STATE REFORMATORY" ACT.

682. ARREST OF ESCAPING INMATES, POWER OF OFFICERS.

683. CONTROL AND MANAGEMENT OF NAPA LAND.

"CALIFORNIA STATE REFORMATORY."

ACT 681—An act to establish the California State Reformatory; to provide for purchase of land therefor; and the construction of buildings and other improvements in connection therewith; to provide for the commitment and transfer of prisoners thereto and therefrom; to provide for the equipment, conduct and management thereof; and to make an appropriation therefor.

History: Approved April 24, 1911, Stats. 1911, p. 1088.

California State Reformatory.

§ 1. There is hereby established a reformatory for the confinement, discipline and instruction of prisoners committed thereto as hereinafter provided, to be known as the California State Reformatory.

Who may be sent to reformatory. Penal Code, section 1588, not applicable.

§ 2. Any male person not less than sixteen and not more than thirty years of age at the time of sentence, convicted of felony for the first time may be sentenced to confinement in said reformatory, when in the judgment of the court said person is capable of reformation and said sentence is compatible with the general welfare, and the sentence shall designate the minimum and maximum term prescribed by law for the par-

ticular offense, but shall fix no other term; provided, however, that if no minimum is fixed by law the court shall fix a minimum of one year. The provisions of section 1588 of the Penal Code relating to credits for good conduct shall not apply to prisoners in the state reformatory.

Prison directors to manage. Superintendent.

§ 3. The state board of prison directors shall manage and maintain said reformatory when ready for occupancy as hereinafter provided. Said board shall employ a superintendent, who shall be the executive head of said reformatory, and shall establish such other positions as the needs of the service may from time to time require. Such positions shall be filled by the superintendent in the manner provided by law. The board may consolidate or abolish such positions and may fix and change the salaries to be paid.

Rules. Prisoners examined.

§ 4. The board of prison directors shall establish the rules under which the reformatory shall be conducted for the purpose of reformation of those committed to it; and shall adopt such methods as the board may deem expedient to restore them to freedom as self-supporting and self-respecting members of the state. Such rules shall include provision for keeping records of the facts known of each prisoner on entrance and of his conduct and progress at such intervals as the board may fix. Each prisoner on entrance shall be thoroughly examined by a competent physician for physical or mental defects or abnormalities, and shall be provided such physical and surgical treatment as may be necessary to overcome such defects, so far as practicable.

Grades for prisoners.

§ 5. The board of prison directors shall, by rule, establish not less than three grades for the prisoners committed to the reformatory, one of which shall be the entering grade. The board shall so far as practicable establish rules by which each prisoner shall be promoted to a higher grade or reduced to a lower grade in accordance with his conduct.

Parole.

§ 6. The board of prison directors shall make and enforce rules governing the release of prisoners on parole and their conduct while on parole and their final discharge, and it is hereby declared the policy of the law that prisoners in said reformatory shall be given their liberty whenever in the judgment of the said board such release is compatible with the public welfare, and said prisoner will conform to its rules concerning prisoners on parole and support himself by honest industry; provided, that no prisoner shall be released before the expiration of the minimum term fixed by law for the offense of which he was convicted, but nothing herein contained shall be construed to restrict the power of the governor to pardon any prisoner.

Return of paroled prisoner whose conduct is not satisfactory.

§ 7. Whenever the governor of the state, the superintendent of said reformatory, or any member of the state board of prison directors is dissatisfied with the conduct of a paroled prisoner he may issue a written order, reciting the commitment and parole of said prisoner and his dissatisfaction with the conduct of said paroled prisoner, and directing his arrest and return to said institution, and said order shall be a sufficient warrant for any parole, probation or peace officer named therein to arrest and deliver said prisoner to any officer of said reformatory for return thereto, and it is hereby made the duty of all such officers to execute any such order in like manner as a warrant of arrest for felony. At the next meeting of said board it shall determine whether or not the order by which such prisoner was placed on parole shall be revoked. If any

prisoner on parole shall leave the state without permission from said board he shall be held to be an escaped prisoner and shall be arrested as such.

Final release of prisoner.

§ 8. The board of prison directors may give a final release to any prisoner who has fulfilled the conditions required of him in the reformatory and upon parole, when in the judgment of the board he is fitted to take his place as a free citizen of the state, and shall have power, by so providing in the order of release, to restore said prisoner to all the rights of citizenship. When any prisoner shall have served the maximum term provided by law for the offense of which he was convicted he shall thereupon be discharged. No petition or other form of application for the parole or release of a prisoner shall be entertained by the board, except the application made by the prisoner himself.

Incorrigible prisoner may be removed to prison.

§ 9. The board of prison directors may establish rules by which any prisoner appearing to be incorrigible may be removed to any one of the state prisons. Such prisoner shall serve the maximum term established by law for the offense of which he was convicted, including the time served in the reformatory, with such deductions for good conduct during his incarceration in such prison as the law and the rules of the prison may allow.

Prisoner may be transferred from prison to reformatory.

§ 10. The board of prison directors may transfer from the state prisons to said reformatory any prisoner serving his first term for felony who in their judgment can be reformed and restored to a life of honest industry. Provided, the consent of the prisoner to be bound by the terms of this act, and for the maximum period fixed by law for the offense of which he was convicted unless sooner discharged, shall be first procured in writing. Said prisoner shall thereafter be treated in all respects as though originally committed to said reformatory.

Prison laws applicable to reformatory.

§ 11. The laws governing the state prisons of this state in relation to expenses of transportation of prisoners to and from the same, escapes, prevention of escapes, suppression of riots, revolts, mutinies, or insurrections, and the punishment of crimes committed therein, are hereby made applicable to the reformatory.

Instruction in reformatory.

§ 12. The discipline of the reformatory shall include instruction in the elementary school courses and in pursuits by which the prisoners may support themselves when released. Said instruction shall chiefly be given in agriculture and horticulture by the best methods as developed by the University of California and the department of agriculture of the United States. Instruction in other forms of labor may be established in the discretion of the board of prison directors; provided, that the prisoners shall be distributed among the various trades and employments so that no excessive number be directed to any trade or employment.

Disposition of products.

§ 13. Products of said reformatory shall so far as possible be supplied for state, county, municipal, school or other public use, and the reformatory shall collect or be credited with the fair market price therefor. No manufactured product shall be supplied, sold, exchanged or given away for private use or profit.

Probation officers to co-operate in getting employment for paroled prisoners.

§ 14. The probation officers of the state shall co-operate with the state board of prison directors and the state parole officer, in procuring employment for and super-

vising paroled prisoners and the probation officers of each county shall act as parole officer for all prisoners on parole living within the limits of their county, under such general rules as may be established by the state board of prison directors and under the supervision of the state parole officer.

Earnings of prisoners.

§ 15. The board of prison directors may allow to prisoners such proportion of their earnings above the cost of the maintenance as the board may deem proper.

Commission to locate reformatory. Purchase of land. Buildings.

§ 16. A commission consisting of the governor of the state of California, the lieutenant-governor of the state and three other persons, to be selected by the governor of the state, is hereby constituted a commission for the location and construction of said reformatory as hereinafter more particularly provided. Said commission, as soon after the passage of this act as possible, shall select a suitable site for said reformatory of not less than six hundred acres. The said commission is directed to secure land susceptible of irrigation if necessary and suitable for the agricultural and horticultural work to be carried on by the prisoners. When a suitable site is selected by said commission they are hereby authorized and empowered to purchase the land so selected, together with water and water rights appertaining thereto, and if necessary shall purchase additional water rights or make provision for the development of water for use on said land. The purchase price of said land may be made payable in installments out of the appropriations hereinafter provided, as may be agreed between said commission and the owner or owners of said land. Title to the land shall be taken in the name of the state of California and first payment therefor shall be made at the time of the delivery of deed or deeds by the owner or owners to the governor of the state of California for and on behalf of the state. The said commission shall adopt plans for the buildings to be erected upon said land for said reformatory to accommodate not less than one thousand prisoners, and may employ architects or engineers or both in the preparation of said plans, and in the construction of said buildings. The said commission is authorized to employ and fix the compensation of such free labor and skilled assistants as may be needed in the erection of such buildings and shall so far as possible utilize the labor of prisoners in said construction as hereinafter provided.

Prisoners to aid in constructing reformatory. Temporary buildings. Supervision of prisoners at work. Compensation of prisoners. Prison directors to provide food, etc. Appropriation.

§ 17. The state board of prison directors shall on the request of the said commission furnish a list of not less than one hundred (100) nor more than three hundred (300) prisoners in San Quentin and Folsom state prisons, who would be available for use in the construction of said reformatory. In the selection of such men for said list the board of prison directors shall name those men who are skilled in building and who have shown themselves active and energetic, and so far as possible shall name those who under the rules of the said board of prison directors would be entitled to parole on or before the completion of the buildings of said reformatory, as estimated, and who would be suitable for transfer to said reformatory upon its completion. From this list so submitted as aforesaid, the state board of prison directors shall designate those to be employed in constructing the buildings of said reformatory, and upon such designation said board of prison directors shall cause to be transported to the location selected for said reformatory said prisoners in such numbers and at such times as may be required by said commission. Temporary buildings may be erected for housing said prisoners while engaged in said work of construction. The state board of prison directors is authorized and directed to employ a superintendent and necessary guards while engaged

in said construction and particularly to have charge of them during the hours they are not actually engaged upon the buildings of the said reformatory.

During the hours that said prisoners are actually engaged in work of construction of said building they shall be under the supervision and direction of those officers and foremen employed by said commission to erect said buildings. At any time during the progress of said work, prisoners engaged therein who have shown themselves unfit to work under the conditions herein provided, shall be returned to the state penitentiary on orders of the board of prison directors, and any prisoner who makes his escape from such employment shall be returned to the state prison from which he was originally transferred. The state board of prison directors shall have the same jurisdiction to parole prisoners engaged in this work as any other prisoners in any other state prison, and shall make such rules concerning their custody and discipline while engaged in said work as may be necessary.

The state board of prison directors may fix the compensation to be paid to said prisoners for their work while constructing said buildings, not to exceed twenty-five cents per day, such money to be paid to said prisoners upon their parole or final discharge, from the money hereinafter appropriated, unless the board declares said amount forfeited by bad conduct.

The state board of prison directors shall provide the necessary food, clothing and transportation for said prisoners while engaged in said work, to be paid upon their order by the state board of examiners from the moneys herein appropriated for the construction of said reformatory buildings.

There is hereby appropriated for the purpose of carrying into effect the provisions of this law the sum of one hundred and fifty thousand dollars; five thousand dollars to be available July 1, 1911, and one hundred and forty-five thousand dollars to be available July 1, 1912.

Governor to publish proclamation when reformatory is ready to receive prisoners.

Termination of commission.

§ 18. Whenever the buildings are so far completed as in the judgment of said commission to be available to receive prisoners committed by the court, a proclamation to that effect shall be published by the governor and thereafter the courts may commit prisoners to the said reformatory in the manner hereinafter provided, and during the progress of said work shall be treated in the same manner as the prisoners transferred by [from] the state prisons as herein provided;

Provided, further, that on January 1, 1915, the commission hereinbefore provided shall terminate. Thereupon the state board of prison directors shall take charge of said reformatory and be vested with the powers hereinbefore conferred upon the said commission, and thereafter all further construction and expenditure shall be under their direction and control.

§ 19. This act shall take effect immediately.

ARREST OF ESCAPING INMATES.

ACT 682—An act relating to the powers and privileges of officers and employees of state reformatories in arresting pupils who have escaped or been rescued therefrom.

History: Approved May 5, 1915. In effect August 8, 1915. Stats. 1915, p. 357.

Officers of reformatories may arrest escaped pupils.

§ 1. The officers and employees of the state reformatories shall have the powers and privileges of peace officers in so far as it may be necessary to exercise such powers and privileges for the purpose of arresting pupils who have escaped or been rescued from a state reformatory.

CONTROL AND MANAGEMENT OF NAPA LAND.

ACT 683—An act providing for the control and management of a tract of land owned by the state of California and situated in the county of Napa, in said state.

History: Approved May 5, 1917. In effect July 27, 1917. Stats. 1917, p. 250.

Board of control to manage land in Napa county.

§ 1. The board of control of the state of California is hereby authorized and directed to take charge of, manage and farm for the use and benefit of the state and its institutions, all of the certain tract of land with all improvements and appurtenances thereto attached, and formerly known as the "Fry Ranch," which said tract of land is situated near the town of Rutherford in the county of Napa, state of California, and being that certain property purchased by the state under the provisions of an act of the legislature of the state of California entitled: "An act to establish the California State Reformatory; to provide for the purchase of land therefor and the construction of buildings and other improvements in connection therewith; to provide for the commitment and transfer of prisoners thereto and therefrom; to provide for the equipment, conduct and management thereof; and to make an appropriation therefor," approved April 24, 1911.

Use of water.

§ 2. Said board of control shall have power to take and conduct therefrom for the use and benefit of the state of California such quantity of water as may be determined by the state engineer to be necessary for the use of the Veterans' Home at Yountville and the Napa State Hospital, both in the county of Napa, and to acquire rights of way by purchase, lease or condemnation for such purpose.

Use for agricultural purposes.

§ 3. In carrying out the provisions of this act the board of control shall have power if it shall be deemed advisable, to co-operate with the governing board of any state institution for the purpose of utilizing said property for agricultural or horticultural purposes or as a stock or dairy farm and to transfer to and maintain upon said property any stock cattle, cows, or other animals now owned or hereafter acquired by any of such institutions and to distribute to such institutions by arrangement therewith the product of said property or of the animals maintained thereon.

Prisoners, etc., not to be kept on property.

§ 4. From and after the passage of this act, no person shall be committed by any court to imprisonment or confinement upon said property in the county of Napa, and no prisoner from any state prison or reformatory, and no patient from any state hospital for the insane, shall be transferred to, kept, housed or retained upon said property by the state board of control, or by the superintendent or governing officer or board of any such institution.

CHAPTER 48.

CALIFORNIA STATUTES, INDEX TO.

CONTENTS OF CHAPTER.

ACT 692. COMPILATION, PUBLICATION, AND DISTRIBUTION.

COMPILATION, PUBLICATION AND DISTRIBUTION.

ACT 692—An act providing for the publication of an index of the laws of California, and making an appropriation therefor.

History: Approved May 23, 1919. In effect July 23, 1913 [1919]. Stats. 1919, p. 926. Former acts on same subject, Act of March 18, 1907, Stats. 1907, p. 572; March 11, 1893, Stats. 1893, p. 150.

Index to laws of California.

§ 1. The legislative counsel is hereby directed to prepare for publication and the superintendent of state printing is hereby directed to print, bind and distribute in accordance with the directions hereof, two thousand copies of an index of the constitution and laws of this state, including the laws enacted by the legislature at its forty-third session.

Distribution.

§ 2. One copy of said index shall be distributed to each member of the legislature and to each state officer, and the balance of the copies printed shall be offered for sale to the public at a price sufficient to cover the cost of publication and distribution, all receipts to be paid into the state treasury.

Appropriation.

§ 3. Out of any money in the state treasury not otherwise appropriated, there is hereby appropriated the sum of six thousand dollars to carry out the provisions hereof.

CHAPTER 49.**CALIFORNIA VOLUNTEERS.****CONTENTS OF CHAPTER.**

ACT. 696. REVISION OF RECORDS *Or.*

REVISION OF RECORDS.

ACT 696—An act to provide for the revision of the records of the California volunteers, to authorize the adjutant-general to employ additional clerks for that purpose, and to authorize the superintendent of state printing to print, bind and issue the same.

History: Approved March 16, 1889, Stats. 1889, p. 228.

The nature of this act appears from its title.

CALIPATRIA.

See Act 3094, note.

CALISTOGA.

See Act 3094, note.

CHAPTER 50.**CANALS.**

References: Drainage, canalization of rivers, etc., see tits. "Drainage Districts"; "Sacramento and San Joaquin Drainage District."

Fish screens in canals, see Kerr's Cyc. Penal Code, § 629.

Malicious injury to, or taking water from canals, see Kerr's Cyc. Penal Code, §§ 592, 607.

Opening private ways for canals, see Kerr's Cyc. Political Code, § 2692.

Procedure for highway crossings, see Kerr's Cyc. Political Code, § 2694.

CONTENTS OF CHAPTER.

ACT 702. SACRAMENTO IRRIGATION AND NAVIGATION CANAL COMPANY.

SACRAMENTO IRRIGATION AND NAVIGATION CANAL COMPANY.

ACT 702—An act to develop the agricultural interests and to aid in the construction of a canal for the purposes of irrigation and inland trade in the counties of Colusa, Yolo, and Solano.

History: March 26, 1866, Stats. 1865-66, p. 451.

This act provided for the organization of a canal company to construct an irrigation and navigation canal from the Sacramento river at a point near the county line of Colusa and Tehama counties to Cache creek in Solano county.

Duty of canal owner to construct and maintain highway and other crossings: City

of Madera v. Madera Irr. Dist., 159 Cal. 749, 754, 115 Pac. 936.

Incorporation of canal companies.—See Kerr's Cyc. Civil Code, §§ 283-410.

Rights, duties and obligations of canal companies.—See Kerr's Cyc. Civil Code, §§ 548-552, and 1410b.

CHAPTER 51.

CAPITOL.

References: Rules for government of capitol, see Kerr's Cyc. Political Code, § 717. State Capitol Commissioners, see Kerr's Cyc. Political Code, § 366.

Superintendent, clerks, engineers and other employees, see Kerr's Cyc. Political Code, §§ 716, et seq.

Sale of intoxicating liquor in, see Kerr's Cyc. Penal Code, § 172.

CONTENTS OF CHAPTER.

- ACT 709. SALARY AND DUTIES OF JANITOR.
- 710. DRINKING FOUNTAINS.
- 712. STATE CAPITOL BONDS.
- 713. PERMANENT EMPLOYEES.
- 714. REPAIR OF CAPITOL BUILDING.
- 715. DECORATION OF ROTUNDA.
- 716. STATE CAPITAL PLANNING COMMISSION.

SALARY AND DUTIES OF JANITOR.

ACT 709—An act fixing the salary of the janitor of the state capitol building, defining his duties, and making an appropriation therefor.

History: Approved February 27, 1893, Stats. 1893, p. 46.

DRINKING FOUNTAINS.

ACT 710—An act making an appropriation for establishing and maintaining drinking fountains in the state capitol grounds at Sacramento.

History: Became a law under constitutional provision without governor's approval, March 15, 1901. Stats. 1901, p. 298.

STATE CAPITOL BONDS.

ACT 712—An act authorizing the issuance of state bonds to the amount of \$250,000, to be known as state capitol bonds of 1872. (Approved March 28, 1872. Stats. 1871-1872, p. 694.)

History: Approved March 28, 1872, Stats. 1871-72, p. 694.

PERMANENT EMPLOYEES.

ACT 713—An act authorizing the appointment of certain permanent employees of the state capitol, and fixing their compensation.

History: Approved March 30, 1874, Stats. 1873-74, p. 937. Amended April 16, 1880, Stats. 1880, p. 107; March 20, 1889, Stats. 1889, p. 449.

Superseded in part.—See Kerr's Cyc. Political Code, §§ 718, 719. If it is in force at all, only the provision as to janitor remains. As to duties and salary of janitor, see, ante, ACT 709.

REPAIR OF CAPITOL BUILDING.

ACT 714—An act authorizing and directing the board of state capitol commissioners to remodel and repair the state capitol building, making the same fireproof, rendering all space therein available, and making an appropriation therefor.

History: Approved March 18, 1905, Stats. 1905, p. 177.

DECORATION OF ROTUNDA.

ACT 715—An act providing for the decoration of the rotunda on the main or ground floor of the state capitol building and making an appropriation therefor.

History: Approved May 20, 1913. In effect August 10, 1913. Stats. 1913, p. 237.

STATE CAPITAL PLANNING COMMISSION.

ACT 716—An act to provide for the appointment of a state capital planning commission to formulate plans for the capital city of the state and to confer with the city planning commission of the state capital city.

History: Approved June 12, 1915. In effect August 11, 1915. Stats. 1915, p. 1514.

State capital planning commission created.

§ 1. There shall be a state capital planning commission composed of the governor, and state librarian, ex officio members and three members to be appointed by the governor, at least one of whom shall be a recognized expert in the planning of cities and towns. Appointive members of this commission shall serve without pay and shall hold office in the first instance for terms respectively for two years, four years, and six years and until their successors have been appointed and qualified. Their successors shall serve for terms of six years each and appointment to fill a casual vacancy shall be only for the unexpired portion of the term. Three shall be a quorum. They may make and alter rules and regulations for their own procedure consistent with the laws of the state. They shall consider all matters in city planning affecting the future needs of the state and the relation of the state plans to those of the capital city.

Powers and duties.

§ 2. They shall confer and advise with the city planning body of the capital city concerning all matters affecting the metropolitan district in and about the said capital city and for a distance within fifteen miles outside the corporate limits of the said city. They shall make recommendations to the governing bodies of all political units within this area and to the governor with regards to all matters of interest to the state in and concerning its capital city with reference to its system of roads, boulevards and thoroughfares, street railway systems, smoke prevention, parks, parkways and playgrounds, water supply, sewage and sewage disposal, collection and disposal of garbage, civic centers, or of other natural or artificial physical features of the district, and of location proposed by it for any new or enlarged thoroughfares, street railway system, union depot, parks, parkways, playgrounds, water supply system, sewers, sewage disposal plant, garbage disposal plant and civic centers, or any other public improvement that will affect the character of the district as a whole, to political units within the district. It may make recommendations to the state, city or district governmental authorities, from time to time concerning any such matters or things aforesaid for action by the respective legislative, administrative or governing bodies thereof. In so doing they shall have regard for the present conditions and future needs and growth of the district, and the distribution and relative location of all the principal and other streets and railways, waterways, and all other means of public travel and business communication, as well as the distribution and relative location of all public buildings, public grounds and open spaces devoted to the public use, and the planning and laying out for urban uses of private grounds brought into the market from time to time.

Report.

§ 3. The state capital planning commission shall make an annual report to the governor which the secretary of the state shall cause to be printed as a public document and

copies of this report shall be filed with each and every governing body in the district under supervision.

Permanent location of the state capital.
—See act of February 25, 1854, Stats. 1854, p. 7, and constitution, article XX, § 1.

War memorial room in capitol building.—
See, post, Act 5465a.

Toll bridge over Carquinez straits, not permitted.—See Kerr's Cyc. Political Code, § 2872.

Railroad bridge—See, ante, Act 653.

CARMEL-BY-THE-SEA.

See Act 3094, note.

CHAPTER 52.

CARQUINEZ STRAITS.

CONTENTS OF CHAPTER.

ACT 717. DISPOSITION OF CERTAIN PROPERTY.

ACT 717—An act providing for the disposition of certain property.

History: Approved April 21, 1851, Stats. 1851, p. 305. Amended April 24, 1917. In effect July 27, 1917. Stats. 1917, p. 193.

CHAPTER 53.

CEMETERIES.

References: Cemetery corporations, in general, see Kerr's Cyc. Civil Code, §§ 603, et seq. Defacing tombs, etc., see Kerr's Cyc. Penal Code, § 296.

Disinterment, in connection with the preservation of the public health, see post Act 3677.

Disinterment without authority of law, see Kerr's Cyc. Penal Code, §§ 290, et seq.

Interment, in connection with vital statistics, see post Act 5446.

Interment in cities, see Kerr's Cyc. Penal Code, § 297.

Soldiers and sailors, care and preservation of bodies of deceased, see tit. "Soldiers and Sailors."

Streets through cemeteries, opening, see tit. "Streets."

Unlawful mutilation or removal of dead bodies, see Kerr's Cyc. Penal Code, §§ 290, 291.

CONTENTS OF CHAPTER.

ACT 720. PROTECTION OF BODIES OF DECEASED PERSONS.

721. DISINTERMENT.

722. REMOVAL FROM CEMETERIES IN CITIES.

724. CEMETERY DISTRICTS.

725. EXECUTION OF DEEDS BY CEMETERY CORPORATIONS.

726. INCORPORATION OF RURAL CEMETERY ASSOCIATIONS.

727. SAME. SUPPLEMENTARY ACT.

PROTECTION OF BODIES OF DECEASED.

ACT 720—To protect the bodies of deceased persons and public graveyards. (Stats. 1854, p. 20.)

History: Passed February 16, 1854, Stats. 1854, p. 20. Superseded as to §§ 1 and 2, by the Penal Code. See Kerr's Cyc. Penal Code, §§ 290, 296.

Location on public lands.—Graveyards located on public lands not to contain more than five acres (§ 3).

Public graveyard.—Where six or more persons buried (§ 4).

Still in force.—Sections 3 and 4 of this act are apparently in force.

Superseded in part.—See Kerr's Cyc. Penal Code, §§ 290, et seq.

DISINTERMENT.

ACT 721—An act to protect public health from infection caused by exhumation and removal of the remains of deceased persons.

History: Approved April 1, 1878, Stats. 1877-78, p. 1050. Amended March 13, 1889, Stats. 1889, p. 139; April 5, 1917. In effect July 27, 1917. Stats. 1917, p. 36.

Disinterring of bodies unlawful without permit.

§ 1. It shall be unlawful to disinter or exhume from a grave, vault, or other burial place, the body or remains of any deceased person, unless the person or persons so doing shall first obtain, from the board of health, health officer, mayor, or other head of the municipal government of the city, town, or city and county where the same are deposited, a permit for said purpose. Nor shall such body or remains disinterred, exhumed, or taken from any grave, vault, or other place of burial or deposit, be removed or transported in or through the streets or highways of any city, town, or city and county, unless the person or persons removing or transporting such body or remains shall first obtain, from the board of health or health officer (if such board or officer there be), and from the mayor or other head of the municipal government of the city or town, or city and county, a permit, in writing, so to remove or transport such body or remains in and through such streets and highways.

Provisions for disinterring remains.

§ 2. Permits to disinter or exhume the bodies or remains of deceased persons, as in the last section, may be granted; provided, the person applying therefor shall produce a certificate from the coroner, registrar, the physician who attended such deceased person, or other physician in good standing cognizant of the facts, which certificate shall state the cause of death or disease of which the person died, and also the age and sex of such deceased; and provided, further, that the body or remains of deceased shall be inclosed in a metallic case or coffin, sealed in such manner as to prevent, as far as practicable, any noxious or offensive odor or effluvia escaping therefrom, and that such case or coffin contains the body or remains of but one person, except where the infant children of the same parent or parents, or parent and children are contained in such case or coffin. And the permit shall contain the above conditions and the words "Permit to remove and transport the body of age, sex,," and the name, age, and sex shall be written therein. [Amendment of April 5, 1917. In effect July 27, 1917. Stats. 1917, p. 36.]

Misdemeanor.

§ 3. Any person or persons who shall disinter, exhume, or remove, or cause to be disinterred, exhumed, or removed, from a grave, vault, or other receptacle or burial place, the body or remains of a deceased person, without a permit therefor, shall be guilty of a misdemeanor and be punished by a fine not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. Nor shall it be lawful to receive such body, bones, or remains on any vehicle, car, barge, boat, ship, steamship, steamboat, or vessel for transportation in or from this state, unless the permit to transport the same is first received, and is retained in evidence by the owner, driver, agent, superintendent, or master of the vehicle, car, or vessel.

Transportation of bodies exhumed without permit—Misdemeanor.

§ 4. Any person or persons who shall move or transport, or cause to be moved or transported, on or through the streets or highways of any city or town, or city and county, of this state, the body or remains of a deceased person, which shall have been disinterred or exhumed without a permit, as described in section 2 of this act, shall be guilty of a misdemeanor, and be punishable as provided in section 3 of this act.

Reward for information.

§ 5. Any person who shall give information to secure the conviction of any person or persons for the violation of the provisions of this act shall be entitled to receive the sum of twenty-five dollars, to be paid from the fund collected from fines imposed and accruing under this act.

Removal of remains of deceased persons.

§ 6. Nothing in this act contained shall be taken to apply to the removal of the remains of deceased persons from one place of interment to another cemetery or place of interment within this state; provided, that no permit shall be issued for the disinterment or renewal of any body, unless such body has been buried for one year or more, without the written consent of the mayor, chairman of the board of supervisors, or city council of any municipality of the state. [Amendment approved March 13, 1889. Stats. 1889, p. 130. In effect immediately.]

§ 7. This act shall take effect and be in force from the thirtieth day after its passage and approval.

1. Construction—Protection of thickly populated centers.—The act is aimed in the main only at protecting the inhabitants of the more thickly populated portions of the state, to wit the inhabitants of cities, towns, and cities and counties, from the dangers from exhumation and transportation of disinterred bodies of deceased persons.—Ex parte John, 17 Cal. App. 58, 118 Pac. 722.

2. County ordinance of San Mateo county requiring permit for disinterment, based on certificate of health officer, and payment of a ten-dollar fee, held a valid ordinance and

not in conflict with state law.—Ex parte Lee John, 17 Cal. App. 58, 118 Pac. 722.

3. Repeal of code provision.—The act does not repeal section 290, Penal Code, making it a felony to disinter a dead body without authority of law.—People v. Dalton, 58 Cal. 226.

Disinterment in cities having a population of more than five thousand (fifteen hundred) and not exceeding one hundred thousand.—See, post, Act 722.

Prohibition of interments in the limits of municipalities.—See, post, Act 726, notes.

REMOVAL FROM CEMETERIES IN CITIES.

ACT 722—Providing for the removal of human remains from cemeteries in cities having a population of more than five thousand [fifteen hundred] and not exceeding one hundred thousand.

History: Approved March 23, 1893, Stats. 1893, p. 234. Amended March 26, 1895, Stats. 1895, p. 157.

City council to provide for removal of remains in certain cases.

§ 1. The city council of any city in this state having a population of more than fifteen hundred and not exceeding one hundred thousand, may, by ordinance duly passed, and under such lawful rules and regulations which it may adopt, provide for the exhuming, taking up, and removal from cemeteries within the boundary lines of such city, or from cemeteries owned and controlled by such city that may have been located without its boundaries (and in which such cemeteries no interments of human remains have been made for a period of not less than two years), of all the human remains interred in such cemeteries. [Amendment of March 26, 1895. Stats. 1895, p. 157.]

Minimum.—The original act fixed the minimum population at 5000.

The constitutionality of the foregoing statute may be considered in connection with: Darcy v. Mayor, etc., 104 Cal. 642, 38 Pac. 500; Marsh v. Supervisors, etc., 111 Cal. 368, 370, 43 Pac. 975; Ex parte Giambonini, 117 Cal. 573, 574, 49 Pac. 732; Kerr's Cyc. Penal Code, § 290; Kerr's Cyc. Political Code, § 3027; People v. Dalton, 58 Cal. 226.

As to municipal control dedication to cemetery or other purposes, or enforcing removal of bodies, see San Francisco v. Canavan, 42 Cal. 541, 554; Weisenberg v. Truman, 58 Cal. 63.

Disinterment.—See, ante, Act 721.

Prohibition of interments in municipal limits.—See, post, Act 726, notes.

PUBLIC CEMETERY DISTRICTS.

ACT 724—An act to provide for public cemetery districts.

History: Approved March 6, 1909, Stats. 1909, p. 156. Amended April 5, 1911, Stats. 1911, p. 605.

Organization of.

§ 1. Whenever a board of county supervisors shall receive the petition of a majority of the electors enumerated upon the great register as residing within a district in such

county, definitely described in such petition, requesting that the said district be organized as a public cemetery district, they shall organize such public cemetery district as provided in this act.

Trustees. Term.

§ 2. Such public cemetery district shall be managed by three trustees, appointed by the board of supervisors from the electors residing therein; but if a majority of the resident electors shall, in their petition, designate the names of the trustees whom they shall desire to be appointed, the board of supervisors shall appoint for the first term, the persons so named. The trustees shall hold office for four years, and their successors shall be appointed in the same manner as other appointments are made by said board. [Amendment approved April 5, 1911. Stats. 1911, p. 605.]

Duties of trustees.

§ 3. Such cemetery trustees shall maintain a cemetery for the use of all inhabitants of the district, and for that purpose shall be capable of holding title to property in trust for the district, taking property by grant, gift, devise or any other method, and doing all acts necessary or proper for managing the affairs of the district, including the selling or leasing of burial lots.

Tax levy for.

§ 4. The said cemetery trustees may annually certify to the county board of supervisors the amount of money necessary to be raised by taxation for maintaining the cemetery of the district, and the board of county supervisors shall thereupon include in the annual tax levy a tax upon all the property within such cemetery district, sufficient to raise the amount demanded by the trustees, but not exceeding two mills on each dollar of assessed valuation within the district.

Fund, how expended.

§ 5. The tax so collected, together with all other moneys received by the trustees shall be paid into the county treasury, and constitute a separate fund to be expended solely for the purposes of the cemetery district upon warrants signed by not less than two of the cemetery trustees.

Report of trustees.

§ 6. The trustees shall as soon after the first day of July in each year as is practicable, file with the county board of supervisors a report, setting forth all their doings during the preceding year, and containing an itemized account of all their receipts and disbursements up to and including the thirtieth day of June, together with proper vouchers therefor.

Rules and regulations.

§ 7. The trustees shall make proper rules and regulations for the management of the cemeteries under their control, and all laws now in existence relating to cemeteries, and not inconsistent with this act shall apply to the cemeteries provided for in this act.

EXECUTION OF DEEDS BY CEMETERY CORPORATIONS.

ACT 725—To provide the manner of execution of deeds by cemetery corporations.

History: Approved March 26, 1895, Stats. 1895, p. 75.

§ 1. All deeds or conveyances executed by cemetery associations or incorporations within this state, shall be executed in the name of the corporation or association, under the seal thereof, by the president, or vice president, and secretary thereof.

§ 2. All acts and parts of acts in conflict with this statute, in so far as they conflict with the same, are hereby repealed.

§ 3. This act shall take effect and be in force from and after its passage.

RURAL CEMETERY ASSOCIATIONS.

ACT 726—An act to authorize the incorporation of rural cemetery associations.

History: Approved April 18, 1859, Stats. 1859, p. 281. Amended January 13, 1864, Stats. 1863-64, p. 12; March 31, 1891, Stats. 1891, p. 264; April 24, 1911, Stats. 1911, p. 1099. Supplemented March 1, 1899, Stats. 1899, p. 36. See, post, Act 727.

Who may incorporate.

§ 1. Any number of persons residing in this state, not less than seven, who shall desire to form an association for the purpose of procuring and holding lands, to be used exclusively for a cemetery or place for the burial of the dead, may meet at such time and place, as they, or a majority of them may agree, and appoint a chairman, or secretary, by a vote of the majority of the persons present at the meeting, and proceed to form an association, by determining on a corporate name, by which the association shall be called and known, by determining on the number of trustees, to manage the concerns of the association, which number shall not be less than six, nor more than twelve, and thereupon may proceed to elect, by ballot, the number of trustees, so determined on, and the chairman and secretary shall, immediately after such election, divide the trustees, by lot, into three classes; those in the first class to hold their office one year; those in the second class, two years; and those in the third class, three years; but the trustees of each class may be re-elected, if they shall possess the qualifications hereinafter mentioned. The meeting shall also determine on what day, in each year, the future annual elections of trustees shall be held.

Certificate signing, acknowledging, and filing.

§ 2. The chairman and secretary of the meeting shall within three days after such meeting, make a written certificate, and sign their names thereto, and acknowledge the same before an officer authorized to take proof and acknowledgment of conveyances, in the county where such meeting shall have been held, which certificate shall state the names of the associates determined upon by the majority of the persons who met; the number of trustees fixed on to manage the concerns of the association; the names of the trustees chosen at the meeting, and their classification, and the day fixed on for the annual election of trustees; which certificate it shall be the duty of the chairman and secretary of such meeting to cause to be filed and recorded in the office of the county clerk of the county in which the cemetery grounds are situated, in a book to be appropriated to the recording of certificates of incorporation.

Powers of association.

§ 3. Upon such certificate, duly acknowledged and filed as aforesaid, being recorded, the association mentioned therein shall be deemed legally incorporated, and shall be a body politic and corporate, in fact and in name, by the name stated in the certificate, and by their corporate name, have succession and power:

First—To sue and be sued in any court.

Second—To make and use a common seal, and alter the same at pleasure.

Third—To purchase, hold, sell, and convey, such real and personal estate as the purposes of the incorporation shall require.

Fourth—To appoint such officers, agents, and servants, as the business of the corporation shall require, to define their powers, prescribe their duties, and fix their compensation.

Fifth—To require of them such security as may be thought proper for the fulfilment of their duties, and to remove them at will, except that no trustee shall be removed from office unless by a vote of two-thirds of the whole number of trustees, or by a vote of a majority of the trustees, on a written request, signed by one-half of the lot owners.

Sixth—To make by-laws not inconsistent with the laws of this state, for the organization of the company, the management of the property, regulation of its affairs, and for

carrying on all kinds of business within the object and purposes of the company. The affairs and property of such associations shall be managed by the trustees, who shall annually appoint, from among their number, a president and vice president, and shall also appoint a secretary and treasurer, who shall hold their places during the pleasure of the board of trustees, and the trustees may require the treasurer to give security for the faithful performance of the duties of his office.

Purchase of property. Survey and map.

§ 4. Any association incorporated under this act, may take, by purchase or devise, and hold, within the county in which the certificate of their incorporation is recorded, not exceeding three hundred and twenty acres of land, to be held and occupied exclusively for a cemetery for the burial of the dead. Such land, or such parts thereof as may from time to time be required for that purpose, shall be surveyed and subdivided into lots or plats of such size as the trustees may direct, with such avenues, paths, alleys, and walks, as the trustees deem proper; and a map or maps of such surveys shall be filed in the office of the county recorder of the county in which the land shall be situated. And after filing such map, the trustees may sell and convey the lots or plats designated upon such map, upon such terms as shall be agreed upon, and subject to such conditions and restrictions, to be inserted in or annexed to the conveyances, as the trustees shall prescribe. The conveyances to be executed under the common seal of the association, and signed by the president or vice president, and the treasurer of the association. Any association incorporated under this act may hold personal property to an amount not exceeding five thousand dollars, besides what may arise from the sale of lots or plats.

Election.

§ 5. The annual election of trustees, to supply the place of those whose term of office expires, shall be holden on the day mentioned in the certificate of incorporation, and at such hour and place as the trustees shall direct; at which election shall be chosen such number of trustees as will supply the places of those whose term expires. The trustees chosen at any election subsequent to the first, shall hold their places for three years, and until others shall be chosen to succeed them. The election shall be by ballot, and every person of full age, who shall be the proprietor of a lot or plat in the cemetery of the association, containing not less than two hundred square feet of land, or if there be more than one proprietor of any such lot or plat, then such one of the proprietors as the majority of joint proprietors shall designate to represent such lot or plat, may, either in person or by proxy, give one vote for each plat, or lot, of the dimensions aforesaid; and the persons receiving a majority of all the votes given at such election, shall be trustees, to succeed those whose term of office expires. But in all elections after the first, the trustees shall be chosen from among the proprietors of lots, or plats, and the trustees shall have power to fill any vacancy in their number occurring during the period for which they hold their office. Public notice of the annual elections shall be given in such manner as the by-laws of the corporation shall prescribe.

Report.

§ 6. The trustees, at each annual election, shall make reports to the lot proprietors of their doings, and of the management and condition of the property and concerns of the association. If the annual election shall not be held on the day fixed in the certificate of incorporation, the trustees shall have power to appoint another day, not more than sixty days thereafter, and shall give public notice of the time and place at which time the election shall be held, with like effect as if holden on the day fixed on in the certificate.

The office of the trustees chosen at such time, to expire at the same time as if they had been chosen at the day fixed by the certificate of incorporation.

Purchase of land. Issuance of bonds. Proceeds of sales, how appropriated.

§ 7. After its formation in the manner provided in the preceding section, the corporation shall proceed to purchase suitable grounds for the proposed cemetery, and to the vendor thereof they are authorized to issue the bonds of the corporation for the amount of the purchase money, bearing interest not exceeding the rate of twelve per centum per annum, but payable out of sixty per centum of the proceeds of the cemetery, as the same shall be realized, and not otherwise. Sixty per centum at least of the proceeds of all sales of lots, plats, or graves, shall be first appropriated to the payment of the said bonds and interest aforesaid, payable at least once in three months to the bondholders, until all are paid, and the residue thereof to be used in preserving, improving, and embellishing the said cemetery grounds and the avenues or roads leading thereto, and to defraying the incidental expenses of the cemetery establishment, and after payment of the purchase money and interest aforesaid, and all debts contracted therefor, and for surveying and laying out the land, the proceeds of all future sales shall be appropriated to the improvement, embellishment, and preservation of such cemetery, and for incidental expenses, and to no other purpose or object; provided, that any association incorporated under this act by the members of the Order of Free and Accepted Masons, the Independent Order of Odd Fellows, or by the members of any other benevolent or charitable society in the city and county of San Francisco, may apply the surplus or net income of such cemetery association to the board of relief or other committee established by such order or society for the purposes of charity. [Amendment of January 13, 1864. Stats. 1863-64, p. 12.]

Vandalism and punishment for.

§ 8. Any person who shall wilfully destroy, mutilate, deface, injure, or remove, any tomb, monument, gravestone, building, or other structure, placed in any cemetery of any association incorporated under this act, or any fence, railing, or other work, for the protection or ornament thereof, or of any tomb, monument, or gravestone, or other structure aforesaid, or of any plat or lot within such cemetery, or shall wilfully destroy, cut, break, or injure, any tree, shrub, or plant, within the limits of such cemetery, shall be deemed guilty of a misdemeanor, and such offender shall also be liable in an action of trespass, to be brought, in all such cases, in the name of such association, to pay all such damages as shall have been occasioned by his unlawful act, or acts. Such money, when recovered, shall be applied, by the trustees, to the reparation, or restoration of the property so destroyed, or injured.

Embellishing.

§ 9. Any association incorporated pursuant to this act, may take and hold any property, real or personal, bequeathed, or given upon trust, to apply the income thereof, under the direction of the trustees of such association, for the improvement or embellishment of such cemetery, or the erection or preservation of any building, structure, fences, or walks, erected, or to be erected, upon the lands of such cemetery association, or upon the lots, or plats, of any of the proprietors; or for the repair, preservation, erection, or removal of any tomb, monument, gravestone, fence, railing, or other erection, on or around any cemetery, lot, or plat, or for planting, or cultivating trees, shrubs, flowers, or plants, in or around any such lot, or plat, or for improving or embellishing such cemetery, or any of the lots, or plats, in any other manner or form, consistent with the design and purposes of the association, according to the terms of such grant, devise, or bequest.

Cemetery lands exempt from taxation.

§ 10. The cemetery lands and property of any association, formed pursuant to this act, shall be exempt from all public taxes, rates, and assessments, and shall not be

liable to be sold on execution, or be applied in payment of debts due from any individual proprietors. But the proprietors of lots, or plots, in such cemeteries, their heirs, or devisees, may hold the same exempt therefrom, so long as the same shall remain dedicated to the purposes of a cemetery. [Amendment of April 24, 1911. Stats. 1911, p. 1099. In effect immediately.]

Plats inalienable. Descend to heirs at law on death.

§ 11. Whenever the said land shall be laid off into lots, or plats, and such lots, or plats, or any of them, shall be transferred to individual holders, and after there shall have been an interment in a lot, or plat, so transferred, such lot, or plat, from the time of such interment, shall be forever thereafter inalienable, and shall upon the death of the holder or proprietor thereof, descend to the heirs at law of such holder, proprietor, and to their heirs at law forever; provided, nevertheless, that any one or more of such heirs at law may release, to any other of the said heirs at law, his, her, or their, interest in the same, on such conditions as shall be agreed on and specified in such release, which release shall be recorded with the county recorder of the county within which the said cemetery shall be situated; and, provided further, that the body of any deceased person shall not be interred in such lot, or plat, unless it be the body of a person having, at the time of such decease, an interest in such lot, or plat, or the relative of some person having such interest, or the wife of such person, or her relative, except by the consent of all persons having an interest in such lot, or plat.

Former purchasers.

§ 12. In case the grounds purchased for cemetery purposes, in accordance with section seven of this act, shall have been used as a cemetery previous to such purchase, then those who are lot owners, at the time of the purchase, shall have, and be entitled to, all the privileges they would be entitled to by purchase from a corporation formed as aforesaid.

Owner may convey when bodies are removed.

§ 13. Whenever all the bodies buried in any lot or plot, in this act referred to, shall have been removed therefrom, with the consent of a majority of the board of directors of the corporation owning said cemetery, it shall be lawful for the owners of said lot or plot, with the consent of a majority of said directors, to transfer the same by deed. [New section added March 31, 1891. Stats. 1891, p. 264.]

1. **Constitutionality—City ordinance.**—An ordinance under the police power, prohibiting the purchase or sale of cemetery lots for burial purposes within the city, and of interment except upon lots already purchased for the purpose, is held to be discriminative in its operation between persons similarly situated, and is unreasonable and void.—*Ex parte Bohen*, 115 Cal. 372, 36 L. R. A. 618, 47 Pac. 55.

2. **Same—City ordinance of San Francisco** prohibiting interments within the city limits, exclusive of places belonging to the United States, is an exercise of the police power, is authorized under the charter, is not in conflict with any provision of the present act or any other general law, and is valid.—*Odd Fellows, etc., Ass'n v. San Francisco*, 140 Cal. 226, 73 Pac. 987.

3. **Same—Police power.—Interment in city limits**, is likely to prove dangerous to the public health, where located in a thickly populated community, and may be prohibited in the exercise of the police power;

but where the place is remote from human habitations, or close to but few dwellings, the absolute prohibition of such interments is an unreasonable restriction to lawful business, not fairly justified as a health measure, and will not be sustained.—*Laurel Hill Cemetery v. San Francisco*, 152 Cal. 464, 14 Ann. Cas. 1080, 27 L. R. A. (N. S.) 260, 93 Pac. 70.

Code commissioners say this act was repealed by the Civil Code, § 288.

Editor's note: The code commissioners' opinion as to the repeal of this act by § 288, Civil Code, is not without reason, as a comparison of the provisions of the act with those of the code will show; but that the legislature did not think so is manifest from the fact that they have, even as late as 1911, amended the original act, and in 1899, supplemented it.—See *Kerr's Cyc. Civil Code*, §§ 288, and 608, et seq.

It may be further noted that this act relates to an "association," and the provisions of the Civil Code deal exclusively with ceme-

tery "corporations," and an "association" is not necessarily a "corporation." Because of the use of certain terms in this act, or for some other reason, the courts might hold that "associations" under this act are "corporations," within the meaning of the Civil Code; but, if so, the code provisions relate

to corporations in general, and the corporations to which this act relates are a particular kind of corporations, to wit, rural cemetery corporations, and it is not unreasonable to assume that the legislation intended a particular classification to cover them, and that such classification is a reasonable one.

RURAL CEMETERY ASSOCIATIONS.

ACT 727—An act supplemental to an act entitled "An act to authorize the incorporation of rural cemetery association," approved April twenty-eight, eighteen hundred and fifty-nine, authorizing such association to erect, purchase, or lease buildings and furnaces and other works for cremation of human bodies; also to erect or lease buildings in which shall be entombed only the ashes of cremated dead, to make provision for the care of the burial places and ashes of the dead; also to provide for the cremation of the unclaimed dead and bodies liable, if interred, to spread disease.

History: Approved March 1, 1899, Stats. 1899, p. 36. See, ante, Act 726, and history.

Cremation associations, rights, privileges, etc.

§ 1. Associations incorporated under the act of which this act is supplementary, shall, in addition to the powers granted by said act, have authority to purchase, lease, or erect buildings and appliances to be used exclusively for the purpose of cremating human bodies, and they may purchase, or lease, and hold land necessary for cremation purposes, or for the erection of columbariums for the entombing of the ashes of the cremated, when inclosed in metal or stone or cement vessels, and not otherwise; but no uncremated body shall be interred or placed for any time whatever inside of the walls, or in the walls, of a place where the ashes of the cremated are deposited.

Care of property.

§ 2. Such associations shall invest their funds and use the proceeds thereof, after current expenses are paid, for the perpetual care of the grounds, lots, buildings, and niches, according to contracts made and to be made with patrons, and in conducting its business such associations shall have the same powers granted by law to corporations in general; provided, they shall have no authority to contract any pecuniary obligation whatever, nor shall they have power to levy or collect assessments.

Municipal authorities may order cremation of unknown or pauper dead.

§ 3. In case of epidemics or the prevalence of contagious diseases, or otherwise, the proper authorities of any county, city and county, city, or town, may order the unclaimed or unknown dead, and the dead who die in public institutions under the control of any county, city and county, city, or town, and the dead commonly buried at public expense, cremated, and their ashes immured or otherwise preserved in receptacles in columbariums, or interred in burial places; and human bodies, and parts of bodies, used in medical or other schools (except specimens to be preserved) shall not be cast into the waters of the state, nor on the ground, nor in receptacles for refuse matter, nor in vaults, nor in sewers, but shall either be buried as deep in the ground as is by law required for dead bodies, or cremated, as in this act provided. But the remains of a person shall not be cremated by compulsion, under the provisions of this section, if he or his family, or any member thereof, or his church or spiritual advisor objects.

Violation of act a misdemeanor.

§ 4. A violation of any of the provisions of this act is a misdemeanor.

§ 5. This act shall be in force from the day of its passage.

Crematory furnace—Contract of village for.—See 18 L. R. A. 45.

Laws relating to disinterment.—See, ante, acts 721, 722.

Liability for cremated portion of servant's body, see 45 L. R. A. 535.

Same—Requisites to letting contract for.—See 47 L. R. A. 635.

Formation of corporations.—See Kerr's Cyc. Civil Code, §§ 290, 296 and notes.

This act authorized the relocation of the route from Sacramento, over the Sierra Nevada mountains to the eastern boundary of the state, and required the filing of new maps and profiles and authorized the amendment of the articles of incorporation to conform to the new route.

CENSUS.

See "Municipal Corporations."

CHAPTER 54.

CENTRAL PACIFIC RAILROAD COMPANY.

CONTENTS OF CHAPTER.

- ACT 790. RELOCATION OF ROUTE.
- 791. STATE AID BOND ACT.
- 792. FRANCHISE GRANT.
- 793. INCORPORATION OF SAN JOAQUIN VALLEY RAILROAD VALIDATED.

RELOCATION OF ROUTE.

ACT 790—An act authorizing relocation of route of.

History: Approved April 17, 1863, Stats. 1863, p. 320.

STATE AID BOND ACT.

ACT 791—An act to aid construction of, and to secure the use of the same to this state for military and other purposes.

History: Approved April 4, 1864, Stats. 1863-64, p. 344.

1. Bonds—Interest—Liability of state.—The bonds issued under the authority of this act are valid and the state is liable for interest payments in accordance with its terms.—*Bank of California v. Dunn*, 66 Cal. 38, 4 Pac. 916.

2. Interest payments by the state, on the bonds issued under the terms of this act, are not a loan, and the company can not by repayment, at its option, relieve itself of liability to perform its agreement executed in accordance with its provisions.—*People v. Central Pacific Co.*, 76 Cal. 29, 18 Pac. 90.

3. Penalty—Liquidated damages.—The

amount required under the terms of the act to be paid by the company upon breach of the contract is not liquidated damages but a penalty imposed.—*People v. Central Pacific Co.*, 76 Cal. 29, 18 Pac. 90.

4. Public messenger.—County treasurer is not a public messenger, under the terms of this act, so as to entitle him to free transportation.—*Pfister v. Central Pacific R. Co.*, 70 Cal. 169, 59 Am. Rep. 404, 11 Pac. 686.

5. State's payment of interest coupons.—This act provided for payment by the state of the interest coupons on \$1,500,000 of certain bonds of the company, for twenty years.

FRANCHISE GRANT.

ACT 792—An act to aid in carrying out the provisions of the Pacific Railroad and Telegraph Act of Congress.

History: Approved April 4, 1864, Stats. 1863-64, p. 471.

Franchise granted for the construction, maintenance and operation of a railroad and telegraph line, and a right of way

granted over state lands, and public high-ways.

INCORPORATION VALIDATION.

ACT 793—An act for the relief of the Central Pacific Railroad Company.

History: Approved March 20, 1872, Stats. 1871-72, p. 432.

This act validated the certificate of incorporation of the San Joaquin Valley Railroad, which consolidated with other rail-

roads under the name of the Central Pacific Railroad Company.

CERES.

See Act 3094, note.

CHAMBERS OF COMMERCE.

See Kerr's Cyc. Civil Code, §§ 591, et seq.

CHAPTER 55.**CHARITIES AND CORRECTIONS.****CONTENTS OF CHAPTER.**

- ACT 803. STATE BOARD OF CHARITIES AND CORRECTIONS CREATED.**
804. HOMES FOR DEPENDENT CHILDREN.
805. RECORDS OF COUNTY HOSPITALS AND ALMS HOUSES.
805a. MATERNITY HOSPITALS, LICENSING, INSPECTING, AND REGULATING.
806. REGISTRATION AND PUBLICITY OF CHARITIES.

CREATION OF STATE BOARD.

ACT 803—An act to create a state board of charities and corrections, prescribing its duties and powers, and appropriating money therefor.

History: Approved March 25, 1903, Stats. 1903, p. 482. Amended May 1, 1911, Stats. 1911, p. 1334; May 26, 1915. In effect August 8, 1915. Stats. 1915, p. 847.

State board of charities created. Women eligible. Vacancies.

§ 1. A state board of charities and corrections is hereby created of six members, to be appointed by the governor, with the advice and consent of the senate, not more than three of whom shall be of the same political party. Such members shall hold office for a period of four years and until their successors are appointed and qualified; provided, that the terms of the three members who were appointed February 17, 1908, shall expire February 17, 1912, and the other three terms shall expire February 17, 1914, and thereafter the terms of three members of said board shall expire on February 17th of each even-numbered year. Women may be appointed members of said board or hold any position in the appointment of said board. No person shall be appointed a member, or continue to act as such, while he is a trustee, manager, director, or other administrative officer of an institution, subject to the provisions of this act. Appointments to fill vacancies before the expiration of such terms shall be for the residue of terms in the same manner as original appointments. The governor shall be ex officio a member of said board. [Amendment approved May 1, 1911. Stats. 1911, p. 1334.]

Expenses allowed. Bond of secretary. Office. Meetings. Non-attendance deemed resignation.

§ 2. The members of said board shall act without compensation, but shall be allowed their actual necessary expenses. The said board may appoint a secretary and such other employees as it may deem necessary to carry out the provisions of this act, and shall determine their salaries. The secretary of said board shall execute a bond in the sum of five thousand (\$5,000.00) dollars, and take the oath of office prescribed by the Political Code for the executive officers of this state. The board shall provide itself with an office in the city and county of San Francisco. Meetings of the board may be held at such times and in such places in the state of California as said board may deem fit. It may make such rules and orders for the regulation of its own proceedings, as it may deem necessary, and may fix the number of members necessary to constitute a quorum. The failure of a member to attend three consecutive meetings

of said board during any calendar year, unless excused by formal vote of the board, may be construed by the governor as a resignation of said non-attending member. [Amendment of May 26, 1915. In effect August 8, 1915. Stats. 1915, p. 847.]

This section was also amended May 1, 1911, Stats. 1911, p. 1336.

Powers and duties. Forms of records. Plans of buildings submitted.

§ 3. The board is hereby empowered and authorized, and it shall be its duty as a whole, or by committee, or by its secretary, or other agent whom it may authorize, to investigate, examine, and make reports upon the charitable, correctional, and penal institutions of the state, including the state hospitals for the insane, of the counties, cities and counties, cities, and towns of the state, and such public officers as are in any way responsible for the administration of public funds used for the relief or maintenance of the poor. All the persons or officers in charge of or connected with such public institutions, or with the administration of said funds, are hereby required to furnish to the board or its committee or secretary such information and statistics as they may request or require, and allow said board, committee, or secretary free access to all departments of such institutions and to all of their records. In order to secure accuracy, uniformity, and completeness in such statistics and information, the board may prescribe such forms of report and records by the state commission in lunacy regarding the state hospitals for the insane and by such other officers, boards, or institutions as it may deem necessary, and also such forms of registration at all public institutions referred to in this section as it may require. The state commission in lunacy, on behalf of the institutions under its charge, and the officers of all other institutions, and all officers in any way responsible for public funds used for the relief of the poor or the maintenance of any inmates of said public institutions, are hereby required to follow such forms, records, and registration so prescribed; provided, that the intent of this law is that, so far as possible, the board shall make use of the forms of report, record, and registration now obtaining in the state commission of lunacy and other state boards and institutions. All plans of new buildings, or parts of buildings for any of the public institutions coming under provisions of this section, or any additions or alterations in such buildings, shall, before their adoption by the proper officials, be submitted to the board for suggestions and criticisms. [Amendment approved May 1, 1911. Stats. 1911, p. 1335.]

Attendance of witnesses. Disobedience of subpoena.

§ 4. The board shall have the power to issue compulsory process to compel the attendance of any witness before said board or any member thereof, and to require the production of such books or papers relating to any public institution mentioned in section three of this act as they may deem necessary; provided, that no witness shall be required to attend before said board out of the county in which he resides. Any member of said board shall have power, and he is hereby authorized to administer an oath to any and all witnesses coming before said board, or any member thereof, for examination, and to examine such witness or witnesses in reference to any matter relating to public institutions mentioned in section three of this act appertaining to the inquiry before the board, or said member. Disobedience of a subpoena issued by said board, or refusal to be sworn, or to answer, shall subject such person disobeying or refusing to a forfeiture of one hundred dollars, to be recovered in a civil action brought in a court of competent jurisdiction by said board in its name as plaintiff, the money recovered to be appropriated to the use of said board.

§ 5. This section was renumbered as section 7; see post.

Investigate institutions receiving state aid.

§ 5. The board is hereby empowered and authorized, and it shall be its duty as a whole, or by committee, or by its secretary, to investigate, examine, and make reports

upon all institutions or persons receiving any state aid for the care of orphan, half-orphan, abandoned or dependent children, and may prescribe forms of record thereof to be kept, and require reports thereof. [New section added May 1, 1911. Stats. 1911, p. 1336.]

§ 6. This section was renumbered as section 8, and amended: See post.

Refusing to furnish information.

§ 6. Any public officer, superintendent, manager or person in charge of any said public institution, or with the administration of said funds, who refuses or neglects to furnish said board, its committee or secretary, the information and statistics which they may request or require shall be subject to a forfeiture of fifty dollars, to be recovered as provided in section 4 of this act for disobedience of a subpoena. [New section approved May 1, 1911. Stats. 1911, p. 1336.]

§ 7. This section was renumbered as section 9: See post.

Plenary investigation by governor.

§ 7. No provision in this act contained shall in any way be construed as preventing the governor of this state from making a plenary investigation in reference to the conduct of any public institutions under the terms of any act of the legislature of this state. Furthermore, the governor may at any time order an investigation by the board, or by a committee of its members, of the management of the above-named institutions, or any thereof. [Renumbered May 1, 1911. Stats. 1911, p. 1336.]

§ 8. This section was renumbered as section 10: See post.

Biennial report.

§ 8. Two months prior to each regular session of the legislature, the board shall make a full and complete report to the governor of all its transactions during the preceding two years, showing fully and in detail all expenses incurred and moneys paid out by it, and giving a list of all officers and agents employed, and the actual condition of all institutions under its supervision, with such suggestions as it may deem necessary and pertinent, and with recommendations for legislative and executive action. [Renumbered and amended May 1, 1911. Stats. 1911, p. 1336.]

Institutions excepted from act.

§ 9. The provisions of this act shall not apply to the Veterans' Home of California, located at Yountville, Napa county, nor to the Woman's Relief Corps Home at Evergreen, Santa Clara county. [Renumbered May 1, 1911. Stats. 1911, p. 1336.]

§ 10. All acts and parts of acts in conflict with the provisions of this act are hereby repealed. Renumbered May 1, 1911. Stats. 1911, p. 1336.]

HOMES FOR DEPENDENT CHILDREN.

ACT 804—An act providing for the supervision and control by the state board of charities and corrections of the placing of dependent children into homes and for the supervision of all societies or organizations engaged in such work and known as children's home finding societies.

History: Approved April 24, 1911, Stats. 1911, p. 1087.

Unlawful to place dependent children in homes without permit.

§ 1. It shall hereafter be unlawful for any organization, society or person to engage in the work of placing dependent children into homes in this state without first obtaining a permit therefor, duly executed in writing, from the state board of charities and corrections.

Board of charities may investigate societies.

§ 2. The said state board of charities and corrections may investigate, or cause to be investigated, the books, records, and methods of such organizations, societies, or persons, and the disposition of the children coming into their custody; and it may make such rules and regulations as it may deem best for the government and regulation of such societies or persons, and may require such reports as it may desire.

Permit may be withdrawn.

§ 3. The said state board of charities and corrections is hereby authorized and empowered to withdraw and cancel any permit to engage in the work of placing children into homes for any failure to observe the rules and regulations established for their government, or the failure to report as required, or for any failure on their part to perform their work as required by the best interests of the state, but no permit shall be canceled or withdrawn without due notice and hearing.

Misdemeanor to engage in work without permit.

§ 4. It is hereby made a misdemeanor for any person or persons, either as individuals or officers of any association or society, to engage in the work of placing children into homes, or the soliciting of funds therefor, in this state without a permit duly executed in writing by the state board of charities and corrections, authorizing said persons or such association or society to engage therein, or to engage in such work after any permit has been canceled.

Not applicable to orphan home.

§ 5. This act shall not be construed as applying to any regularly established orphan home or any officer or official thereof acting for or on behalf of such home receiving aid from the state for the care of orphans, half-orphans or abandoned children in any effort such institution or its officers may make to procure the adoption into homes or any officer or official thereof acting for or on behalf of such home of any such children.

§ 6. This act shall take effect immediately.

RECORDS OF COUNTY HOSPITALS AND ALMSHOUSES.

ACT 805—An act making it the duty of the state board of charities and corrections to prescribe forms of record for the use of county hospitals and almshouses, county jails and city prisons; and authorizing such board to furnish such records; and making the neglect or failure on the part of superintendents and jailers in charge thereof to keep such records a misdemeanor.

History: Approved June 11, 1913. In effect August 10, 1913. Stats. 1913, p. 682.

Form of records for county hospitals, jails, etc.

§ 1. It is hereby made the duty of the state board of charities and corrections to prescribe forms of record for the use of the superintendents of county hospitals and almshouses, and jailers in charge of county jails and city prisons, in keeping the records of persons received into or discharged from such county hospitals, almshouses, jails and city prisons.

Cost of printing.

§ 2. Books of record for the records so prescribed by said state board of charities and corrections may be printed at the expense of said board and furnished to such county hospitals and almshouses, county jails and city prisons, at the cost thereof.

Duty of superintendents to keep records.

§ 3. It shall be the duty of the superintendent in charge of any such county hospital or almshouse and the jailer in charge of any such jail or city prison to keep the

records prescribed by the state board of charities and corrections as fully and completely as possible, and any such superintendent or jailer who neglects and fails to keep the records thus prescribed shall be guilty of a misdemeanor.

MATERNITY HOSPITALS.

ACT 805a—An act to provide for the licensing, inspecting and regulating of maternity hospitals or lying-in asylums, and institutions, boarding-houses and homes for the reception and care of children, by the state board of charities and corrections, and providing a penalty for the violation of the provisions of this act.

History: Approved April 23, 1913. In effect August 10, 1913. Stats. 1913, p. 73.

License for maternity hospitals.

§ 1. No person, association, or corporation shall hereafter maintain or conduct in this state any maternity hospital or lying-in asylum where females may be received, cared for or treated during pregnancy, or during or after delivery; or any institution, boarding-house, home or other place conducted as a place for the reception and care of children, without first obtaining a license or permit therefor, in writing, from the state board of charities and corrections, such permit or license once issued to continue until revoked for cause after a hearing.

Rules for government.

§ 2. The state board of charities and corrections is hereby authorized to issue licenses or permits to persons or associations to conduct maternity hospitals, lying-in asylums, or homes for children, as provided in section one of this act, and to prescribe the conditions upon which such licenses or permits shall be granted, and such rules and regulations as it may deem best for the government and regulation of maternity hospitals, lying-in asylums and institutions, boarding-houses, or homes for the reception and care of children, and said board is further authorized, by one or more of its members, secretary, or duly authorized representative, to inspect and report upon the conditions prevailing in all such institutions.

Penalty.

§ 3. Any person who maintains or conducts, or assists in maintaining or conducting as manager or officer, any maternity hospital, lying-in asylum, or any institution, boarding-house, home or other place conducted as a place for the reception and care of children, or who keeps at any such place any child under the age of twelve years, not his relative, apprentice or ward, without first having obtained a license or permit therefor in writing, as provided in section one of this act, shall be punished upon conviction by imprisonment in the county jail for not more than one year, or by a fine not to exceed five hundred dollars, or both a fine and imprisonment may be imposed at the discretion of the court.

REGISTRATION AND PUBLICITY OF CHARITIES.

ACT 806—An act making provision for registration of and for publicity concerning the affairs of any charity for the support of which an appeal is made to the public, and prescribing penalties for violation of the provisions hereof.

History: Approved May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1356.

Registration of charities

§ 1. In any county or city and county in this state it shall be unlawful to make any appeal to the public for a charity either by soliciting donations or subscriptions or by promoting any bazaar, sale or exhibition, or by any similar means, unless the charity is registered with the county board of public welfare.

Information given.

§ 2. For the purposes of this act, any charity may be registered with the county board of public welfare upon the giving of such information in respect to the conduct of its affairs as may be necessary to enable the board properly to investigate the charity. If the board of public welfare approves or disapproves of the proposed appeal to the public in a particular case, such approval or disapproval with the reasons therefor shall be entered in a separate book with the records of the board, and shall be open to public inspection. Such an approval shall not be deemed a guarantee or endorsement as to the proper conduct of the affairs of a charity, but it is hereby authorized for the purpose of making such information available to the public whenever an appeal is made.

Registration with board of supervisors.

§ 3. In any county or city and county in which there is no board of public welfare, the registration herein provided for shall be made with the board of supervisors, and this board shall exercise the powers and duties hereby conferred or imposed upon the board of public welfare.

Penalty.

§ 4. Any person, firm or corporation violating any of the provisions of this act is guilty of a misdemeanor.

Exceptions.

§ 5. The provisions of this act shall not apply to the solicitation of gifts, contributions or donations for religious purposes; or for the specific personal aid of any particular individual or individuals; or for the meeting of extraordinary emergencies or calamities where time is of the essence of merited succor and relief.

License for charitable entertainments.—See Kerr's Cyc. Political Code, § 3386.

CHARTERS.

See *tit.* "Elections"; "Municipal Corporations."

CHAPTER 56.**CHEESE.**

References: See *tit.* "Adulteration," "Butter," "Dairies."

Fraud in sale of, see Kerr's Cyc. Penal Code, § 381.

Imitation cheese, see *tit.* "Butter," Act 621.

State Dairy Bureau, duty of, as to enforcement of the law against false tests for dairy products, see Kerr's Cyc. Penal Code, § 381b.

CONTENTS OF CHAPTER.**ACT 815. GRADES OF CHEESE.****GRADES OF CHEESE.**

ACT 815—An act defining the different grades of cheese and for branding the same, manufactured in the state of California.

History: Approved March 4, 1897, Stats. 1897, p. 69.

Branding grades of cheese.

§ 1. Every person or persons, firm or corporation, who shall at any creamery, cheese factory, or private dairy, manufacture cheese in the state of California, shall, at the place of manufacture, brand distinctly, and durably on the bandage of each and every cheese manufactured, and upon the package or box when shipped, the grade of cheese manufactured, as follows: "California full-cream cheese," "California half-skim cheese," and "California skim cheese."

Brands to be procured from state dairy bureau. Record of brands.

§ 2. All brands for branding the different grades of cheese shall be procured from the state dairy bureau, and said bureau is hereby directed and authorized to issue to all persons, firms, or corporations, upon application therefor, uniform brands, consecutively numbered, of the different grades specified in section 1 of this act. The state dairy bureau shall keep a record of each and every brand issued, and the name and location of the manufacturer receiving the same. No manufacturer of cheese in the state of California, other than the one to whom such brand is issued, shall use the same, and in case of a change of location, the party shall notify the bureau of such change.

Defining grades of cheese.

§ 3. The different grades of cheese are hereby defined as follows: Such cheese only shall have been manufactured from pure milk, and from which no portion of the butter fat has been removed by skimming or other process, and having not less than thirty per cent of butter fat, shall be branded as "California full-cream cheese"; and such cheese only as shall be made from pure milk, and having not less than fifteen per cent of butter fat, shall be branded "California half-skim cheese"; and such cheese only as shall be made from pure skim-milk shall be branded "California skim cheese"; provided, that nothing in this section shall be construed to apply to "Edam," "Brickstein," "Pineapple," "Limburger," "Swiss," or hand-made cheese, not made by the ordinary Cheddar process.

No sales without official brand.

§ 4. No person or persons, firms or corporations, shall sell, or offer for sale, any cheese, manufactured in the state of California, not branded by an official brand and of the grade defined in section 3 of this act.

Penalties.

§ 5. Whoever shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished for the first offense by a fine of not less than twenty-five dollars (\$25) nor more than fifty dollars (\$50), or by imprisonment in the county jail for not exceeding twenty-five days; and for each subsequent offense by a fine of not less than fifty dollars (\$50) nor more than one hundred dollars (\$100), or by imprisonment in the county jail not less than fifty days nor more than one hundred days, or by both such fine and imprisonment, at the discretion of the court.

Repeal of conflicting acts.

§ 6. All acts or parts of acts inconsistent with this act are hereby repealed.

§ 7. This act shall take effect sixty days after its passage.

Producing, buying and selling cheese.—See, post, Act 1167.

CHICO.

See Act 3094, nota.

CHAPTER 57.

CHINESE.

References: See tits. "Aliens," "Prostitution."

CONTENTS OF CHAPTER.

- ACT 825. IMMIGRATION.
- 826. COMPETITION OF CHINESE LABOR.
- 827. EXCLUSION AND REGISTRATION.
- 828. CHINESE CRIMINALS, IMPORTATION OF COOLIE SLAVERY.
- 829. KIDNAPING AND IMPORTATION OF FEMALES.
- 830. SUPPRESSION OF CHINESE HOUSES OF ILL-FAME.
- 831. REMOVAL OUTSIDE LIMITS OF CITIES AND TOWNS.

IMMIGRATION.

ACT 825—An act to prevent the further immigration of Chinese or Mongolians to this state.

History: Approved April 26, 1858, Stats. 1858, p. 295.

Editor's note: This act does not appear to have been passed on by the supreme court, although it is undoubtedly unconstitutional. Under any circumstances the penal portion of it is superseded by the Penal Code.—See Kerr's Cyc. Penal Code, § 6.

COMPETITION OF CHINESE LABOR.

ACT 826—An act to protect free white labor from competition with Chinese labor and to discourage the immigration of Chinese.

History: Approved April 26, 1862, Stats. 1862, p. 462.

Unconstitutional — **Police tax.** — This act declared unconstitutional in *Lin Sing v. Washburn*, 20 Cal. 534. It was imposed a police tax on Chinese.

EXCLUSION, REGISTRATION.

ACT 827—An act to prohibit the coming of Chinese into the state, whether the subjects of the Chinese empire or not, and to provide for registration and certificates of residence and determine the status of all Chinese persons now resident of this state, and fixing penalties and punishments for violation of this act, and providing for deportation of criminals.

History: Approved March 20, 1891, Stats. 1891, p. 185.

Unconstitutional.—Ex parte Ah Cue, 101 Cal. 197, 35 Pac. 556.

CHINESE CRIMINALS, COOLIE SLAVERY.

ACT 828—An act to prevent the importation of Chinese criminals and to prevent the establishment of coolie slavery.

History: Approved March 18, 1870, Stats. 1869-70, p. 332.

Penal provisions superseded by the Penal Code.—The code commissioners say of section 174, Penal Code: "This section embodies the material penal provisions of the act to prevent the kidnapping and importation of Mongolian females for criminal purposes and the kindred act of March 18, 1870 (Stats. 1869-70, pp. 336, et seq.). The provisions of this section are broad enough to include every offense defined in either act."

KIDNAPING AND IMPORTATION OF FEMALES.

ACT 829—An act to prevent the kidnaping and importation of Mongolian, Chinese and Japanese females for criminal or demoralizing purposes.

History: Approved March 18, 1870, Stats. 1869-70, p. 330.

Superseded as to penal provisions.—See note to preceding act (Act 828).

Compulsory prostitution and importation of Chinese and Japanese women for immoral purposes.—See, post, Act 3633.

SUPPRESSION OF CHINESE HOUSES OF ILL-FAME.

ACT 830—An act for the suppression of Chinese houses of ill-fame.

History: Approved March 31, 1866, Stats. 1865-66, p. 641. Amended February 7, 1874, Stats. 1873-74, p. 84. Continued in force by the codes. See Kerr's Cyc. Political Code, § 19, and Kerr's Cyc. Penal Code, § 23.

Amending act codified—Code commissioners' note.—The amending act of 1873-74, p. 84, is codified by § 315 of Penal Code. Concerning this section of the Penal Code, the code commissioner said: "The new matter is taken from the statute of 1866, as amended 1873-74, p. 84, and makes the repu-

tation of the house evidence of its character and of that of the women resorting to it."

See, also, Kerr's Cyc. Penal Code, §§ 174, 179, inc., and § 315.

Redlight abatement act.—See, post, Act 3634.

REMOVAL OUTSIDE CITIES AND TOWNS.

ACT 831—An act to provide for the removal of Chinese outside the limits of cities and towns.

History: Approved April 3, 1880, Stats. 1880, p. 22.

Code commissioners' comment: "Probably unconstitutional."

CHINO.

See Act 3094, note.

CHIROPRACTIC.

See tit. "Medicine."

CHULA VISTA.

See Act 3094, note.

CIDER.

See tit. "Adulteration."

CHAPTER 58.

CITY ATTORNEY.

CONTENTS OF CHAPTER.

ACT 836. ASSISTANTS IN CITIES AND COUNTIES OF 100,000 AND OVER.

ASSISTANTS IN CITIES.

ACT 836—An act to provide for furnishing assistants to city and city and county attorneys in every city, or city and county having a population of one hundred thousand or over, and providing for their mode of appointment and compensation.

History: Approved March 11, 1891, Stats. 1891, p. 95.

Superseded as to San Francisco.—See charter chapter II, article V.

CIVIL RIGHTS.

See Kerr's Cyc. Civil Code, §§ 51, et seq.

CHAPTER 59.

CIVIL SERVICE COMMISSION.

CONTENTS OF CHAPTER.

ACT 846. GENERAL SYSTEM OF CIVIL SERVICE.

GENERAL SYSTEM OF CIVIL SERVICE.

ACT 846—An act to provide for a general system, based upon investigation as to merit, efficiency and fitness, for appointment to and holding during good behavior of office and employment under state authority and, in that behalf, to create a state civil service commission, to prescribe its powers and duties, to make the wilful violation of the provisions of this act a misdemeanor, to repeal all acts and parts of acts inconsistent herewith in so far as they may be inconsistent with the provisions of this act, and to make an appropriation therefor.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 1035. Amended May 27, 1919. In effect immediately. Stats. 1919, p. 1337.

Definitions of terms.

§ 1. First—The term “commission” as used in this act means the “state civil service commission” herein created, and the term “commissioner” as used in this act means one of the three members of that commission, all unless such terms are plainly used with some other meaning.

Second—That terms “position” and “positions” as used in this act include all offices and employments under state authority, whether there be any salary or other compensation or emolument connected therewith, except offices held by elective officers as such and also except the militia and all offices and employments as now or hereafter provided by virtue of or under article eight of the constitution of the state, and except county and township offices and employments.

Third—The term “appointing power” as used in this act includes all persons whether acting singly or in conjunction with others in any way whatsoever, either by nomination or confirmation or as a board or commission or otherwise, in selecting any one to hold any position as that term is so used in this act.

Fourth—The term “appointment” as used in this act includes all means of selecting and employing any one to hold any position as that term is so used in this act. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1338.]

Civil service commission created. Salary.

§ 2. There is hereby created a commission known as the “state civil service commission” which shall consist of three commissioners but which may continue to act after being fully constituted if there is not more than one vacancy in such commission. The commission shall be first constituted by three commissioners appointed for terms ending July 1, 1914, July 1, 1916, and July 1, 1917, respectively, and the succeeding terms shall each be for a period of four years. The governor shall appoint all commissioners including those who fill unexpired terms. Any commissioner may be removed by concurrent resolution of both houses of the legislature adopted by a two-thirds vote of each house. The commissioners shall each receive a salary of three thousand dollars per annum, which shall be paid at the same time and in the same manner as the salaries of state officers are paid, and the commissioners shall also be paid necessary traveling expenses incurred in the performance of their duties. The total and items of all expenditures and obligations made, authorized and incurred by the commission shall not exceed the sums appropriated therefor by law.

Employees.

§ 3. The commission shall employ a chief examiner and secretary, which offices may be combined, and such other employees as it may deem necessary or proper to carry out the purposes of this act. Their compensation shall be fixed by the commissioner, and they may be paid necessary traveling expenses incurred in the discharge of the duties. The duties of the chief examiner, secretary and other employees shall be prescribed by the commission, subject to the provisions of this act. It shall be the duty of the secretary to keep the minutes of the meetings of the commission and perform such other services as may be assigned him by the commission. The commission may select suitable persons to assist in examinations under its directions. The compensation of such assistants shall not exceed five dollars per day, except in the case of special and expert examiners employed in the preparation of questions and rating of candidates; and when the persons so selected are in the official service of the state it shall be deemed a part of their official duty to serve as such assistants without additional compensation. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1339.]

Office accommodations.

§ 4. The commission is authorized to secure in the city of Sacramento suitable and convenient rooms and accommodations and cause the same to be furnished, heated and lighted, for carrying on the work of the commission and the commission may order the necessary stationery, postage stamps, and official seal and other articles to be supplied, and the necessary printing to be done for its official use. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1339.]

Classify and grade positions.

§ 5. The commission shall:

First—Classify positions to be held under state authority in accordance with the provisions of this act and in accordance with the duties attached to such positions. The commission shall grade all positions within each class with respect to salaries, to the end that like salaries shall be paid for like duties. Such classes and grades may from time to time be amended, added to, consolidated or abolished by the commission, but persons holding positions under the original classification or grade shall not be affected thereby; provided, that no person otherwise competent shall be excluded from any class on account of any physical defect or affliction unless such defect or affliction tends directly to incapacitate such person from performing the services required of that class, and that when any person with any such physical defect or affliction which does not tend directly to incapacitate such person from performing the duties required of persons in that class, has been appointed to a position, such person shall not be placed in a different grade as to salaries from other persons in the same class.

Hold examinations.

Second—Hold examinations to determine the merit, efficiency and fitness of applicants, for positions, and prepare properly classified eligible lists from applicants so examined.

All questions for examination shall be prepared under the supervision of the commission or chief examiner and delivered to the examining board or to the candidates by one of the commissioners or chief examiner or by an examiner specially designated to perform such service.

Enforce act.

Third—Enforce the provisions of this act and prescribe and enforce suitable rules and regulations for carrying the same into effect and from time to time amend and repeal the same.

Fourth—Keep minutes of its own proceedings, and records of its examinations and other official actions.

Efficiency records.

Fifth—Records of individual efficiency of holders of positions in performing their duties must be established and posted monthly in all offices and places of employment affected by this act. Such records shall be made by the appointing power, unless otherwise directed by the commission, and under and in accordance with such rules and regulations as the commission may prescribe, and a copy of such records shall be filed with the commission. The commission shall investigate all such efficiency records and may make its own records, and shall rate upon such records the item of "ascertained merit" in examinations for promotion. The commission shall establish and enforce rules and regulations under which records of unsatisfactory service may lead to reduction in grade and compensation of the person holding the position concerned, and shall further provide for the manner in which persons falling below the standards of efficiency fixed by its rules and regulations may be removed from their positions by the commission proceeding substantially as provided in this act and with the same effect as in case of removals by the appointing power.

Make investigations.

Sixth—Make investigations concerning and report upon all matters touching the enforcement and effect of the provisions of this act and the rules and regulations prescribed thereunder; inspect all state institutions, offices, places of employment and services affected by this act, and ascertain whether this act and all such rules and regulations are obeyed. Such investigation may be made by any commissioner, or chief examiner, or by any other authorized agent of the commission. In the course of such investigation any commissioner, or chief examiner or such other authorized agent of the commission, or the secretary of the commission, shall have power to administer oaths, subpoena and require the attendance in this state of witnesses and the production thereby of books, papers, documents and accounts appertaining to the investigation but not requiring the attendance of witnesses either with or without books, papers, documents or accounts unless residing within the same county or within thirty miles of the place of attendance.

Rules governing hearing. Superior court may compel witnesses to attend. Order directing witness to appear.

Seventh—All hearings and investigations before the commission, or any commissioner, or the chief examiner or such other authorized agent of the commission shall be governed by this act and by rules of practice and procedure to be adopted by the commission and in the conduct thereof neither the commission nor any commissioner nor the chief examiner nor such other authorized agent of the commission shall be bound by the technical rules of evidence. No informality in any proceeding or in the manner of taking testimony before the commission or any commissioner, or the chief examiner or such other authorized agent of the commission shall invalidate any order, decision, rule or regulations made, approved or confirmed by the commission. The superior court in and for the county, or city and county, in which any inquiry, investigation, hearing or proceeding may be held by the commission, or any commissioner, or the chief examiner or such other authorized agent of the commission shall have the power to compel the attendance of witnesses, the giving of testimony and the production of books, papers, documents and accounts, as required by any subpoena issued by the commission, or any commissioner, or such other authorized agent of the commission or the secretary. The commission, or the commissioner, or the chief examiner or such other authorized agent of the commission before whom the testimony is to be given

or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the superior court in and for the county, or city and county, in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or the production of such books, papers, documents, or accounts, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend or produce such books or papers or documents or accounts required by the subpoena, before the commission, or the commissioner, or the chief examiner, or such other authorized agent of the commission, in the matter named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceedings, and ask an order of said court compelling the witness to attend and testify or produce such books or papers or documents or accounts before the commission, or any commissioner, or the chief examiner or such other authorized agent of the commission. The court, upon the petition of the commission, or any commissioner, or the chief examiner or such other authorized agent of the commission, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he has not attended and testified or produced said papers before the commission, or such commissioner, or the chief examiner or such other authorized agent of the commission. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission, or any commissioner, or the chief examiner or other authorized agent of the commission, or the secretary, the court shall thereupon enter an order that said witness appear before the commission, or such commissioner, or the chief examiner or any other authorized agent of the commission at the time and place fixed in said order, and testify or produce the required books, papers, documents and accounts, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative, and shall not be construed to impair or interfere with the power of the commission, or a commissioner, or the chief examiner or any such other authorized agent of the commission to enforce the attendance of witnesses and the production of books, papers, documents and accounts.

Depositions.

The commission, or any commissioner, or the chief examiner or such other authorized agent of the commission may, in any investigation or hearing before the commission, or any commissioner, or the chief examiner or such other authorized agent of the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state and to that end may compel the attendance of witnesses and the production of books, papers, documents and accounts.

Witness not excused from testifying.

No person shall be excused from testifying or from producing any book, paper, document or account in any investigation or inquiry by or hearing before the commission, or any commissioner, or the chief examiner or such other authorized agent of the commission, when ordered to do so, upon the ground that the testimony or evidence, book, paper, document or account required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall, under oath, have testified or produced documentary evidence; provided, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. Nothing herein con-

tained shall be construed as in any manner giving to any person immunity of any kind otherwise than is herein expressly provided.

Biennial report.

Eighth—Make a biennial report to the governor for transmission to the legislature, showing the action of the commission, including all the rules and regulations adopted by it during such period and those that are in force at the time of making such report, information as to exempted positions as required by this act and the effects of this act and of all proceedings under it and any suggestions the commission or any commissioner may deem practical for the more effectual accomplishment of the purposes of this act.

Meetings.

Ninth—Meet at Sacramento as often as the needs of the public service may require, and at such other places as the commission may designate. A majority of the members of the commission shall constitute a quorum. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1339.]

Duty of state officers.

§ 6. It shall be the duty of all persons subject to the authority of the state in that behalf (including all state officers and employees of all state institutions of every kind and character) to aid in all proper ways in carrying into effect the provisions of this act and the rules and regulations prescribed from time to time thereunder and especially, at the request of the commission, to allow the commission the reasonable use of public buildings and to heat and light the same for the purpose of making examinations of applicants and investigations as provided by this act. Every one subject to the authority of the state in that behalf shall afford to the commission and its members and employees all reasonable facilities and give inspection of all books, papers, documents and accounts applying or in any way appertaining to any and all offices subject to the authority of the state in that behalf, and shall also produce said books, papers, documents and accounts, and shall attend and testify when required to do so by the commission or any commissioner, or the chief examiner, or the secretary or any other authorized agent of the commission. The attorney general shall advise and assist the commission, and the district attorneys of the counties shall prosecute violations of this act. The commission may employ special counsel. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1343.]

Appointments to be under act.

§ 7. The appointing power in all cases not excepted or exempted under the provisions of this act, or by virtue of the provisions of the constitution of the state, shall fill positions by appointment, including cases of transfers, reinstatements, promotions and reductions, in strict accordance with the provisions of this act and the rules and regulations prescribed from time to time hereunder, and not otherwise. Except only and to the extent that the appointing power otherwise requests as hereinafter provided, the positions held in the following specified classes are excepted from such method of appointment:

Exceptions.

First—Appointee of the legislature and one person holding a position having a confidential relation, whether as secretary or clerk or stenographer to each such appointee.

Second—Appointees of the governor and one person holding a position having a confidential relation whether as secretary or clerk or stenographer to each such appointee.

Third—The chief deputy of and also one person holding a position having a confidential relation whether as secretary or clerk or stenographer to an elective officer.

Fourth—The secretary or executive officer, or both, and also the attorney and one stenographer of any board or commission appointed by the legislature or governor or elected by the electors, and all stenographers in the superior and appellate courts.

Fifth—The assistant and deputies of the attorney general and all special attorneys for boards and officers.

Sixth—The members of the appointing board of and any chief in any legislative reference or counsel bureau and one person holding a confidential relation to each such chief.

Seventh.—One warden for each of the state prisons.

Eighth—One superintendent for each of the state reformatories, state hospitals or other state charitable or correctional institutions; also the parole officers for the state prisons, Preston School of Industry and Whittier State School.

Ninth—Persons employed by the University of California and the state normal schools, and the teaching force of the elementary, secondary, trades and technical schools.

Tenth—Persons engaged in work done by co-operation between the state and federal governments.

Eleventh—The state librarian, the chief deputy or assistant state librarian and also one person holding a position having a confidential relation to the state librarian, and appointees under provisions for court, law, teachers, school and county libraries.

Twelfth—The secretary, chief accountant and children's agents of the state board of control.

Thirteenth—The employees of the state railroad commission.

Fourteenth—Superintendents, chiefs, and heads of departments.

Position may be declared exempt.

All provided that at any time any vacancy in any position in any of the above specified fourteen excepted classes may be filled by the appointing power in the manner provided by this act, in which case the person appointed shall hold, during the tenure of office of said appointing power, such position under the tenure of good behavior and subject to the provisions of this act as if that position had not been so excepted, but upon such appointee ceasing to hold such position that position shall be open as in such excepted class. Upon such appointee ceasing to hold such office by reason of the termination of the tenure of office of said appointing power, said appointee shall be restored to place upon the eligible lists in accordance with such rules and regulations as the commission may prescribe in that behalf. Any position subject to the provisions of this act may be declared exempted by resolution passed by concurrence of the three commissioners. Such resolution shall state separately the reasons for each exemption. Not more than one appointment shall be made to or under any position covered by such resolution unless permission to appoint a different number is given therein. Any exception thus made may be terminated at any time by resolution of the commission. Appointments to exempted positions shall be reported immediately to the commission. The names of each exempted position and the names of the incumbent and the reason for each exemption shall be stated in the biennial reports of the commission. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1343.]

Rules for classification of positions.

§ 8. Within three months after the commission is constituted, it shall make rules for the classification of positions to be held under state authority to be provided by this act, and subject to the provisions of this act; such rules shall govern appointments, transfers, reinstatements, promotions, reductions and removals, and examination of

applicants, and the commission may amend such rules from time to time. Such rules shall be printed for public distribution. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1344.]

Method of making appointments. Appointments for probationary period.

§ 9. Subject to the special provisions in this as to laborers, appointments shall be made to all positions that are not filled by promotion, reinstatement, transfer or reduction, under the provisions of this act and the rules in pursuance thereof, by the appointing power: Said appointing power shall notify the commission of any vacancy to be filled, stating the duties of the position. The commission shall then certify to the appointing power the names and addresses of the three persons standing highest on the eligible list for the class or grade to which the position belongs; but in case there be less than three on such eligible list, the commission shall certify the number thereon; and the appointing power shall fill the position by the appointment of one of the persons certified by the commission therefor. The term of eligibility shall be fixed for each eligible list at not less than one year. Appointments shall be made from the eligible list most nearly appropriate for the position to be filled, and a new list shall be created for a stated position or a group of positions only when there is no appropriate list existing from which appointment may be made. No person shall be appointed under any title not appropriate to the duties to be performed, and no person shall be assigned to perform the duties of any other position than that which he legally holds, except by consent of the commission. All appointments shall be for a probationary period to be fixed by the commission but not to exceed six months. Unless such appointee shall have been dismissed within such probationary period by the appointing power, for reasons stated in writing and filed with the commission, his appointment shall become permanent subject to the provisions of this act as to removals, suspensions and changes. Discharged probationers may by unanimous vote of the commission be restored to the list of eligibles for certification to any position within their class other than the one from which they were rejected.

Character of examinations. Preliminary requirements. Application blanks. May refuse to examine. Appointing power may require bond.

§ 10. The examinations shall be practical in their character, and shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of the positions they seek. Applicants for positions in the mechanical trades and occupations may, in the discretion of the commission, be rated solely on experience and physical qualifications which may be determined by such evidence and in such manner as the commission may direct; and such applicants may be submitted to such further tests as the commission may require. The commission shall prepare lists of preliminary requirements and subjects of examinations for the several positions, and shall publish its rules and regulations and such information and advertise such examinations in such manner as the nature of the examination may require. The commission, except as may be otherwise provided in the case of laborers, shall require an applicant to file in its office, in accordance with its rules and regulations, a reasonable length of time before the date of examination, a formal application filled out in his own handwriting. Blank forms of such application shall be furnished by said commission without charge to all persons requesting the same. The commission may require in connection with applications, including laborers, such certificates of citizens, physicians, public officers or others having knowledge of the applicant, as the good of the service may require. The commission may refuse to examine or after examination to certify as eligible, any one who is found to lack any of the established preliminary requirements for the examination or position for which he applies; or who is physically so disabled as to be rendered unfit to perform the duties of the position to which he

seeks appointment, or who is addicted to the habitual use of intoxicating beverages to excess; or who has been guilty of a crime or of infamous or notoriously disgraceful conduct; or who has been dismissed from the public service for delinquency or misconduct; or who has intentionally made a false statement of any material facts, or practiced, or attempted to practice any deception or fraud in his application, in his examination, or in securing his eligibility. Any person appointed to a position under the provisions of this act who has secured his place on the eligible list through fraud shall be removed by the commission from his position and shall not thereafter be eligible for examination for any position under the provisions of this act except by unanimous permission of the commission. When the position to be filled involves fiduciary responsibility, the appointing power may require the appointee to furnish a reasonable bond or other security, and shall notify the commission of the amount and necessary details thereof. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1345.]

Temporary appointments.

§ 11. When there is no eligible list from which a position may be filled, the appointing power may, with the consent of the commission, fill such position by temporary appointment; and such temporary appointment shall not continue for a longer period than three months, nor shall successive temporary appointments be made to the same position under this section without the previous consent of the commission, and in no case shall any person hold a position under such successive temporary appointments for a longer period than six months without the unanimous consent of the commission. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1346.]

Emergency appointments.

§ 12. The commission shall establish rules and regulations under which emergency appointments may be made when those on the eligible lists are not immediately available, and for the time for which such emergency appointments shall be valid; and may fix a different time for different counties or cities and counties of the state for which such emergency appointments shall be valid. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1346.]

Promotions. Transfer.

§ 13. Vacancies in positions shall be filled, so far as practicable by promotion from among persons holding positions in a lower grade of the department, office or institution in which the vacancy exists. Promotion shall be based upon merit and competition and upon the superior qualifications of the person promoted as shown by his records of efficiency. For the purposes of this section an increase in the salary or other compensation of any person holding an office or position within the scope of the rules and regulations in force hereunder beyond the limit fixed for the grade in which such office and position is classified, shall be deemed a promotion. The commission may authorize the transfer of any person legally holding a position to a similar position in the same class or grade, and may provide for the reinstatement within one year of persons separated from positions without fault or delinquency on their part, if within that time there is need for their services. No promotion, transfer or reinstatement shall be made from a position in one class to a position in another class, nor shall a person be transferred to or reinstated in a position for original entrance to which there is required by this act or the rules and regulations thereunder an examination involving essential tests or qualifications different from or higher than those required for original entrance to the position held by such person. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1346.]

Tenure of office. Written charges. Public hearing. Judgment not subject to review. Suspension.

§ 14. The tenure of every one holding a position under the provisions of this act shall be during good behavior, but any such person may be removed for any of the following causes:

(a) Incompetence, or inefficiency.

(b) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or of fellow employees, a violation of the provisions of this act or of the rules and regulations of the commission or any other failure of good behavior. The appointing power that could fill such positions under the provisions of this act if vacant or the commission may remove, as hereinafter provided, for such cause. The appointing power in so proceeding must furnish to the person holding such position written charges setting forth such ground for removal and file copy with the commission and allow the accused a reasonable time and opportunity to file with the commission and furnish to said appointing power written answer and explanation and thereafter said appointing power shall publicly hear and determine such charges after reasonable notice to the accused and the commission of the time and place of said hearing and affording the accused an opportunity at such hearing to present whatever competent evidence the accused may desire in defense. In case of charges presented by or to the commission, it shall proceed in like manner. A judgment of removal, in writing, setting forth the findings of said appointing power after such hearing and filed with the commission, shall be final and effect such removal and shall not be subject to review by any other tribunal, except that in case of proceedings against the same person before both the appointing power and the commission the judgment against the accused by either the appointing power or the commission shall control a judgment by the other in favor of the accused. Such appointing power may from time to time peremptorily suspend, with loss of salary or other compensation during such suspension, such person for such cause, and without trial, but only upon written charges so furnished to such person and filed with the commission and with the privilege to such person to so furnish to the appointing power and file with the commission written answer and explanation, but such suspension or total suspensions by that appointing power of that person shall not exceed thirty days. Either the appointing power or the commission may transfer charges to the other for action or investigation.

Employment of laborers.

§ 15. The commission shall provide by rule for the employment of laborers in the labor class in the order of priority of application for employment. There shall be separate lists of applicants for different kinds of labor, and the commission may provide separate labor registration lists for departments, institutions, districts or localities. The commission may require an applicant for registration to pass such examination as they may deem proper with respect to his age, residence, physical condition, ability to labor, skill, capacity and experience. The commission shall establish such time as it may deem expedient for the duration of eligible lists in the labor class. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1346.]

Reports of appointees, etc. Official roster.

§ 16. It shall be the duty of each appointing power to report to the commission forthwith upon each appointment the name of the appointee, the title or character of the position, the date of the commencement of such service, and the salary or compensation therefor, and to report from time to time, and upon the date of official action in, or knowledge of each case, any separation of the person from the position, or other changes, and such other information as the commission may require in order to keep the roster hereinafter mentioned. The commission shall keep in its office an official

roster of all persons holding positions under the provisions of this act and shall enter thereon the name of each and every person who has been appointed to, promoted, reduced, transferred, reinstated or removed from or left any position and require such evidence as it may deem satisfactory as to whether such person was appointed to, promoted, reduced, transferred, reinstated or removed from such position in accordance with the provisions of this act and the rules and regulations of the commission thereunder and as to when and why and how such person was otherwise separated from such position. The official roster shall show opposite, or in connection with, each name, the date of appointment, promotion, reduction, transfer or reinstatement, the compensation of the position, the date of commencement of service and change in or separation from position and when and why and how there was such change or separation. The names of all persons holding positions at the time of the taking effect of this act which if vacant would be filled under the provisions of this act shall be certified to the commission by the appointing power that could then so fill such position if vacant, and such names shall be entered in said roster, and thereupon shall be deemed appointed under the provisions of this act and persons then holding such positions who have served in such positions a less period than one year and more than sixty days from the date of the classification of such positions as required by this act shall be deemed to be serving the probationary period, and persons who have served in such positions for less than such sixty days shall be deemed temporary appointees. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1347.]

Certification of pay rolls.

§ 17. It shall be unlawful for the controller or other fiscal officer of the state to draw, sign, issue, or authorize the drawing, signing, or issuing of any warrant on the treasurer or other disbursing officer of the state for the payment of, or for the treasurer or other disbursing officer to pay any salary or compensation to any one holding any position under the provisions of this act unless the estimate, pay roll or account for such salary or compensation, containing the name of the person to be paid, shall bear the certificate of the commission that the persons named in such estimate, pay roll or account are holding positions as provided by this act and the rules and regulations prescribed thereunder. Any sums paid contrary to the provisions of this section may be recovered from any one making such appointment in violation of the provisions of this act and of the rules and regulations prescribed thereunder or from any officer signing, or countersigning, or authorizing the signing or countersigning of any warrant for the payment of the same, and from the sureties on his official bond in an action in any court of competent jurisdiction of this state maintained by a citizen resident therein, who is assessed for and is liable to pay, or within one year before the commencement of such action has paid, a tax therein. All moneys recovered in any action brought under the provisions of this section must, when collected, be paid into the treasury of the state, except that the plaintiff in any such action shall be entitled to receive for his own use the taxable costs of such action. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1347.]

Penalty for false marking, grading, etc.

§ 18. Any commissioner or examiner, or any person who shall wilfully by himself or in co-operation with one or more persons, defeat, deceive or obstruct any person in respect of his or her right of examination or registration, according to any rules or regulations prescribed pursuant to the provisions of this act, or who shall wilfully and falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined, registered, or certified pursuant to the provisions of this act, or aid in so doing, or who shall wilfully make any false representation concerning the same, or concerning the person examined, or who shall wilfully furnish to any person

any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, registered, or certified, or to be examined, registered, or certified, or who shall personate any other person, or permit or aid in any manner any other person to personate him, in connection with any examination or registration or application or request to be examined or registered, shall be deemed guilty of misdemeanor. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1348.]

Soliciting prohibited.

§ 19. No officer, agent, clerk or employee, under the government of the state shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, contribution or political service, whether voluntary or involuntary, for any political purpose whatever, from any one on the eligible lists or holding any position under the provisions of this act.

Every officer, agent, clerk or employee under the government of the state who may have charge or control in any building, office, or room occupied for any purpose of said government is hereby authorized to prohibit the entry of any person, and he shall not permit any person to enter the same, for the purpose of therein making, collecting, receiving or giving notice of any political assessment, subscription or contribution, and no person shall enter, or remain in any said building, office or room, or send or direct any letter or other notice thereto, for the purpose of giving notice of, demanding, or collecting a political assessment, subscription or contribution, nor shall any person therein give notice of, demand, collect or receive, any such assessment, subscription or contribution contrary to the provisions of this section. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1348.]

Promise of advancement for political influence prohibited.

§ 20. No one, while holding any public office, or in nomination for, or while seeking a nomination or appointment for, any public office, shall use or promise to use, whether directly or indirectly, any official authority or influence (whether then possessed or merely anticipated) in any way of conferring upon any person, or in order to secure or aid any person in securing any position under the provisions of this act, either in nomination, confirmation, promotion, or increase in salary, or as to any change in any such position, upon a consideration or condition that the vote or political influence or action of the last named person or any other, shall be given or used in behalf of any candidate, officer or party, or upon any other corrupt condition or consideration. And no one, being a public officer, or in nomination for, or while seeking nomination or appointment for, any public officer or having or claiming to have any authority or influence (whether then possessed or merely anticipated) for the securing or holding of or as to affecting any position under the provisions of this act, shall use, or promise or threaten to use, any such authority or influence, directly or indirectly, in order to coerce or persuade the vote or political action of any person on the eligible lists or holding any position under the provisions of this act. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1349.]

No salary to persons appointed in violation of act.

§ 21. No salary, compensation or other emolument shall be paid to any one appointed to or retained in any position in violation of this act. Any officer approving or paying such salary shall be liable for such sum on his official bond. Whenever the commission shall notify the auditing officer that any position has been filled in violation of this act or any of the rules and regulations thereunder, no demand for the salary or compensation or other emolument of such position shall be approved or paid except upon the order of a court of competent jurisdiction. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1349.]

Appointing power must pay persons accepting appointment in good faith.

§ 22. Any person acting in good faith in accepting appointment or employment contrary to the provisions of this act or of the rules and regulations prescribed thereunder, shall be paid by the appointing power the compensation promised by or on behalf of the appointing power or in case no compensation is so promised then the actual value of any service rendered and the expense incurred in good faith under such attempted appointment or employment, and shall have a cause of action against the appointing power for such sum or sums and for the costs of action. No public officer shall be reimbursed by the state or any of its instrumentalities for any sum so paid or recovered in such action. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1349.]

Political or religious opinions not to be considered.

§ 23. No recommendation or question or inquiry under the authority of this act shall relate to the political or religious opinions or affiliations of any person, and no appointment or change in or removal from any position under the provisions of this act shall be in any manner affected or influenced by such opinions or affiliations. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1350.]

Witness fees.

§ 24. Witnesses and officers to subpoena and secure the attendance of witnesses before the commission, or any commissioner, or the chief examiner or other authorized agent of the commission, shall be entitled to the same fees as are allowed witnesses in civil cases in courts of record. Such fees need not be prepaid, but the controller shall draw his warrant for the payment of the amount thereof when the same shall have been certified to by the commission and duly proved by affidavit or otherwise to the satisfaction of the controller. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1350.]

Penalty.

§ 25. Any person wilfully violating any of the provisions of this act shall be guilty of a misdemeanor. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1350.]

Veteran defined.

§ 26. The term "veteran" as used in this act means and includes any person who has served in the United States army, navy, marine corps, revenue marine service, or as an active nurse in the service of the American Red Cross or in the army and navy nurse corps, during or prior to the war between the United States and the Central European Powers and who has not been dishonorably discharged from such service. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1350.]

Preference to veterans.

§ 27. When proper proof is presented to the state civil service commission that an applicant is a veteran, as defined in this act, and such veteran stands equal in percentage in any civil service examination for original entrance into the public service, with any other applicant or applicants taking the same examination, it shall be the duty of the state civil service commission to show such veteran preference by giving him the higher rank. [Amendment of May 27, 1919. In effect immediately. Stats. 1919, p. 1350.]

Purpose of act to give preference to veterans.

§ 28. It is the purpose of this act to give preference, in the manner set forth in the foregoing section, to all persons who have served the government and the people in the army, navy, marine corps, revenue marine service, or as active nurses in the American Red Cross or the army and navy nurse corps, and particularly to persons who have rendered such service during the Ally-Germanic war, the Spanish-American war, the

Philippine insurrection, the Boxer uprising, the Indian wars, or the Civil War. [New section added May 27, 1919. In effect immediately. Stats. 1919, p. 1350.]

Interpretation by court.

§ 29. Whenever this act or any part or section thereof is interpreted by a court, it shall be liberally construed by such court. [New section added May 27, 1919. In effect immediately. Stats. 1919, p. 1350.]

Constitutionality.

§ 30. If any section, subsection, subdivision, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, subdivision, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses or phrases be declared unconstitutional. [New section added May 27, 1919. In effect immediately. Stats. 1919, p. 1350.]

Repealed.

§ 31. All acts and parts of acts inconsistent with this act are hereby repealed in so far as they are inconsistent with the provisions of this act. [New section added May 27, 1919. In effect immediately. Stats. 1919, p. 1351.]

The amending act of May 27, 1919, contained the following:

Emergency measure.

Sec. 6. Inasmuch as the United States military and naval forces are being demobilized and those who went into the federal service are suddenly returning in great numbers to their homes; and inasmuch as this act will assist them to re-employment, thereby simplifying the problems of reconstruction, it is hereby declared that this act is an emergency measure necessary for the immediate preservation of the public peace, health and safety, under the provisions of section one of article four of the constitution of the state of California and that this act shall take effect immediately.

State civil service act not binding upon county of San Francisco.—Uhte v. Rosen-
the civil service commission of the city and thal, 37 Cal. App. 519, 174 Pac. 83.

CLAREMONT.

See Act 3094, note.

CLEAR LAKE.

See Kerr's Cyc. Political Code, § 2349.

CLEVELAND NATIONAL FOREST.

See tit. "Forestry."

CLOVERDALE.

See Act 3094, note.

CLOVIS.

See Act 3094, note.

COACHELLA VALLEY STORM WATER DISTRICT.

See tit. "Storm Water Districts."

COALINGA.

See Act 3094, note.

CHAPTER 60.

COAST SURVEY.

CONTENTS OF CHAPTER.

ACT 860. ENTER LANDS. PROTECT OPERATIONS.

ENTER LANDS. PROTECT OPERATIONS.

ACT 860—An act to authorize persons engaged in the U. S. coast survey to enter upon lands within the state; to protect the operations of the same from injury and molestation, and to ascertain the mode of assessing damages and to punish offenders.

History: Passed April 2, 1852, Stats. 1852, p. 147.

Nature and purpose of act sufficiently appears from title.

CHAPTER 61.

CODE COMMISSION.

CONTENTS OF CHAPTER.

ACT 865. CREATION OF COMMISSION.

CREATION OF COMMISSION.

ACT 865—An act to create and establish a commission for revising, systematizing, and reforming the laws of this state, and for the appointment of the members of said commission, to be known as "The commissioners for the revision and reform of the law," and to prescribe their powers and duties; and to authorize the appointment of a secretary and stenographer therefor; and to provide for the compensation and expenses of said commission, secretary, and stenographer, and to appropriate money therefor.

History: Approved March 28, 1895, Stats. 1895, p. 345. Amended March 25, 1903, Stats. 1903, p. 479; March 20, 1905, Stats. 1905, p. 403; March 15, 1907, Stats. 1907, p. 294; April 19, 1909, Stats. 1909, p. 997.

Composition of commission—Termination.—The commission originally consisted of three persons. In 1903 it was reduced to one person. By the act of 1905, it was provided the commission should cease on May 1, 1907.

By the act of 1907 it was continued until Oct. 1, 1911, when it was to cease to exist. A further appropriation was made in 1909, but no change was made as to termination.

CHAPTER 62.

COLD STORAGE.

CONTENTS OF CHAPTER.

ACT 870. COLD STORAGE ACT.

871. BUTTER AND EGGS IN STORAGE MORE THAN THREE MONTHS.

872. FRAUDULENT SALE OF COLD STORAGE BUTTER AND EGGS.

COLD STORAGE ACT.

ACT 870—An act relating to cold storage, the regulation of refrigerating warehouses, the disposition or sale of food kept or preserved therein, and defining the duties of the state board of health in relation thereto.

History: Approved June 13, 1913. In effect August 10, 1913. Stats. 1913, p. 769. Amended May 19, 1915. In effect August 8, 1915. Stats. 1915, p. 601; April 20, 1917. In effect July 27, 1917. Stats. 1917, p. 152.

"Cold storage" defined.

§ 1. The term "cold storage" as used in this act shall be construed to mean a place artificially cooled to a temperature of forty degrees Fahrenheit or below but shall not include such a place in a private home, hotel, restaurant, or exclusively retail establishment not storing articles of food for other persons. The term "cold stored" as used in this act shall be construed to mean the keeping of "articles of food," in "cold storage" for a period exceeding thirty days. The term "articles of food" as used in this act shall be construed to mean and include fresh meat and fresh meat products (except in process of manufacture), fresh and dried fruit and vegetables, fish, shellfish, game, poultry, eggs, butter and cheese. The term "storer" as used in this act shall

be construed to mean the person or persons who offer articles of food for cold storage. [Amendment of May 19, 1915. In effect August 8, 1915. Stats. 1915, p. 601.]

Application to operate cold storage plant. License fee. Restaurants, hotels, etc., excepted.

§ 2. Any person, firm or corporation desiring to operate a cold storage refrigerating warehouse wherein shall be stored "articles of food" for a period exceeding thirty days, shall make application in writing to the state board of health for that purpose, stating the location of its plant or plants. On receipt of the application the state board of health shall cause an examination to be made into the sanitary condition of said plant or plants and if found to be in a sanitary condition and otherwise properly equipped for the business of cold storage, the state board of health shall cause a license to be issued authorizing the applicant to operate a cold storage or refrigerating warehouse for and during a period of one year. The license shall be issued upon payment by the applicant of a license fee to the state board of health for each and every warehouse or plant operated by applicant under the provisions of this act for all cold storage or refrigerating warehouses or plants having a capacity of ten thousand cubic feet, or less, a fee of fifteen dollars. For all cold storage or refrigerating warehouses or plants having a capacity of more than ten thousand cubic feet and less than fifty thousand cubic feet, a fee of thirty dollars. For all cold storage or refrigerating warehouses or plants having a capacity of more than fifty thousand cubic feet and less than one hundred thousand cubic feet, a fee of forty dollars. For all cold storage or refrigerating warehouses or plants having a capacity of one hundred thousand cubic feet or more, a fee of fifty dollars.

The secretary of the state board of health shall keep a full and correct account of all fees received under the provisions of this act, and shall, at least once each month, deposit all such fees collected with the state treasurer and make a detailed report covering same to the state controller, and such moneys shall be credited to the appropriation for the support of the pure food and drug laboratory; provided, however, that nothing in this act contained shall apply to cold storage or cold storage or refrigerating plants or warehouses as herein defined which are maintained or operated by restaurants, hotels, or exclusively retail establishments not storing articles of food for other persons. [Amendment of April 20, 1917. In effect July 27, 1917. Stats. 1917, p. 152.]

This section was also amended May 19, 1915, Stats. 1915, p. 601.

Use of unsanitary places for cold storage prohibited.

§ 3. In the event that any place or places, or any part thereof, covered by a license, under the provision of this act shall at any time be deemed by the state board of health to be in an unsanitary condition, it shall be the duty of the state board of health to notify licensee of such condition and upon the failure of the licensee to put said specified place or places, or the specified part thereof, in a sanitary condition within a designated time it shall be the duty of the state board of health to prohibit the use under its license [of] such specified place or places, or part thereof, as it deems in an unsanitary condition until such time as it may be put in a sanitary condition.

Record of receipts and withdrawals. Quarterly reports.

§ 4. It shall be the duty of any person, firm or corporation, licensed to operate a cold storage or refrigeration warehouse to keep an accurate record of the receipts and the withdrawals of the articles of food, and the state board of health shall have free access to these records at any time.

Every such person, firm or corporation, shall, furthermore, submit a quarterly report to the state board of health, setting forth in itemized particulars quantity of food products held in cold storage. Such quarterly reports shall be filed on or before the 25th day of January, April, July and October of each year, and the reports so rendered

shall show the conditions existing on the first day of the month in which the report is filed. The state board of health shall have the authority to require such reports to be made at more frequent intervals than the times herein specified, if in the judgment of the state board of health more frequent reports shall be needed in the interest of a proper enforcement of this act, or for other reasons affecting the public welfare.

Diseased articles not to be stored. Articles for other than human consumption to be marked.

§ 5. No storer shall place in cold storage any article of food intended for human consumption, if diseased, tainted or deteriorated so as to injure its keeping qualities, or if not slaughtered, handled and prepared for storage in accordance with the pure food and sanitary food laws and such rules and regulations as may be prescribed by the state board of health for the sanitary preparation of food products for cold storage, under the authority hereinafter conferred. Any article of food if intended for use other than human consumption before being cold stored shall be marked by the owner in accordance with forms prescribed by the state board of health, under authority hereinafter conferred, in such a way as to plainly indicate the fact that such articles are not to be sold for human food.

Board of health to supervise and inspect cold storage plants.

§ 6. It shall be the duty of the state board of health to inspect and supervise all cold storage or refrigerating warehouses in this state, and to make such inspection of the entry of articles of food therein as the state board of health may deem necessary to secure proper enforcement of this act. The members of the state board of health or its duly authorized agents, inspectors or employees, shall be permitted access to such establishments and all parts thereof at all reasonable times for purposes of inspection and enforcement of the provisions of this act. The state board of health may also appoint and designate, at such salary or salaries as it may designate, such person or persons as it deems qualified to make the inspections herein required.

Dates of receipt and withdrawal marked on articles.

§ 7. All articles of food when deposited in cold storage shall be marked plainly on the containers in which they are packed or on the individual article with the date of receipt, in accordance with such rules and forms as may be prescribed by the state board of health, under the authority hereinafter conferred; and when removed from cold storage shall be marked in like manner with the date of withdrawal. [Amendment of April 20, 1917. In effect July 27, 1917. Stats. 1917, p. 153.]

Maximum period twelve months. Extension of period.

§ 8. No person, firm or corporation as owners or having control shall keep in cold storage any article of food for a longer period than twelve calendar months, except with the consent of the state board of health, as hereinafter provided. The state board of health, shall, upon application, grant permission to extend the period of storage beyond twelve months for a particular consignment of goods, if the goods in question are found, upon examination, to be in proper condition for further storage at the end of twelve months. The length of time for which further storage is allowed shall be specified in the order granting the permission. A report on each case in which such extension of storage may be permitted, including information relating to the reason for the action of the state board of health, the kind and the amount of goods for which the storage period was extended, and the length of time for which the continuance was granted, shall be included in the annual report of the state board of health.

Notice : "These are cold storage goods."

§ 9. It shall be unlawful to sell, or to offer or expose for sale, uncooked articles of food which have been cold stored without notifying persons purchasing, or intending

to purchase, the same that they have been kept in cold storage by the display, in a conspicuous place and upon the articles of food, of a sign marked, "These are cold stored goods," in type at least two inches high; and it shall be unlawful to represent or advertise as fresh goods articles of food which have been placed in cold storage.

Unlawful to return cold stored articles to cold storage.

§ 10. It shall be unlawful to return to cold storage any article of food that has once been released from such storage and placed on the market for sale to consumers, but nothing in this section shall be construed to prevent the transfer of goods from one cold storage or refrigerating warehouse to another, provided, that such transfer is not made for the purpose of evading any provision of this act.

Rules and regulations.

§ 11. The state board of health may make rules and regulations to secure a proper enforcement of the provisions of this act, including rules and regulations with respect to the sanitary preparation of articles of food for cold storage, the use of marks, tags, or labels, and the display of signs, and the violation of such rules shall be punished on conviction, as provided in section 12 of this act.

Penalty.

§ 12. Any person, firm or corporation violating any of the provisions of this act shall upon conviction be punished for the first offense by a fine not exceeding five hundred dollars, and for the second offense by a fine not exceeding one thousand dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment.

§ 13. All acts and parts of acts in conflict herewith are hereby repealed.

BUTTER AND EGGS.

ACT 871—An act to regulate the sale of eggs and butter that have been in cold storage for a longer period than three months, requiring the labeling thereof by all persons selling or offering the same for sale, empowering and directing the state board of health to make rules and regulations to carry this act into effect and fixing penalties for the violation of the same, or any of the provisions.

History: Approved March 14, 1911, Stats. 1911, p. 356.

Definitions.

§ 1. For the purpose of this act the words "person, firm, company or corporation" shall include wholesalers, retailers, jobbers, and every place where eggs or butter that have been in cold storage for a longer period than three months are sold or offered for sale.

Marking cold storage packages.

§ 2. Every person, firm, company or corporation, who sells or offers for sale any eggs or butter that have been in cold storage for a longer period than three months shall, before so doing, cause to be stamped, marked or branded upon all sides of each receptacle holding and containing the same in black-faced letters two inches in length the period of time during which the same have been in cold storage.

Sign.

§ 3. That every person, firm, company or corporation selling or offering for sale any cold storage eggs or butter, shall display in a conspicuous place in his or their salesroom, a sign bearing the words "Cold storage eggs or butter sold here" in black-faced letters not less than six inches in length upon a white ground.

Penalty.

§ 4. Every person, firm, company or corporation, who shall fail to comply with any of the provisions of this act is guilty of a misdemeanor and punishable by imprisonment in the county jail for a term not exceeding six months, or a fine of two hundred and fifty dollars, or both fine and imprisonment.

Rules.

§ 5. The state board of health is hereby authorized and directed to make rules and regulations necessary to carry this act into effect.

§ 6. This act shall take effect immediately.

Manufacture and sale of butter in general.
—See tits. "Butter," "Dairies."

Penalty for sale of cold storage eggs and butter as fresh eggs and butter.—See, post, Act 872.

FRAUDULENT SALE OF BUTTER AND EGGS.

ACT 872—An act regulating the sale of cold storage eggs and butter, represented to be fresh eggs and butter, and fixing a penalty for the violation thereof.

History: Approved March 6, 1911, Stats. 1911, p. 285.

Selling storage eggs and butter as fresh.

§ 1. Every person, firm, company or corporation, who sells or offers for sale any cold storage eggs or butter, as and for fresh eggs or butter, or who by any means whatever represents the same to be fresh eggs or butter is guilty of a misdemeanor.

Manufacture and sale of butter.—See tits. "Butter," "Dairies."

COLFAX.

See Act 3094, note.

COLLEGE CITY.

See tit. "Intoxicating Liquors."

CHAPTER 63.**COLLEGES.****CONTENTS OF CHAPTER.**

ACT 878. INCORPORATION OF COLLEGES.

880. ASSENT OF STATE U. S. ENDOWMENT OF AGRICULTURAL COLLEGES.

INCORPORATION OF.

ACT 878—An act to provide for the incorporation of colleges.

History: Approved April 20, 1850, Stats. 1850, p. 273. Amended April 13, 1855, Stats. 1855, p. 110; February 21, 1868, Stats. 1867-68, p. 69; March 20, 1868, Stats. 1867-68, p. 218; March 28, 1870, Stats. 1869-70, p. 419. Supplemented April 27, 1863, Stats. 1863, p. 775; January 8, 1872, Stats. 1871-72, p. 10. The supplemental act of 1872 was amended February 7, 1874, Stats. 1873-74, p. 85.

Editor's note: "The code commissioner speaking of this act says: "Section 288 of the Civil Code repealed this act, together with other acts affecting corporations, but provided that corporations which were in existence at the time the codes went into effect might remain subject to the laws under which they were formed. It may therefore perhaps be doubted whether the amendment of 1873-74, p. 85, which was passed after § 288 went into effect is of any validity,

seeing that it purports to amend an act already repealed."

It may be suggested, however, that the legislature did not, by § 288, Civil Code, repeal this law, but left it in force as to existing corporations formed under it. Not having lost all its vitality, is it not subject to amendment at least in a detail consistent with the act and not inconsistent with the provisions of the code?

This view finds support in the fact that

the amendment referred to is not an amendment of the general act of 1850, but of the supplementary act of 1872, which deals with institutions, existing and to be formed, under the auspices of benevolent, religious, and fraternal organizations and societies. The amendment, so far as it relates to institutions already formed and existing under the act of 1850 or the supplementary act of 1872, is certainly a valid act of legislation, since the amended acts are expressly continued in force, as to existing corporations, by § 288, Civil Code. As to corporations to be formed, covered by section 1 of the

amending act, it may be said that, treating that section as an act of original legislation, it is not inconsistent with §§ 649, et seq., of the Civil Code, and has the effect merely of a classification, making provision for this particular kind of an institution.

Whether section 1 of the amending act is properly to be construed as an original act of legislation, and whether the classification attempted is a reasonable one, or not, are questions for judicial determination.

Incorporation of colleges and seminaries of learning.—See Kerr's Cyc. Civil Code, §§ 649, et seq.

ENDOWMENT OF AGRICULTURAL COLLEGES.

ACT 880—An act expressing assent of the state of California to the act of Congress, approved August thirtieth, eighteen hundred and ninety, entitled "An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts established under the provisions of an act of Congress, approved July second, eighteen hundred and sixty-two," and to the purposes of the grants of moneys authorized thereby, and to all the provisions thereof.

History: Approved March 31, 1891, Stats. 1891, p. 458.

COLTON.

See Act 3094, note.

CHAPTER 64.

COLTON HALL.

CONTENTS OF CHAPTER.

ACT 890. COLTON HALL TRUSTEES.

COLTON HALL TRUSTEES.

ACT 890—An act to provide for the appointment of a board of Colton Hall trustees, and for the leasing of the Colton Hall property, and providing for an appropriation for the preservation, protection, and improvement of said property.

History: Approved March 25, 1903, Stats. 1903, p. 435.

CHAPTER 65.

COLUSA COUNTY.

CONTENTS OF CHAPTER.

ACT 895. "NO FENCE LAW."

896. IRRIGATION AND NAVIGATION CANAL.

899. "COLUSA AND YOLO DRAINAGE DISTRICT."

900. PARTITION FENCES.

910. ACT TO QUIET TITLE TO CERTAIN LANDS IN YOLO AND COLUSA COUNTIES.

"NO FENCE LAW."

ACT 895—An act to protect agriculture and to prevent trespassing of animals in the county of Colusa.

History: Approved March 28, 1872, Stats. 1871-72, p. 685. Amended March 28, 1874, Stats. 1873-74, p. 760.

No fence law.—This is one of the series of county acts, known as the "no fence laws."

Repealed.—The amending act of 1874, repealed sections 7, 8 and 9 of the original act.

Repeal.—The code commissioners say of this act that it was repealed by the general estray law; but see editor's note to chapters on "Estrays" and "Trespassing animals."

IRRIGATION AND NAVIGATION CANAL.

ACT 896—An act to develop agricultural interests and aid the construction of a canal in Colusa, Solano, and Yolo counties.

History: Approved March 26, 1866, Stats. 1865-66, p. 451.

This act provided for the organization of a canal company to construct an irrigation and navigation canal from the Sacramento at a point near the county line of Colusa and Tehama counties to Cache creek in Solano County.

Duty of canal owner to construct and maintain highway and other crossings.—

City of Madera v. Madera Irr. Dist., 159 Cal. 749, 754, 115 Pac. 936.

Incorporation of canal companies.—See Kerr's Cyc. Civil Code, §§ 283, et seq.

Rights, duties and obligations of canal companies.—See Kerr's Cyc. Civil Code, §§ 548-552, and 1410b.

"COLUSA AND YOLO DRAINAGE DISTRICT."

ACT 899—An act to provide for the drainage of certain lands in the counties of Colusa and Yolo.

History: Approved April 1, 1878, Stats. 1877-78, p. 1037.

Drainage districts in general.—See tit. "Drainage Districts."

PARTITION FENCES.

ACT 900—An act concerning partition fences in the counties of Colusa and Tehama.

History: Approved March 11, 1876, Stats. 1875-76, p. 207.

Fence laws in general.—See tits. "Fences."

QUIET TITLE.

ACT 910—An act to quiet title to certain land in the counties of Yolo and Colusa, in the state of California.

History: Approved March 30, 1874, Stats. 1873-74, p. 818.

This act relinquished the claims of the United States, in order to quiet title of state of California to certain lands, to the actual settlers under United States grants.

CHAPTER 66.

COLUSA, TOWN OF.

References: Incorporation of, see post Act 3094, note.

CONTENTS OF CHAPTER.

ACT 916. ISSUE OF ROAD BONDS AUTHORIZED.

ISSUE OF ROAD BONDS AUTHORIZED.

ACT 916—An act to authorize the board of trustees of the town of Colusa to issue bonds for road purposes.

History: Approved March 20, 1878, Stats. 1877-78, p. 369. Amended March 12, 1880, Stats. 1880, p. 9.

COMMERCE, CHAMBER OF.

See Kerr's Cyc. Civil Code, §§ 591, et seq.

COMMISSION MARKET.

See tit. "State Commission Market."

COMMISSIONERS IN EQUITY.

See Kerr's Cyc. Code Civil Procedure, §§ 258, 259, and 2024, et seq.

COMMISSIONER OF TRANSPORTATION.

See tit. "Public Utilities."

COMMON LAW.

See Kerr's Cyc. Political Code, §§ 4, 4468; Kerr's Cyc. Code Civil Procedure, § 4;
Kerr's Cyc. Civil Code, § 5; Kerr's Cyc. Penal Code, § 4.

COMPTON.

See Act 3094, note.

CONCORD.

See Act 3094, note.

CONGRESSIONAL DISTRICTS.

See Kerr's Cyc. Political Code, § 117.

CHAPTER 67.**CONSERVATION.****CONTENTS OF CHAPTER.**

ACT 940. STATE CONSERVATION COMMISSION.

941. "CONSERVANCY ACT OF CALIFORNIA."

STATE CONSERVATION COMMISSION.

ACT 940—An act creating and establishing a commission for investigating and gathering data and information concerning the subjects of forestry, water, the use of water, water power, electricity, electrical and other power, mines and mining, mineral and other lands, dredging, reclamation and irrigation, and for revising, systematizing and reforming the laws of this state upon, concerning, regarding or appertaining to these said subjects; providing for the appointment of said commission to be known as the "Conservation Commission of the State of California"; prescribing the powers and duties of said commission and its members and providing for the expenses of said commission and appropriating money therefor.

History: Approved April 8, 1911, Stats. 1911, p. 822.

Conservation commission.

§ 1. A commission consisting of three persons which shall be known and designated as the "Conservation Commission of the State of California," is hereby created and established for the purpose of investigating and gathering data and information concerning the subjects of forestry, water, the use of water, water power, electricity, electrical or other power, mines and mining, mineral and other lands, dredging, reclamation and irrigation, and for the purpose of revising, systematizing and reforming the laws of this state, upon, concerning, regarding or appertaining to these said subjects.

Appointment by governor.

§ 2. Said commission shall be appointed by the governor, and shall enter upon the performance of its duties immediately. The members of said commission shall hold office at the pleasure of the governor. In case of a vacancy in said commission, such vacancy shall be filled by appointment by the governor.

Duties.

§ 3. It shall be the duty of said commission to investigate and examine the laws of the United States, of foreign nations, of the states of the Union and of this state, and the reports and recommendations of persons, officials, commissions, societies and associations upon the subjects of forestry, water, the use of water, water power, electricity, electrical and other power, mines and mining, mineral and other lands, dredg-

ing, reclamation and irrigation and to prepare and recommend to the legislature laws, statutes and constitutional amendments revising, systematizing and reforming the laws of this state upon forestry, water, the use of water, water power, electricity, electrical and other power, mines and mining, mineral and other lands, dredging, reclamation and irrigation. The said commission is hereby authorized and empowered to do and perform the acts and things required of it by this act, and to adopt all rules and regulations necessary to carry out the provisions of this act.

Reports.

§ 4. The said commission is hereby empowered and authorized to have printed by the state printer its reports, records and proceedings in the manner provided by law.

State officers to assist.

§ 5. It is hereby made the duty of the attorney-general, surveyor-general, the state engineer and all other state officers to render such aid and assistance to said board as said board may require.

Expert, etc., assistance.

§ 6. For the purpose of carrying out the provisions of this act the said commission is authorized to employ such expert, technical, professional and clerical assistance and upon such terms as it may deem proper.

Commission given authority to enter all lands.

§ 7. In order to carry out the provisions of this act the members of said commission or any person authorized by it are authorized to enter and cross all lands within this state, and to make all proper and necessary surveys and measurements of land and water; provided, that in doing so no damage is done to private property; and it shall be a misdemeanor, for any person or persons to wilfully and maliciously remove or destroy any permanent marks or monuments made or erected by said commission or any person or persons under its direction or authorization, or to prevent the members of the said commission or any person authorized by said commission to enter and cross any land within this state or to make surveys and measurements of land and water.

No salary.

§ 8. Said commissioners shall receive no salary for their services but shall be allowed their actual expenses while in the performance of their duties as in this act provided.

Appropriation.

§ 9. The sum of \$100,000 is hereby appropriated out of the funds of the state not otherwise appropriated for the purposes of carrying out the provisions of this act, and the state controller is hereby authorized and directed to draw warrants upon such sum from time to time upon the requisition of said conservation commission approved by the board of examiners, and the state treasurer is hereby authorized and directed to pay such warrants.

§ 10. All acts or parts of acts in conflict herewith are hereby repealed.

§ 11. This act shall take effect immediately.

1. Attorney — Employment by the commission.—Section 472, Political Code, has no application to the employment by the state conservation commission of an attorney "to compile for the use of said state conserva-

tion commission the laws of the different nations, the federal government, and the states of the Union, affecting conservation generally," and the consent of the attorney general to such employment is not required.

—U'ren v. State Board of Control, 31 Cal. App. 6, 159 Pac. 615.

2. Compilation of conservancy laws—Clerical in character.—While the work of compiling conservancy laws may be best performed by one skilled in the knowledge of the law, it is not strictly professional in character, and may be performed by one possessing clerical ability without possessing the title or the license to practice law. —U'ren v. State Board of Control, 31 Cal. App. 6, 159 Pac. 615.

3. Claim for services in compiling conservancy laws.—Approval by the commission

is final.—U'ren v. State Board of Control, 31 Cal. App. 6, 159 Pac. 615.

4. Suit against the state.—An action in mandamus to compel the state board of control to audit a claim allowed by the state conservation commission and payable out of a fund set apart by the legislature for the payment of claims so allowed, is not an action against the state, but is against the board of control to compel the performance of an official act, to wit, the auditing of the claim.—U'ren v. State Board of Control, 31 Cal. App. 6, 159 Pac. 615.

Conservancy districts.—See, post, Act 941.

“CONSERVANCY ACT OF CALIFORNIA.”

ACT 941—An act to provide for the organization and government of conservancy districts for certain specified purposes; to provide for the issuance, sale and hypothecation of district bonds to pay the costs and expenses incurred in relation thereto, and to provide for the retirement of such bonds; to provide for the levying and collection of taxes to pay the annual installment of principal and interest on said bonds; to provide for levying and collecting special assessments for special benefits and to issue improvement warrants to represent such special assessments for special benefits; to provide for the effect and enforcement of such improvement warrants and the application of moneys derived from the enforcement thereof; and to provide a method of dissolving such districts.

History: Approved May 16, 1919. In effect July 22, 1919, Stats. 1919, p. 559.

ANALYSIS OF ACT.

- § 1. TITLE OF ACT. DEFINITIONS.
- § 2. CONSERVANCY DISTRICTS. PURPOSES.
- § 3. PETITION. CONTENTS. AMENDMENT. EVIDENCE OF OWNERSHIP.
- § 4. BOND.
- § 5. NOTICE OF HEARING. JURISDICTION OF BOARD OF SUPERVISORS. JOINT MEETING. HEARING OF OBJECTIONS. LANDS INCLUDED IN DISTRICT.
- § 6. ELECTION. NOTICE. CANDIDATES FOR DIRECTOR. CONDUCT OF ELECTION. ONE VOTE FOR EACH ACRE OF LAND. FRACTION OF ACRE. JOINT OWNERSHIP. UNKNOWN OWNERS. PROXIES. CANVASS OF VOTES. IF MAJORITY FOR DISTRICT. IF MAJORITY AGAINST DISTRICT. DIRECTORS DECLARED ELECTED. NAME. POWERS OF DISTRICT. PLACE OF BUSINESS.
- § 7. RECORDING RESOLUTION ESTABLISHING DISTRICT.
- § 8. OATH OF DIRECTOR. PRESIDENT AND SECRETARY.
- § 9. QUORUM.
- § 10. DUTIES OF SECRETARY. CHIEF ENGINEER. ATTORNEY.
- § 11. PLAN FOR IMPROVEMENTS. USE OF FORMER SURVEY. NOTICE OF HEARING ON PLAN. OBJECTIONS. APPROVAL OF STATE ENGINEER. ADOPTION.
- § 12. POWER OF DIRECTORS.
- § 13. RIGHT TO ENTER LANDS TO MAKE SURVEYS, ETC.
- § 14. POWERS OF DIRECTORS TO PERFORM WORK. LIMITATIONS.
- § 15. LETTING CONTRACTS.
- § 16. RIGHT OF EMINENT DOMAIN.
- § 17. RIGHT TO CONDEMN PROPERTY.
- § 18. REGULATION OF DITCHES. CONSENT OF HEALTH OFFICERS.
- § 19. POWER TO CHANGE WATERCOURSE, ETC.
- § 20. MOVING DREDGE BOAT THROUGH BRIDGE OR GRADE.
- § 21. STREAM GAUGES, ETC.
- § 22. CO-OPERATION WITH U. S. GOVERNMENT.

- § 23. APPROPRIATION OF INCREASED WATER SUPPLY. APPLICATION TO USE WATER APPROPRIATED. RIGHTS OF MUNICIPALITIES. TERMS OF LEASE. REGULATIONS FOR DETERMINING RATES. RATES FIXED BY RAILROAD COMMISSION. DETERMINATION OF WATER RIGHTS, ETC.
- § 24. BOARD OF APPRAISERS.
- § 25. APPRAISAL OF BENEFITS AND DAMAGES. APPRAISAL OF PROPERTY FOR PURCHASE.
- § 26. LANDS OUTSIDE DISTRICT.
- § 27. REPORT OF BOARD OF APPRAISERS. FILING.
- § 28. NOTICE OF HEARING ON APPRAISALS. DESCRIPTION OF LANDS.
- § 29. HEARING OF OBJECTIONS.
- § 30. APPROVAL OF REPORT. DISORGANIZATION OF DISTRICT ON DISAPPROVAL OF REPORT.
- § 31. CONDEMNATION OF PROPERTY.
- § 32. ALTERATIONS OR ADDITIONS TO PLAN.
- § 33. VALIDITY OF PROCEEDING NOT AFFECTED BY FAULT.
- § 34. DISTRICT FUNDS.
- § 35. PAYMENT OF PRELIMINARY EXPENSES. ADVANCE OF FUNDS BY COUNTIES. TAX LEVY FOR INCIDENTAL EXPENSES.
- § 36. INTEREST ON UNPAID WARRANTS.
- § 37. BOND ISSUE TO COMPLETE WORKS. ADDITIONAL ISSUE. ORDINANCE CALLING ELECTION. RATE OF INTEREST. ELECTION PRECINCTS. GENERAL DESCRIPTION OF WORK. PUBLICATION OF ORDINANCE. DEFECTS OR IRREGULARITIES NOT TO AFFECT VALIDITY. MAJORITY VOTE. FORM OF BONDS. SALE OF BONDS. TAX TO PAY PRINCIPAL AND INTEREST. TAX PROVISIONS OF POLITICAL CODE ADOPTED. PARTIAL SALE OR PLEDGE. MANNER OF SECURING PAYMENT OF BONDS. VALIDITY OF BONDS. CONVERSION INTO REGISTERED BONDS. STATEMENT ON REGISTERED BOND. TO WHOM REGISTERED BONDS PAYABLE.
- § 38. BONDS LEGAL INVESTMENTS.
- § 39. IMPROVEMENT WARRANTS. FORM OF IMPROVEMENT WARRANT. PAYMENT OF IMPROVEMENT WARRANTS.
- § 40. RECORD OF IMPROVEMENT WARRANTS.
- § 41. AMOUNT OF WARRANT LIEN ON PROPERTY.
- § 42. IMPROVEMENT WARRANT FUND.
- § 43. SALE OF LAND ON DEFAULT OF OWNER.
- § 44. DELINQUENT IMPROVEMENT WARRANTS.
- § 45. AFFIDAVIT OF PUBLICATION.
- § 46. ADDED COSTS.
- § 47. RECORD OF SALE.
- § 48. PURCHASER DIVESTED OF LIEN.
- § 49. REDEMPTION OF PROPERTY SOLD.
- § 50. CERTIFICATE OF SALE FILED.
- § 51. DEED TO PROPERTY SOLD.
- § 52. DEED CONCLUSIVE EVIDENCE OF PROCEEDINGS.
- § 53. PAYING OFF WARRANT.
- § 54. CONSERVANCY MAINTENANCE ASSESSMENTS.
- § 55. READJUSTMENT OF APPRAISAL OF BENEFITS.
- § 56. INVALID ASSESSMENTS.
- § 57. COLLECTION OF TAX LEVIED AGAINST COUNTY OR CITY. DESIGNATION OF DISTRICT. DISSOLUTION OF DISTRICT. LIENS NOT AFFECTED BY DISSOLUTION. DUTY OF OFFICERS IN THE EVENT OF DISSOLUTION.
- § 58. FAILURE OF TAX COLLECTOR TO MAKE PROMPT PAYMENT.
- § 59. USE OF SURPLUS FUNDS. YEARLY REPORT TO BOARD OF SUPERVISORS.
- § 60. PER DIEM EXPENSES OF DIRECTORS AND APPRAISERS.
- § 61. LAND IN MORE THAN ONE DISTRICT.
- § 62. CONFERENCE OF SUPERVISORS TO DETERMINE JURISDICTION OF DISTRICTS.
- § 63. SUB-DISTRICTS. OFFICERS OF MAIN DISTRICT TO SERVE.
- § 64. PROTECTION OF WORKS.
- § 65. PENALTY FOR INJURING BENCH MARKS, ETC.
- § 66. LIABILITY FOR DAMAGES.
- § 67. DISTRICTS FOR FORESTATION AND REFORESTATION.
- § 68. IF NOTICE IS NOT PROPERLY GIVEN.
- § 69. EARLY HEARING ON QUESTION OF VALIDITY.
- § 70. CONSTRUCTION OF ACT.
- § 71. CONSTITUTIONALITY.
- § 72. ALTERNATIVE ACT.

§ 73. JURISDICTION OF SUPERVISORS OVER PROCEEDING. BONDING RESOLUTION. ABBREVIATIONS. LAND DESCRIBED BY REFERENCE TO RECORD. UNNECESSARY TO SPECIFY NAMES IN NOTICE. DISTRICT A POLITICAL SUBDIVISION. POWERS OF STATE COMMISSIONS NOT LIMITED.

§ 74. FORMS OF PROCEDURE.

Notice of hearing on the petition.
Finding on hearing.
Notice to property owner to pay assessment.
Bond and coupon.
Notice of enlargement of district.
Notice of hearing on appraisals.

Title. Terms defined.

§ 1. Terms defined. This act may be known and cited as the "conservancy act of California"; the bonds which may be issued hereunder may be briefly called "conservancy bonds," and shall be so engraved or printed on their face; the districts created hereunder shall be briefly termed "conservancy districts" or "conservation districts"; the tax books and records provided for hereunder shall be termed "conservancy books" or "conservancy records," and such titles shall be printed, stamped or written thereon.

"Publication."

Wherever the term "publication" is used in this act and no manner specified therefor, it shall be taken to mean once a week for three consecutive weeks in a newspaper of general circulation in the county wherein any part of the district is situated.

"Assessment roll."

Wherever the term "assessment roll" is used herein it shall be held to mean the "last" tax assessment roll of the county.

"Railroad commission."

Where the term "railroad commission" is used herein it shall be held to mean that certain state commission referred to in the public utilities act of the state of California.

"Water commission."

Wherever the term "water commission" is used herein it shall be held to mean that certain commission of the state of California referred to in an "act to create the use of waters," etc., approved June 16, 1913, and when the "water commission act" is referred to it shall be held to mean said "act to create the use of waters," etc., approved June 16, 1913.

"State engineer."

Wherever the term "state engineer" is used it shall be held to mean the department of engineering of the state of California. The chief engineer of said department shall be ex officio an engineer of any district formed under this act, and it shall be the duty of said department to supervise, examine and pass upon the plans and specifications of the district in the manner provided for herein.

"Person."

Wherever the term "person" is used in this act, and not otherwise specified, it shall be taken to mean any person, firm, copartnership, association or corporation, other than county, city or other political subdivision. Similarly, the words "public corporation" shall be taken to mean counties, cities, school districts, road districts, protection districts, flood control districts, ditch districts, park districts, levee districts, and all other governmental agencies and political corporations clothed with the power of levying general or special taxes or general or special assessments which may be levied for local improvement purposes.

"Board of supervisors."

Wherever the term "board of supervisors" is used, and not otherwise specified, it shall be taken to mean the board of supervisors of the county wherein the petition for the organization of the district was filed and granted, and where a district lies in more than one county, the words "board of supervisors" shall mean the board of supervisors of all the counties sitting conjointly.

"Board."

Wherever the word "board" is used and not otherwise specified, it shall mean the board of directors of the district.

"Treasurer."

Wherever the word "treasurer" or "treasurer of the district" is used, it shall mean ex officio the treasurer of the county with which the petition is filed, unless otherwise specified.

"Secretary."

Wherever the term "secretary" is used it shall be held to mean the "secretary" of the district.

"Clerk."

The word "clerk" unless otherwise specified shall mean the clerk of the district, who shall also be clerk of the board of directors.

"Land."

Wherever the terms "land" or "property" are used in this act they shall, unless otherwise specified, be held to mean real property, as the words "real property" are used in and defined by the laws of the state of California, and shall embrace all railroads, tramroads, roads, electric railroads, street and interurban railroads, streets and street improvements, telephone, telegraph and transmission lines, gas, sewerage and water systems, pipe lines and rights of way of public service corporations, and all other real property whether public or private.

"Main county."

Wherever the term "main county" is used herein, it shall be held to mean the county wherein the petition for formation of the district has been filed.

Conservancy districts established by board of supervisors.

§ 2. The board of supervisors of any county in this state is hereby vested with jurisdiction, power and authority, when the conditions stated in this act are found to exist, to establish conservancy districts, which may be entirely within unincorporated territory or partly within unincorporated and partly within incorporated territory, and either entirely within, or partly within and partly without, the county in which said board is located, for all or any of these objects and purposes:

Purposes.

- (a) Of preventing floods;
- (b) Of regulating ditches and water channels by changing, widening and deepening the same;
- (c) Of reclaiming or of filling or of draining wet, swamp and overflowed lands;
- (d) Of preventing or aiding the deposit of detritus and silt;
- (e) Of regulating the flow of streams;
- (f) Of constructing canals;
- (g) Of forestation or reforestation;
- (h) Of spreading and sinking flood water;

(i) Of diverting in whole or in part eliminating water courses; and incident to such purposes and to enable their accomplishment, to straighten, widen, deepen, divert, or change the course or terminus of, any natural or artificial water course;

(j) To build reservoirs, canals, levees, walls, embankments, bridges, dams, by-passes or spreading basins; or sinking wells or sinking basins; to maintain, operate and repair any of the constructions herein named;

(k) To conserve flood waters and to dispose of waters which have been conserved, for purposes of irrigation;

(l) To construct and maintain levees and embankments for the prevention of damage by floods to real or personal property or real and personal property and to do all things for the fulfillment of the purposes of this act.

Petition to establish district.

§ 3. **Petition.** Before any board of supervisors shall call an election to determine whether a district shall be established, and before a district shall be established as outlined in section two hereof, a petition shall be filed in the office of the clerk of said board of supervisors signed either by fifty freeholders, or by a majority of the freeholders, or by the owners of more than half of the property, in either acreage or assessed value, according to the last assessment roll, within the limits of the territory proposed to be organized into a conservancy district under this act.

The petition shall set forth:

Contents.

First—The proposed name of said district.

Second—The necessity for the proposed work and that it will be conducive to the public health, safety, convenience or welfare.

Third—A general description of the purpose of the contemplated improvement, and of the territory to be included in the proposed district. Said description of the territory to be included need not be given by metes and bounds, or by legal subdivisions, but it shall be sufficient if a generally accurate description is given of the territory to be organized as a district. Said territory need not be contiguous, provided it be so situated that the public health, safety, convenience or welfare will be promoted by the organization as a single district of the territory described.

Fourth—Said petition shall pray for the organization of the district by the name proposed.

Amendment.

No petition with the requisite signature shall be declared null and void on account of alleged defects, but the board of supervisors may at any time prior to the hearing thereof permit the petition to be amended in form and substance to conform to the facts, by correcting any errors in the description of the territory to be included, or in any other particular. Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one petition. All such petitions filed prior to the hearing on said petition shall be considered by the board of supervisors the same as though filed with the petition first placed on file.

Evidence of ownership.

In determining when a majority of landowners have signed the petition the board of supervisors shall be governed by the names as they appear upon the last tax assessment roll prior to one day before the filing of said petition, which shall be *prima facie* evidence of such ownership.

Bond.

§ 4. At the time of filing the petition, or at any time subsequent thereto and prior to the time of the hearing on said petition, a bond shall be filed running to the board of supervisors of the county in which the petition is filed, with security approved by the board of supervisors, sufficient to pay all the expenses connected with the proceeding in case the said board of supervisors refuses to organize the district. If at any time during the proceeding the said board of supervisors shall be satisfied that the bond first executed is insufficient in amount, it may require the execution of an additional bond within a time to be fixed to be not less than ten days distant, and upon failure of the petitioners to execute the same the petition shall be dismissed.

Notice of hearing. Jurisdiction of board of supervisors. Joint meeting. Hearing objections.

§ 5. Immediately after the filing of such petition, the clerk of the board of supervisors with whom such petition is filed shall cause notice by publication to be made of the pendency of the petition and of the time and place of the hearing thereon and of the hearing of objections to the formation of such district. The board of supervisors of the county in which the petition was filed, shall thereafter, for all purposes of this act, except as hereinafter otherwise provided, maintain and have original and exclusive jurisdiction coextensive with the boundaries and limits of said district and of lands and other property proposed to be affected by said district; provided, that where said district lies in more than one county the board of supervisors of the county where the petition is filed shall forthwith notify the board or boards of supervisors of other counties in which said district is situated by directing a letter and transmitting the same by mail to the clerk or clerks of said board or boards notifying said board or boards of that fact and setting a day for a joint meeting with said board or boards, whereupon said boards shall meet jointly for the purpose of hearing said petition and objections thereto, if any, and for the transaction of business, in the chambers of the board with whom the said petition was filed; provided, that said meetings from time to time may be continued by mutual agreement, whereupon said boards shall sit conjointly thereafter for all purposes of this act, except as hereinafter otherwise provided, and maintain and have original and exclusive jurisdiction coextensive with the boundaries and limits of the district and of lands and other property proposed to be included in said district or affected by said district without regard to the usual limits of their jurisdiction. A majority of the members of the joint board shall constitute a quorum; provided, that in the event that the board of supervisors of any county in which a portion of the district lies, after having been given due notice, as herein provided, of the hearing for the formation of such district, who shall after having been given said notice fail to appear and participate, as a member, or members, of said joint board, shall be considered to have waived all right to participate in the deliberations of said board, and a majority of the supervisors representing the other county or counties in which said district lies, shall thereby automatically constitute the joint board of supervisors and shall have all jurisdiction and powers provided for said joint board of supervisors under this act. The clerk of the board of supervisors with whom the petition is filed, and all officers of the board with whom the petition is filed, shall be clerk and officers of the board sitting conjointly as herein specified. The act of the clerk of said board of supervisors transmitting said letter of notification shall be deemed the act of said board of supervisors so notifying. At the day set for said hearing all objections to said petition shall be heard by said board or joint board. Said board or joint board shall have and it is hereby given full discretion to approve or deny said petition by a majority vote of its members present. Its decision in the matter shall be final and conclusive except as to the matters hereinafter stated. Objections to said

petition need not be in writing, but the determination of said board shall be in writing and entered upon the minutes of said board.

Lands included in district.

Said board shall at said hearing, if it approve said petition, determine what land or lands within said proposed district will be benefited by said proposed improvements, and said board may in its discretion change or alter the boundaries of said proposed district to conform to the needs of the district; provided, that they shall include therein only such land as will in their judgment be benefited by the proposed work or improvement; and provided, that they shall not include therein land not included within the proposed boundaries of the district set forth in the petition; and provided, that said board shall at said hearing or adjourned hearing define the boundaries of the proposed district. The findings of such board shall be conclusive upon the genuineness and sufficiency of the signatures to the petition and of the notice of the hearing.

Election.

§ 6. Said board or joint board of supervisors, unless said petition be denied, must, if said lands of said district lie wholly within the county, within ten days after the determination of a hearing upon said petition, otherwise within thirty days after the termination of a hearing upon said petition, call an election within the proposed district for the determination of the question, whether such proposed district shall or shall not be organized and also to elect five persons who shall act as directors of the district for a term of four years in case such district be organized, and shall divide said district into convenient precincts and fix a polling place in each, and shall appoint three qualified electors in each precinct of said district to conduct said election; which election must be held within forty days from the date of said order.

Notice.

Said election shall be called by posting notice thereof in three of the most public places in such county in said proposed conservancy district, and by publication in a daily or weekly paper in each of said counties, if there be one, at least once a week for not less than fifteen days. Said notices must specify the time, place or places and purposes of said election, give the boundaries of the said proposed conservancy district as determined at the hearing of the petition, designate the respective election precincts and the polling place in each and the election officers and the hours during which the polls will be kept open; provided, that the polls must be opened not later than eight o'clock a. m., and kept open until seven o'clock p. m.

Candidates for director.

It shall be the duty of the board of supervisors to order placed upon the ballot the names of candidates for the position of director of the district who shall have been endorsed by a petition to said board of supervisors containing the names of ten or more electors of the district, petitioning that the names of candidates designated in the petition be placed upon the ballot to be voted on at such election; provided, however, that such petitions be filed with the board of supervisors calling said election within fifteen days after the first publication of the notice calling said election.

Conduct of election.

Said election shall be conducted in accordance with the general election laws of this state so far as applicable, and except as herein otherwise provided, without reference to the form of the ballot or manner of voting, except that the ballots shall contain the words "for the formation of a conservancy district," and "against the formation of a conservancy district," and the voter shall write or print or stamp a cross after the words that indicate his choice, together with the number of votes he is entitled to cast

therefor as hereinafter provided, and that said ballots shall also contain the names of all candidates for the position of director of the district, with instructions to the voter to vote for five of the candidates for said position whose names appear upon such ballot, with the right to vote for each of the five candidates selected by him the number of votes he is entitled to cast as hereinafter provided.

One vote for each acre of real estate owned.

Each and every owner of land in the district shall be entitled to vote in person or by proxy, and shall have the right to cast one vote for each acre of real estate owned by him in the district, such ownership to be determined from the next preceding assessment roll of the county or counties in which the lands of the district are situated, and the board shall, prior to the election, cause to be prepared and certified and furnished to the board of elections at each voting place, a true and correct copy of the entries upon said next preceding assessment rolls so far as such assessment rolls apply to any lands within such district, and to the extent of showing the name of the owner and the number of acres assessed to each such owner, and which said certified entries from said rolls shall be used by the board of election in determining the number of votes each voter is entitled to cast.

Fraction of acre.

In calculating the number of acres owned by any voter any fraction of an acre in excess of the integral number owned by him shall be disregarded.

Joint ownership.

Where land is owned in joint undivided ownership, the votes shall be divided in accordance with the interests of each joint owner.

Unknown owners.

Where land is assessed to unknown owners, any person producing an affidavit of any searcher of records certifying the true ownership of such land at the date of the election, or at any time five days previous thereto, accompanied by an affidavit of the person certified to be the owner that he is the owner of the property at that time, said person so certified to be the owner shall be entitled to vote in like manner as if his name appeared upon the assessment roll as above mentioned.

Proxies.

Where corporations or partnerships appear as the owners of properties the votes of such voters shall be cast by any person holding a proxy from such corporation or firm.

Executors, administrators, special administrators and guardians may cast the vote of the estates represented by them.

No person shall vote by proxy at such election unless authority to cast such vote shall be evidenced by an instrument in writing duly acknowledged and certified in the same manner as grants of real property, and filed with the board of elections.

The election officer in delivering to each voter his ballot shall ascertain and write upon the ballot, the number of votes the holder of the ballot is entitled to cast, and in their canvassing returns shall see to it that the number of votes cast does not exceed the number of votes such voter was entitled to cast, but if there is an excess, the ballot shall not be disregarded or invalidated, but only the number which the voter was entitled to cast shall be counted.

Canvass of vote.

It shall be the duty of the election officers to publicly canvass the votes immediately after the close of the election, and to make a report of the result of said election to the

board of supervisors within five days subsequent to the holding thereof, who shall as soon as practicable proceed to canvass said returns.

If majority for district.

If a majority of the votes cast at said election shall be in favor of a conservancy district, the said board of supervisors shall, by resolution, establish said conservancy district and proceed as herein otherwise stated.

If majority against.

If a majority of the votes cast shall be against the conservancy district, the board of supervisors shall by order so declare, and shall thereafter dismiss said proceedings by order and proceed to adjudge the cost against the signers of the petition or their bondsmen; no other proceedings shall be taken for the formation of a similar district until the expiration of one year from said election.

Directors declared elected.

If the majority of votes cast at such election shall be in favor of a conservancy district, the board of supervisors shall canvass the returns of said election for the position of directors for the district and having determined upon the five candidates duly elected as directors shall by resolution declare them to be so duly elected and declare them to be the directors of the district for the ensuing term of four years and certificates of election shall be issued to them.

The fact of the presentation of the petition and the order establishing the conservancy district and the order declaring the five directors elected, shall be entered in the minutes of the board of supervisors of the main county, and shall be conclusive evidence of the due presentation of a proper petition, and that each of the petitioners was at the time of the signing the same and presentation of the petition an assessed freeholder in the proposed district, and of the fact and regularity of all prior proceedings of every kind and nature provided for by this act, and of the existence and validity of the district. Should the office of any of said directors elected become vacant before his term of office expires, the same shall be filled by the board of directors for the unexpired term. On the expiration of the terms of said directors elected as herein specified, the supervisors shall again call an election in accordance with the provisions of this section to fill the offices so becoming vacant.

Name.

In said resolution establishing the district the board shall give said district a corporate name, which may or may not be the name designated in said petition, by which in all proceedings it shall thereafter be known, and thereupon the district shall be a political subdivision of the state of California, a body corporate with all the powers of a corporation, and shall have power:

Powers of district.

1. To have perpetual succession and existence.
2. To sue and to be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To take by grant, purchase, gift, devise or lease, to hold, use, enjoy, and to lease or dispose of real or personal property of every kind within or without such district necessary to the full exercise of its powers.

After an order is entered by the board of supervisors establishing the district, such order shall be deemed final and binding upon the property within the district and shall finally and conclusively establish the regular organization of the said district against

all persons except the state of California upon suit commenced by the attorney general. Any such suit must be commenced within three months after said decree declaring such district organized as herein provided and not otherwise.

Place of business.

Upon the election and qualification of a board of directors as herein provided said board of directors shall designate the place where the office or principal place of business of the district shall be located, which shall be within the corporate limits of the district if practicable, and which may be changed by order of said board of directors from time to time. The regular meetings of the board of directors shall be held at such office or place of business, but for cause entered of record may be adjourned to any other convenient place. The official records and files of the district shall be kept at the office so established.

Recording of resolution establishing district.

§ 7. Within thirty days after the said district has been duly established the clerk of the main county shall transmit to the secretary of state, and to the county recorder and the county clerk in each of the counties having lands in said district, copies of the resolution establishing said district. The same shall be filed and recorded in the office of the secretary of state in the same manner as articles of incorporation are now required to be filed and recorded under the general law concerning corporations, and shall also be filed in the office of the county clerk of each county in which a part of the district may be, where they shall become permanent records; and the recorder in each county shall receive a fee of one dollar for filing and recording the same, and the secretary of state shall receive for filing and for recording said copies such fees as are now or hereafter may be provided by law for like services in similar cases. The expenses required for filing papers and all other incidental expenses to the organization of the district shall be paid from the general fund of the main county and shall be refunded by the district on demand.

Oath of director. President and secretary.

§ 8. Each director before entering upon his official duties shall take and subscribe to an oath before a qualified officer that he will honestly, faithfully and impartially perform the duties of his office, and that he will not be interested directly or indirectly in any contract let by said district, which said oath shall be filed in the office of the clerk of the board of supervisors of the main county. Upon taking the oath, the board of directors shall choose one of their number president of the board, and shall elect some suitable person secretary, who may or may not be a member of the board. Such board shall adopt a seal, and shall keep a record of all its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees or contracts and all corporate acts, which record book shall be open to the inspection of all owners of property in the districts, as well as to all other interested parties.

Quorum.

§ 9. A majority of the directors shall constitute a quorum, and a concurrence of at least three directors in any matter within their duties herein prescribed shall be valid as the act of the board.

Duties of secretary.

§ 10. The secretary shall be the custodian of the records of the district and of its corporate seal and shall assist the board of directors in such particulars as said board may direct in the performance of its duties. It shall be the duty of the secretary to attest, under the corporate seal of the district, all certified copies of the official records and files of the district that may be required of him by the provisions of this act, or

by any person ordering the same and paying the reasonable cost of transportation. And any portion of the record so certified and attested shall *prima facie* import verity.

Chief engineer. Attorney.

The board of directors shall also employ a chief engineer who may be an individual, copartnership, or corporation; an attorney, attorneys, and such other agents and assistants as may be needful; and may provide for their compensation, which, with all other necessary expenditures, shall be taken as a part of the cost of the improvement. The employment of the secretary, engineer and attorney for the district shall be evidenced by agreements in writing, which, so far as possible, shall specify the amounts to be paid for their services.

Plan for improvements. Use of former survey.

§ 11. Upon their qualification, and after their organization, the board of directors shall cause to be prepared a plan by the engineer of the district employed for this purpose, for the improvements for which the district was created. Such plan shall include such surveys, maps, profiles, plans and other data and descriptions as may be necessary to set forth properly the location and character of the work, and the location and extent of the property benefited or taken or damaged, with estimates of cost and with specifications for doing the work. In case the board of directors finds that any former survey made by any other district, or in any other manner, is useful for the purpose of the district, the board of directors shall have the power to acquire such data and records of surveys as may be useful to it, and shall pay therefor an amount not to exceed the value of such data and records to said district. The plan herein referred to may include any improvement work already done for conservancy or flood control purposes or any of the purposes contemplated by this act, by any person, firm, corporation, private or public, or any district or municipality, and if so the board of directors shall have power to acquire the same and pay therefor an amount not to exceed the appraised value thereof as appraised by the board of appraisers hereafter referred to.

Notice of hearing on plan.

Upon the completion and filing of such plan, the board shall cause notice by publication to be given as provided in section one herein in each county of said district, of such completion of said plan, and shall permit the inspection thereof at their office by all persons interested. Said notice shall fix the time and place for the hearing of all objections to said plan not less than twenty days nor more than thirty days after the last publication of said notice; any person interested in property within the district may object to such plan.

Approval of state engineer. Adoption.

All objections to said plan shall be in writing and filed with the secretary of said board at his office not more than one day before the time of such hearing. Said objection shall specify the features of the plan objected to. At the time specified in said notice, the board of directors shall meet at the office of said district, and hear said objections and adopt, reject or refer back said plan for modification to the engineer of said district. If said plan be referred back to said engineer said meeting shall be continued from time to time until such modified plan shall be reported by said engineers. The state engineer shall be invited to be present in person or by representative at said hearing or any continuation thereof and may approve, reject or modify said plan, his actual expenses to be borne by the district. Before final approval of the official plan the same shall have had the written approval of the state engineer whose duty it shall be to pass upon the feasibility of the plan, its proper adaptation to a general flood control plan of the stream system or systems of which it may be a part as well as the safety of the works to be constructed and until such approval shall have

been received such official plan may not be adopted. After said hearing before the board of directors and their approval, and after said plans have been approved or modified and approved by the state engineer, the said board shall adopt said plan as approved, or as modified and approved, as the official plan of the said district. If said board of directors shall reject said plan, then said board shall proceed as in the first instance under this section to prepare another plan. Upon final adoption of said official plan, a record of such adoption shall be entered upon the minutes of the board and shall be filed with the secretary together with the approval of the state engineer.

Power of directors.

§ 12. The board of directors shall have full power and authority to devise, prepare for, execute, maintain and operate any or all works or improvements necessary or desirable to complete, maintain, operate and protect the improvement outlined by the official plan. They may secure and use men, materials and equipment under the supervision of the chief engineer or other agents, or they may in their discretion let contracts for such work, either as a whole or in part, to the lowest responsible bidder after publication calling for bids as hereinafter provided.

Right to enter lands to make surveys, etc.

§ 13. The board of directors of any district organized under this act, or their employees or agents, including contractors, and their employees, and the members of the board of appraisers and their assistants may upon first obtaining an order of court enter upon lands within or without the district in order to make surveys and examinations to accomplish the necessary preliminary purposes of the district, or to have access to the work, being liable, however, for actual damage done, but no unnecessary damage shall be done. Any person or corporation preventing such entrance shall be guilty of misdemeanor, punishable by fine not exceeding fifty dollars.

Powers of directors to perform work. Limitation on powers.

§ 14. In order to effect the protection from damage by flood waters or the drainage, reclamation or irrigation of the land and other property in the district, and to accomplish all other purposes of the district, the board of directors is authorized and empowered, subject to the laws of this state, to clean out, straighten, widen, alter or deepen the course or terminus of any conduit, pipe line or ditch, drain, sewer, river, water course, wash, pond, lake, creek or natural stream, to plant trees for the protection of the same or to forest or reforest lands for the conservation of flood water, to establish settling basins, shafts or tunnels for sinking water and to construct dams in or out of said district; to fill, abandon or alter any ditch, drain, sewer, river, water course, wash, pond, lake, creek or natural stream, and to concentrate, divert or divide the flow of water in or out of said district; to construct and maintain main and lateral conduit pipe lines or ditches, sewers, canals, levees, dikes, dams, sluices, revetments, reservoirs, holding basins, floodways, pumping stations and siphons, and any other works and improvements deemed necessary to construct, preserve, operate or maintain the works herein provided for, and subject to approval of general plan therefor by the officer or officers in charge of such highways to construct or enlarge or cause to be constructed or enlarged any and all public bridges that may be needed in or out of said district; to construct or elevate roadways and streets in the manner herein provided; to construct any and all of said works and improvements across, through or over any public highway, canal, railroad right of way, track, grade, fill or cut, in or out of said district, as herein provided; to remove or change the location of any fence, building, railroad, canal, or other improvements in or out of said district as herein provided; and shall have the right to hold, encumber, control, to acquire by donation, purchase or condemnation, to construct, own, lease, use and sell real and personal property, and any

easement, riparian right, railroad right of way, canal, sluice, reservoir, settling basin, holding basin, mill dam, water power, wharf, or franchise in or out of said district for right of way, holding basin or for any necessary purpose, or for material to be used in constructing and maintaining said works and improvements, open new roads, streets and alleys, or change the course of an existing one, as herein provided, and may dispose of waters conserved for irrigation as herein provided; provided, however, that the powers in this act vested in said board of directors are vested subject to the conditions, restrictions and limitations imposed by the public utilities act of the state of California and the act of the state of California creating the water commission, and the reclamation board act of the state, and subject to the powers therein vested in the said railroad commission and the said water commission and the said reclamation board of this state; and provided, further, that the approval of the officer or officers in charge of public highways be first had before any public highway, alley, lane, or bridge or appurtenance thereto be in any manner interfered with.

Letting of contracts.

§ 15. When it is determined to let the work by contract, contracts in amounts to exceed one thousand dollars shall be let after notice calling for bids shall have been published, once a week for three consecutive weeks completed on date of last publication, in at least one newspaper of general circulation within said district, or in case there is no such newspaper within the district, then within the county where the work is to be done, and the board may let said contract to the lowest or best bidder who shall give a good and approved bond, with ample security, conditioned on the carrying out of the contract, or the board may reject all bids and readvertise for the same. But said contract shall not be let to another than the lowest responsible bidder unless upon a hearing before the board of directors, and with notice to all parties interested. an order be obtained therefor. Such contract shall be in writing, and shall be accompanied by or shall refer to official plans and specifications for the work to be done, prepared by the engineer of said district in accordance with said final plan. Said contract shall be approved by the board of directors and signed by the president of the board and by the contractor, and shall be executed in duplicate; provided, that in case of sudden emergency when it is necessary in order to protect the district, the advertising of contracts may be waived upon the unanimous consent of the board of directors in writing.

Right of eminent domain.

§ 16. Said board, where necessary for the purposes of this act, shall have a right of eminent domain subject to the rights and powers vested in the railroad commission of this state.

Right to condemn property.

§ 17. Said board shall also have the right, subject to the powers and rights vested by law in the state railroad commission, to condemn for the use of the district any land or property within or without said district.

Regulation of ditches. Consent of health officers.

§ 18. Where necessary, in order to secure the best results from the execution and operation of the plans of the district, or to prevent damage to the district by deterioration or misuse, or by the pollution of the waters, of any watercourse therein, the board of directors may make regulations for and may prescribe the manner in which existing ditches or other works shall be adjusted to or connected with the works of the district or any water course therein; and when not in conflict with local or state health regulations may prescribe the manner in which the water courses of the district may be used

for sewer outlets or for disposal of waste; provided, however, that the consent of the properly constituted local or state health officer or officers be first obtained.

Power to change water-course, etc.

§ 19. The board of directors, subject to such regulations as may be imposed by law, shall have power and authority to improve in alignment, section, grade or in any other manner any water-course, and they may require the removal, widening, lengthening, deepening, raising or other change of any public or private road bridge or railroad bridge or any aqueduct or telephone, telegraph, gas, oil, sewer, water or other pipe lines or any other construction over, along, across, under or through such water-course; provided, however, that no change shall be made in any public bridge, highway, ditch, or other public structure without the consent of the public officer or officers in charge of the same be first had and obtained. In case such change is made necessary in any such structure by the failure of such bridge or other structure to permit the free flow of the water in such stream in time of flood, then the owner of any such construction shall make such change without cost to the district, or without any claim for damages against the district, except that the district shall pay the cost of excavating the earth for the enlargement of any channel or for placing earth for the filling of any channel where such excavation or filling is required as a part of plans of the district in making the changes outlined in this section, but the district shall not be required to make such fill or excavation unless it would be necessary to the plans of the district if the bridge or other construction did not exist; provided, however, that nothing herein contained shall deprive any owner of property of due process of law in determining the amount of damages due him for property damaged or taken for the uses herein stated; and provided, further, that in all things where the railroad commission of this state is empowered to act by the laws of this state their sanction to any act must first be had.

Moving dredge boat through bridge or grade.

§ 20. In case it is necessary to pass any dredge boat or other equipment through a bridge or grade of any railroad company or other corporation, county or municipality, the board of directors shall give twenty days' notice to the owner of said bridge or grade that the same shall be removed temporarily to allow the passage of such equipment or that an agreement be immediately entered into in regard thereto. The owner of said bridge or grade shall keep an itemized account of the cost of the removal, and, if necessary, of the replacing of said bridge or grade, and said actual cost shall be paid by the district. In case the owner of said bridge or grade shall refuse to provide for the passage of said equipment, the board of directors may remove such bridge or grade at the expense of the district after proceeding according to law so to do, interrupting traffic in the least degree consistent with good work and without delay or unnecessary damage; provided, that, where required by law, the consent of the railroad commission of the state is first obtained. In case they shall be impeded from doing so, the owner of said bridge or grade shall be liable for damage for the resulting delay. Nothing in this act specified to be done affecting any public bridge or highway shall be undertaken without first obtaining the consent in writing of the officer or officers of the county or city or state having supervision of such bridge or highway in which such improvement is contemplated.

Stream gages, etc.

§ 21. The board of directors shall also have the right to establish and maintain stream gages, rain gages, a flood warning service with telephone or telegraph lines or telephone or telegraph service, and may make such surveys and examinations of rainfall and flood conditions, stream flow and other scientific and engineering subjects as are necessary and proper for the purposes of the district, and they may issue reports of their findings.

Co-operation with United States government, etc.

§ 22. The board of directors shall also have the right and authority to enter into contracts or other arrangements with the United States government or any department thereof, with persons, railroads or other corporations, with public corporations, and the state government of this or other states, with protection, flood control, drainage, conservation, conservancy, levee or other improvement districts, in this or other states, for co-operation or assistance in constructing, maintaining, using and operating the works of the district or the waters thereof, or for making surveys and investigations or reports thereon; and may purchase, lease or acquire land or other property in adjoining states in order to secure outlets or for other purposes of this act, and may let contracts or spend money for securing such outlets or other works in adjoining states.

Appropriation of increased water supply.

§ 23. Wherever the organization of or the improvements made by the district increase the supply of water in the stream or streams system such increase may be subject to appropriation by the district, and the rights to such increase where lawfully appropriated may be leased, sold, or assigned by the district in return for reasonable compensation, subject, however, to such regulation and control as may be reposed by law in water commission or other office, agency or department of the state of California.

Application to use waters appropriated.

Persons, corporations, municipalities, or other parties desiring to secure use of the waters lawfully appropriated by the district for protection against flood damage, or water-courses of the district, or of the district rights therein, which may have been acquired by appropriation under the laws of this state, may, subject to the regulations and conditions authorized by law to be imposed by the state water commission, make application to the board of directors for lease, purchase, or permission for such use. Such application shall conform to the rules and regulations of the state water commission and state the purpose and character of such use, the period and degree of continuity of such use, the amount of water desired and the place of use and the means of conveyance. Where it is not possible nor reasonable to grant all applications, preference shall be given to domestic and municipal water supply. All other applications shall be granted in the order of their filing and shall be granted subject to the applicable provisions of the said water commission act and to said public utility act and other acts of the state of California now in force.

Rights of municipalities.

Nothing in this act contained shall be deemed or construed to limit the rights of municipalities in the exercise of the right of eminent domain under the laws of the state of California.

Term of lease, etc.

The board of directors shall not permanently sell, lease, assign, permit or otherwise part with the control by the district of the use of the waters thereof, and rates for light, power or other services charged by vendees, assignees, lessees or licensees of such board of directors shall be subject at all times to revision and control by state law. Assignments, leases, sales or permissions may be made for periods of not greater than twenty-five years. At the termination of the period of such assignments, sales, leases or permissions, they shall be renewed for a reasonable period not to exceed fifteen years, on the condition that a new determination is made of a reasonable charge therefor, as herein provided; unless there are other applications on file, the granting of which would result in filling a greater need or in a more reasonable use. In case such applications are on file, they shall have preference.

Regulations for purpose of determining rates. Rates fixed by railroad commission.

The board of directors may make regulations, subject always to the applicable provisions of the said water commission act and the said public utilities act of the state of California, and other act or acts of said state, for the determination and measurement of the increased, or better, or more convenient use of, or benefit from the water supply of the district, for the purpose of determining rates of compensation, and for the purpose of securing to all parties interested the greatest and best use of the water thereof. A copy of such regulations shall be transmitted to the state water commission for its approval and to the railroad commission of the state of California, accompanied by a request for the fixing of rates by said commission for said district. Said commission shall thereupon proceed to fix said rates in the manner provided by law and report the same to said board of directors. In case of failure of any user to pay for use in the manner specified by order of the court, the board may compel payment, and may enjoin further use until such payment is made. The rights under any lease or sale shall not extend to a change of use, or of place, time or manner of use, except in so far as is specifically stated in the lease or other agreement.

All money received as compensation under the provisions of this section shall be added to the maintenance fund of the district and used for defraying the expenses thereof.

Determination of water rights, etc.

As a basis for assessment of benefits due to a greater, better, or more convenient use of, or benefit from, the waters of the district the directors of the district may themselves cause a determination to be made or may avail themselves of data in the hands of the said state water commission of the conditions of the water supply and of the water-courses of the district as they were before the improvements were made, or as they existed at any subsequent time, and they may petition the state water commission to make a determination of all rights, property, easements, or other interests in the waters, or the water-courses of the district, such determination being based upon records of greatest and least flow, upon the evidence of use, or evidence of legal rights, and upon any other evidence and records which may be available, and upon receipt of such petition it shall become the duty of the state water commission to immediately proceed to ascertain the same and to report to said board of directors their findings. Upon the completion of such determination and the receipt of a report thereof by them, the directors of the district shall make their report thereon and file the same with the secretary of said district. Thereupon notice shall be given of the pendency of said report and a hearing thereon, which notice and hearing shall conform as nearly as possible to the notice and hearing on appraisals of benefits and of land to be taken. Upon the determination of the matter by the board of directors, its findings shall be conclusive, and shall be the basis of any future assessment; provided, that in case any party shall thereafter establish in court or through the action of the state water commission any right or property in the waters of the district, or the use thereof, which has not been adjudicated, the existence of such right, or the failure to adjudicate it, shall not affect the operation of this provision nor the findings of the board of directors thereon in any other particular.

The appraisal of benefits made by the appraisers of the district shall not include benefits for such greater, better or more convenient use of, or benefit from the waters of the district, but the compensation for such use or benefits shall be made according to the provisions of this section.

Board of appraisers.

§ 24. At any suitable time after having taken their oath of office, the board of directors shall appoint three appraisers whose duty it shall be to appraise the lands

or other property within and without the district to be acquired for rights of way, reservoirs and other works of the district, and to appraise all benefits and damages accruing to all lands within or without the district by reason of the execution of the official plan. Said appraisers shall be freeholders residing within the state of California, who may or may not own lands within said district. Each of the appraisers shall, before taking up his duties, take and subscribe to an oath that he will faithfully and impartially discharge his duties as such appraiser, and that he will make a true report of such work done by him. The said appraisers shall at their first meeting elect one of their own number chairman, and the secretary of the board of directors or his deputy shall be ex officio secretary of said board of appraisers during their continuance in office. A majority of the appraisers shall constitute a quorum, and a concurrence of the majority in any matter within their duties shall be sufficient for its determination. Said appraisers shall continue to hold their office until dismissed by the board of directors, and the board of directors shall fill all vacancies in the board of appraisers, or may appoint a new board for subsequent appraisals, as occasion may require. Such new board, if appointed, shall fill all the requirements of the board of appraisers of the district, and perform its duties.

Appraisal of benefits and damages.

§ 25. When the official plan is adopted and filed with the secretary of the district and said appraisers have been appointed he shall at once notify the board of appraisers, and they shall thereupon proceed to appraise the benefits of every kind to all real property within or without the district, which will result from the organization of said district and the execution of the official plan; and also to appraise the damages sustained and the value of the land and other property necessary to be taken by the district for which settlement has not been made by the board of directors. In the progress of their work, they shall have the assistance of the attorney, engineers, secretary and other agents and employees of the board of directors.

The board of appraisers shall also appraise the benefits and damages, if any, accruing to property or interests in properties of cities, counties and other public corporations, and to the state of California.

Appraisal of property for purchase.

Before appraisals of compensation and damages are made, the directors of the district may report to the appraisers the parcels of land or other property, or any other works to be done, included within the powers granted under the act they may wish to purchase and for which they may wish appraisals to be made, both for easement and for purchase in fee simple. The board may, if it deems best, specify in case of any property the particular purpose for which and the extent to which an easement in the same is desired, describing definitely such purpose and extent. The appraisers shall appraise all damages which may, because of the execution of the official plan, accrue to real or other property either within or without the district, which damages shall also represent easements acquired by the district for all the purposes of the district, unless otherwise specifically stated. Upon such appraisals being confirmed by the board of directors, the board of directors of the district shall have the option of paying the entire appraised value of the property and acquiring full title to it (in fee simple), or of paying only the cost of such easement for the purposes of the district. The appraisers in appraising benefits and damages shall consider only the effect of the execution of the official plan. The appraisers in making appraisals shall give due consideration and credit to any other works or other systems of reclamation already constructed, or under construction, which form a useful part of the work of the district according to the official plan. Where the appraisers return no appraisal of

damages to any property, it shall be deemed a finding by them that no damage will be sustained.

Lands outside district.

§ 26. If the appraisers find the lands or other property not embraced within the boundaries of the district will be affected by the proposed improvement, or should be included in the district, they shall appraise the benefits and damages to such land, and shall file notice with the board of directors of the appraisal which they have made upon the lands beyond the boundaries of the district.

Report of board of appraisers.

§ 27. The board of appraisers shall prepare a report of its findings which shall be arranged in tabular form and bound in book form, and which shall be known as the conservancy appraisal record. Such record shall contain the names of the owners of property appraised as it may appear on the last assessment roll of the county, a description of the property appraised, the amount of benefits appraised, the amount of damages appraised, and the appraised value of land or other property which may be taken for the purposes of the district. They shall also report any other benefits or damages or any other matter which in their opinion should be brought to the attention of the board of directors. No error in the names of the owners of real property or in the descriptions thereof shall invalidate said appraisal or the levy of assessments or taxes based thereon, if sufficient description is given to identify such real property.

When their report is completed, it shall be signed by at least a majority of the appraisers and filed with the secretary.

Notice of hearing on appraisals.

§ 28. Upon the filing of the report of the appraisers, the secretary of the district shall give notice thereof by publication. Said notice shall be substantially as in form six of the schedules hereto attached. It shall not be necessary for said secretary to name the parties interested.

Description of lands.

It shall not be necessary to describe the separate lots or tracts of land in giving said notice, but it shall be sufficient to give such descriptions as will enable him, the owner, to determine whether or not his land is covered by such description. For instance, it will be sufficient to state "all land lying in block of the town of," or, "all land abutting on street in the town of," or "all land lying west of river and east of railroad in township," or any other general description pointing out the lands involved and identifying the same.

Where lands in different counties are mentioned in said report it shall not be necessary to publish a description of all the lands in the district in each county, but only of that part of the said lands situate in the county in which publication is made.

Hearing of objections.

§ 29. Any property owner may accept the appraisals of benefits and of damages and of lands to be taken made by the appraisers, or may acquiesce in their failure to appraise damages, and shall be construed to have done so unless he shall within ten days after the last publication provided for in the preceding section file objections to said report. All objections shall be heard by the board of directors, beginning not less than twenty nor more than thirty days after the last publication provided for herein, and determined in advance of other business so as to carry out, liberally, the purposes and needs of the district. The board of directors, if it deem necessary, may alter or amend said report in accordance with such objection or any of them, or may return the

report to the board of appraisers for their further consideration and amendments, and enter its order to that effect. If, however, the appraisal roll as a whole is referred back to the appraisers, the board of directors shall not resume the hearing thereof without due notice, as for an original hearing thereon.

Approval of report. Disorganization of district on disapproval of report.

§ 30. If it appears to the satisfaction of the board of directors after having heard and determined all said objections that the estimated cost of constructing the improvement contemplated in the official plan is less than the benefits appraised, then the said board shall approve and confirm said appraisers' report as filed or as so modified and amended. In case the board of directors shall find that the benefits appraised are less than the estimated total costs, it shall report the fact to the board of supervisors who shall disorganize the district after having provided for the payment of all expenditures by an order of said board abandoning all proceedings.

Condemnation of property.

§ 31. If after the approval of the appraisers' report the said board of directors deems it necessary to proceed by condemnation to acquire for the district property to carry out the official plan of the district, it may proceed so to do, under and by virtue of the laws of the state of California, and the passage of a resolution by said board that the lands to be acquired are for a public use shall be conclusive of that fact.

Alterations or additions to plan.

§ 32. The board of directors may at any time before the conclusion of the hearing thereon and the approval by the state engineer, when necessary to fulfill the objects for which the district was created, alter or add to the official plan as in section eleven provided, and when such alterations or additions are formally approved by the said board and by the state engineer and are filed with the secretary, they shall become parts of the official plan for all purposes of this act. Where such alterations or additions in the judgment of the said board neither materially modify the general character of the work, nor materially increase resulting damages for which the board is not able to make amicable settlement, nor increase the cost more than ten per cent, no reappraisal shall be necessary. In case the proposed alterations or additions in the opinion of the board materially modify the resulting damages or materially reduce the benefits, for which the board of directors is not able to make amicable settlement, or materially increase the benefits in such a manner as to require a new appraisal, or increase the cost more than ten per cent, the board of directors shall direct the board of appraisers (which may be the original board or a new board appointed by the board of directors) to appraise the property to be taken, benefited or damaged, by the proposed alterations or additions. Upon the completion of the report thereon by the board of appraisers notice shall be given and a hearing had on their report in the same manner as in the case of the original report of the board of appraisers; provided, that where only a few landowners are affected, the secretary of the district may, on order of the board of directors, if found by them to be more economical and convenient, give personal notice to such landowners of the hearing of the report of said appraisers, instead of notice by publication; and provided, that when the only question at issue is additional damages or reduction of benefits to property, due to modifications or additions to the plans, the board of directors may, if they find it practicable, make settlements with the owners of the property damaged or benefited, instead of having appraisals made by the board of appraisers. In case such settlements are made, notice and hearing need not be had. After bonds have been sold, in order that their security may not be impaired, no reduction shall be made in the aggregate amount of benefits appraised against property in the district.

Validity of proceeding not affected by fault.

§ 33. No fault in any notice or other proceedings shall affect the validity of any proceeding under this act except to the extent to which it can be shown that such fault resulted in a material denial of justice to the property owner complaining of such fault if any appraisal of benefits shall be declared ineffectual by any court.

The board of directors may render a finding as to the amount of benefits to said property, and appraise the proper benefits accordingly, and thereupon said land shall be assessed according to such benefits.

District funds.

§ 34. The moneys of every conservancy district organized hereunder shall consist of four separate funds: (1) Preliminary fund, by which is meant the proceeds of the ad valorem tax authorized by this act and such advancements as may be made from the general county funds as provided in this act; (2) bond fund, by which is meant a fund raised by the issuance and sale of bonds of the district; (3) improvement warrant fund, by which is meant the proceeds of levies made against the special assessments of benefits equalized and confirmed under the provisions of this act; and (4) maintenance fund, which is a special assessment to be levied annually for the purpose of upkeep, administration and current expenses as hereinafter provided. It is intended that the cost of preparing the official plan, the appraisal (except as paid out of the preliminary fund) and the entire cost of construction and superintendence, including all charges incidental thereto, and the cost of administration during the period of construction, shall be paid out of the bond fund.

No vouchers shall be drawn against the preliminary fund (except for advances from the general county funds) or against the maintenance fund until a tax-levying resolution shall have been properly recommended by the board of directors and passed by the board of supervisors and duly entered upon its records; no bonds shall be issued against the bond fund until a tax-levying resolution shall have been properly recommended by the board of directors and passed by the board of supervisors and duly entered upon its records; no moneys shall be transferred from the improvement warrant fund except by order of the board of supervisors, upon recommendation of the board of directors.

Payment of preliminary expenses.

§ 35. If the district is not organized, then the costs of publication and other official costs of the proceedings shall be collected by the county from the petitioners or their bondsmen, paid into the county treasury and there held in a separate fund against which warrants may be audited and drawn on the order of the board of supervisors, as other warrants of the county are audited and drawn. Upon the organization of the district, the board of supervisors shall make an order indicating a preliminary division of the preliminary expenses between the counties included in the district in approximately the proportions of interest of the various counties as may be estimated by said board of supervisors. And the board of supervisors of each respective county shall issue an order to the auditor of its respective county to issue his warrant for the pro rata amount to be paid that county, upon the treasurer of his county to reimburse the county having paid the total cost; provided, however, that the joint board of supervisors shall first determine at a previous meeting the pro rata amount to be borne by each county and shall determine the same upon a basis of the assessed value of property benefited in the district in each county.

Advance of funds by counties.

Expenses incurred thereafter prior to the receipt of money by the district from taxes or assessments, bond sales, or otherwise, shall be paid from the general funds of the

respective counties proportionately upon the order of the board of supervisors, and shall be paid upon certification of the clerk of the board of supervisors of such order, specifying the amount and purpose of the claims to the auditor of each county, who shall thereupon at once issue his warrant to the treasurer of his county. Upon receipt of funds by the district from the sale of bonds or by taxation or assessment the funds so advanced by the counties shall be repaid.

Tax levy for incidental expenses.

As soon as any district shall have been organized under this act, and a board of directors shall have been elected and qualified, such board of directors shall recommend to the board of supervisors and the board of supervisors shall have the power and authority to levy upon the property within the district an assessment not to exceed three-tenths of a mill on each one hundred dollars of the assessed valuation thereof as a level rate to be used for the purpose of paying expenses of organization, for surveys and plans, and for other incidental expenses which may be necessary up to the time money is received from the sale of bonds or otherwise. This assessment shall be certified to the auditors of the various counties having property within the district and by them to the respective treasurers of their counties. If such items of expense have already been paid in whole or in part from other sources, they may be repaid from the receipts of such levy, and such levy may be made although the work proposed may have been found impracticable or for other reasons is abandoned. The tax collector shall at once proceed to collect said assessment and the collection of such assessment levy shall conform in all matters to the collection of taxes and assessments for the district outlined in this act, and the same provisions concerning the non-payment of taxes shall apply. In case a district is disbanded for any cause whatever before the work is contracted, the data, plans and estimates which have been secured shall be filed with the clerk of the board of supervisors with which the petition thereupon was filed, and shall be matters of public record available to any person interested.

Interest on unpaid warrants.

§ 36. If any warrant issued by the board of directors is presented for payment and is not paid for want of funds in the treasury, that fact with the date of refusal shall be endorsed on the back of such warrant, and said warrant shall thereafter draw interest at the rate of six per cent, until such time as there is money in the treasury of said district sufficient to pay the amount of said warrant with interest.

Bond issue to complete works.

§ 37. At any time after the adoption of the original official plan the board of directors may by majority vote of said board adopt and enter on their minutes a resolution estimating the amount of money needed to complete the works according to said official plan and authorizing and directing a petition to be filed with the board of supervisors of the county in which the original petition for the organization of the district was filed, requesting that a special election be called to submit to the electors of the district qualified under this act the question of incurring an indebtedness in the amount specified in said resolution. Said petition shall set forth the amount of bonds to be issued, the rate of interest to be paid, which shall not exceed six per cent per annum and in general terms the objects and purposes for which the indebtedness is to be incurred. After the filing of said petition the board of supervisors shall without delay call a special election and submit to the electors of said district, qualified under the provisions of this act, the proposition of incurring a bonded debt in the amount estimated by the board for the construction of the works in accordance with said official plan.

Additional issues.

If the amount of money provided in the original bond issue is not sufficient to complete the work according to the official plan nothing herein contained shall prohibit the board of directors from filing petitions for additional issues of bonds in the same form and manner hereinabove set forth for the original issue of bonds. The plan and procedure for the original issue of bonds shall be followed for all subsequent issues of bonds.

Ordinance calling election. Rate of interest.

Said board of supervisors shall call such special election by ordinance, and shall recite therein the objects and purposes for which the indebtedness is proposed to be incurred; provided, that it shall be sufficient to give a brief general description of such objects and purposes, and refer to the official plan on file for particulars; and said ordinance shall also state the estimated cost of the proposed work and improvements, the amount of the principal of the indebtedness to be incurred therefor, and what part of such indebtedness shall be paid each and every year, and which shall be not less than one-fortieth of the whole amount of such indebtedness, and the rate of interest to be paid on said indebtedness, and shall fix the date on which such special election shall be held, the manner of holding the same and the manner of voting for or against incurring such indebtedness. The rate of interest to be paid on such indebtedness shall not exceed six per centum per annum.

Election precincts.

For the purposes of said election, said board of supervisors shall in said ordinance establish election precincts within the boundaries of the said district, and may form election precincts by consolidating the precincts established for general election purposes in said district to a number not exceeding six for each such bond election precinct, and shall designate a polling place and appoint two inspectors, two judges and two clerks for each of such precincts.

In all particulars not recited in such ordinance, such election shall be held as nearly as practicable in conformity with the general election laws of the state.

Said board of supervisors shall cause so much of said official plan as covers a general description of the work to be done, and the map showing the location of the proposed work and improvements, to be printed at least thirty days before the date fixed for such election, and a copy thereof furnished to every elector of said district qualified under the provisions of this act who shall apply for the same.

Publication of ordinance.

Said ordinance calling such election shall, prior to the date set for such election, be published ten times in a daily, or four times in a weekly, newspaper of general circulation, printed and published in said district, and designated by said board of supervisors for said purpose. No other notice of such election need be given.

Any defect or irregularity in the proceedings prior to the calling of such election shall not affect the validity of the bonds.

Majority vote. Form of bonds. Sale of bonds. Tax to pay principal and interest.

If at such election a majority of the votes cast are in favor of incurring such bonded indebtedness, then bonds of said district for the amount stated in such proceedings shall be issued and sold as in this act provided. All bonds issued under this act shall mature serially in equal annual amounts of not less than one-fortieth part of the aggregate principal in each year, and their principal and interest shall be made payable at the county treasurer's office of the main county; in United States gold coin. The board of supervisors by an order entered upon its minutes shall prescribe the

form of said bonds, and of the interest coupons attached thereto; the denominations of the bonds, which shall be not less than one hundred dollars nor more than one thousand dollars; the dates of payment of principal and interest, and the serial numbering of the bonds and coupons. Said bonds shall be signed on behalf of the district by the chairman of the board of supervisors of the main county and by the auditor of said county, and the coupons shall be signed by the engraved or lithographed facsimile signature of such auditor; and when so signed said bonds and coupons shall be delivered for safe keeping to the county treasurer of said main county, who shall deliver them to the purchaser or purchasers thereof on receipt of the purchase price. If any officer signing shall cease to be such officer before the delivery of the bonds to the purchaser, such signature shall nevertheless be valid and effectual. Said bonds shall be sold in the manner prescribed by the board of supervisors, but for not less than par, and the proceeds of sale thereof, including any premium received at such sale, shall be deposited in the county treasury to the credit of the construction fund of the district. Payments from said fund shall be made by the county treasurer upon demands signed by the president and secretary of the district and approved by resolution of the board of directors, each of which demands shall recite that it is drawn in payment of work to be done under said official plan, or for expense incidental thereto. Bonds issued under this act shall constitute a continuing lien upon all property within the district. The board of supervisors shall levy a tax each year upon the taxable property in such district, sufficient (when added to the district bond fund in the county treasury available therefor) to pay the annual interest on said bonds, and also such part of the principal thereof necessary to be collected as will become due before the collection of the next general tax levy. Such tax shall be levied and collected on such property in each county containing any part of the district at the time and in the same manner as the general tax levy for county purposes, and when collected shall be paid by the treasurer of each county into the county treasury of the main county to the credit of the district bond fund, to be used for the payment of the principal and interest of said bonds and for no other purpose. The treasurer shall pay therefrom the principal and interest of said district bonds in the manner provided by law for payment of county bonds.

The provisions of the Political Code prescribing the manner and effect of levying, equalizing and collecting taxes, the sale of property for delinquency, and the redemption from such sale, and the duties of the several county officers in respect thereto, so far as they do not conflict with the specific provisions of this act, are hereby adopted and made applicable to the levy and collection of said taxes for the payment of bonds. Such officers shall be liable on their official bonds for the faithful discharge of the duties imposed on them by this act.

Partial sale or pledge.

If at the time the bonds are ready to be issued, the board shall be of the opinion that such bonds can not advantageously be issued and sold in whole, the board may sell parts only for the entire issuer or may pledge all or part of said issue as collateral to a loan, but no partial sale or pledge shall be made without the order of the board made and entered of record, and no pledge shall be made at a greater margin than at the rate of one hundred dollars of bond principal for ninety dollars of loan.

The district may secure the payment of loans from the United States government in the same manner as it may secure the payment of bonds, and the board of directors may make any necessary regulations to provide for such payments.

Validity of bonds. Conversion into registered bond.

This act shall, without reference to any other act of the legislature of California, be full authority for the issuance and sale of the bonds in this act authorized, which

bonds shall have all the qualities of negotiable paper under the law merchant, and when executed and sealed and certified to by the state treasurer in conformity with the provisions of this act, and when sold in the manner prescribed herein and the consideration therefor received by the district, shall not be invalid for any irregularity or defect in the proceedings for the issue and sale thereof, and shall be incontestible in the hands of bona fide purchasers or holders thereof for value. No proceedings in respect to the issuance of any such bonds shall be necessary except such as are required by this act. Whenever the owner of any coupon bond issued pursuant to the provisions of this act shall present such bond to the treasurer of the district with a request for the conversion of such bond into a registered bond, the said treasurer shall cut off and cancel the coupons of any such coupon bond so presented and shall stamp, print or write upon such coupon bond so presented, either upon the back or the face thereof, as may be convenient, a statement to the effect that the said bond is registered in the name of the owner and that thereafter the interest and principal of said bond are payable to the registered owner. Thereafter and from time to time, such bond may be transferred by such registered owner in person or by attorney duly authorized on presentation of such bond to the treasurer of the district and the bond again registered as before, a similar statement being stamped, printed or written thereon. Such statement stamped, printed or written upon any such bond may be substantially in the following form:

Statement on registered bond.

(Date, giving month, year and day.)

This bond is registered pursuant to the statutes in such case made and provided, in the name of (here insert name of owner), and the interest and principal thereof are hereafter payable to such owner.

Treasurer conservancy district.

If any bond shall be registered as aforesaid, the principal and interest of such bond shall be payable to the registered owner. The treasurer of the district shall enter in a register of said bonds to be kept by him or in a separate book, the fact of the registration of such bond and the name of the registered owner thereof, so that said registry or book shall at all times show what bonds are registered and the name of the registered owner thereof.

Bands [Bonds] legal investments.

§ 38. Bonds of any district issued pursuant to the provisions of this act which are investigated and approved by any commission or officer now or hereafter authorized by the laws of this state to conduct such investigation and give such approval and by authority of which approval said bonds are declared to be legal investments for savings banks may be lawfully purchased or received in pledge for loans by banks, trust companies, guardians, executors, administrators and special administrators, or by any public officer or officers of this state, or of any county, city, city and county or other municipal or corporate body within the state having or holding funds which they are allowed by law to invest or loan.

Improvement warrants.

§ 39. Upon the adoption of the report of appraisers hereinbefore referred to, the board of directors shall certify said report to the board of supervisors. The board of supervisors shall levy against the respective parcels of property within the district the sum set forth in said report of appraisers assessed to the respective parcels of property as therein set forth for special benefits. The board of supervisors shall thereupon issue what shall be known as improvement warrants, under the provisions of this act, to represent such special assessments against each parcel of land, in the form and manner and with the effect in this act provided. Said improvement warrants shall be

numbered consecutively, their said numbers corresponding with the numbers given to the respective parcels of land as shown upon the map accompanying the general plan, and shall be deemed to refer to said map. The respective special assessments so levied, as evidenced by said improvement warrants, shall bear the same rate of interest per annum from the date of the issuance of the said warrants until paid as is borne by the district bonds hereinbefore authorized to be issued, and said interest, together with a sum equal to the first installment of principal, plus one per cent of said principal, shall be paid semiannually at the treasury of said district. Said assessments shall be apportioned by said board of supervisors over a period of twenty-six years, both principal and interest payable at the office of the treasury of said district. The said improvement warrants issued to evidence said assessments shall be attested by the seal of said district, and shall be signed by the secretary of the board of directors, and shall be a lien for the amount indicated on the face of such warrants, viz, the amount of said special assessment, together with accrued interest, if any, against the specific parcels of land to which the said improvement warrants respectively refer. Payment of the annual installment of the principal of said assessment, as evidenced by said improvement warrants, together with accrued interest, shall be due on the first day of July and January of each year, and the first payment shall be due on the first day of July next following the date of the issuance of such improvement warrant. In case of default in the payment of any installment of the principal provided for in said improvement warrant, or interest accrued on deferred payments, then and in that event the entire remaining unpaid installments shall become immediately due and payable, and the same, and all liens which are security therefor, may be collected and enforced as in this act provided. Said improvement warrants shall be in the following, or substantially the following form, and of effect as therein stated:

Form of improvement warrant.

Improvement Warrant No..... of..... Conservancy District.
\$..... (Date).....

This improvement warrant, known as and numbered improvement warrant number of the conservancy district, is issued to represent an assessment for benefits to the amount of \$....., levied in the conservancy district, state of California. The amount herein stated is the amount assessed in said assessment against the lot or parcel of land numbered in the report of appraisers on file herein, and in the diagram attached thereto, and which said amount has been divided into fifty-two equal installments of principal, one installment of which, together with accrued interest, is to be paid semiannually, and which said amount, except as indicated on the back hereof, remains unpaid, and until entirely paid, with accrued interest, is a first lien upon the property affected thereby, and as the same is described herein and in said recorded assessment with its diagram, to wit, the lot or parcel of land in the conservancy district, county of, state of California, described as follows:.....

The term of this improvement warrant is twenty-six years from July 1, 19..., and at the expiration of said time the whole sum then unpaid, together with accrued interest, shall be due and payable, but on the first days of July and January of each year after the date hereof, an even semiannual proportion of its principal is due and payable until the whole is paid, with accrued interest, at the rate of per cent per annum. The interest on deferred payments is payable semiannually, on the first day of July and January in each year hereafter until paid, the first of which is due for the interest from date to the first day of July, 19..., and thereafter the interest payments are for the interest due on all deferred payments. Should default be made in the first

or any succeeding payments of principal, or in any payment of interest by the owner of said lot or parcel, or anyone in his behalf, the district is entitled to declare the whole unpaid amount to be due and payable, and thereupon have a right to collect the same and to enforce all liens which are security therefor, as by law provided, and as in the case of unpaid state and county taxes.

Issued by order of the board of supervisors this.....day of....., 19.....
.....
Secretary of the board of directors of the.....conservancy district.

Amounts due on said improvement warrants shall be payable to the district treasurer, and no mistake or error in the description in said warrant or in the description of the lot or parcel of land assessed shall affect the validity of the lien of any improvement warrant, unless the mistake or error is such that the said lot or parcel of land can not be identified, and in such event, the same, by order of the board of directors, may be corrected upon application to the treasurer and to the officers or board who or which made the assessment to represent which such warrant is issued.

Record of improvement warrants.

§ 40. The treasurer of the district shall enter in a book kept for that purpose in his office a record of each improvement warrant issued hereunder, specifying the date of its issue, the amount for which issued, its duration, and a description of the lot or parcel against which issued. Payments of principal and interest on account of any warrant issued hereunder shall be made to the treasurer of the district, who shall keep a separate account of all such payments, entering the same in the record herein required to be kept, and credit the same on the back of the warrant, and place the same in appropriate funds for the payment of principal and interest of the improvement warrants on account of which paid.

Amount of warrant lien on property.

§ 41. Such warrants issued hereunder shall by their issuance be conclusive evidence of the regularity and validity of all proceedings thereto. The amount due upon any such improvement warrant shall be a lien upon the lot or parcel described in such improvement warrant, superior to all other liens, charges and encumbrances until paid, except the liens of prior assessments and of state, county and municipal taxes, assessments levied or assessed by statutory authority and taxes levied to pay off the principal and interest of the bonds hereinbefore referred to.

Improvement warrant fund.

§ 42. The proceeds derived from the payments of such improvement warrants shall be paid into what shall be known as the improvement warrant fund of the district, to represent, and shall represent, assessments for which said improvement warrants were issued. Upon recommendation of the board of directors, and upon order of the board of supervisors, proceeds received from the payment of the principal and interest of such improvement warrants shall be employed for the purpose of retiring the bonds of the district hereinbefore first authorized to be issued, and for no other purpose.

Sale of land on default of owner.

§ 43. Whenever, through the default of the owner of any lot or parcel of land against which any such improvement warrant or warrants is or are issued to represent the assessment and interest against such lot or parcel of land, payment of the principal or of the interest is not made when the same has become due, the treasurer of the district, upon order of the board of supervisors, shall proceed to advertise and sell said lot or parcel of land as herein provided, and provided there is money in any available fund so to do, the board of directors, in the name of the district, may buy in said

lot or parcel of land. Thereupon the whole improvement warrant or its unpaid remainder, together with accrued interest, shall become due and payable immediately, and on the day following shall become delinquent.

Delinquent improvement warrants.

§ 44. If the payment of principal or interest of any improvement warrant issued shall become delinquent, as hereinbefore provided, the said treasurer shall publish twice in a newspaper of general circulation to be designated by him, published in the city where his office is situated, a notice which must contain the date and number of the delinquent improvement warrant, a description of the property mentioned in said warrant, and the name of the owner of such property, if known, and if unknown, the fact shall be so stated, the amount due thereon, and a statement that unless the amount of said improvement warrant and the interest due thereon, together with the cost of publication of such notice are paid, the real property described in said improvement warrant will be sold at public auction on a day to be therein fixed, which shall not be less than fifteen nor more than thirty days from the day of the first publication of said notice, and the place of such sale, which must be the office of the said treasurer. A like notice shall be served upon any such owner, if known, either personally or by depositing the same in the post office at such city, addressed to such owner at his address if known, with the postage thereon prepaid. At any time prior to the sale, the owner or person in possession of any real estate offered for sale under the provisions of this act, may pay the whole amount of said improvement warrant then due, with costs, and said improvement warrant and the assessment evidenced thereby shall thereupon be canceled; but in case such payment is not made by such owner, or person in possession, or by some one in behalf of such owner, or of the person in possession, the property subject thereto shall be sold at public auction, first, preferably to the district; secondly, if the district does not bid therefor, to the bidder offering to pay the amount due on the warrant with costs for the least portion of such lot or parcel of land offered for sale.

Affidavit of publication.

§ 45. The district treasurer, before the day of sale hereinafter provided for, must file with the secretary of the board of directors a copy of the publication, with an affidavit of the publisher of such newspaper or some one in his behalf attached thereto, that it is a true copy of the same, and that the publication was made in a newspaper, stating its name and place of publication, and the date of each appearance in which such publication was made, which affidavit is prima facie evidence of all the facts stated therein.

Added costs.

§ 46. The treasurer of the district must collect, in addition to the amount due on such improvement warrant, the cost of the publication of such notice, and fifty cents for the certificate of sale delivered to the purchaser as hereinafter provided.

Record of sale.

§ 47. The treasurer of the district, before delivering any certificate of sale, must, in a book kept in his office for that purpose, enter the date, number and series of the improvement warrant, a description of the land sold corresponding with the description in the certificate, the date of sale, purchaser's name, the amount paid, and regularly number the descriptions on the margins of the book, and put a corresponding number on each certificate. Such book must be open to public inspection during office hours when not in actual use, and he shall enter on the records and on the improvement warrant the words, "Canceled by sale of the property," giving the date of such sale.

Purchaser divested of lien.

§ 48. Immediately on the sale, the purchaser shall become vested with the lien on the property so sold to him to the extent of his bid, and is only divested of such lien by the payment to the treasurer of the district of the purchase money, including costs herein provided for, with interest thereon at the rate of one per cent per month from date of sale.

Redemption of property sold.

§ 49. A redemption of the property sold may be made by the owner of the property or any part in interest within twelve months from the date of purchase, or at any time prior to the application for a deed, as hereinafter provided. Redemption must be made in lawful money of the United States, and when made to the treasurer of the district he must credit the amount paid to the person named in his certificate and pay it on demand to him or his assignees.

Certificate of sale filed.

§ 50. On receiving the certificate of sale, the secretary must file it and make an entry in a book similar to that required of the treasurer of the district, the fee for which shall be fifty cents, and on presentation of the receipt of the treasurer of the district for the total amount of the redemption money, the secretary must, without charge, mark the word "Redeemed," the date, and by whom redeemed, on the margin of the book where the entry of the certificate is made.

Deed to property sold.

§ 51. If the property is not redeemed within the time allowed by the provisions of this act for its redemption, the treasurer of the district or his successor in office, upon application of the purchaser, or his assignee, must make to said purchaser or his assignee a deed to the property, reciting in the deed substantially the matter contained in the certificate, and that no person has redeemed the property during the time allowed for its redemption. The treasurer shall be entitled to receive from the purchaser two dollars for making said deed, which shall be deposited in the treasury of the district for the use of the district after payment has been made therefrom for the acknowledgment of said deed; provided, however, that the purchaser of the property, or his assignee or agent, must, thirty days prior to the expiration of the time of the redemption, or thirty days before his application for a deed, serve upon the owner or agent of the property purchased, if named in such certificate of sale, and upon the party occupying the property if the property is occupied, a written notice, stating that said property, or a portion thereof, has been sold to satisfy the improvement warrant lien, and stating the date of sale, the number, the amount then due, and the time when the right of redemption will expire, or when the purchaser will apply for a deed, and the owner of the property shall have the right of redemption indefinitely until such notice shall have been given and such deed applied for, upon the payment of the fees, penalties and costs in this act required. In case of unoccupied property, a similar notice must be posted in a conspicuous place upon the property at least thirty days before the purchaser applies for a deed, and no deed to the property sold in accordance with the provisions of this act shall be issued by the treasurer of the district to the purchaser of such property until such purchaser shall have filed with such treasurer an affidavit showing that the notice hereinbefore required to be given has been given as herein required, which said affidavit shall be filed and preserved by the said treasurer as other records kept by him in his office. Such purchaser shall be entitled to receive the sum of fifty cents for his services of such notice and the making of such affidavit, which sum of fifty cents shall be paid by the redemptioner at the time and in the same manner as the other sums, costs and fees are paid.

Deed conclusive evidence of proceedings.

§ 52. The deed, when duly acknowledged or proven, shall be conclusive evidence of all things which the improvement warrant upon which it is based is conclusive evidence and prima facie evidence of the regularity of all proceedings subsequent to the issue of the warrant, and conveys to the grantee the absolute right to the lands described therein, free of all encumbrances except the lien for state, county and municipal taxes and assessments levied or assessed by statutory authority.

Paying off warrant.

§ 53. Nothing in this act contained shall be construed to deprive any person or persons whose land has been assessed, as evidenced by said improvement warrants, of the privilege of paying off and having said warrant canceled by the payment of the principal and accrued interest of said warrant at any time when payments may be made during the life of said warrant.

Conservancy maintenance assessment.

§ 54. To maintain, operate and preserve the reservoirs, ditches, drains, dams, levees, settling basins or settling wells, canals or other improvements made pursuant to this act and to strengthen, repair and restore the same, when needed, and for the purpose of defraying the current expenses of the district, the board of directors may recommend, and the board of supervisors upon such recommendation may upon the substantial completion of said improvements and on or before the first day of September in each year thereafter, levy an assessment upon each tract or parcel of land and upon property within the district, subject to assessments under this act, to be known as a "conservancy maintenance assessment." Said maintenance assessment shall be apportioned upon the basis of the total appraisal of benefits accruing for original and subsequent construction, and shall be levied, collected, audited and deposited in each county in which lands of said district are situate, in the same manner as county taxes are levied, collected, audited and deposited; provided, however, that said funds shall be deposited to the credit of the "conservancy maintenance assessment fund," hereby established.

The amount of the maintenance tax paid by any parcel of land shall not be credited against the benefits assessed against such parcel of land; but the maintenance tax shall be in addition to any tax that has been or can be levied against the benefit assessment.

Readjustment of appraisal of benefits.

§ 55. Whenever the owners or representatives of twenty-five per cent or more of the acreage or value of the lands in the district shall file a petition with the clerk of the district, stating that there has been a material change in the values of the property in the district since the last previous appraisal of benefits, and praying for readjustment of the appraisal of benefits for the purpose of making a more equitable basis for the levy of the maintenance assessment, the said clerk shall give notice of the filing and hearing of said petition in the manner hereinbefore provided.

Upon hearing of said petition if said board of directors shall find there has been a material change in the value of property in said district since the last previous appraisal of benefits, the board of directors shall order that there be a readjustment of the appraisal of benefits for the purpose of providing a basis upon which to levy the maintenance assessment of said district. Thereupon the board of directors shall direct the appraisers of the conservancy district to make such readjustment of appraisal in the manner provided in this act, and said appraisers shall make their report; and the same proceedings shall be had thereon, as nearly as may be, as are herein provided for the appraisal of benefits accruing for original construction; provided, that in making the readjustment of the appraisal of benefits said appraisals shall not be limited to the aggregate amount of the original or any previous appraisal of benefits, and that after

the making of such readjustment the limitation of the annual maintenance assessment to one per cent of the total appraised benefits shall apply to the amount of the benefits as readjusted; and provided, further, that there shall be no such readjustment of benefits oftener than once in six years.

Invalid assessments.

§ 56. If any assessment made pursuant to the provisions of this act shall prove invalid, the board of directors shall by subsequent or amended acts or proceedings promptly and without delay remedy all defects or irregularities as the case may require by making and providing for the collection of new taxes or assessments or otherwise.

Collection of tax levied against county or city.

§ 57. Whenever, under the provisions of this act, an assessment is made or a tax levied against a county or city, it shall be the duty of the governing or taxing body of such political subdivision, upon receipt of the order of the board of directors which established the district, confirming the appraisal of benefits and the assessment based thereon, to receive and file the said order, and to immediately take all the legal and necessary steps to collect the same. It shall be the duty of the said governing or taxing body or persons to levy and assess a tax, by a uniform rate upon all the taxable property within the political subdivision, to make out the proper duplicate, certify the same to the auditor of the county in which such subdivision is, whose duty it shall be to receive the same, certify the same for collection to the tax collector of the county, whose duty it shall be to collect the same for the benefit of the conservancy district, all of said officers above named being authorized and directed to take all the necessary steps for the levying, collecting and distribution of such tax.

Nothing in this section shall prevent the assessment of the real estate of other corporations or persons situated within such political subdivision, which may be subject to assessment for special benefits to be received.

Designation of district.

Every conservancy district formed or established under the provisions of this act, must be designated by the name and under the style of, conservancy district (using the name of the district), of, county, (using the name of the county in which such district is situated), and in that name the board of supervisors may make and award contracts, and may sue and be sued.

Dissolution of district.

The district may at any time be dissolved upon the vote of two-thirds of the qualified electors thereof voting at an election called by the board of supervisors, upon the question of dissolution. Upon a petition signed by fifty or more property owners and residents of such conservancy district, or by thirty-three per cent of the property owners and residents, asking for the dissolution of said district, the board of supervisors shall within thirty days after receiving said petition, by resolution, order that an election be held in the said district, for the determination of the question. Such election shall be called and conducted in the same manner as other elections of the district. Upon such dissolution, any property which may have been acquired by such conservancy district shall vest in the board of supervisors of the county wherein such conservancy district is situated; provided, however, that if at the time of the election to dissolve such district there be any outstanding indebtedness of such district, then, in such event, the vote to dissolve such district shall dissolve the same for all purposes excepting only the levy and collection of taxes for the payment of such outstanding indebtedness; and from the time such district is thus dissolved, until such indebtedness is fully paid, satisfied and discharged, the board of supervisors is hereby constituted

ex officio the governing board of such district. And it is hereby made obligatory upon such board to levy such taxes and perform such other acts as may be necessary in order to raise money for the payment of such indebtedness, as herein provided.

Liens not affected by dissolution. Duty of officers in event of dissolution.

In the event of any dissolution or disincorporation of any conservancy district organized pursuant to the provisions of this act, such dissolution or disincorporation shall not affect the lien of any assessment for benefits imposed pursuant to the provisions of this act, or the liability of any land or lands in such district to the levy of any future assessments for the purpose of paying the principal and interest of any bonds issued hereunder, and in that event, or in the event of any failure on the part of the officers of any district to qualify and act, or in the event of any resignations or vacancies in office, which shall prevent action by the said district or by its proper officers, it shall be the duty of the county tax collector and of all other officers charged in any manner with the duty of assessing, levying and collecting taxes for public purpose in any county, in which said lands shall be situated, to do and perform all acts which may be necessary and requisite to the collection of any such assessment which may have been imposed and to the levying, imposing and collecting of any assessment which it may be necessary to make for the purpose of paying the principal and interest of the said bonds. Any holder of any bonds issued pursuant to the provisions of this act or any person or officers being a party in interest, may either at law or in equity by suit, action or mandamus, enforce and compel performance of the duties required by this act of any of the officers or persons mentioned in this act.

Failure of tax collector to make prompt payment,

§ 58. If any county tax collector or other person entrusted with the collection of these assessments refuses, fails or neglects to make prompt payment of the tax or any part thereof collected under this act to the treasurer of said district upon his presentation of a proper demand, then he shall pay a penalty of ten per cent on the amount of his delinquency; such penalty shall at once become due and payable and both he and his securities shall be liable therefor on his official bond.

Use of surplus funds.

§ 59. Any surplus funds in the treasury of the district may be used, upon resolution of the board of directors for retiring bonds, reducing the rate of assessment to purchase lands sold for taxes or assessments as hereinbefore provided, or for accomplishing any other of the legitimate objects of the district.

Report to board of supervisors.

At least once a year, or oftener if the board of supervisors shall so order, the board of directors shall make a report to the board of supervisors of its proceedings and an accounting of receipts and disbursements to that date which shall be filed with the clerk of the board of supervisors. Thereupon the board of supervisors shall order the auditing of said accounts by public accountants of recognized standing who shall file their report thereon with the clerk of the board of supervisors.

Per diem and expenses of directors and appraisers.

§ 60. Each member of the board of directors shall receive not to exceed ten dollars a day and his necessary traveling expenses, when away from home, for the time actually employed in performing his duties. Each appraiser shall receive not to exceed ten dollars a day and his expenses for the time actually employed in his duties.

Land in more than one district.

§ 61. The same land, if conducive to public health, safety, convenience or welfare, may be included in more than one district and be subject to the provisions of this act

for each and every district in which it may be included; provided, that no district shall be organized under this act in whole or in part within the territory of a district already organized under this act until the board or joint boards of supervisors determine whether the public health, safety, convenience or welfare demand the organization of an additional district, or whether it demand that the territory proposed to be organized into an additional district shall be added to the existing district; and in case the proceedings concerning two or more such districts are before the board of supervisors of two or more counties, such determination shall be as provided in the next section.

Conference of supervisors to determine jurisdiction of districts.

§ 62. In case any district or districts are being organized within, or partly within and partly without, the same territory in which some other district or districts have been or are being organized, the board of supervisors of every such county in which such districts have been or are being organized shall confer at the earliest convenient moment after they ascertain the possibility of a conflict in jurisdiction, the sitting to be had in the county having the largest assessed valuation in the proposed district or districts, anything to the contrary herein stated notwithstanding.

At such conference, the several supervisors shall determine to what extent the several districts should be consolidated, or to what extent the boundaries should be adjusted in order to most fully carry out the purposes of this act; and they shall by suitable orders make such determination effective. At such conferences, the decision of the majority of the supervisors shall be necessary for the determination of any matter.

The provisions of this, and of the preceding section shall not operate to delay or to interrupt any proceeding under this act until the question of jurisdiction has been finally determined by the court or courts.

Subdistricts.

§ 63. Whenever it is desired to construct improvements wholly within any district organized under this act, which improvements will affect only a part of said district, for the purpose of accomplishing such work, subdistricts may be organized upon petition of the owners of real property, within the district, which petition shall fulfill the same requirements concerning the subdistricts as the petition outlined in this act is required to fulfill concerning the organization of the main district, and shall be filed with the clerk of the same board of supervisors, and shall be accompanied by a bond as provided for in this act in the first instance. All proceedings relating to the organization of such subdistricts shall conform in all things to the provisions of this act relating to the organization of districts, including also the provision in regard to holding an election excepting as to an election of directors. Whenever the board of supervisors shall by its order duly entered of record declare and decree such subdistricts to be organized, the clerk of said board shall thereupon give notice of such order to the directors of the district, who shall thereupon act also as directors of the subdistrict. Thereafter, the proceedings in reference to the subdistrict shall in all matters conform to the provisions of this act, with the same officers, directors and appraisers; except that in appraisal of benefits and damages for the purposes of such subdistricts, in the issuance of bonds, in the levying of assessments or taxes, and in all other matters affecting only the subdistrict, the provisions of this act shall apply to this subdistrict as though it were an independent district, and it shall not, in these things, be amalgamated with the main district.

Officers of main district to serve.

The board of directors, board of appraisers, chief engineer, attorney, secretary and other officers, agents and employees of the district shall, so far as it may be necessary, serve in the same capacities for such subdistrict, and contracts and agreements between

the main district and the subdistrict may be made in the same manner as contracts and agreements between two districts. The distribution of administrative expense between the main district and subdistrict shall be in proportion to the interests involved and the amount of service rendered, such division to be made by the board of directors with an appeal to the board of supervisors establishing the district. This section shall not be held to prevent the organization of independent districts for local improvements under other laws within the limits of a district organized under this act.

Protection of works.

§ 64. The board of directors shall have the right to police the works of the district, and in times of great emergency may compel assistance in the protection of such works, and shall, also, have the right to prevent persons, vehicles or live stock from passing over the works of the district in any manner which would result in damage thereto.

Penalty for injuring bench marks, etc.

§ 65. The wilful destruction, injury or removal of any bench marks, witness marks, stakes or other reference marks, placed by the surveyors or engineers of the district or by contractors in constructing the works of the district, shall be a misdemeanor, punishable by a fine not exceeding one hundred dollars.

Liability for damages.

§ 66. All persons and corporations shall be liable for damages done to works of the district by themselves, their agents, their employees, or by their live stock, in the same manner, and punishable in the same manner as persons and corporations are liable for damage committed to property or works belonging to private persons.

Districts for forestation and reforestation.

§ 67. Districts may be formed under the provisions of this act for forestation and reforestation of the lands leased or owned by said district or upon federal or state lands upon receiving proper permits therefor, when deemed necessary for and incidental to the conservation or control of flood waters against damage by floods, by a substantial compliance with the terms of this act. But no such district in its construction or operation shall in any manner interfere with works for the prevention of floods, or the drainage of lands, or materially diminish their protective value. And the board of supervisors organizing such district for the conservation of water by forestation or reforestation solely, shall require a statement in the petition and proof of the effect that the organization and operation of the same will not materially interfere with any works or plans for flood prevention or the drainage or protection of lands, but will assist in preventing such damage. Nor shall any improvement under this act deprive the owners of lands lying upon any streams of water, of the ordinary flow in said stream without compensation therefor.

Subject to the above, the board of directors shall have the same powers as are herein conferred generally by its provisions so far as applicable.

If notice is not properly given.

§ 68. In any and every case where a notice is provided for in this act, if the board of directors finds for any reason that due notice was not given, the board of directors shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void; but the board of directors shall in that case order due notice to be given, and shall continue the hearing until such time as such notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

In case any individual appraisal or appraisals, assessment or assessments, or levy or levies, shall be held void for want of legal notice, or in case the board may determine that any notice with reference to any land or lands may be faulty, then a petition may

be filed with the board of directors asking that the board of directors order notice to the owner of such land or lands given and set a time for hearing as provided in this act. And in case the original notice as a whole was sufficient, and was faulty only with reference to publication as to certain tracts, only the owners of and persons interested in those particular tracts need be notified by such subsequent notice. And if the publication of any notice in any county was defective or not made in time, publication of the defective notice need be had only in the county in which the defect occurred.

Early hearing on question of validity.

§ 69. All cases in which there arises a question of the validity of the organization of conservancy districts shall be advanced as a matter of immediate public interest and concern, and heard in all courts at the earliest practicable moment.

Construction of act.

§ 70. This act being necessary for securing the public health, safety, convenience or welfare, and being necessary for the prevention of great loss of life and for the security of public and private property from floods and other uncontrolled waters, it shall be liberally construed to effect the control and conservation and drainage of the waters of this state.

Constitutionality.

§ 71. In case any section or sections or part of any section of this act shall be found to be unconstitutional, the remainder of the act shall not thereby be invalidated, but shall remain in full force and effect.

Alternative act.

§ 72. All existing laws of the state and parts of laws relating to drainage, flood control, protection from storm waters, irrigation and subjects of which this act treats, shall not be in any other way affected by this act, but this act shall be treated and shall be in effect an alternative act thereto.

Jurisdiction of supervisors over proceeding.

§ 73. For the sake of convenience:

(a) In any orders of the board of supervisors, the words, "the board of supervisors now here finds that it hath jurisdiction of the parties to and of the subject matter of this proceeding," shall be equivalent to a finding that each jurisdictional act necessary to confer plenary jurisdiction upon the board of supervisors beginning with the proper signing and filing of the initial petition to the date of the order to meet every legal requirement imposed by this act, has been conferred.

Bonding resolution.

(b) No other or further evidence of the legal disposition of the special assessment to the payment of the bonds shall be required than the passage of a bonding resolution by the board of directors recommending to the board of supervisors the issuance of bonds in accordance therewith.

Abbreviations.

(c) In the preparation of any assessment or appraisal roll the usual abbreviations employed by engineers, surveyors and abstractors may be used.

Land described by reference to record.

(d) Where properly to describe any parcel of land, it would be necessary to use a long description, the appraisers after locating the land generally, may refer to the book and page of the public record of any instrument to which the land is described, which

reference shall suffice to identify for all the purposes of that act the land described in the public record so referred to.

Unnecessary to specify names in notice.

(e) It shall not be necessary in any notice required by this act to be published to specify the names of the owners of the lands or of the persons interested therein; but any such notice may be addressed, "to all persons interested" with like effect as though such notice named by name every owner, of any lands within the territory specified in the notice and every person interested therein, and every lienor, actual or inchoate.

District a political subdivision.

(f) Every district declared to be a conservancy district in accordance with this act shall thereupon become a political subdivision and a public corporation of the state of California, invested with all the powers and privileges conferred upon such districts by this act.

Powers of state commissions not limited.

Nothing in this act stated shall be construed to limit or abridge the rights and powers now vested in the railroad commission of the state of California, the water commission of the state of California, the reclamation board, any other commission, officer or agency created by law, and all things herein enumerated to be done shall be performed subject to and in compliance with the authority now vested or hereafter to be vested by law in such commission, board, officer or agency, anything appearing herein notwithstanding.

Form of procedure.

§ 74. The following forms may suffice to illustrate the character of the procedure contemplated by this act; and if substantially complied with, those things being changed which (to meet the requirements of the particular case) should be changed, such procedure shall be held to meet the requirements of this act.

Notice of hearing on the petition.

1. Form of Notice of Hearing on the Petition.

To all persons interested:

Public notice is hereby given:

1. That on the day of, 19...., pursuant to the provisions of the conservancy act of California, there was filed in the office of the clerk of the board of supervisors of county, California, the petition of and others for the establishment of a conservancy district to be known as conservancy district. (Here insert the purposes.)

2. That the lands sought to be included in said district comprise lands in..... and..... counties, California, described substantially as follows: Beginning on the north line of county at its point of intersection with the west bank of the river; thence west along the north line of county to the high bluffs facing said river on the west; thence following the base of the line of said bluffs to the north line of the right of way of the railroad; thence west along the north right of way line of said railroad to the center line of avenue in the city of; thence south along the center line of avenue to the road; thence southeasterly along the road to the southeasterly line of the right of way of the railroad; thence southeasterly along said right of way line to the corporate limits of the city of; thence with said corporation line southerly, easterly and northerly to the southerly right of way line of

the main tract of the railroad; thence easterly along said last named right of way line to the boundary line between counties; thence north along said county line to the southerly line of county; thence easterly along the dividing line between counties to the easterly line of the right of way of the railroad; thence northerly along said right of way line to its intersection with the road; thence westerly along said road to the center line of the bridge over wash; thence up said wash and along the center line thereof to the north line of county; thence west to the place of beginning.

Or, if found more convenient, the lands sought to be included in the district may be described as follows:

All of township in range between the railroad and the river; the following lands in township and range; section and the half of section; also all lands within the corporate limits of the city of, etc., etc., etc.

3. That a public hearing on said petition will be had in the chambers of said board of supervisors on the day of, at the hour of o'clock .. m., by the board of supervisors of county, at the in the city of county, California.

All persons and public corporations owning or interested in real estate within the territory hereinbefore described will be given the opportunity to be heard at the time and place above specified.

.....,
County Clerk.

By.....,

Clerk of the board of supervisors, county, California.

Dated, California,, 19....

Finding on hearing.

2. Form of Finding on Hearing.

State of California, }
County of..... } ss.

In chambers of the board of supervisors of county.

In matter of conservancy district;

Findings and Decree on Hearing.

On this day of, 19...., this cause coming on for hearing upon the petition of and others, for the organization of a conservancy district under the conservancy act of California, the board of supervisors, after a full hearing now here find:

1. That it hath jurisdiction of the parties to, and the subject matter of this proceeding.

2. That the purposes for which said district is established are:

(Insert the purposes.)

And that it is a public necessity.

3. That the public safety, health, convenience and welfare will be promoted by the organization of a conservancy district substantially as prayed in said petition (if additional lands are added by petition), except, that the following additional lands at the petition of the owners thereof should be, and hereby are included in said district:

(Here insert additional lands.)

4. That the boundaries of said district as modified by the last finding herein are as follows: (Here insert corrected boundaries of district.)

5. That the said territory last above described should be erected into and created

a conservancy district under the conservancy act of California under the corporate name of conservancy district.

Wherefore, it is by the board ordered, adjudged and decreed:

That the territory as above described be, and the same hereby is erected into and created a conservancy district under the conservancy act of California, under the corporate name of conservancy district, in county, California. And the following persons are hereby (found to be) (elected) directors of said conservancy district:

.....for the term of five years,
.....for the term of five years,
.....for the term of five years,
who are hereby directed to qualify and proceed according to law.

6. [3] Form of Notice to Property Owners to Pay Assessment:

.....conservancy district.

To all persons interested:

Public notice is hereby given:

That on the day of, 19...., assessments upon the respective parcels of property in the district aggregating the sum of \$...... were levied in accordance with this act, and pursuant thereto improvement warrants were issued representing such respective assessments; that said entire assessment may be paid in fifty-two semiannual installments, together with accrued interest, payable on the first days of July and January of each year, or the entire amount due and unpaid of such assessment as evidenced by said improvement warrants may be paid at any time on or prior to the day of, 19....

.....
President.
.....
Secretary.

Bond and coupon.

4. Form of Bond and of Coupon.
(Form of bond.)

No..... \$.....
United States of America,
State of California.
.....Conservancy district.
Conservancy bond.

Know all men by these presents that conservancy district, a legally organized conservancy district of the state of California, acknowledges itself to owe and for value received hereby promises to pay to bearer dollars (\$......) on the first day of, 19...., with interest thereon from the date hereof until paid at the rate of per cent per annum, payable, 19...., and semiannually thereafter on the first day of and of in each year on presentation and surrender of the annexed interest coupons as they severally become due. Both principal and interest of this bond are hereby made payable in lawful money of the United States of America, at the county treasurer's office of the main county of said district, state of California.

This bond is one of a series of bonds issued by conservancy district for the purpose of paying the cost of constructing a system of flood prevention (or for other works) for said district and in anticipation of the collection of the taxes duly levied upon lands within said district and benefited by said improvement in strict compliance with the conservancy act of California, and pursuant to an order of the board of

supervisors upon recommendation of the board of directors of said district duly made and entered of record.

And it is hereby certified and recited that all acts, conditions and things required to be done in locating and establishing said district and in equalizing appraisals of benefits and in levying taxes and assessments against lands benefited thereby, and in authorizing, executing and issuing this bond, have been legally had, done and performed in due form of law.

And for the performance of all the covenants and stipulations of this bond and of the duties imposed by law upon said district for the collection of the taxes and the application thereof to the payment of this bond and the interest thereon, and for levying of such other and further taxes and assessments as are authorized by law and as may be required for the prompt payment of this bond and the interest thereon, the full faith, credit and resources of said conservancy district are hereby irrevocably pledged.

In testimony whereof the board of supervisors of the conservancy district has caused this bond to be signed on behalf of said district by the chairman of the board of supervisors of the main county, and by the auditor of said main county, and sealed with the corporate seal of said district, and the coupons hereto annexed to be signed by the engraved or lithographed facsimile of such auditor.

.....
Chairman.

.....
Auditor.

(Form of Coupon.)

\$.....

On the first day of....., 19...., conservancy district promises to pay to bearer dollars (\$.....) lawful money of the United States of America, at the office of the treasurer of the county of, California, being semiannual interest due on that date on its conservancy bond dated, 19....
..... Auditor.

Notice of enlargement of district.

5. Form of Notice of Enlargement of District.

State of California, }
County of..... } ss.

In the office of the board of directors of county, California.

In the matter of conservancy district.

Notice of Enlargement of District.

To all persons (and public corporations, if any,) interested:

Public notice is hereby given:

1. That heretofore, on the day of, 19...., the board of supervisors of county, California, duly entered a final order erecting and creating conservancy district and designating a board of directors therefor.

2. That thereafter this board duly designated, and to be the board of appraisers for said district. That said board of appraisers on the day of, 19...., filed their report recommending that the following described lands, not originally included in the district, be added thereto:

(Here describe generally the lands which the report of the board of appraisers recommends should be added to the district.)

3. That on the day of, 19...., (or as soon thereafter as the convenience of the board will permit), at the courthouse in, of, California, the board of supervisors of county, California, will hear all persons and public corporations, who are owners of or interested in the property described in this notice upon the question whether said lands should be added to and included in said conservancy district.

.....
Clerk of the board of supervisors of county, California.

Hearing on appraisals.

6. Form of Notice of Hearing on Appraisals.

State of California,

County of..... } ss.

In office of the board of directors, county, California.

In the matter of conservancy district.

Notice of Hearing on Appraisals.

To all persons and public corporations interested:

Public notice is hereby given:

1. That heretofore on the day of, 19...., the board of supervisors of county, California, duly entered an order erecting and creating conservancy district and designating a board of directors therefor.

2. That thereafter this board duly appointed the board of appraisers for said district. That said board of appraisers on the day of, 19...., filed their appraisal of benefits and damages and of land to be taken as follows: (Here insert general description of land appraised.)

The said appraisal of benefits and damages and of land to be taken is now on file in the office of the clerk of this board.

3. All public and private corporations and all persons owners of or interested in the property described in said report, whether as benefited property or as property taken and damaged (whether said taken or damaged property lies within or without said district), desiring to contest the appraisals as made and returned by the board of appraisers must file their objections with the board of directors of the district on or before the day of, 19...., (here insert a date ten days after the last publication of the notice) and a hearing on said appraisal will be had on the day of, 19...., (here insert a date not less than twenty days nor more than thirty days after the date of last publication of this notice) as fixed by the board of directors in the city of, California, at which time an opportunity will be afforded all objectors to be heard upon their several objections.

.....

County clerk.

By.....

Clerk of the board of supervisors of county, California.

Dated at the city of, California, this day of, 19...

Conservation districts.—See, also, "California irrigation act" of 1919, post, Act 2266b.

CHAPTER 68.

CONSPIRACY.

References: Conspiracy, in general, see Kerr's Cyc. Penal Code, §§ 182, et seq.
Conspiracy, evidence of, see Kerr's Cyc. Penal Code, § 1104.

CONTENTS OF CHAPTER.

ACT 946. UNION LABOR INJUNCTIONS.

947. CONSPIRACY AGAINST THE PERSON OF THE PRESIDENT AND OTHER OFFICIALS.

UNION LABOR INJUNCTIONS.

ACT 946—An act to limit the meaning of the word "conspiracy," and also the use of "restraining orders" and "injunctions," as applied to disputes between employerz and employees in the state of California.

History: Approved March 20, 1903, Stats. 1903, p. 289.

Combinations in trade disputes not criminal when.

§ 1. No agreement, combination, or contract by or between two or more persons to do or procure to be done, or not to do or procure not to be done, any act in contemplation or furtherance of any trade dispute between employers and employees in the state of California shall be deemed criminal, nor shall those engaged therein be indictable or otherwise punishable for the crime of conspiracy, if such act committed by one person would not be punishable as a crime, nor shall such agreement, combination, or contract be considered as in restraint of trade or commerce, nor shall any restraining order or injunction be issued with relation thereto. Nothing in this act shall exempt from punishment, otherwise than as herein excepted, any persons guilty of conspiracy, for which punishment is now provided by any act of the legislature, but such act of the legislature shall, as to the agreements, combinations, and contracts hereinbefore referred to, be construed as if this act were therein contained; provided, that nothing in this act shall be construed to authorize force or violence, or threats thereof.

Act takes effect when.

§ 2. This act shall take effect immediately.

1. Constitutionality—Special legislation—Special privileges and immunities.—If the act is to be construed so as to prohibit the court from granting preventive relief against irreparable injury done by a labor union in the course of a trade dispute, it would be void as special legislation (art. IV, § 25, subds. 3, 33, constitution), and as an attempt to grant special privileges and immunities to one class of citizens, not granted to all citizens.—*Pierce v. Stablemen's Union*, 156 Cal. 70, 103 Cal. 324.

2. Construction of act.—The act can not be construed to prohibit the court from enjoining the main wrongful acts committed by the parties in a trade dispute; but if it could be so construed, would, to that extent,

be void, as violative of the constitutional right to acquire, possess, enjoy and protect property.—*Goldberg, etc., Co. v. Stablemen's Union*, 149 Cal. 429, 117 Am. St. Rep. 145, 9 Ann. Cas. 1219, 8 L. R. A. (N. S.) 460, 86 Pac. 806; *Pierce v. Stablemen's Union*, 156 Cal. 70, 103 Pac. 324.

Boycott in labor disputes.—See *Pierce v. Stablemen's Union*, 156 Cal. 70, 103 Pac. 324.

Child labor.—See tit. "Infants."

Labor.—See tits. "Labor Bureau," "Hours of labor," "Master and servant."

Right of united labor to strike.—See *J. F. Parkinson Co. v. Building Trades Council*, 154 Cal. 581, 16 Ann. Cas. 1165, 21 L. R. A. (N. S.) 550, 98 Pac. 1027.

CRIME AGAINST THE PRESIDENT AND OTHER OFFICIALS.

ACT 947—An act making a conspiracy to commit any crime against the person of, or an attempt to kill or commit any assault upon, the President or Vice-President of the United States, the governor of any state or territory, any United States justice or judge, or the secretary of any executive department of the United States, a felony; and providing a penalty therefor.

History: Approved February 28, 1903, Stats. 1903, p. 58.

Conspiracy to commit crime against President, etc., penalty.

§ 1. If two or more persons conspire to commit any crime against the person of the President or Vice-President of the United States, the governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States, they are guilty of felony, and upon conviction thereof, shall be punished by imprisonment in the state prison not less than ten years.

Attempt to kill President. Penalty.

§ 2. Every person who attempts to kill, or who commits any assault upon the President or Vice-President of the United States, the governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States, is guilty of a felony; and upon conviction thereof, shall be punished by imprisonment in the state prison not less than ten years.

Act takes effect, when.

§ 3. This act shall take effect and be in force from and after its passage.

CHAPTER 69.**CONSTITUTION.**

References: See tit. "Elections."

See, also, Kerr's Cyc. Political Code, tit. "Elections."

CONTENTS OF CHAPTER.

ACT 960. DISSEMINATION OF KNOWLEDGE CONCERNING PROPOSED CONSTITUTIONAL AMENDMENTS.

CONSTITUTIONAL AMENDMENTS.

ACT 960—An act to provide for the dissemination of knowledge regarding the various propositions and constitutional amendments which are to be submitted to the people of the state of California and for the distribution of copies of said propositions and amendments to various institutions of learning throughout the state.

History: Approved April 27, 1911, Stats. 1911, p. 1162.

Copies of constitutional amendments to be furnished schools.

§ 1. For the purpose of encouraging the study and investigation of the various propositions and constitutional amendments which are hereafter submitted to the people and to stimulate interest therein, and study thereof by addresses, debates and general discussions throughout the various institutions of learning of the state of California, the secretary of state shall, within six months after the adjournment of each session of the legislature, have printed in the manner prescribed by section 1195 of the Political Code a sufficient number of all propositions and constitutional amendments which are to be submitted to a vote of the people at any election thereafter, to supply each institution of higher learning with twenty-five copies, and each high school and grammar school with ten copies thereof and deliver the same to the superintendent of public instruction.

Superintendent of public instruction to make statement to heads of schools.

§ 2. The superintendent of public instruction shall immediately prepare such instructions to the heads of said institutions and schools, as he may deem sufficient to properly accomplish the object expressed in section 1 of this act, and shall forward said propositions and constitutional amendments to the heads of said institutions and schools together with such instructions.

Constitutional amendments.—As to manner of printing, advertising, and submitting.

—See Kerr's Cyc. Political Code, §§ 1195, et seq.

CHAPTER 70.

CONTRA COSTA COUNTY.

CONTENTS OF CHAPTER.

ACT 967. LAWFUL FENCE LAW.

977. TO QUIET TITLE TO CERTAIN SALT MARSH AND TIDE LANDS..

981. ADDITIONAL JUDGE OF SUPERIOR COURT.

LAWFUL FENCES.

ACT 967—An act concerning lawful fences in the county of Contra Costa.

History: Became a law by operation of the constitution, March 5, 1858, Stats. 1858, p. 40. Supplemented May 3, 1861, Stats. 1861, p. 277. Continued in force by the code. See Kerr's Cyc. Political Code, § 19, subdv. 23.

Fence laws in general.—See tit. "Fences."

QUIET TITLE TO SALT MARSH AND TIDE LANDS.

ACT 977—An act to quiet the title to certain salt marsh and tide lands in Contra Costa county.

History: Approved March 25, 1874, Stats. 1873-74, p. 616.

This act confirmed title to salt marsh and tide lands, sold by the tide land commissioners, where the purchase had been made

in good faith, the consideration had been paid in full, and patents issued.—See, post, Act 5082, notes.

ADDITIONAL SUPERIOR JUDGE.

ACT 981—An act to provide one additional judge of the superior court of the county of Contra Costa.

History: Approved June 4, 1913. In effect August 10, 1913. Stats. 1913, p. 449.

This act increased the number of judges from one to two.

CONTROLLER.

See Kerr's Cyc. Political Code, §§ 433, et seq.

CHAPTER 71.

CONVICTS.

References: See tits. "Pardon Board"; "Parol of Prisoners"; "Prisons."

See, also, Kerr's Cyc. Penal Code, tits. "Convicts"; "Prisoners."

Asexualization of Convicts, see Act. 346.

Attorney, removal or suspension for conviction of felony, see Kerr's Cyc. Code Civil Procedure, §§ 287, 289.

Witness, persons convicted of crime incapable, see Kerr's Cyc. Code Civil Procedure, § 1879.

CONTENTS OF CHAPTER.

ACT 995. PHOTOGRAPHS AND MARKS OF IDENTIFICATION OF TO BE FURNISHED.

996. EXPENSES AND COSTS OF TRIAL OF CONVICTS.

997. INDEMNITY TO PERSONS ERRONEOUSLY CONVICTED.

PHOTOGRAPHS AND MARKS OF IDENTIFICATION.

ACT 995—An act requiring the wardens of the state prisons of California to furnish the sheriffs of California and the bureaus of identification with certain information concerning convicts within thirty days after receiving said convicts, and providing for payment of the expenses incurred thereby.

History: Approved March 20, 1905, Stats. 1905, p. 532. Amended March 18, 1909, Stats. 1909, p. 398.

Description of prisoners to be furnished to whom.

§ 1. The wardens of the state prisons of the state of California shall within thirty days after receiving persons convicted of crime and sentenced to serve terms in the respective prisons, send to the sheriffs of the state of California, to the legalized bureau of identification and to the chiefs of police of all regularly constituted police departments, of incorporated cities and towns within said state, photographs together with minute descriptions including marks of identification of all such persons and also a statement of the nature of the crime for which said persons are imprisoned. [Amendment of March 18, 1909. Stats. 1909, p. 398.]

Expenses incurred, how paid.

§ 2. Any expenditures incurred in carrying out the provisions of this act shall be paid for out of the appropriation made for the support of state's prisons.

Repeal of former act.

§ 3. This act shall be in effect immediately and be enforced from and after its passage and repeals an act approved March 27, 1897, on pages 213, 214 of Statutes and Amendments to the Codes of California of 1897.

EXPENSES AND COSTS OF TRIAL OF CONVICTS.

ACT 996—An act concerning the payment of the expenses and costs of the trial of convicts for crimes committed in the state prison, and to pay the costs of the trial of escaped convicts, and to pay for the expenses of coroner inquests in said prison.

History: Approved April 12, 1880, Stats. 1880, p. 43.

Costs and expenses of trials of convicts for crimes committed in state prison.

§ 1. The costs and expenses of all trials which have heretofore been had in the county in this state where the state prison is situated, for any crime committed by any convict in the state prison, and the costs of guarding and keeping such convict, and the execution of the sentence of said convict by said county, and the costs and expenses of all trials heretofore had for the escape of any convict from the state prison, and the costs and expenses of all coroner inquests heretofore had of any convict at the state prison by the county where said prison has been situated, shall be certified to by the county clerk of said county wherein said trials and inquests have been held to the board of state prison directors for their approval, and after such approval they shall pay the same out of the money appropriated for the support of the state prison to the county treasurer of said county where said trials have been had; "provided, that this act shall not apply to any costs or expenses incurred since January first, eighteen hundred and seventy-three."

Act applies to what cases only.

§ 2. This act shall apply to cases which have not been settled for by the state.

Act takes effect when.

§ 3. This act shall take effect immediately.

INDEMNITY FOR ERRONEOUS CONVICTION.

ACT 997—An act to provide indemnity to persons erroneously convicted of felonies in the state of California.

History: Approved May 24, 1913. In effect August 10, 1913. Stats. 1913, p. 245.

Claim of persons erroneously convicted.

§ 1. Any person who, having been convicted of any crime against the state of California amounting to a felony, and having been imprisoned therefor in a state prison

of this state shall hereafter, on a retrial of the case, or on reversal on appeal of the final judgment of conviction, be acquitted or discharged for the reason that the crime with which he was charged was either not committed at all, or, if committed, was not committed by him, or who shall hereafter be granted a pardon by the governor of this state for either of the foregoing reasons, or who, being innocent of the crime with which he was charged for either of the foregoing reasons, shall have served the term for which he was imprisoned, may, under the conditions hereinafter provided, present a claim against the state to the state board of control for the pecuniary injury sustained by him through such erroneous conviction and imprisonment.

Presented to board of control.

§ 2. Such claim, accompanied by a statement of the facts constituting the claim, verified in the manner provided for the verification of complaints in civil actions, must be presented by the claimant to the board of control within a period of six months after judgment of acquittal or discharge given, or after pardon granted, or after release from imprisonment, and at least four months prior to the next meeting of the legislature of this state; and no claim not so presented shall be considered by the board of control.

Hearing on claim.

§ 3. Upon presentation of any such claim, the board of control shall fix a time and place for the hearing of the claim, and shall mail notice thereof to the claimant and to the attorney-general of this state at least fifteen days prior to the time fixed for such hearing.

Proof of claimant.

§ 4. On such hearing the claimant shall introduce evidence in support of the claim, and the attorney-general may introduce evidence in opposition thereto. The claimant must prove the facts set forth in the statement constituting the claim, including the fact that the crime with which he was charged was either not committed at all, or, if committed, was not committed by him, the fact that he did not, by any act or omission on his part, either intentionally or negligently, contribute to the bringing about of his arrest or conviction for the crime with which he was charged, and the pecuniary injury sustained by him through his erroneous conviction and imprisonment.

Board to report approved claim to legislature.

§ 5. If the board of control shall be satisfied from the evidence that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, and that the claimant did not, by any act or omission either intentionally or negligently, contribute to the bringing about of his arrest or conviction, and that the claimant has sustained pecuniary injury through his erroneous conviction and imprisonment, it shall, with the sanction of the governor of this state, report the facts of the case and its conclusions to the next legislature of this state, with a recommendation that an appropriation be made by the legislature for the purpose of indemnifying the claimant for such pecuniary injury; but the amount of the appropriation, so recommended shall not exceed in any case, the sum of five thousand dollars (\$5,000).

Statement to controller.

§ 6. The board of control shall make up its report and recommendation and shall give to the controller of this state a statement showing its recommendations for appropriations under the provisions of this act, as provided by the law in cases of other claimants against this state for which no appropriations have been made.

Rules.

§ 7. The board of control is hereby authorized to make all needful rules and regulations consistent with the law for the purpose of carrying into effect the provisions of this act.

CO-OPERATIVE ASSOCIATIONS.

See Kerr's Cyc. Civil Code, §§ 653a, 653b, et seq.

CORCORAN.

See Act 3094, note

CORNING.

See Act 3094, note.

CORONA.

See Act 3094, note.

CORONADO.

See Act 3094, note.

CHAPTER 72.**CORONER.**

References: See tit. "Vital Statistics."

Also, Kerr's Cyc. Political Code, tit. "Coroner."

Inquests in state prisons, see, ante, Act 996.

Justice of the peace as coroner, see Kerr's Cyc. Political Code, § 4147.

Physician and surgeon, as witness at inquest, see Kerr's Cyc. Political Code, § 1512.

CONTENTS OF CHAPTER.

- ACT 1008. ASSISTANT CORONERS IN CITIES OF 100,000 OR MORE INHABITANTS.
- 1009. APPOINTMENT OF AUTOPSY PHYSICIAN IN COUNTIES OF THE FIRST CLASS.
- 1010. OFFICIAL REPORTER IN CITIES OF 100,000 OR MORE INHABITANTS.

ASSISTANT CORONERS IN CITIES.

ACT 1008—An act to provide for furnishing assistants to the coroner of each city, or city and county having one hundred thousand or more inhabitants, and providing the mode in which such assistants shall be appointed and designated, and establishing the compensation and prescribing the duties of such assistants.

History: Approved March 23, 1893, Stats. 1893, p. 190.

Coroner to appoint assistants.

§ 1. It shall be lawful for the coroner to every city, or city and county of this state, having one hundred thousand or more inhabitants, to select and appoint five assistants. Such assistants shall hold their respective offices at the pleasure of said appointing power.

Classification and designation of assistants. Salaries; duty of assistants.

§ 2. Such assistants shall be classified and designated as follows: First deputy coroner, second deputy coroner, third deputy coroner, fourth deputy coroner, messenger. Said deputies shall be allowed and receive salaries as follows: The salary of the first deputy shall be two hundred dollars per month; the salary of the second deputy shall be one hundred and fifty dollars per month; the salary of the third and fourth deputies shall be one hundred and twenty-five dollars per month each; the salary of the messenger shall be seventy-five dollars per month. It shall be the duty of said deputies to act as deputy coroners in all matters, except as to those duties which are forbidden

to be delegated. It shall be the duty of the messenger to have charge of the dead-wagon, keep in order the morgue, and perform such other duties as are required by the coroner or his deputies.

Salary, how paid.

§ 3. The salaries of the said assistants shall be audited and paid monthly out of the general fund of the said city, or city and county.

Act takes effect when.

[§ 4.] This act shall take effect from and after its passage.

Superseded as to San Francisco.—See article IV, chapter VI, § 2, charter. **Coroners and deputies in cities of the first class.**—See, post, Act 3094.

AUTOPSY PHYSICIAN IN COUNTIES OF FIRST CLASS.

ACT 1009—An act providing in counties of the first class for the appointment by the coroner of a competent physician for the performance of autopsies upon the bodies of deceased persons when inquests are held, and fixing the compensation therefor.

History: Approved March 14, 1895, Stats. 1895, p. 52.

Coroner to appoint physician in counties of first class to hold autopsies.

§ 1. In counties of the first class, the coroner shall appoint a competent physician, whose duties it shall be to perform autopsies upon the bodies of all deceased persons when inquests are held. Such physician shall, after the performance of such autopsy, certify in writing his professional opinion as to the cause of death, which certificate shall be filed with said coroner.

Compensation.

§ 2. The physician so appointed shall receive as compensation for his said services the sum of twenty-four hundred dollars per annum, which shall be paid out of the general fund of the county in monthly installments of two hundred dollars, at the same time and in the same manner as county officers are paid.

Act takes effect when.

§ 3. This act shall take effect and be in force from and after its passage.

OFFICIAL REPORTER IN CITIES.

ACT 1010—An act to provide an official stenographic reporter to the coroner of each county, or city and county, having one hundred thousand or more inhabitants, and providing the mode in which such reporter shall be appointed, and establishing the compensation and prescribing the duties of such reporter.

History: Approved March 26, 1895, Stats. 1895, p. 168.

Coroners of cities and counties of one hundred thousand to appoint stenographer.

§ 1. It shall be lawful for the coroner of every county, or city and county, of this state, having one hundred thousand or more inhabitants, to select and appoint an official stenographic reporter, such reporter to hold office during the pleasure of the coroner making the appointment.

Salary.

§ 2. The said official reporter shall be allowed and shall receive compensation as follows: One hundred and fifty dollars per month.

Duties.

§ 3. It shall be the duty of said reporter to attend all inquests held by the coroner of the said county, or city and county, and report in shorthand all testimony of witnesses, and all the proceedings of said inquests, and to transcribe the same into legible

longhand and furnish two typewritten copies thereof, and shall certify the same, and file one of the copies with said coroner and the other copy with the clerk of the said county, or city and county. He shall also, within a reasonable time after such testimony is taken, file with the said clerk the shorthand notes taken by him at each inquest.

Oath.

§ 4. The said official reporter shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office.

Certified report prima facie correct.

§ 5. Any report of the said official reporter duly appointed and sworn, when written out in longhand writing and certified by him as being a correct transcript of the testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings.

Salary, how paid.

§ 6. The salary of said reporter shall be audited and paid monthly out of the general fund of the said county, or city and county.

Act takes effect when.

§ 7. This act shall take effect from and after its passage.

Superseded as to San Francisco.—See article IV, chapter VI, § 2, charter.

CHAPTER 73.

CORPORATIONS.

References: Banking Corporations, see tit. "Banks and Banking."

Benefit Societies, see tit. "Benefit Societies."

"Blue Sky Law," see tit. "Investment Companies."

"Cartwright Anti-Trust Law," see Act 5264.

Corporations as sureties, see tit. "Bonds," and Kerr's Cyc. Civil Code, and Kerr's Cyc. Code Civil Procedure, same title.

Corporations in general, see Kerr's Cyc. Civil Code, tit. "Corporations."

Corporation taxes, see Kerr's Cyc. Political Code, §§ 3664a, et seq.

Foreign Corporations, see Kerr's Cyc. Civil Code, tit. "Foreign Corporations."

Insolvent banks, see tit. "Banks and Banking."

Insolvent corporations, see tit. "Bankruptcy and Insolvency."

Investment corporations, see tit. "Investment Companies."

Particular corporations, see particular title.

Public service corporations, see tit. "Public Utilities."

Editor's Note: The legislature of 1850 passed the first act relating to corporations (April 22, 1850, Stats. 1850, p. 347). From that date to March 23, 1872, two days after the adoption of the Civil Code, but more than nine months prior to its taking effect, something like forty separate acts were passed and approved, covering practically every phase of the subject, a large proportion of which were amendatory and so called supplementary acts. The bulk of this mass of statutory law passed into the Civil Code on its adoption, and is no longer in force in its original form. Section 288 of the Civil Code expressly continues it in force as to corporations formed thereunder and in existence on the going into effect of the code. Section 287 authorized existing corporations to continue existence under the code, and it is assumed that many took advantage of the authority. Some did not, and their entire corporate existence and government, their rights and liabilities, all rested upon the statutes now under consideration; but, in view of the lapse of time, few or none of these corporations remain, or, if they are still in existence, they exist by reorganization and reincorporation under code provisions, and are, therefore, practically new corporations.

For this reason, all acts relating to corporations, enacted prior to January 1, 1873, when the Civil Code went into effect, are treated as of no longer any force, and are omitted. There are certain exceptions in particular instances, but where these occur, a proper note is made of the reason for the exception.

CONTENTS OF CHAPTER.

ACT 1021. CORPORATION LICENSE TAX ACT.

1021a. RETURN OF CORPORATION LICENSE TAX ERRONEOUSLY COLLECTED.

1022. CORPORATIONS TO LEND MONEY ON CHATTELS, AND LIMITING THE RATE OF INTEREST.

1033a. ISSUE OF SHARES WITHOUT NOMINAL OR PAR VALUE.

1033b. ISSUE OF SHARES OF STOCK WITHOUT NOMINAL OR PAR VALUE BY PUBLIC UTILITY CORPORATIONS.

1034. CORPORATIONS AS EXECUTORS AND TRUSTEES.

1035. FOR THE PROTECTION OF STOCKHOLDERS, ETC.

1036. REQUIRING CORPORATIONS TO PAY EMPLOYEES MONTHLY.

1037. PAYMENT OF WAGES OF MECHANICS AND LABORERS OF CORPORATIONS.

1041. FOREIGN CORPORATIONS ACT.

1042. "INDUSTRIAL LOAN COMPANIES" ACT.

CORPORATION LICENSE TAX ACT.

ACT 1021—An act to repeal an act entitled "An act relating to revenue and taxation, providing for a license tax upon corporations and making an appropriation for the purpose of carrying out the objects of this act," approved March 20, 1905, and all acts amendatory thereof or supplemental thereto, and to provide upon what conditions any corporation which has failed to pay any license tax imposed by the provisions of any of the acts hereby repealed may pay the same and be restored to its former corporate status and rights, and also, to provide for settling the affairs of any corporation which by reason of failure to pay any tax imposed by any of said acts, has forfeited either its charter or right to do business in this state.

History: Approved June 10, 1913. In effect June 30, 1914. Stats. 1913, p. 680. Prior act repealed by present act, approved March 20, 1905, Stats. 1905, p. 493; amended June 13, 1906, Stats. 1906 (ex. sess.), p. 22; March 19, 1907, Stats. 1907, p. 664; March 20, 1907, Stats. 1907, p. 745; March 19, 1909, Stats. 1909, p. 458; April 24, 1911, Stats. 1911, p. 1094; May 30, 1913. In effect August 10, 1913. Stats. 1913, p. 513.

Corporations' license tax of 1905 repealed.

§ 1. An act entitled "An act relating to revenue and taxation providing for a license tax upon corporations and making an appropriation for the purpose of carrying out the objects of this act," approved March 20, 1905, and also all acts amendatory thereof or supplemental thereto, are hereby repealed; provided, however, that this act shall not be construed to affect the status of any corporation which has before the taking effect of this act, by reason of failure to pay any tax in accordance with the terms of any of the acts hereby repealed, forfeited either its charter or right to do business in this state. Nor shall this act be construed to relieve any corporation or person from any penalty or penal provision of any of the acts hereby repealed except as herein provided.

Relief from forfeiture on account of failure to pay tax.

§ 2. Any corporation which has failed to pay the license tax required by the provisions of any of the acts hereby repealed, may pay to the secretary of state all taxes and penalties prescribed by either of said acts and the license tax and penalties that would have accrued if such corporation had not forfeited its charter or right to do business in this state, and any such corporation making such payments shall thereupon be relieved from the forfeiture prescribed in any of the acts hereby repealed and restored to its former corporate rights and status and the secretary of state shall annually in the month of December transmit to the county clerk of each county a list of the corporations so paying, which list shall be by said county clerk filed in his office; provided, the rehabilitation of any such corporation by reason of making such payments shall be without prejudice to any action, defense, or right which accrued by reason of the original forfeiture.

Powers of directors continued. Execution may issue on judgment.

§ 3. The powers conferred by the provisions of section 10a of the act hereby repealed (as amended March 20, 1907) upon the directors or managers of any such corporation in office at the time of any such forfeiture are hereby continued in force and said trustees or managers shall notwithstanding the taking effect of this act have full power as trustees to settle the affairs of any such corporation and to maintain or defend any action or proceeding then pending in behalf of or against any such corporation or to take such legal proceedings as may be necessary to fully settle its affairs and such directors or managers as such trustees may be sued in any of the courts of this state by any person having a claim against any such corporation; provided, always, that no action pending against any such corporation shall abate thereby but may be brought to final judgment and may be enforced by execution and to the same force and effect and in like manner as though no forfeiture has occurred; and provided, further, that where judgment has been entered against any corporation prior to forfeiture under the provisions of any of the acts hereby repealed notwithstanding such forfeiture execution may be issued on any such judgment, and the property of such corporation or which may come into the hands of any trustees for it, may be levied upon, seized and sold to satisfy such judgment with like force and effect as though such forfeiture had not occurred.

In effect.

§ 4. This act shall take effect and be in force June 30, 1914, at 12 o'clock m.

- I. CONSTITUTIONALITY.
- II. CONSTRUCTION.
- III. FORFEITURE OF CORPORATE FRANCHISE.
- IV. EFFECT OF FORFEITURE.
- V. MISCELLANEOUS.

I. CONSTITUTIONALITY.

- 1. Failure of title to express the subject.
- 2, 3. Exercise of judicial functions by executive officer.
- 4. Due process of law.
- 5. Uniformity of operation.
- 6. Power to impose privilege tax.
- 7. Double taxation.
- 8-10. Unconstitutionality declared.
- 11. Rule of Ex parte Young, 209 U. S. 123.
- 12. Same — Constitutionality depending upon complicated and technical investigation.
- 13-16a. Foreign corporations.
- 16b. Domestic corporations.

II. CONSTRUCTION.

- 17, 18. Nature of tax.
- 19-21. Same—License tax on privilege of existing and doing business.
- 22, 23. Liability for tax—The sole test.
- 24. Act of 1905 superseded.
- 25. Same—Exemption of telephone company.
- 25a. Corporations exempt from license tax.

III. FORFEITURE OF CORPORATE FRANCHISE.

- 26-28. Failure to pay tax operates ipso facto as forfeiture of charter.
- 29. When penalty attaches.
- 30. Same — Governor's proclamation of delinquency.
- 31. Same—Report to governor by secretary of state.

- 32. Enforcement of forfeiture—Defense
- 33, 34. Evidence of forfeiture.

IV. EFFECT OF FORFEITURE.

- 34a. Loss of legal entity.
- 35. Suit and judgment against corporation whose charter has been forfeited.
- 36. Right to defend action after forfeiture of charter.
- 36a. Abatement of action — Effect of amendment.
- 37. "Doing business" after forfeiture of charter.
- 38. Substitution of directors as trustees.
- 39. Title to property.
- 40. Appeal by corporation after forfeiture of charter.
- 41. Averment of incapacity.
- 42, 42a. Right to substitute trustees as parties plaintiff.
- 43. Sale of corporate property—Discretion of trustees.
- 44. Application by trustees of corporate funds to personal claims.
- 45. Pending litigation prosecuted to final judgment.

V. MISCELLANEOUS.

- 46. Intervention by stockholder.
- 46a. Estoppel against stockholder.
- 46b. Same.
- 47. Same—Answer of directors does not estop.
- 48. Jurisdiction of bankruptcy court not affected by forfeiture.
- 49. Foreign corporation—Forfeiture of right to do business.
- 50. Section 400, Civil Code, as amended by act of 1905, p. 563.
- 51. Personal liability of secretary of state.

1. **Failure of title to express its subject.**—The act is not invalid on the ground of the failure of its title to express the subject of the act.—*Kaiser, etc., Co. v. Curry*, 155 Cal. 638, 103 Pac. 341.

2. **Exercise of judicial functions by executive officer.**—The act is not in violation of section 1, article III, of the constitution, providing that no person charged with the exercise of powers belonging to one of the three departments of the state government, legislative, judicial, and executive, shall exercise any of the functions appertaining to either of the others, except in the constitution provided.—*Kaiser, etc., Co. v. Curry*, 155 Cal. 638, 103 Pac. 341.

3. **The act does not impose** upon the secretary of state any judicial power.—*Kaiser, etc., Co. v. Curry*, 155 Cal. 638, 103 Pac. 341.

4. **Due process of law.**—The act is not unconstitutional as in violation of the due process provisions of the federal and state constitution.—*Kaiser, etc., Co. v. Curry*, 155 Cal. 638, 103 Pac. 341.

5. **Uniformity of operation.**—The act is not in violation of section 11 of article I of the constitution, requiring all legislative acts to operate uniformly.—*Kaiser, etc., Co. v. Curry*, 155 Cal. 638, 103 Pac. 341.

6. **Power to impose privilege tax.**—Under its reserve power the legislature is authorized to change the conditions upon which the privilege of being and acting as a corporation shall continue to exist, and every corporation accepts its charter subject to the exercise of this power.—*Kaiser, etc., Co. v. Curry*, 155 Cal. 638, 103 Pac. 341.

7. **Double taxation.**—The imposition of the state corporation license-tax is not double taxation.—*Lewis v. Curry*, 156 Cal. 93, 103 Pac. 493.

8. **Unconstitutionality declared.**—In conformity with the decisions of the supreme court of the United States in *Baltic, etc., Co. v. Massachusetts and White, etc., Co. v. Massachusetts*, it is held that the prepayment by a foreign corporation, engaged in both interstate and intrastate business in California, of the license tax prescribed by section 2 of the act of 1905, is exacted as a privilege or occupation tax exclusively upon the right to do domestic business; that it is an excise tax and not a property tax; that it is not based on, but measured by, the capital stock of the corporation; and that it is practicable to segregate the interstate and intrastate business of such a corporation; and that, therefore, for these reasons, such corporation is required to pay said license tax or fee.—*Albert Pick & Co. v. Jordan*, 169 Cal. 1, 2, Ann. Cas. 1916C, 1237, 145 Pac. 506.

9. **Mulford Co. v. Curry**, 163 Cal. 276, 125 Pac. 236, holding the act of 1905 unconstitutional, because imposing a direct burden upon interstate commerce, and an illegal tax upon property outside the state, declared to be no longer regarded as an authority in view of *Baltic Min. Co. v. Massachusetts*, and *White Dental Mfg. Co. v. Massachusetts*, 231 U. S. 48, 59 L. ed. 127,

34 Sup. Ct. 15, in which such exactions were declared to be valid.—*Albert Pick & Co. v. Jordan*, 169 Cal. 1, Ann. Cas. 1916C, 1237, 145 Pac. 506.

10. **The conclusion of the court** as to the unconstitutionality of the act is based upon the decisions of the supreme court of the United States in *Western Union, etc., Co. v. Kansas*, 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. 190; *Pullman Co. v. Kansas*, 216 U. S. 56, 54 L. ed. 378, 30 Sup. Ct. 232; and *Ludwig v. Western Union, etc., Co.*, 216 U. S. 146, 54 L. ed. 423, 30 Sup. Ct. 280.—*H. K. Mulford Co. v. Curry*, 163 Cal. 276, 281, 125 Pac. 236.

11. **Rule of Ex parte Young**, 209 U. S. 123, 52 L. ed. 714, 28 Sup. Ct. 441, 14 Ann. Cas. 764, 13 L. R. A. (N. S.) 932.—The act is not unconstitutional on the ground stated in *Ex parte Young*, 209 U. S. 123, 52 L. ed. 714, 28 Sup. Ct. 441, 14 Ann. Cas. 764, 13 L. R. A. (N. S.) 932.—*Kaiser, etc., Co. v. Curry*, 155 Cal. 638, 103 Pac. 341.

12. **Same — Constitutionality depending upon complicated and technical investigation.**—Where the validity of a legislative act depends upon a complicated and technical investigation, and at the same time imposes such severe penalties as to intimidate parties from resorting to the courts to test such validity, it is a practical denial of the equal protection of the law, and is unconstitutional.—*Ex parte Young*, 209 U. S. 123, 52 L. ed. 714, 28 Sup. Ct. 441, 14 Ann. Cas. 764, 13 L. R. A. (N. S.) 932.

13. **Foreign corporations.**—The act of 1905, commonly known as the corporation tax law, is, so far as foreign corporations are concerned, imposes a direct burden upon interstate commerce, as is unconstitutional as in violation of the commerce clause of the constitution of the United States.—*H. K. Mulford Co. v. Curry*, 163 Cal. 276, 281, 125 Pac. 236.

14. **The conditions prescribed by the act** as to foreign corporations are absolutely the same as to domestic corporations, and it is not obnoxious to section 15, article XII of the constitution as imposing more favorable conditions upon foreign corporations than upon domestic corporations.—*Kaiser, etc., Co. v. Curry*, 155 Cal. 638, 103 Pac. 341.

15. **The act is unconstitutional** as to foreign corporations although doing exclusively a domestic business.—*H. K. Mulford Co. v. Curry*, 163 Cal. 276, 286, 125 Pac. 236.

16. **As to foreign corporations** the charge is not a tax on property, but is a charge imposed as a condition of the state's consent, without which such corporation can not come into the state and do business.—*Kaiser, etc., Co. v. Curry*, 155 Cal. 638, 103 Pac. 341.

16a. **The license fee** provided for in the act is a tax, where it imposes a burden upon interstate business.—*H. K. Mulford Co. v. Curry*, 163 Cal. 276, 286, 125 Pac. 236.

16b.—**Domestic corporations.**—The act is also unconstitutional as to domestic corporations engaged in interstate business and having property without the state.—

H. K. Mulford Co. v. Curry, 163 Cal. 276, 286, 125 Pac. 236.

II. CONSTRUCTION.

17. Nature of tax.—The tax imposed by this act is substantially the purchase price which the state sees fit to charge for the continuance of the privilege of being and acting as a corporation.—Kaiser, etc., Co. v. Curry, 155 Cal. 628, 103 Pac. 341.

18. Under our law, there is no difference in principle between the fee required to be paid to the state "as a condition or for the privilege of being a corporation" and the annual charge required by the act or an excise for the privilege of continuing corporate existence, and so far as such charge is a tax at all, it is a mere privilege or license tax, in other words, the mere purchase price of the privilege.—Kaiser, etc., Co. v. Curry, 155 Cal. 638, 103 Pac. 341.

19. Same—License tax on privilege of existing and doing business as a corporation, not a tax on "property" within the meaning of section 1, article XIII of the constitution.—Kaiser, etc., Co. v. Curry, 155 Cal. 638, 103 Pac. 341.

20. The tax is a condition imposed upon foreign corporations of the exercise of the privilege of doing business in the state.—Kaiser, etc., Co. v. Curry, 155 Cal. 638, 103 Pac. 341.

21. The charge is imposed not alone for the doing of business, but as a condition for the corporate privilege and authority to do business.—Kaiser, etc., Co. v. Curry, 155 Cal. 638, 103 Pac. 341; Lewis v. Curry, 156 Cal. 93-99, 103 Pac. 493.

22. Liability for tax.—The sole test is the existence or non-existence of the corporation.—Kaiser, etc., Co. v. Curry, 155 Cal. 638, 103 Pac. 341.

23. It was the intention of the legislature that every corporation, domestic and foreign, a certified copy of whose articles of incorporation was on file with the secretary of state, should pay the license tax, the secretary of state not being required to make an investigation as to what corporations were actually transacting business in the state.—Kaiser, etc., Co. v. Curry, 155 Cal. 638, 103 Pac. 341; Lewis v. Curry, 156 Cal. 93, 96, 97, 103 Pac. 493.

24. Act of 1905 superseded.—Section 14, of article XIII, of the constitution, in effect, superseded the license tax act of 1905.—Hartford, etc., Co. v. Jordan, 168 Cal. 270, 287, 142 Pac. 839.

25. Same—Exemption of telephone company.—The effect of section 14, article XIII, of the constitution, was to exempt a telephone company from liability for a license imposed for revenue only by an ordinance in effect at the time of the adoption of that section, and such exemption, beginning from the day of its adoption, covered the first two quarters of the year 1911.—City and County of San Francisco v. Pacific, etc., Co., 166 Cal. 244, 251, 135 Pac. 971.

25a. Corporations exempt from license tax.—See Transcontinental, etc., Co. v. Neylan, 34 Cal. App. 379, 167 Pac. 541.

See, also, act of April 1, 1911, Stats. 1911, p. 530, amended February 3, 1913, Stats. 1913, p. 3; June 12, 1913, Stats. 1913, p. 615; January 28, 1915, Stats. 1915, p. 3, which was again amended and revised by a substitute act adding certain sections to the Political Code, for which see Kerr's Cyc. Political Code, §§ 3664a, et seq.

III. FORFEITURE OF CORPORATE FRANCHISE.

26. Failure to pay tax operates ipso facto as forfeiture of charter.—Under the act, failure to pay the license tax operates ipso facto as a forfeiture of the charter on November 30, of each year, at 4 o'clock p. m.—Kaiser, etc., Co. v. Curry, 55 Cal. 638, 103 Pac. 341.

27. The forfeiture provided for by the act of 1905, for failure to pay the license tax therein prescribed is self-acting and operating and no judicial determination or decree is required.—Newhall v. Western Zinc Min. Co., 164 Cal. 380, 382, 128 Pac. 1040.

28. The provisions of the amendments of June 13, 1906 (Stats. 1906, p. 22), and March 20, 1907 (Stats. 1907, p. 746), referring to the amounts due and unpaid for the years 1905-6 and 1906-7 can be reasonably construed only as designed to relieve corporations that had failed to pay those charges from the effect of a forfeiture that had already occurred upon condition of their payment, and are not void as in violation of section 7, article XII, of the constitution.—Kaiser, etc., Co. v. Curry, 155 Cal. 638, 103 Pac. 341.

29. When penalty attaches.—Penalty for delinquency does not attach until the list is turned over to the governor and he has issued his proclamation thereon, although the corporation which fails to pay the tax by the first Monday of August in each year, becomes delinquent.—Ukiah Guaranty Co. v. Curry, 148 Cal. 256, 82 Pac. 1048.

30. Same—Governor's proclamation of delinquency need not designate specifically the class to which a named corporation belongs, whether domestic or foreign.—Lewis v. Curry, 156 Cal. 93, 103 Pac. 493.

31. Same—Report to the governor by the secretary of state is practically a notice of delinquency, and of the forfeiture that will occur upon failure to pay the charge imposed during the days of grace prescribed by the act.—Kaiser, etc., Co. v. Curry, 155 Cal. 638, 103 Pac. 341.

32. Enforcement of forfeiture—Defense.—Where it is sought to enforce the forfeiture against a corporation, such corporation has ample opportunity to defend on the ground that it is exempt, or that it has paid the tax, or that the act is objectionable as a whole, or as to itself, and if the objection is sustained, there will result, of course, that it has suffered no forfeiture.—Kaiser etc., Co. v. Curry, 155 Cal. 638, 103 Pac. 341.

33. Evidence of forfeiture.—While the certificate of the secretary of state will suffice to prove prima facie that a corporation has not paid its corporation license

tax, such certificate can not be accepted as proof of the fact of forfeiture.—Kehrlein-Swinerton, etc., Co. v. Rapken, 30 Cal. App. 11, 156 Pac. 972.

*34. **The governor's proclamation** declaring such forfeiture, or a certified copy thereof, is the only competent proof of the forfeiture of a corporate charter for failure to pay the corporation license tax.—Kehrlein-Swinerton, etc., Co. v. Rapken, 30 Cal. App. 11, 156 Pac. 972.

IV. EFFECT OF FORFEITURE.

34a. **Loss of legal entity.**—The effect of the forfeiture of a corporate charter from failure to pay the license tax, or from whatever cause, is to terminate the existence of the corporation as a legal entity, except as it is otherwise provided by statute.—Slayden v. O'Dea, 29 Cal. App. Dec. 267.

35. **Suit and judgment against corporation whose charter has been forfeited.**—A California corporation whose franchise and charter has been forfeited under the act of 1905 for failure to pay the license tax prescribed therein, ceases to have a corporate existence, can not be sued, and a judgment obtained against it is void, and may be impeached by an intervening stockholder for the purpose of expunging it from the records.—Newhall v. Western Zinc Min. Co., 164 Cal. 380, 382, 128 Pac. 1040.

36. **Right to defend action after forfeiture of charter.**—Under section 10a, added by the amendment of 1906 (Stats. 1906, ex. sess., p. 22), a corporation defendant, whose charter had been forfeited after the commencement of the action, might have the action maintained either in its own name or in the names of its trustees.—Lowe v. Superior Court, 165 Cal. 709, 714, 134 Pac. 190. Cited with approval in Brandon v. Umpqua, etc., Co., 166 Cal. 322, 136 Pac. 62.

36a. **Abatement of action—Effect of amendment.**—Since the enactment of the amendment of 1907 (745) to section 10a of the corporation license act, an action pending against a corporation does not abate by forfeiture pendente lite of the corporate franchise by its failure to pay its license tax.—Brandon v. Umpqua, etc., Co., 166 Cal. 322, 323.

37. **"Doing business" after forfeiture of charter.**—The institution and maintenance of an action is embraced within the inhibition of the statute with respect to doing business in the state after forfeiture of the corporate charter.—Crossman v. Vivienda, etc., Co., 150 Cal. 575, 89 Pac. 335; Kaiser, etc., Co. v. Curry, 155 Cal. 638, 103 Pac. 341; Newhall v. Western, etc., Co., 164 Cal. 380, 128 Pac. 1040; Carpenter v. Bradford, 23 Cal. App. 560, 138 Pac. 946; Kehrlein-Swinerton, etc., Co. v. Rapken, 30 Cal. App. 11, 156 Pac. 972.

38. **Substitution of directors as trustees** in place of a corporation, was a proper exercise of the discretion of the court, upon a showing that the corporation had suffered forfeiture of its charter by reason of its failure to pay its corporation license tax.—Reed & Co. v. Harshall, 12 Cal. App. 697, 103 Pac. 719.

39. **Title to property, after forfeiture,** does not vest in the trustees provided by the act any title to the property of the corporation, but such trustees get no more than the act gives them, merely a power over it for the purpose of settling the corporate affairs.—Rossi v. Caire, 174 Cal. 74, 161 Pac. 1161.

40. **Appeal by corporation after forfeiture of charter** may be taken in its own name, notwithstanding such forfeiture.—166 Cal. 322, 136 Pac. 62.

41. **Averment of incapacity** to maintain an action by reason of forfeiture of charter by failure to pay corporation license tax, in the absence of special demurrer, sufficiently puts in issue such incapacity.—Kehrlein-Swinerton, etc., Co. v. Rapken, 30 Cal. App. 11, 156 Pac. 972.

42. **Right to substitute trustees as parties plaintiff** in place of the corporation which has forfeited its charter for non-payment of license tax should be ordered, at any time, upon suggestion of the fact on the part of plaintiffs, where it clearly appears that the cause of action is unchanged, that the real parties in interest are the same, that the meritorious defenses of defendant are unaffected, and that a mere formal change in the names of the parties plaintiff without change in substantial rights and relations of the real actors in the case, and it is an abuse of discretion to refuse to allow such change even though the forfeiture may have occurred prior to the bringing of the action.—Kehrlein-Swinerton, etc., Co. v. Rapken, 30 Cal. App. 11, 156 Pac. 972.

42a. **After a corporation has forfeited** its charter under the act of 1905 for non-payment of the license tax prescribed therein, the directors have no power to act for the corporation in suits by or against it, but are authorized to act merely as trustees.—Newhall v. Western Zinc Min. Co., 164 Cal. 380, 383, 128 Pac. 1040.

43. **Sale of corporate property—Discretion of trustees.**—The purpose of the law was to vest the trustees with a discretion as to the sale of the corporate property, which could not be controlled by a court of equity except in case of abuse.—Rossi v. Caire, 174 Cal. 74, 161 Pac. 1161.

44. **Application by trustees of corporate funds to personal claims.**—Where it appears that the directors of a corporation whose charter has been forfeited for failure to pay the license tax are using their power and authority for the purpose of benefiting themselves at the expense of the stockholders and creditors, and where relief has been sought unsuccessfully in the only tribunal that could defeat such a preference, and the corporation is insolvent, the creditors have such an interest as entitle them to the interposition of a court of equity.—Hanson v. Choynski, 180 Cal. 275, 180 Pac. 816.

45. **Pending litigation prosecuted to final judgment.**—Section 10a of the corporation license tax act (Crossman act), added June 13, 1906, pending litigation does not abate by forfeiture of corporate franchise for non-payment of the tax, and the section

should be construed as providing that such litigation may be continued and prosecuted to final judgment in the corporate name, and while the directors as trustees may be substituted as parties defendant, such substitution is not required.—*Lowe v. Superior Court*, 165 Cal. 708, 714, 134 Pac. 190.

V. MISCELLANEOUS.

46. Intervention by stockholder.—In an intervention by a stockholder for the purpose of expunging from the records a void judgment obtained in an action against a corporation after the forfeiture of its charter and franchise because of non-payment of the annual license tax prescribed by the act of 1905, the intervenor need not show that he was a stockholder when the liability on which the judgment was obtained was incurred, nor that an execution had been returned unsatisfied, nor that the corporation had acquired any assets since the judgment was rendered.—*Newhall v. Western Zinc Min. Co.*, 164 Cal. 380, 383, 128 Pac. 1040.

46a. Estoppel against stockholder.—While a judgment against a defunct corporation is void, and can be impeached, and its invalidity shown by any interested person, in a proper proceeding, estoppel may bar the way of a successful assault upon it.—*Slayden v. O'Dea*, 29 Cal. App. Dec. 267.

46b. Same.—The stockholder of a corporation is estopped from moving in the appellate court, on behalf of the corporation, for the modification of a judgment against it based upon the theory that the corporation was not an existing entity at the time the action was commenced, where the stockholder was a defendant in the action, and knowingly concealed from the plaintiff all

knowledge that the corporation had suffered dissolution.—*Slayden v. O'Dea*, 29 Cal. App. Dec. 267, 189 Pac. 1062.

47. Same—Answer of directors does not estop.—The stockholder intervening for the purpose of annulling a judgment obtained against a corporation after the forfeiture of its charter for non-payment of the license tax, is not estopped by an answer filed by one of its directors admitting the corporate existence of the corporation.—*Newhall v. Western Zinc Min. Co.*, 164 Cal. 380, 383, 128 Pac. 1040.

48. Jurisdiction of bankruptcy court not affected by forfeiture.—Forfeiture of franchise for non-payment of license tax does not deprive the bankruptcy court of jurisdiction to administer the estate of a bankrupt corporation.—*In re Double Star Brick Co.*, 210 Fed. 980.

49. Foreign corporation.—Forfeiture of right to do business by failure to pay the corporation license tax, renders a foreign corporation an improper party to an action to compel it to reissue its stock, and if such an action can be maintained at all, it must be against the trustees.—*Carpenter v. Bradford*, 23 Cal. App. 560, 138 Pac. 946.

50. Section 400, Civil Code, as amended by act of 1905, p. 563, was intended to apply to corporations dissolved for non-payment of the license tax.—*Hanson v. Choyinski*, 180 Cal. 275, 180 Pac. 816.

51. Personal liability of secretary of state.—The secretary of state is not personally liable for moneys paid to him in his official capacity, under protest, as corporate license taxes under Stats. 1905, p. 493, after he has paid over the same to the state treasurer as required by law.—*Hartford, etc., Co. v. Jordan*, 168 Cal. 270, 272, 142 Pac. 839.

REPAYMENT OF CORPORATION LICENSE TAX ERRONEOUSLY COLLECTED.

ACT 1021a—An act to appropriate money to pay the claims of corporations, arising from exemptions under the provisions of section fourteen of article XIII of the constitution, for the return of corporation license tax erroneously collected.

History: Approved May 17, 1915. In effect August 8, 1915. Stats. 1915, p. 475.

Appropriation: return of corporation license taxes erroneously collected.

§ 1. The sum of two hundred thirty thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated to pay the claims of corporations, arising from exemptions under the provisions of section fourteen of article XIII of the constitution, for the return of corporation license tax erroneously collected.

Paper corporation.—A corporation not rendering a public service, though organized as such, is not a public service corporation within the meaning of section 14, article XIII, of the constitution, and is not there-

fore entitled to the benefit of this act, or to have its corporation license tax refunded.—*Transcontinental, etc., Co. v. Neylan*, 34 Cal. App. 379, 167 Pac. 541.

CORPORATIONS TO LEND MONEY ON CHATTELS.

ACT 1022—An act to provide for the incorporation of associations for lending money on personal property, and regulating the same, and to forbid certain loans of money, property or credit.

History: Approved March 21, 1905, Stats. 1905, p. 711.

Unconstitutional, as an improper discrimination in fixing a minimum loan under its provisions, and establishing a classification based solely upon the amount of the loan.—*Ex parte Sohncke*, 148 Cal. 262, 113 Am. St. Rep. 236, 7 Ann. Cas. 475, 2 L. R. A. (N. S.) 813, 82 Pac. 956.

post, Act 2200, approved March 20, 1905, Stats. 1905, p. 422, declared unconstitutional in *In re Sohncke*, 148 Cal. 262, 113 Am. St. Rep. 236, 7 Ann. Cas. 475, 2 L. R. A. (N. S.) 813, 82 Pac. 956.

Pawnbrokers.—See tit. "Pawnbrokers."

Usury law.—See tit. "Usury Law."

Interest on chattel mortgage loans.—See,

ISSUE OF SHARES WITHOUT NOMINAL OR PAR VALUE.

ACT 1033a—An act relating to corporations and to the issue of shares by them without a nominal or par value.

History: Approved May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1321.

Issuance of shares without nominal or par value.

§ 1. Any corporation having a capital stock may provide in its articles of incorporation for the issuance of the shares of stock of such corporation, other than preferred stock having a preference as to principal, without any nominal or par value by stating in such articles:

(1) The number of shares that may be issued by the corporation and, if any of said shares be preferred stock, the amount of each class having a preference and the particular character of such preferences, and if such preferred stock or any part thereof shall have a preference as to principal, the par value of each share thereof, which shall be one dollar or some multiple thereof not exceeding one hundred dollars.

(2) The amount of capital with which the corporation will carry on business, which amount, if any portion of the shares shall be preferred stock having a preference as to principal, shall be a sum equal to the product obtained by multiplying the par value of such preferred shares by the whole number of shares that may be issued by the corporation, but which otherwise shall be equal to the product obtained by multiplying one dollar, or some multiple thereof not exceeding one hundred dollars, by the whole number of shares that may be issued by the corporation.

Equal to other shares.

Such statements in the articles shall be in lieu of any statements prescribed by section two hundred ninety of the Civil Code of the state of California as to the amount of its capital stock, the number of shares into which it is divided and the par value thereof. No distinction shall exist between any shares or classes of shares either as to voting power or as to the statutory or constitutional liability of the holders thereof to the creditors of the corporation, and each share of stock without nominal or par value shall be equal in every other respect to every other share authorized to be issued, subject only to the preferences granted to the preferred stock, if any, as stated in such articles. Certificates for shares without nominal or par value shall not have printed or otherwise expressed thereon any nominal or par value of such shares. Such corporation may issue and may sell its authorized shares from time to time for such consideration as may be prescribed in the articles of incorporation, and any shares sold or issued for such consideration shall be deemed, when such consideration shall have been paid or delivered to the corporation, to be fully paid.

Capital fully paid. Liability of directors.

§ 2. No corporation authorized to issue shares in accordance with section one hereof shall begin to carry on business or shall incur any debts until the amount of

capital stated in its articles of incorporation shall have been fully paid in money or in property taken at its actual value. If the amount of capital stated in its articles of incorporation shall at any time be increased, such corporation shall not increase the amount of its indebtedness then existing until it shall have received in money or property taken at its actual value the amount of such increase of its stated capital. The directors of any corporation assenting to the creation of any debt in violation of this section shall be liable jointly and severally for such debt. Any director who, because of any such liability under this section, shall pay any debt of the corporation shall be subrogated to all rights of the creditor in respect thereof against the corporation and its property, and also shall be entitled to contribution from all other directors of the corporation similarly liable for the same debt and the personal representative of any such director who shall have died before making such contribution.

Capital reduced by dividends.

No such corporation shall declare any dividend which shall reduce the amount or actual value of its capital below the amount stated in the articles as the amount of capital with which the corporation will carry on business. If any such dividend shall be declared, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen) are, in their individual or private capacity, jointly and severally liable to the corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or by its creditors respectively by reason of such dividend.

Aggregate amount of capital stock. Par value.

§ 3. For the purpose of any rule of law or of any statutory provision relating to the amount of the capital stock of the corporation or to the amount or par value of its shares, the aggregate amount of the capital stock of any such corporation formed pursuant to this act shall be deemed to be the aggregate amount of capital specified in the articles of incorporation, or in any certificate of increase or decrease made pursuant to the provisions of section three hundred fifty-nine of the Civil Code, as the amount of capital with which the corporation will carry on business; the amount or the par value of each share of preferred stock having a preference as to principal shall be deemed to be the amount or par value thereof as stated in the articles of incorporation, and the amount or par value of each other share shall be deemed to be an aliquot part of the aggregate capital so stated in such articles or in such certificate of increase or decrease, in excess of the specified amount (if any) of the preferred stock therein authorized to be issued with a preference as to principal.

ISSUE OF SHARES OF STOCK WITHOUT NOMINAL OR PAR VALUE BY PUBLIC UTILITY CORPORATIONS.

ACT 1033b—An act to provide for and regulate the issuance of stock without nominal or par value by public utility corporations now existing or hereafter organized.

History: Approved May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1367.

Issuance of shares without nominal or par value by public utility corporation.

§ 1. Any public utility corporation as defined in the "public utilities act" hereafter organized may, if so provided in its articles of incorporation, issue shares of stock without nominal or par value. Such articles of incorporation shall set forth, in lieu of setting forth the amount of its capital stock and the par value thereof, the number of shares into which its capital stock is divided, and shall state that all such shares are without nominal or par value; or such articles of incorporation shall set forth, in addition to setting forth the amount of its capital stock and the par value thereof, a provision for the conversion or exchange of shares having a nominal or par

value at any time outstanding for shares without nominal or par value. In all other respects such articles shall set forth the matters and things specified in section two hundred ninety of the Civil Code. Any such corporation may, in common with other corporations formed for profit, by its articles of incorporation provide for the classification of its shares of capital stock into preferred and common shares.

Resolution to issue shares. Ratification by stockholders. Amended articles of incorporation.

§ 2. Any public utility corporation now or hereafter organized which shall not be authorized by its articles of incorporation to issue shares of stock without nominal or par value, but which desires to issue shares without nominal or par value, may do so by a resolution of its board of directors, passed and adopted at any regular or special meeting, and ratified by the vote of stockholders representing at least two-thirds of its subscribed or issued capital stock at a meeting called for that purpose, or by the written assent of stockholders representing at least two-thirds of its subscribed or issued capital stock filed with the secretary. Such resolution shall specify that such corporation proposes to divide its capital stock into shares without nominal or par value and to issue such shares of stock then outstanding; such resolution shall also set forth the number of shares into which its capital stock shall be divided, how many of said shares, if any, shall be preferred shares, the terms of preference of any preferred shares, and the basis of exchange of such shares for the shares of stock then outstanding; provided, however, that no such resolution shall be valid which sets forth a basis of exchange which, if carried out, would give to the holders of any class of outstanding stock shares evidencing a less proportionate interest in the capital stock or earnings of the corporation than the outstanding shares of stock held by them, unless such resolution is ratified by the unanimous vote or written assent of the holders of all the outstanding stock of the class prejudicially affected, but with such ratification such resolution shall be valid. Upon the ratification of such resolution by the stockholders by vote or written assent as aforesaid, the board of directors of said corporation shall, without further assent or vote of the stockholders, cause to be prepared amended articles of incorporation setting forth the number of shares into which its capital stock is divided and the fact that such shares are without nominal or par value, the number of shares, if any, to which preference is granted, and the nature and extent of such preference. Such amended articles, certified to as correct by the president and secretary and a majority of the directors under the seal of said corporation shall be filed in the office of the county clerk of the county in which the original articles of incorporation were filed, and a copy of such amended articles of incorporation certified by such county clerk, shall be filed in the office of the secretary of state. A copy of such amended articles, certified by the secretary of state, shall be filed in the office of the county clerk of every county in which such corporation has or holds real property, except only the county in which the original articles were filed. From and after the filing of such certified copy of such amended articles of incorporation in the office of the secretary of state, all outstanding shares of capital stock shall be deemed shares without nominal or par value. Upon the surrender of all or any certificates representing such outstanding shares, the corporation shall issue to the holder or holders thereof a certificate or certificates representing the number and kind of shares without nominal or par value to which such holder or holders may be entitled, but whether or not such surrender is made, all outstanding shares shall, for all purposes, be regarded as representing the number and kind of shares without nominal or par value to which the holder or holders thereof may be entitled.

§ 3. No such corporation shall at any time have outstanding shares of stock having nominal or par value and at the same time have outstanding shares of stock without nominal or par value.

When shares deemed to be of par value.

§ 4. For the purpose of determining the amount of money payable to the secretary of state for filing articles of incorporation, and for the purpose of determining the vote of the stockholders upon the question of the increase of the stock or bonded indebtedness of such corporation, but for no other purpose, such shares shall be deemed to be of the par value of one hundred dollars each. The words "capital stock" and "amount of capital stock" as used in existing laws shall, for the purpose of making such laws applicable to corporations having stock without nominal or par value, be construed in the case of such corporations to mean the aggregate number of shares of stock without nominal or par value. Except as in this act otherwise provided, all provisions of law relating to stock having a par value, so far as the same may be legally, necessarily or practically applicable, shall apply to and govern stock without nominal or par value.

Consent of railroad commission.

§ 5. No public utility as defined in the public utilities act may issue any share of stock without nominal or par value, nor shall any share of stock or any stock certificate outstanding be converted into or deemed to be converted into stock without nominal or par value, without the consent of the railroad commission first having been secured in accordance with the provisions of the public utilities act, and the jurisdiction of the railroad commission with reference to such issue and such conversion of stock shall be in all respects the same as that defined in the public utilities act with reference to the issue by public utilities of stock or stock certificates, and nothing in this act shall be construed to in any way limit the jurisdiction of the railroad commission under the public utilities act over the issue of stock and stock certificates.

CORPORATIONS AS EXECUTOR AND TRUSTEE.

ACT 1034—An act authorizing certain corporations to act as executor and in other capacities, and to provide for and regulate the administration of trusts by such corporations.

History: Approved April 6, 1891, Stats. 1891, p. 490. Amended April 1, 1897, Stats. 1897, p. 424; March 20, 1903, Stats. 1903, p. 244; March 18, 1905, Stats. 1905, p. 232; March 18, 1907, Stats. 1907, p. 562.

What corporation may act as executor.

§ 1. Any corporation which has or shall be incorporated under the general incorporation laws of this state, authorized by its articles of incorporation to act as executor, administrator, guardian, assignee, receiver, depository or trustee, and having a paid-up capital of not less than two hundred and fifty thousand dollars, of which one hundred thousand dollars shall have been actually paid in, in cash, may be appointed to act in such capacity in like manner as individuals. In all cases in which it is required that an executor, administrator, guardian, assignee, receiver, depository, or trustee, shall qualify by taking and subscribing an oath, or in which an affidavit is required, it shall be a sufficient qualification by such corporation if such oath shall be taken and subscribed or such affidavit made by the president or secretary or manager or trust officer thereof, and such officer shall be liable for the failure of such corporation to perform any of the duties required by law to be performed by individuals acting in like capacity and subject to like penalties; and such corporation shall be liable for such failures to the full amount of its capital stock; provided, any such appointment as guardian shall apply to the estate only, and not to the person. Such corporation shall be entitled to and shall be allowed proper compensation for all the services performed by them under the foregoing provisions of this act; but such compensation shall not exceed that allowed to natural persons for like services. [Amendment. Approved March 18, 1907. Stats. 1907, p. 562.]

Deposits made with corporation.

§ 2. Any court, having appointed and having jurisdiction of any executor, administrator, guardian, assignee, receiver, depository, or trustee, upon the application of such officer or trustee, or upon the application of any person having an interest in the state administered by such officer or trustee, after notice to the other parties in interest as the court may direct, and after a hearing upon such application, may order such officer or trustee to deposit any moneys then in his hands, or which may come into his hands thereafter, and until the further order of said court, with any such corporation, and upon deposit of such money, and its receipt and acceptance by such corporation, the said officer or trustee shall be discharged from further care or responsibility therefor. Such deposits shall be paid out only upon the orders of said court.

Public administrator may make deposits.

§ 3. And it shall be lawful for any public administrator to deposit with any such corporation doing business in the county, or city and county, in which he is acting as such administrator, any and all moneys of any estate upon which he is administering, not required for the current expenses of the administration. And such deposits shall relieve the public administrator from depositing with the county treasurer the moneys so deposited with such corporation. Moneys deposited by a public administrator may be drawn, upon the order of such administrator, countersigned by a judge of a superior court, when required for the purpose of administration, or otherwise.

Court may order deposit and reduce bonds.

§ 4. Whenever, in the judgment of any court having jurisdiction of any estate in process of administration by any executor, administrator, guardian, assignee, receiver, depository, or trustee, the bond required by law of such officer shall seem burdensome or excessive, upon application of such officer or trustee, and after such notice to the parties in interest as the court shall direct, and after a hearing on such application the said court may order the said officer or trustee to deposit with any such corporation, for safe-keeping, such portion or all of the personal assets of said estate as it shall deem proper; and thereupon said court shall, by an order of record, reduce the bond to be given or theretofore given by such officer or trustees, so as to cover only the estate remaining in the hands of said officer or trustee; and the property as deposited shall thereupon be held by said corporation, under the orders and directions of said court. Any court having jurisdiction of an estate being administered by a public administrator, may direct such public administrator to deposit all or any part of the moneys of the estate not required for the current expenses of the administration, with any such corporation doing business in the county, or city and county, where such public administrator is acting.

Responsible for investments.

§ 5. Such corporations shall not be required to give any bond or security in case of any appointment hereinbefore provided for, except as hereinafter provided, but shall be responsible for all investments which shall be made by it of the funds which may be intrusted to it for investment by such court, and shall be further liable as natural persons in like positions now are, and as hereinafter provided. The amount of money which any such corporation shall have on deposit at any time shall not exceed ten times the amount of its paid-up capital and surplus, and its outstanding loans shall not at any time exceed said amount.

Interest.

§ 6. Such corporations shall pay interest upon all moneys held by them by virtue of this act, at such rate as may be agreed upon at the time of its acceptance of any such appointment, or as shall be provided by the order of the court.

Deposit of bonds with state treasurer.

§ 7. Each corporation, before accepting any such appointment or deposit, shall deposit with the treasurer of state, for the benefit of the creditors of said corporation, the sum of one hundred thousand dollars (\$100,000.00), in bonds of the United States, or municipal bonds of this state, or of any county, or city, or school district thereof, or in mortgages on improved and productive real estate in this state, being first liens thereon, and the real estate being worth at least twice the amount loaned thereon. The bonds and securities so deposited may be exchanged from time to time for other securities, receivable as aforesaid. Said bonds of the United States, or municipal bonds of this state, or of any county, city, or school district thereof, to be registered in the name of said treasurer, officially, and all said securities to be subject to sale and transfer, and to the disposal of the proceeds by said treasurer, only on the order of a court of competent jurisdiction, and as hereinafter provided. [Amendment. Approved April 1, 1897. Stats. 1897, p. 424.]

May mortgage real estate.

§ 8. Any such corporation, having a paid-up capital in excess of two hundred and fifty thousand dollars, may be permitted by the board of bank commissioners to mortgage any improved and productive real estate owned by it, in excess of said amount, to the treasurer of state, for such sum as the said board may determine; and such mortgage may be deposited with said treasurer, and, when so deposited, it shall be included in the amount of securities hereinabove required to be deposited with said treasurer for the benefit of the creditors of said corporation.

Deposit, increase and decrease of.

§ 9. So long as the corporation so depositing shall continue solvent, such corporation shall be permitted to receive from said treasurer the interest or dividends on said deposit; provided, however, that when it shall appear to the board of bank commissioners, from the semi-annual report of any such corporation, that the value of the personal property and cash held and possessed by such corporation, by virtue of the provisions of this act and any amendment thereof, exceeds ten times the amount of the deposit aforesaid, said board shall require said corporation to forthwith increase its said deposit to the sum of five hundred thousand dollars in such securities. And whenever it shall appear to said board that the amount of personal property and cash so held by any such corporation has been reduced below ten times the value of its original deposit above provided for, and said corporation is not in any default in its duties and obligations hereunder, they shall allow such corporation to reduce its said deposit to the sum of two hundred thousand dollars, by the withdrawal of such additional deposit, until such time as an increase in its holdings shall again require an additional deposit, as hereinbefore provided.

Abstracts of title.

§ 10. When any part of such deposit is made in bonds and mortgages, it shall be accompanied by full abstracts of titles and searches, and shall be examined and approved by or under the direction of the said board. The fees for an examination of title by counsel, to be paid by the corporation making the deposit, shall not exceed twenty dollars for each mortgage, and the fee for each appraiser, not exceeding two, besides expenses, shall be five dollars for each mortgage.

Certificate of authority.

§ 11. It shall not be lawful for any such corporation to accept any trust or deposit, as hereinbefore provided, after the passage of this act, without first procuring from the board of bank commissioners a certificate of authority, stating that such corporation has complied with the requirements of this act in respect to such deposit.

Semi-annual statement.

§ 12. Such corporation shall file with the said board of bank commissioners, during the months of January and July of each year, a statement, under oath, of the condition of such corporation at the close of business on the thirty-first day of December and the thirtieth day of June, respectively, next preceding, showing its financial condition. Also, a list and brief description of the trusts held by such corporation, the source of the appointment thereto, and the amount of real and personal estate held by such corporation by virtue thereof, except that mere mortgage trusts, wherein no action has been taken by such corporation, shall not be included in such statement. The said statement shall also be in such form, and contain such reports, returns, and information, as to the affairs, business, condition, and resources of the corporation, as the said board may from time to time prescribe and require.

Verification of statement.

§ 13. Such statement shall be verified by the affidavit of one of the managing officers and two of the directors or trustees of such corporation, who shall also state in such affidavit that they have examined the assets and books of such corporation for the purpose of making such statement. Any false swearing in regard to such statement shall be deemed perjury, and shall be subject to the punishment prescribed by law for such offense.

Duty of bank commissioners.

§ 14. The said board of bank commissioners are hereby authorized and empowered to address any inquiries to any such corporation, or the officers thereof, in relation to its doings and conditions, or any other matter connected with its affairs; and it shall be the duty of any such corporation or person so addressed to promptly reply, in writing, to such inquiries; and they may also require reports from any such corporation at any time they may deem desirable. It shall be the duty of one or more of the bank commissioners, as designated by the commissioners, annually, or as often as in their judgment they may deem it necessary, without previous notice, to visit and to make personal examination of the solvency of any such corporation, its ability to fulfill all its obligations, and report its condition to the attorney-general as soon as may be after such examination.

§ 15. [No section numbered 15.]

Administering oaths and examining witnesses.

§ 16. Such commissioners shall have power to administer an oath to any person whose testimony may be required on any such examination, and to compel the appearance and attendance of any such person, for the purpose of examination, by summons, subpoena, or attachment, in the matter now authorized in respect to the attendance of persons as witnesses in courts of record in this state; and all books and papers which may be deemed necessary to examine by the commissioners shall be produced, and their production may be compelled in like manner.

Duty when corporation violates law.

§ 17. Whenever it shall appear to the board of bank commissioners, from any such examination or report, that any such corporation has committed any violation of law, or is conducting its business in an unsafe or unauthorized manner, they shall, by an order under their hands, direct the discontinuance of such illegal and unsafe or unauthorized practice, and strict conformity with the requirements of the law, and with safety and security in its transactions; and whenever any such corporations shall refuse or neglect to make any such report as hereinbefore required, or to comply with any such order as aforesaid, or whenever it shall appear to the said board that it is unsafe

or inexpedient for any such corporation to continue to transact business, they shall communicate the facts to the attorney-general, who shall thereupon institute such proceedings against the corporation as the nature of the case may require.

False statement revokes authority.

§ 18. If the board of bank commissioners shall, at any time, have satisfactory evidence that any semi-annual statement or other report required or authorized by this act, made or to be made by any officer or officers of such corporation, is false, it shall be the duty of the said board to immediately revoke the certificate of authority granted on behalf of such corporation, and mail a copy of such revocation to said corporation and to the clerk of every court of record in this state. Such revocation shall not be set aside until satisfactory evidence shall be given to said board of bank commissioners that such corporation is in substance and in fact in the condition set forth in such statement or report, and that all the requirements of this act have been complied with. Such revocation shall be sufficient cause for the removal of such corporation from any appointment held by it under the provisions of this act.

Retirement from business.

§ 19. Any corporation which desires to retire from business under this act, shall furnish to the board of bank commissioners satisfactory evidence of its release and discharge from all the obligations and trusts hereinbefore provided for; whereupon, they shall revoke their certificate to such corporation, and thereupon the treasurer of state shall return to said corporation all its securities.

Conflicting acts repealed.

§ 20. All laws and parts of laws in conflict with the provisions of this act are hereby repealed.

Time of taking effect.

§ 21. This act shall take effect and be in force from and after its passage.

Communications confidential.

§ 22. Any corporation exercising the powers and performing the duties provided for in said act, shall keep inviolate all communications confidentially made to it touching the existence, condition, management, and administration of any trusts confided to it; and no creditor or stockholder of any such corporation shall be entitled to disclosure of any such communication; provided, however, that the president, manager and secretary of such corporation shall be entitled to knowledge of such communication; and provided further, that in any suit or proceeding touching the existence, condition, management or administration of such trust, the court wherein the same is pending may require disclosure of any such communication. [New section. Added March 20, 1903. Stats. 1903, p. 244.]

Word "trust." Use prohibited when.

§ 23. The use of the word "trust" in combination or in connection with the word "company," "corporation," "incorporation," "association," "society," "organization," or "syndicate," is hereby prohibited to all persons, firms, associations, companies or corporations, other than corporations provided for by a certain act of the legislature entitled: "An Act authorizing certain corporations to act as executor and in other capacities and to provide for and regulate the administration of trusts by such corporations," approved April 6, 1891, and any person, firm, association, company or corporation which uses the word "trust" in combination with or in connection with the word "company," "corporation," "incorporation," "association," "society," "organization" or "syndicate" as the name under which business is done or transacted,

shall be subject to the provisions of the act last referred to and to the supervision of the bank commissioners as required by the said act. Any person, firm, association, company or corporation making use of the word "trust" in combination or in connection with the word "company," "corporation," "incorporation," "association," "society," "organization" or "syndicate" in the manner hereinabove mentioned in the transaction of business and not subject to the provisions of said act and the supervision of the bank commissioners as in said act provided shall forfeit for each day the offense is committed, the sum of one hundred dollars to be recovered by the bank commissioners of the state of California in the manner provided by law. [New section. Added March 18, 1905. Stats. 1905, p. 232.]

1. Constitutionality—Special legislation—Uniformity of operation.—The act is not special legislation, and is not objectionable on the ground of want of uniformity in its operation.—*Estate of Kilborn*, 5 Cal. App. 161, 164, 89 Pac. 985.

2. Special proceeding not provided.—"As hereinafter provided."—This phrase in section 7 seems to have no application, for the statute does not provide a special proceeding in court to determine as to the sale, transfer or disposal of the bonds or proceeds thereof.—*Spalding Co. v. Roberts*, 170 Cal. 175, 176, 149 Pac. 41.

3. Incorporation as trustee corporation—Return of bond deposit.—A trustee corporation under the act is not entitled to have the return of the bonds deposited with the state treasurer until it divests itself of its powers to act as trustee.—*Spalding Co. v. Roberts*, 170 Cal. 175, 178, 149 Pac. 41.

4. Insolvent trust corporation—Set-off.—An administratrix of an estate has a right of set-off against an insolvent trust corporation, growing out of a deposit of funds of her estate prior to insolvency, against an allowed claim against the estate founded upon a debt due the insolvent by the decedent.—*People v. California, etc., Co.*, 168 Cal. 241, L. R. A. 1915A, 299, 141 Pac. 1181.

5. Intervention in insolvency proceedings—Jurisdiction of court.—Where a court has control of the insolvent estate of a trust company for the purpose of liquidating and settling such estate, it has jurisdiction of a claim for a set-off growing out of a deposit of the funds of the estate of a deceased person, against a claim of the insolvent based upon a debt due from the decedent in his lifetime, and intervention was a proper proceeding, and the administratrix is not required to maintain a separate action against the receiver, nor pay her debt in full and accept a pro rata distribution on her deposit claim.—*People v. California, etc., Co.*, 168 Cal. 241, L. R. A. 1915A, 299, 141 Pac. 1181.

6. Letters testamentary to corporation were properly granted as a coexecutor, where it was qualified to act by the terms

of its articles of incorporation, and the conditions required by the act had been complied with, in the absence of objections on the ground of want of solvency or financial responsibility.—*Estate of Kilborn*, 5 Cal. App. 161, 89 Pac. 985.

7. Trust—Deposit of funds of minor's estate, made under the terms of a will and of the decree of distribution, with a corporation authorized under the terms of the act to act as trustee, is a trust, and is protected by the deposit of bonds with the state treasurer.—*People v. California, etc., Co.*, 22 Cal. App. 69, 133 Pac. 324; *Wickersham v. California, etc., Co.*, 22 Cal. App. 69, 133 Pac. 324.

8. Section 1348, Code Civil Procedure.—In § 1348 of the Code of Civil Procedure, it is provided that corporations authorized by their articles of incorporation to act as executor, administrator, guardian of estates, assignee, receiver, depository, or trustee, and having a paid-up capital of not less than two hundred and fifty thousand dollars, of which one hundred thousand dollars shall have been actually paid in in cash, may be appointed to act in such capacity in like manner as individuals. In all cases in which it is required that an executor, administrator, guardian, assignee, receiver, depository, or trustee, shall qualify by taking and subscribing an oath, or in which an affidavit is required, it shall be a sufficient qualification by such corporation, if such oath shall be taken and subscribed, or such affidavit made, by the president or secretary or manager thereof; and such officer shall be liable for the failure of such corporation to perform any of the duties required by law to be performed by individuals acting in like capacity and subject to like penalties; and such corporation shall be liable for such failure to the full amount of its capital stock and upon the bond required upon its assuming the trusts provided for herein.

As to power of trust companies to act as administrator and executor, guardian, surety, etc., see monographic note by J. H. Hill, 43 L. R. A. 587-593; 52 L. R. A. 469.

FOR THE PROTECTION OF STOCKHOLDERS, ETC.

ACT 1035—An act to protect stockholders and persons dealing with corporations in this state.

History: Approved March 29, 1878, Stats. 1877-78, p. 695. Amended March 22, 1905, Stats. 1905, p. 786.

Corporations, false reports of officers of.

§ 1. Any superintendent, director, secretary, manager, agent, or other officer, of any corporation formed or existing under the laws of this state, or transacting business in the same, and any person pretending or holding himself out as such superintendent, director, secretary, manager, agent or other officer, who shall willfully subscribe, sign, indorse, verify, or otherwise assent to the publication, either generally or privately, to the stockholders or other persons dealing with such corporation, or its stock, any untrue or willfully and fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures or prospects, or other paper or document intended to produce or give, or having a tendency to produce or give, to the shares of stock in such corporation a greater value or less apparent or market value than they really possess, or with the intention of defrauding any particular person or persons, or the public, or persons generally, shall be deemed guilty of a felony, and on conviction thereof, shall be punished by imprisonment in state prison or a county jail not exceeding two years, or by fine not exceeding five thousand dollars, or by both. [Amendment of March 22, 1905. Stats. 1905, p. 786.]

§ 2. All acts and parts of acts in conflict with this act are hereby repealed.

1. Constitutionality.—Original act constitutional.—Even though the amendatory act might be unconstitutional under the constitution of 1879, the original act was valid under the constitution of 1849, and the amendatory act recites the original act, and re-enacts it with amendments, and thus complies fully with constitutional requirements as to amendments.—*People v. Merritt*, 18 Cal. App. 58, 122 Pac. 839, 844.

See, also, *People v. Parvin*, 74 Cal. 549, 16 Pac. 490; *Francais v. Somps*, 92 Cal. 505, 23 Pac. 592; *Beach v. Von Detten*, 139 Cal. 462,

73 Pac. 187; *People v. Oates*, 142 Cal. 12, 75 Pac. 337.

2. Title of amendatory act.—The act is not invalid on the ground that the subject thereof is not sufficiently stated in the title, the body of the act being wholly penal and not being germane to the subject of protecting stockholders and persons dealing with corporations.—*People v. Merritt*, 18 Cal. App. 58, 122 Pac. 839, 844.

3. Code provision.—This act was approved the day after § 564 of the Penal Code was amended to include substantially the same provisions.—See *Kerr's Cyc. Penal Code*, § 564.

PAYMENT OF EMPLOYEES OF CORPORATIONS.

ACT 1036—An act requiring corporations to pay their employees at least once a month.

History: Approved March 29, 1897, Stats. 1897, p. 231.

See, post, Act 1037.

This act provided for the payment of wages at least once a month, and gave the employee a lien for the same.

1. Constitutionality.—This act is discriminatory, creates an unreasonable classification, infringes the right of person to make and enforce their own contracts, denies the equal protection of the law, and is unconstitutional and void.—*Johnson v. Goodyear Mining Company*, 127 Cal. 4, 78 Am. St. Rep. 17, 47 L. R. A. 338, 59 Pac. 304.

2. Same.—The act is not unconstitutional as a violation of the due process of law

clause of the constitution.—*Skinner v. Garnett G. M. Co.*, 96 Fed. 735.

3. Same.—The act is not unconstitutional as a denial of the equal protection of the laws.—*Skinner v. Garnett G. M. Co.*, 96 Fed. 735.

4. Same.—The act is not unconstitutional on the ground that it unjustly discriminates against corporations in the matter of liens for wages.—*Skinner v. Garnett G. M. Co.*, 96 Fed. 735.

5. Same.—The act is not invalid on the ground that the provisions of sections 2 and 6 are not specifically referred to in the title.—*Skinner v. Garnett G. M. Co.*, 96 Fed. 735.

PAYMENT OF WAGES OF EMPLOYEES OF CORPORATIONS.

ACT 1037—An act to provide for the payment of wages of mechanics and laborers employed by corporations.

History: Approved March 31, 1891, Stats. 1891, p. 195.

See, ante, Act 1036, notes.

This act provided for the payment of wages, weekly or monthly, and gave a lien therefor.

1. Unconstitutional.—The act is held to be special legislation, to create an arbitrary and unreasonable classification and to be Gen. Laws—28

unconstitutional and void.—*Slocum v. Bear Valley, etc., Co.*, 122 Cal. 555, 68 Am. St. Rep. 68, 55 Pac. 403.

See, also, *Johnson v. Goodyear, etc., Co.*, 127 Cal. 4, 20, 78 Am. St. Rep. 17, 47 L. R. A. 338, 59 Pac. 304.

2. Lien for wages.—Under this act the

wages must be shown to be payable weekly or monthly to entitle the employee to a lien therefor.—*Spaulding v. Mammoth, etc., Co.*, 5 Cal. Unrep. 712, 49 Pac. 183; *Kuschel v. Hunter*, 5 Cal. Unrep. 793, 50 Pac. 397.

See, also, *Keener v. Eagle Lake, etc., Co.*, 110 Cal. 627, 43 Pac. 14; *Ackley v. Black Hawk, etc., Co.*, 112 Cal. 42, 44 Pac. 330.

Preferred claim for wages.—See tit. "Labor Bureau," Act 2404.

3. Not within terms of statute.—Upon the case shown it was held that plaintiff had not brought himself within the terms of the statute creating a lien for wages payable weekly or monthly.—*Spaulding v. Mammoth, etc., Min. Co.*, 5 Cal. Unrep. 712, 49 Pac. 183.

FOREIGN CORPORATIONS ACT.

ACT 1041—An act prescribing terms and conditions upon which corporations may transact business in this state and providing penalties and forfeitures for non-compliance.

History: Approved May 10, 1915. In effect, see § 19. Stats. 1915, p. 422. Entire act amended May 11, 1917. In effect immediately. Stats. 1917, p. 371.

Corporations must file articles of incorporation. Certified copy filed with county clerk. Affidavit. Fee.

§ 1. Every corporation organized under the laws of another state, territory, or of a foreign country, which is now doing interstate or intrastate business in this state or maintaining an office herein, and which has not filed with the secretary of state prior to the day on which this act takes effect the document or documents required by this section, or which shall hereafter do such business in this state or maintain an office herein, or which shall enter this state for the purpose of doing such business herein, must file in the office of the secretary of state of the state of California a certified copy of its articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental act or acts creating it, in cases where it has been created by charter, or statute, or legislative, or executive, or governmental act, duly certified by the secretary of state or other officer authorized by the law of the jurisdiction under which such corporation is formed to certify such copy, and must also file a certified copy thereof, duly certified by the secretary of state of this state in the office of the county clerk of the county where its principal place of business in this state is located, and also where such corporation owns any real property. With such certified copy of its articles of incorporation, charter or legislative, executive or governmental act creating it, such corporation shall also file with the secretary of state an affidavit sworn to by the president or secretary of such corporation, which shall state the amount of such corporation's authorized capital stock at or within fifteen days prior to such filing. Every such corporation shall pay to the secretary of state for filing in his office such certified copy of its articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental act or acts creating it, a fee of seventy-five dollars; provided, that foreign corporations organized for educational, religious, scientific or charitable purposes and having no capital stock, and foreign nonprofit corporations shall pay a fee of five dollars for filing the document or documents hereinabove required.

Foreign corporations must file amendment, etc. Affidavit showing capital stock.

Foreign corporations shall also file any amendment of or change in any of the provisions of its original articles of incorporation, or charter, or of the statute or legislative, executive or governmental act or acts creating it. Every foreign corporation subject to the tax hereinafter provided shall file with the secretary of state, at the time it tenders payment of said tax and any penalty which has accrued, an affidavit sworn to by its president or secretary, showing the amount of its authorized capital stock on the first day of January of the year in which said payment is made, and in the event that such authorized capital stock, as shown by such affidavit, differs from the amount of such capital stock as appears from the records of the secretary of state, then

the tax hereinafter provided shall be measured by the amount of the capital stock shown in such affidavit. The license hereinafter required shall not be issued nor shall the amount so tendered be accepted until copies of any documents relating to such change in authorized capital stock, certified as required by this section, shall have been filed with the secretary of state.

Representative of foreign corporation.

Every foreign corporation shall file with the secretary of state a designation of some person residing within this state upon whom process issued by authority of law may be served as the representative, for such purpose, of such corporation. A copy of such designation certified by the secretary of state is sufficient evidence of the appointment of such representative. Such process may be served on the person so designated, or, in the event that no such representative is designated, then on the secretary of state, and such service shall be a valid and binding service on such corporation.

Benefit of law.

Every corporation which complies with the provisions of this section is thereafter entitled to the benefit of the laws of this state limiting the time for the commencement of civil actions, but any corporation created by or under the laws of any foreign state or country and that has not complied with this section is not entitled to the benefit thereof, nor can any such foreign corporation maintain or defend any action or proceeding concerning its property in this state or any intrastate business or transaction, in any court of this state or acquire or convey any legal title to any real property within this state. In any action or proceeding instituted against any body styled as a corporation, but not created by nor under the laws of this state, evidence that such body has acted as a corporation, or employed methods usually employed by corporations, must be received by the court for the purpose of proving the existence of such corporation, the sufficiency of such evidence to be determined by the court with like effect as in other cases. Every corporation which has complied with the law requiring it to make and file a designation of the person upon whom process against it may be served, need not make or file any further designation. Any designation made may be revoked by the filing by the corporation with the secretary of state of a writing stating such revocation. Within forty days after the death or removal from the state of any person designated by the corporation, or after the revocation of the designation, the corporation must make a new designation, or be subject to the provisions and penalties of this section; provided, however, that any foreign corporation which, prior to the eighth day of March, one thousand nine hundred one, shall have complied with the provisions of the act entitled, "An act to amend 'An act in relation to foreign corporations,' approved April first, one thousand eight hundred seventy-two," approved March seventeenth, one thousand eight hundred ninety-nine, shall, in lieu of the provisions of this section above set forth, file the affidavit and designation of representative herein required and the license tax due from such corporation shall be measured by the authorized capital stock, as shown thereby.

Fees.

§ 2. Upon filing in the office of the secretary of state the certified copy of articles of incorporation of corporations organized under the laws of this state, there shall be paid to the secretary of state the fees prescribed therefor by section four hundred nine of the Political Code.

Annual license. Tax.

§ 3. Except those corporations hereinafter specified, every corporation incorporated under the laws of this state, and every corporation incorporated under the laws of any other state, territory, or foreign country now doing intrastate business within this state,

or which shall hereafter engage in intrastate business in this state, shall procure annually from the secretary of state a license authorizing the transaction of such business in this state, and pay therefor the license tax prescribed herein.

For the purpose of measuring said tax the secretary of state shall examine all articles of incorporation and all documents on file in his office relating to an increase or decrease in the authorized capital stock of corporations which are subject to said tax, and determine the amount due from each corporation by the following rule:

Determination of tax.

When the authorized capital stock of the corporation does not exceed ten thousand dollars, the tax shall be ten dollars; when the authorized capital stock exceeds ten thousand dollars, but does not exceed twenty thousand dollars, the tax shall be fifteen dollars; when the authorized capital stock exceeds twenty thousand dollars but does not exceed fifty thousand dollars, the tax shall be twenty dollars; when the authorized capital stock exceeds fifty thousand dollars but does not exceed one hundred thousand dollars, the tax shall be twenty-five dollars; when the authorized capital stock exceeds one hundred thousand dollars but does not exceed two hundred fifty thousand dollars, the tax shall be fifty dollars; when the authorized capital stock exceeds two hundred fifty thousand dollars but does not exceed five hundred thousand dollars, the tax shall be seventy-five dollars; when the authorized capital stock exceeds five hundred thousand dollars but does not exceed one million dollars, the tax shall be one hundred dollars; when the authorized capital stock exceeds one million dollars but does not exceed three million dollars, the tax shall be two hundred dollars; when the authorized capital stock exceeds three million dollars but does not exceed five million dollars, the tax shall be three hundred fifty dollars; when the authorized capital stock exceeds five million dollars but does not exceed seven million five hundred thousand dollars, the tax shall be five hundred fifty dollars; when the authorized capital stock exceeds seven million five hundred thousand dollars but does not exceed ten million dollars, the tax shall be eight hundred dollars; when the authorized capital stock exceeds ten million dollars, the tax shall be one thousand dollars; when the capital stock of any corporation has no par value the tax shall be one hundred dollars; when part of the capital stock of any corporation has a par value and a part of such stock has no par value, the tax shall be computed upon such par value stock in accordance with the admeasurement schedule herein established, to which sum shall be added the sum of fifty dollars. Building and loan companies and associations shall pay an annual license tax of ten dollars.

Tax on corporations having no capital stock.

All corporations having no capital stock, but organized for profit, shall pay an annual tax of ten dollars. Said license tax shall be due and payable to the secretary of state on the first day of January of each and every year. Such license tax shall be paid on or before the hour of six o'clock p. m. of the first Monday of February of each year and if not so paid shall at said hour become delinquent and there shall thereupon be added thereto as a penalty for such delinquency the sum of ten dollars.

Tax authorizes transaction of business.

§ 4. The license hereby provided authorizes the domestic corporations holding the same to transact business in this state, and authorizes foreign corporations to transact intrastate business in this state, during the year or any fractional part of such year for which such license is issued. "Year" within the meaning of this act, means from and including the first day of January to and including the thirty-first day of December next thereafter.

License tax for part of year.

§ 5. At the time any corporation subject to the license tax provided herein shall file certified copy of articles of incorporation, or charter, or statute or statutes, or legis-

lative, or executive or governmental act or acts creating a corporation, when filed between the first day of January and the thirty-first day of December, inclusive, in any year, there shall be paid to the secretary of state, in addition to all other fees required by law, that proportion of the license tax specified in section three of this act which the unexpired number of months of such year bears to the entire year including the month in which such filing occurs, and thereupon the secretary of state shall issue a license for such fractional part of the then current year.

Corporations exempt.

§ 6. Corporations organized and conducted solely and exclusively for educational, religious, scientific or charitable purposes, corporations which are not organized or conducted for profit, corporations organized under the laws of any other state, territory or foreign country doing solely and exclusively an interstate or foreign business, and those corporations taxed under subdivisions (a), (b) and (c) of section fourteen of article XIII of the constitution, are exempt from payment of the tax provided by section three of this act.

“Corporation license tax exemption board.” Protest. Contents.

§ 7. The secretary of state, state controller and members of the state board of control shall be and are hereby constituted the “corporation license tax exemption board.” Except in cases where articles of incorporation are filed in the month of December, every corporation claiming exemption from the payment of the annual license tax prescribed by this statute must file with said board, at least thirty days before such license tax becomes due and payable, a written protest in which shall be set forth all facts and reasons upon which such exemption claim is made. Such protest shall contain a concise statement of the nature, character and manner of doing business by such corporation, together with any other data illustrating the method of doing such business and the places in which such business is transacted within this state. Such corporation shall furnish to said board such other or additional information as may be required by said board. Such application shall be sworn to by the president, secretary or general manager, or authorized agent of such corporation. Failure to protest in the manner and within the time herein prescribed shall constitute a waiver of all rights of exemption from said tax; provided, however, that the corporation license tax exemption board shall have the power, irrespective of such protests to grant such exemption in the case of corporations mentioned in section six of this act.

Corporations excepted.

The provisions of this section with respect to filing written claim of exemption, shall not apply to educational, religious, scientific or charitable corporations, specified in section six of this act nor to corporations taxed under subdivisions (a), (b) and (c) of section fourteen, article XIII of the constitution of this state.

Tax exemption determined before filing articles of incorporation.

§ 8. Before filing a certified copy of the articles of incorporation of any domestic corporation in the office of the secretary of state, and before any foreign corporation files with the secretary of state the document or documents required by section one of this act, said articles of incorporation or said documents shall be submitted to said corporation license tax exemption board, which board shall determine the question of whether such corporation is exempt, under any of the provisions of this act, from the license tax imposed hereby.

All claims or applications for exemption, under this and the preceding section together with all evidence and proofs submitted therewith, shall be considered by such license tax exemption board, which shall determine the question of such exemption.

The determination of such corporation license tax exemption board upon all questions of fact, with respect to such claims of exemption, shall be final and conclusive.

Notice of time when tax payable. Notice of delinquency. Notice of suspension or forfeiture.

§ 9. On or before the first day of December of each year the secretary of state shall mail a notice to every corporation subject to the tax imposed by this act, notifying such corporations of the time when such tax shall be due and payable, when delinquent, and of the penalties for delinquency and non-payment. Immediately after the first Monday in February of each year the secretary of state shall mail a notice to every corporation subject to the tax imposed by this act and which has failed to pay the same, notifying such corporation of its delinquency and the penalties therefor. Within ten days after the Saturday preceding the first Monday in March of each year the secretary of state shall, by registered mail, notify every corporation subject to the tax imposed by this act and which has failed to pay the same, that such corporation has been recorded by him as a "suspended" or "forfeited" corporation in accordance with the provisions of this act, and that such suspension or forfeiture may be removed by complying with the provisions of this act. Mailing by the secretary of state to any corporation of any of the notices required by this section shall not be a jurisdictional prerequisite to the accrual of any forfeiture provided by this act, or to the suspension of the corporate powers of any delinquent corporation and the officers thereof hereinafter provided, nor be held to be an essential prerequisite to the imposition of such or any other penalties for delinquency and nonpayment.

License tax lien.

§ 10. The license tax due from any corporation subject to the provisions of this act is a lien upon the real property of such corporation from and after the first day of January of each year and until paid or until the property is sold for the payment thereof. On or before the first Monday in April of each year the secretary of state shall make a list of all corporations subject to the tax imposed by or that should have been paid under this act and which have failed to pay the same, and transmit a certified copy thereof to each county clerk and county recorder in this state. Said county clerks and county recorders shall file such certified copies in their respective offices in such manner that the same shall be preserved in the form of a permanent record of such office and easily identified by and available to the public. Said copies so certified by the secretary of state and filed as herein provided shall, in the case of each corporation, state whether such corporation is a domestic or foreign corporation and specify the tax and penalties which each corporation has incurred for failure to pay the tax imposed by this act. Such certified copies so filed with either of said county officers, or any copy thereof certified by the secretary of state, shall be received in evidence in any court in lieu of the original record on file with the secretary of state and shall be prima facie evidence of the truth of all statements contained therein.

Rights of domestic corporations suspended. Right of foreign corporations forfeited. Forfeiture relieved.

§ 11. After six o'clock p. m. of the Saturday preceding the first Monday in March in any year, the corporate rights, privileges and powers of every domestic corporation which has failed to pay the tax and money penalty for nonpayment thereof imposed by this act shall, from and after said hour of said day, be suspended, and incapable of being exercised for any purpose or in any manner, except to execute and deliver deeds to real property in pursuance of contracts therefor made prior to such time, and to defend in court any action brought against such corporation, until said tax with all accrued penalties, taxes and charges due to the state under this act and subdivision (d)

of section fourteen, article XIII of the constitution are paid as hereinafter provided. The right and privilege of every foreign corporation, subject to the provisions of this act, to transact intrastate business in this state shall, for failure to pay the tax and money penalty for nonpayment thereof imposed by this act, be forfeited at said hour of said day, and the secretary of state shall make a record of such forfeiture. In the case of foreign corporations such forfeiture may be relieved and the corporation's privilege to transact intrastate business in this state restored in the manner hereinafter provided. After said hour of said day and until such taxes, penalties and charges are paid, every person who attempts or purports to exercise any of the rights, privileges or powers of any delinquent domestic corporation except as permitted by this act, or, who transacts or attempts to transact any intrastate business in this state in behalf of any forfeited foreign corporation, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars and not exceeding one thousand dollars, or by imprisonment in the county jail not less than fifty days or more than five hundred days, or by both such fine and imprisonment. The jurisdiction of such offense shall be held to be in any county in which any part of such attempted exercise of such powers, or any part of such transaction of business was had or occurred. Every contract made in violation of this section is hereby declared to be void.

Application by stockholder or creditor to restore rights. Payment of additional amount.

§ 12. All corporate powers, rights and privileges, suspended or forfeited under the provisions of this act may be revived and restored to full force and effect upon application therefor by any stockholder or creditor thereof and upon payment of all accrued taxes and penalties due to the state under this act and subdivision (d) of section fourteen, article XIII of the constitution. In case the application for such revivor and restoration is not made during the year in which such suspension or forfeiture occurred, such application shall not be granted nor a certificate of revivor issued to such corporation until there is paid to the secretary of state in addition to the tax and money penalty due or that should have been paid the state under this act and subdivision (d) of section fourteen, article XIII of the constitution for the year in which such suspension or forfeiture occurred, a sum of money, equal to the tax, without penalty, imposed or that should have been paid under this act during the year in which such suspension or forfeiture occurred, for each year succeeding said year in which such suspension or forfeiture occurred.

Controller's certificate.

Upon payment of all such taxes and penalties, and upon payment of all other taxes due the state under subdivision (d) of section fourteen, article XIII of the constitution, the state controller shall issue a certificate under his seal evidencing such payment and restoration, which certificate, when recorded in the office of any county recorder shall constitute a release of all existing liens for such taxes upon the property of such corporation. Each county recorder shall keep an index of all such controller's certificates recorded by him. Upon presentation of such controller's certificate of revivor to any county clerk said officer shall make a record thereof in his office in a book kept for such purpose. The record so made by said county clerk shall be prima facie evidence of the restoration to such corporation of all previously suspended or forfeited rights, powers and privileges unless it appears from the records in the office of such county clerk or of the controller or secretary of state that subsequent to the date of such certificate of revivor the powers of said corporation have been again suspended or its right to do intrastate business again forfeited.

No dissolution until tax paid.

§ 13. No court shall have jurisdiction to make or enter any decree of dissolution of any domestic corporation until all taxes and penalties due under this act shall have been paid.

Restoration of right under acts of 1905 and 1915.

§ 14. Any corporation which has heretofore failed to pay any license tax and penalty imposed under the provisions of chapter three hundred eighty-six, statutes 1905, and amendments thereof, or under chapter one hundred ninety, statutes 1915, and for such nonpayment suffered a forfeiture of the charter of such corporation or of the right to do business in this state, may be relieved of such forfeiture, or may be restored to its right to do business in this state, upon making application therefor in writing and paying the license tax and penalties prescribed by said act, for nonpayment of which such forfeiture occurred. Application for restoration under the provisions of this section shall be made in writing, shall be signed by four-fifths of the surviving trustees or directors of said corporation, duly verified by said trustees or directors and filed with the state controller. Upon payment of the moneys due this state under the provisions of said act for the one year in which such forfeiture occurred, together with any tax levied in such year under subdivision (d) of section fourteen, article XIII of the constitution by the state board of equalization, and the license tax due under the provisions of this act, the state controller shall issue a certificate of revivor to such corporation, and thereupon such corporation is revived and its powers restored to full force and effect.

The revivor of a corporation, under the provisions of this section, shall be without prejudice to any action or proceeding, defense or right, which has occurred by reason of the original forfeiture.

Use of new name.

In case the name of any corporation which has suffered the forfeiture prescribed by either of said acts first in this section above mentioned, has been adopted by any other corporation since the date of said forfeiture, or in case any corporation has adopted subsequent to such forfeiture any name so closely resembling the name of such reviving corporation as will tend to deceive, then such reviving corporation shall be entitled to a certificate of revivor pursuant to the terms of this section only upon the adoption by such corporation seeking revivor of a new name, and in such case nothing in this section contained shall be construed as permitting such reviving corporation to carry on any business under its former name. Such reviving corporation shall have the right to use its former name or take such new name only upon filing an application therefor with the secretary of state, and upon the issuing of a certificate to such corporation by the secretary of state, setting forth the right of such corporation to take such new name or use its former name as the case may be. The secretary of state shall not issue any certificate permitting any corporation to take or use the name of any corporation heretofore organized in this state and which has not suffered a forfeiture under either of the acts in this section first above mentioned, or to take or use a name so closely resembling the name of any corporation heretofore organized in this state as will tend to deceive.

The provisions of title nine, part three of the Code of Civil Procedure, in so far as they conflict with this section of this act are not applicable to corporations seeking revivor under this act.

Surrender of right to engage in intrastate business.

§ 15. Any foreign corporation may surrender its right to engage in intrastate business in this state by filing with the corporation license tax exemption board an affi

davit, sworn to by the president of such corporation, which shall contain a concise statement of the nature, character and manner of doing any business of any kind that such corporation may thereafter intend to transact in this state. Said corporation shall furnish such other or additional information as may be required by said board. Said board shall consider such application and the order of such board approving the same shall terminate the right of such corporation to transact intrastate business in this state. Any person transacting any intrastate business in this state in behalf of such corporation after approval of such application to surrender such privilege shall be guilty of a misdemeanor and punishable as provided in section eleven of this act.

False statement.

§ 16. Any false statement contained in any of the affidavits herein required shall constitute perjury, and shall be punishable as such.

Moneys paid.

§ 17. All moneys herein required to be paid shall, upon collection, be immediately paid into the state treasury.

Statutes unaffected.

§ 18. Nothing in this act shall be construed as affecting or repealing any statute of this state respecting the assessment of franchises and levying of taxes thereon, as required by section fourteen, article XIII of the constitution and chapter three hundred thirty-five of statutes of one thousand nine hundred eleven of this state and amendments thereof.

Title.

§ 19. This act shall be known as the "corporation license act."

The amending act contained the following:

In effect.

§ 2. This act, inasmuch as it provides for a tax levy, shall, under the provisions of section one of article IV of the constitution, take effect immediately.

The original act contained the following:

In effect when.

§ 19. The provisions of this act in so far as they relate to the payment of the license tax provided for in section four of this act shall take effect on the first day of January, 1916, and as to all other provisions this act shall take effect ninety days after final adjournment of the forty-first session of the legislature.

1. **"Doing business" in California.**—Maintaining general offices in California, where all its corporate affairs are conducted, constitutes "doing business" in the state within the meaning of the act, although a foreign corporation, organized and existing under the laws of another state and owning and operating a railroad wholly in the state of its organization.—*Bullfrog, etc., Co. v. Jordan*, 174 Cal. 342, 163 Pac. 40.

2. **Upon forfeiture of the corporate franchise**, the corporation is dissolved by operation of law.—*Talcott Land Co. v. Hirshiser*, 30 Cal. App. Dec. 586.

See Act 1021, notes.

3. **Upon dissolution of corporation by**

forfeiture of charter, the directors are trustees for the purpose of winding up its affairs.—*Talcott Land Co. v. Hirshiser*, 30 Cal. App. Dec. 586.

4. **In a stockholder's suit** against the directors of a corporation to compel the return of money of the corporation unlawfully distributed to stockholders, an averment in the answer that the corporation has forfeited its charter is, in the absence of a special demurrer, or motion to strike out a sufficient supplemental plea in abatement, and raised a substantial issue in behalf of defendants, and a demurrer should not have been sustained.—*Freeman v. Glenn Co. Telephone Co.*, 28 Cal. App. Dec. 967.

"INDUSTRIAL LOAN COMPANIES."

ACT 1042—An act defining industrial loan companies, providing for their incorporation, powers and supervision.

History: Approved May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 658.

"Industrial loan company."

§ 1. The term "industrial loan company" as used in this act means any corporation which in the regular course of its business loans money and issues its own choses in action under the provisions of this act.

Incorporation.

§ 2. Corporations may be incorporated under and by virtue of this act in the same manner as corporations under and by virtue of chapter one of title one of part four, division first of the Civil Code, except as otherwise herein provided.

Capital stock. Shares. Capital stock paid.

§ 3. The capital stock of any corporation incorporated under the provisions of this act shall not be less than twenty-five thousand dollars in any city having a population of twenty-five thousand inhabitants or more and less than fifty thousand; and shall not be less than fifty thousand dollars in any city having fifty thousand or more inhabitants, and less than one hundred thousand; and shall not be less than one hundred thousand dollars in any city having one hundred thousand or more inhabitants, according to the last official census. The capital stock of any such corporation shall be divided into shares of the par value of one hundred dollars each. Before the articles of incorporation of any corporation, incorporated under the provisions of this act, are filed, there must be paid in cash for the benefit of the corporation to a treasurer, elected by the subscribers, not less than twenty-five per cent of the amount of the capital stock; the balance of the capital stock shall be paid in cash to the corporation at the rate of not less than ten per cent per month, following the initial payment. No corporation organized hereunder shall create more than one class of stock.

Powers of corporation.

§ 4. Every corporation under the provisions of this act shall have power:

First—To loan money on personal security, or otherwise, and to deduct interest therefor in advance at the rate of six per cent per annum, or less, and, in addition, to receive and to require uniform weekly or monthly installments on its certificates of investment, purchased by the borrower simultaneously with the said loan transaction, or otherwise, and pledged with the corporation as security for the said loan, with or without an allowance of interest on such installments.

Second—To sell or negotiate choses in action for the payment of money at any time, either fixed or uncertain, and to receive payments therefor in installments or otherwise, with or without an allowance of interest upon such installments. Nothing herein contained shall be construed to authorize corporations hereunder to receive deposits or to issue certificates of deposit. The issuance of choses in action herein authorized shall be approved as to form by the commissioner of corporations and shall bear the endorsement on the face of the instrument "This is not a certificate of deposit."

Third—To charge for a loan, made pursuant to this section, one dollar for every fifty dollars, or fraction thereof loaned, for expenses, including any examination or investigation of the character and circumstances of the borrower, and the drawing and taking acknowledgment of any papers, or other expenses incurred in making the loan. No charge shall be collected unless a loan shall have been made, and in no case shall such charge exceed five dollars.

Fourth—To establish branch offices, or places of business, within the county, in which its principal place of business is located, but not elsewhere.

In addition to the powers herein enumerated, every corporation, under the provisions of this act, shall have the general powers conferred upon corporations by chapter three, title one, part four, division first, of the Civil Code, except as herein otherwise provided.

Limitations on corporations.

§ 5. No corporation under the provisions of this act shall:

(a) Hold at any one time the obligation or obligations of any person, firm or corporation, for more than two per cent of the amount of the capital and surplus of such industrial loan company.

(b) Make any loan, under the provisions of this act, for a longer period than one year from the date thereof.

(c) Deposit any of its funds with any other moneyed corporation, unless such corporation has been designated as such depository by a vote of the majority of the directors or of the executive committee, exclusive of any director who is an officer, director or trustee of the depository so designated.

(d) Invest any of its funds, otherwise than as herein authorized, except in such investments as are by law legal investments for savings banks, or in the choses in action issued by any other corporation organized under this act.

(e) Have outstanding at any time its investment certificates in an aggregate sum in excess of ten times the aggregate amount of its paid up capital, exclusive of those hypothecated with the company issuing them.

Holding real estate.

§ 6. Every corporation, under the provisions of this act, may purchase, hold and convey real estate for the following purposes, but for no other:

First—Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business.

Second—Such as it shall purchase at sale under judgments, decrees or mortgage foreclosures under securities held by it, but no such corporation shall bid at any such sale a larger amount than shall be necessary to satisfy its debt and costs.

Real estate shall be conveyed under the corporate seal of such corporation and the hand of its president or vice-president and manager or treasurer. No real estate acquired in the cases contemplated above shall be held for a longer period than five years. Parcels of such real estate not sold within said time may be purchased by any person wanting the same, upon the conditions and proceedings provided in section fifty-four of "An act to define and regulate the business of banking," approved March 1, 1909.

Dividends.

§ 7. The directors of every corporation, under the provisions of this act, may at certain times and in such manner as its by-laws prescribe, declare and pay dividends to the stockholders of such corporation, of so much of the net profits of the corporation as may be appropriated for that purpose under its by-laws, but before any such dividend is declared, not less than ten per cent of the net profits of such corporation for the preceding half year, or for such period as is covered by the dividend, shall be carried to its surplus until such surplus shall amount to twenty-five per cent of the paid-up capital stock.

Certificates of investment issued not creation of debt.

§ 8. Issuing certificates of investment and the like in the transaction of the business of corporations under the provisions of this act shall not be construed to be the creation of debt within the meaning of the phrase "create debt" in section three hun-

dred nine of the Civil Code nor of "indebtedness" within the meaning of the phrase "the capital stock can not be diminished to an amount less than the indebtedness of the corporation" in section three hundred fifty-nine of the Civil Code, except that no company organized hereunder shall reduce its capital stock to an amount less than is required by this act to be maintained by such company or less than any indebtedness of such company other than such investment certificates.

Taxed.

§ 9. Corporations, under the provisions of this act, shall be taxed the same as other general corporations.

Subject to investment companies act.

§ 10. Corporations under the provisions of this act shall be subject to the provisions and regulations of "An act to define investment companies, investment brokers and agents; to provide for the regulation, supervision and licensing thereof; to provide penalties for the violation thereof; to create the office of commissioner of corporations and making an appropriation therefor," approved May twenty-eighth, nineteen hundred thirteen, and any additions or amendments thereto.

Order to discontinue violation of law.

§ 11. If it shall appear to the commissioner of corporations that any company hereunder has violated or failed to comply with the provisions of its articles of incorporation, or any law of this state, or whenever it shall appear from the report of any company hereunder, or the commissioner shall have reason to conclude, that the capital, of any company hereunder is impaired or reduced below the amount required by law, he may, by an order under his hand and official seal, addressed to such company, direct such company to discontinue such violation and to comply with the law, or to make good the deficiency or impairment of capital alleged by him to exist within sixty days after the date of such requisition; or

Order to discontinue unsafe practices.

If it shall appear to the commissioner that such company is conducting business in an unsafe or injurious manner, he may, in like manner, direct the discontinuance of any such unsafe or injurious practices. Such orders shall require such company to show cause, before the commissioner, at a time and place to be fixed by him, why said order should not be observed. If upon such hearing it shall appear to the commissioner that such order should be made final he shall proceed to do so, and such company shall immediately comply with such order made by the commissioner of corporations.

Suit to restrain enforcement.

Such company shall have ten days after any such order is made final in which suit may be commenced to restrain enforcement of such order and unless such action be so commenced and enforcement of such order be enjoined within ten days by the court in which such suit is brought, then such company shall comply with such order.

Commissioner of corporations may take possession of property.

Upon failure of any company to comply with such order or if any such company shall refuse to submit its books, papers and concerns to the inspection or examination of the commissioner of corporations, or to any one authorized by him to make such examination, or if any officer of such company shall refuse to be examined upon oath touching the concerns of such company, or if any such company shall neglect or refuse to observe any order made by the commissioner of corporations pursuant to his supervision as authorized by this act, the commissioner of corporations may forthwith take possession of the property and business of such company and retain such possession until such

company shall resume business or its affairs be finally liquidated. On taking possession of the property and business of any such company, the commissioner of corporations may proceed to liquidate the same in the manner provided by the bank act.

Powers of commissioner of corporations not affected.

§ 12. Nothing in this act contained shall be deemed or construed as a limitation or restriction of or as in any way affecting the power or discretion of the commissioner of corporations, under the investment companies act or any other statute now or hereafter in effect, to issue a permit authorizing any corporation under the provisions of this act to issue and dispose of choses in action in such amounts and upon such terms and conditions as he may in such permit provide and to impose such conditions as he may deem necessary to the issue of such securities and to establish such rules and regulations as may be reasonable or necessary to insure the disposition of the proceeds of such securities in the manner and for the purposes provided in such permit and from time to time for cause to amend, alter or revoke any permit issued by him or to refuse to issue such permit or otherwise authorize the issue of such securities.

CORTE MADERA.

See Act 3094, note.

CHAPTER 74.

COSTS.

References: Costs in actions for libel, see post Act, 2527.

Costs in general, see appropriate title in Kerr's Cyc. Code of Civil Procedure, Kerr's Cyc. Penal Code, and Kerr's Cyc. Political Code.

Costs in trial of convicts, see ante Act 996.

Costs on removal of criminal actions, see Kerr's Cyc. Political Code, §§ 4308, 4309.

CONTENTS OF CHAPTER.

ACT 1051. COSTS IN CIVIL ACTION FOR SERVING SUMMONS AND SUBPOENA.

SERVICE OF SUMMONS AND SUBPOENAS IN CIVIL ACTIONS.

ACT 1051—An act concerning the costs in civil actions for serving summons and subpoenas.

History: Approved March 10, 1891, Stats. 1891, p. 56.

Fees for serving writ.

§ 1. In all civil actions, when a summons or subpoena is served by a person other than the sheriff, the person so serving shall be allowed by the court issuing the process such sum as the court may think proper, not exceeding the amount allowed sheriffs by law.

§ 2. This act shall take effect from and after its passage.

COTENANCY.

See appropriate title, Kerr's Cyc. Codes.

COUNTERFEITING.

See same title, Kerr's Cyc. Penal Code.

Service of summons in civil actions, by person other than sheriff.—See Kerr's Cyc. Code Civil Procedure, § 410.

CHAPTER 75.

COUNTIES.

References: County bonds, see tit. "Bonds."

County boundaries, see tit. "County Boundaries," and appropriate title, Kerr's Cyc. Political Code.

County government, see Kerr's Cyc. Political Code, §§ 4000, et seq.

County classification, see Kerr's Cyc. Political Code, §§ 4006, et seq.

County and township officers, see Kerr's Cyc. Political Code, §§ 4013, et seq.

General provisions relating to counties, see Kerr's Cyc. Political Code, §§ 3969, et seq.

Gifts to counties, see Kerr's Cyc. Political Code, §§ 453a, 4052; and Kerr's Cyc. Civil Code, § 1275.

Judgments against counties, see tit. "Judgments."

Mobilization sites, acquisition and conveyance to United States, see post Act. 5463.

Particular counties, see particular title.

Particular subject relating to counties, see particular title.

Taxes, see Kerr's Cyc. Political Code, tit. "Taxation."

Taxes, collection of, on formation of new county, see Kerr's Cyc. Political Code, § 3975.

Transfer of moneys, on formation of new county, see Kerr's Cyc. Political Code, § 3975a.

CONTENTS OF CHAPTER.

ACT 1071. CLAIMS OF COUNTIES AGAINST STATE.

1075. FORMATION, ORGANIZATION AND CLASSIFICATION OF NEW COUNTIES.

1076. MISAPPROPRIATED SCHOOL MONEY.

1077. REPORTS OF FINANCIAL TRANSACTIONS.

CLAIMS OF COUNTIES AGAINST THE STATE.

ACT 1071—An act authorizing the allowance, settlement, and payment of claims of counties against the state.

History: Approved March 9, 1893, Stats. 1893, p. 109.

§ 1. On the presentation of the claim of any county of this state, or treasurer thereof, to the state controller for commissions, charges, or fees fixed or directed to be allowed by law for the collection of state taxes, the said commissions, charges, or fees for which claim is made, not having been allowed by the state, and the same having been paid into the state treasury, thereupon the state controller shall, in the next settlement thereafter to be made with the treasurer of the county presenting such claim, allow to be retained out of any moneys then in the hands of such treasurer belonging to the state, the amount of such claim; provided, however, that the moneys thus retained shall be paid into the county treasury, and shall be the property of such county.

§ 2. This act shall take effect immediately.

Act does not fix fees or charges against the state, but provides for the allowance of fees and commissions, which, having been paid into the state treasury, might be allowed in the next settlement.—County of

Yolo v. Colgan, 132 Cal. 265, 84 Am. St. Rep. 41, 64 Pac. 403.

Claims against counties in general.—See Kerr's Cyc. Political Code, §§ 4074, et seq.

FORMATION, ORGANIZATION AND CLASSIFICATION OF NEW COUNTIES.

ACT 1075—An act to provide for the formation, organization, and classification of new counties, for locating the county seats, for the election and appointment of officers and for the adjustment and fulfillment of the rights and obligations arising between such new counties and other counties.

History: Approved March 15, 1907, Stats. 1907, p. 275. Amended March 8, 1909, Stats. 1909, p. 194.

Creation of new counties. Restrictions. Existing debts liability for.

§ 1. New counties may from time to time be formed and created in this state from portions of one or more counties already in existence in the manner set forth in this act; provided, however, that no new county shall be established which will reduce any

county to a population of less than 20,000, nor shall any new county be formed containing a population less than 10,000, nor shall any line of such new county pass within five miles of a county seat of any county proposed to be divided. In every case where the county seat of a county sought to be divided is situated at or within the boundary of any incorporated town or city, such county seat shall for the purposes of this act, be held to include and to be coterminous with the territory included within the boundaries of the incorporated town or city whereat or wherein the county seat of the county sought to be divided is situated, as such boundaries are legally fixed and determined at a date of the filing of the petition or petitions referred to in section two of this act; nor shall any new county be formed which shall reduce to less than twelve hundred square miles the area of any existing county from which territory is taken to form such new county. Every county which shall be enlarged or created from territory taken from any other county or counties shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken, to be determined as hereinafter provided. [Amendment of March 8, 1909. Stats. 1909, p. 195.]

Petition for formation. Number of signers required.

§ 2. Whenever it is desired to divide any county or counties then existing and form a new county out of a portion of the territory of such then existing county or counties, a petition shall be presented to the board of supervisors of the county from which said new county is to be formed in case said county is to be formed from but one county, or to the board of supervisors of the county from which the largest area of territory is proposed to be taken for the formation of such new county in case said new county is to be formed from portions of two or more existing counties. Such petition shall be signed by at least sixty-five per cent of the qualified electors residing within the designated boundaries of the proposed new county as set forth in said petition, and not less than fifty per cent of the qualified electors residing within the county or counties out of which the proposed new county is to be carved. A qualified elector, within the meaning of this act, is one whose name appears on the great register or registers used at the general election held in the county or counties last preceding the presentation of said petition to the board of supervisors as herein provided. In cases where the proposed new county is to be formed from portions of two or more existing counties, separate petitions shall be presented from each county and each of said separate petitions shall be signed by at least sixty-five per cent of the qualified electors residing within each part or portion of each county out of which it is proposed to form the new county, and by not less than fifty per cent of the qualified electors residing in each of the counties out of which the proposed new county is to be carved. Such signatures need not be affixed to one paper, but may be signed to several petitions, but each must be identical in form, and when so signed the several petitions may be fastened together and shall be treated and presented as one petition. Such petition or petitions shall contain:

What petition shall contain.

“A particular description of the boundaries of the proposed new county to be formed; and a statement that no line thereof passes within five miles of the county seat of any county proposed to be divided;

“A statement of the population in such proposed county, as near as may be;

“A statement of the population remaining in the county or each of the counties from which such new county is to be established, as near as may be;

“A statement of the area in square miles which will remain in the county or counties from which territory is taken to form such new county, after such new county is formed;

“The name of the proposed new county;

“A prayer that such proposed new county be organized into a new county under the provisions of this act.

Affidavit to petition.

There shall be attached to and filed with said petition or petitions the affidavits of three qualified electors and tax payers within each county sought to be divided to the effect that they have read said petition or petitions and examined the signatures affixed thereto and that they believe that the statements therein are true and that it is signed by at least sixty-five per cent of the qualified electors of the proposed new county, or of the proposed portion thereof taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties, and by not less than fifty per cent of the qualified electors of the entire county out of which a new county is to be carved, and if the proposed new county is to be formed from two or more counties, than [sic] that it is signed by not less than fifty per cent of the qualified electors of each county out of which it is proposed to form said new county; that the signatures affixed thereto are genuine, and that each of such persons so signing was a qualified elector of such county therein sought to be divided, at the date of such signing.

Verification prima facie true.

Such petition or petitions so verified, and the verification thereof shall be accepted in all proceedings permitted or provided for in this act, as prima facie evidence of the truth of the matters and facts therein set forth.

Hearing, fixing date for.

Upon the filing of such petition or petitions and affidavit with the clerk of the said board of supervisors said board shall forthwith fix a date to hear the proof of the said petitioners and of any opponents thereto, which date must not be less than thirty nor more than forty days, subsequent to the filing of such petition with the clerk of said board.

Publication of notice.

Said board of supervisors shall also at the same time designate a newspaper of general circulation published in the old county or each of the old counties, but not within the proposed new county, and also a newspaper of general circulation published within the boundaries of the proposed new county, if there be such, in which the said board shall order and cause to be published at least once a week for two weeks next preceding the date fixed for such hearing, a notice in substantially the following form:

Form of notice.

NOTICE.

Notice is hereby given that a petition has been presented to the board of supervisors of county, (naming county represented by the board of supervisors with which said petition was filed) praying for the formation of a new county out of a portion of the said county and county (naming the county or counties out of which it is proposed to form the new county), and that said petition will be heard by the said board of supervisors at its place of meeting (designating the city or town and the day and hour of the meeting so to be held) when and where all persons interested therein may appear and oppose the granting of said petition and make any objection thereto.

Dated

By order of the board of supervisors, of.....county.

Bychairman.

Attest:

.....county clerk.

Bond of petitioners.

Said petitioners shall on or before the date fixed for said hearing, or on or before the date to which said hearing may have been adjourned, file with the said board of supervisors a bond to be approved by said board, in such amount as the said board shall designate, but not exceeding ten thousand dollars, payable to the county in which said petition is filed, conditioned that the obligors named in said bond will pay to said county all expenses incurred in the proceedings and elections provided for in this act, not exceeding the amount specified in said bond, in the event that at the election herein provided for the percentages of votes required by the provisions of this act to form a new county are not cast in favor of the formation of such new county.

Hearing, and what supervisors shall determine.

At the time so fixed for said hearing the board of supervisors shall proceed to hear the petitioners and any opponents, and may adjourn such hearing from time to time, not exceeding fourteen days in all, and shall receive the proofs offered to establish or controvert the facts set forth in said petition or petitions, and on the final hearing of such petition or petitions said board shall by resolution entered on its minutes determine:

1st. The boundaries of the proposed new county, and the boundaries so determined by said board of supervisors shall be the boundaries of such proposed new county if it be created as herein provided.

2nd. Whether the said petition contains the genuine signatures of at least sixty-five per cent of the qualified electors of the proposed new county, and of fifty per cent of the qualified electors residing within the county out of which the new county is to be carved as herein required, and in cases where said separate petitions are presented from portions of two or more counties, as herein required, whether each petition is signed by not less than sixty-five per cent of the qualified electors residing within that part or portion of each county out of which it is proposed to carve a new county and not less than fifty per cent of the qualified electors of each of the existing counties out of which it is proposed to form a new county, as herein provided.

3rd. Whether the establishing of the proposed new county will reduce the population of any county proposed to be divided to less than twenty thousand.

4th. Whether the proposed new county will contain a population of at least ten thousand.

5th. Whether any line of the proposed new county passes within five miles of the county seat of any county proposed to be divided.

6th. Whether the area of any existing county from which territory is taken to form such new county will be reduced to less than twelve hundred square miles by taking the territory proposed to be taken therefrom to form such new county.

7th. The class to which said proposed new county after its creation, shall belong, and the name of said proposed new county as herein provided.

Determining population.

In determining the population of the proposed new county and the population remaining in any county proposed to be divided after such division, the board of supervisors shall assume that such population is five times the number of names of qualified electors recorded on the great register at the date when said petition is filed in each of the counties proposed to be divided, as residents in the territory of which the population is required to be determined.

Board may exclude territory. Petitions for exclusion.

On the final hearing said board of supervisors must, upon petition of not less than fifty per cent of the qualified electors of any territory lying within said proposed new

county and contiguous to the boundary line thereof, and lying entirely within a single old county, and described in said petition, asking that said territory be not included within the proposed new county, make such changes in the proposed boundaries as will exclude such territory from such new county, and shall establish and define such boundaries; provided that any changes made by said board shall not reduce the population of the proposed new county to less than ten thousand; petitions for exclusion shall be disposed of in the order in point of time in which they are filed with the clerk of the board of supervisors and on final determination of boundaries no changes in the boundaries originally proposed shall be made except as prayed for in said petition or petitions or to correct clerical errors or uncertainties.

Copy of petition to be filed in each county.

When the proposed new county is to be formed from two or more existing counties, the board of supervisors with which said petition shall have been filed, shall upon the adoption of a resolution provided for in this section, cause a certified copy of such resolution to be filed with the board of supervisors of each county out of which it is proposed to carve territory to constitute the new county. [Amendment of March 8, 1909. Stats. 1909, p. 195.]

Determination of supervisors. Division into townships, etc. Notice of election on proposition.

§ 3. If the said board of supervisors determine that the formation of the said proposed new county will not reduce the population of any county proposed to be divided to less than 20,000, nor the area thereof to less than twelve hundred square miles, and that the proposed new county contains a population of at least 10,000, and that no line of said proposed new county passes within five miles of the county seat of any county proposed to be divided, and that the said petition contains the genuine signatures of at least sixty-five per cent of the qualified electors residing in the territory defined by the boundaries of the proposed new county, and fifty per cent of the qualified electors residing within the existing county, when the proposed new county is to be formed from territory of only one county; but when said proposed new county is to be formed from territory of two or more counties and separate petitions are presented, then that said petitions contain the genuine signatures of at least sixty-five per cent of the qualified electors residing within that part or portion of each of the existing counties out of which it is proposed to create a new county, and not less than fifty per cent of the qualified electors of each of the existing counties from which the new county is to be carved, then said board of supervisors shall divide the proposed new county into a convenient number of judicial townships, road and school districts, and define their boundaries and designate the names of said districts and each of them; they shall also divide the proposed new county into five supervisorial districts to contain as nearly as practicable an equal population, and number said districts; they shall also, if necessary for the purposes of the election hereinafter provided for, change the boundaries of the election precincts in said old county or counties to make the same conform to the boundaries of the proposed new county; provided that the boundary lines of no such precinct shall extend beyond the boundary lines of the existing county in which it is located and from which the territory is proposed to be taken; and said board shall appoint the election officers to act at said election and to be paid by said board. Within two weeks after its determination of the truth of the allegations of said petition as aforesaid, the said board of supervisors shall order and give proclamation and notice of an election to be held in the county in which said petition is filed on a specified day not less than sixty days nor more than ninety days thereafter, for the purpose of determining whether such territory described in the petition shall be established and organized into a new county.

When the petition calls for the organization of a new county out of territory of two or more existing counties, a certified copy of such election proclamation and notice shall be immediately mailed to the board of supervisors of each county from the territory of which a part of the proposed new county is taken. Within two weeks after the receipt of said certified copy each board of supervisors receiving same shall issue a like proclamation and notice of an election to be held on the same specified day for the purpose of determining whether said territory shall be established and organized into a new county.

Notice of election of officers.

At the same time that the board of supervisors before which the petition for the organization of a new county is pending issues a proclamation and notice of election for the purpose of determining whether such county shall be established and organized into a new county, it shall issue a proclamation and notice of an election to be held on the same day in the territory which is proposed to be taken for the new county for the election of officers and the location of the county seat therefor in the event that the vote at the election called in the county or counties out of which the new county is to be carved shall be in favor of establishing and organizing the said new county.

Who entitled to vote.

All qualified electors of the county or counties from which territory is taken to form such proposed new county and who shall have been such qualified electors ninety days prior to date of such election, shall be entitled to vote at such election to determine whether or not such territory shall be established and organized into a new county, and all qualified electors resident within the territory included within the boundary lines of the proposed new county as established by the board of supervisors and who are qualified electors of the county or counties from which territory is taken to form such proposed new county and who shall have been such resident qualified electors ninety days prior to date of said election, shall be entitled to a vote at said election for the election of officers and the location of a county seat therefor. Registration and transfers of registration shall be made and shall close in the manner and at a time provided by law for registration and transfers of registration for a general election in the state of California.

Publication of proclamation. Ballots.

Such proclamation and notice of election to determine whether such county shall be established and organized into a new county shall be published in each county territorially affected by the proposed organization at least once a week for three weeks before the holding of such election, in some newspaper of general circulation published in the county or counties out of which it is proposed to take territory for the organization of such new county. Such proclamation and notice shall require the voters to cast ballots which shall contain the words "For the new county of (giving name of the proposed new county) Yes," and "For the new county of (giving name of the proposed new county) No," and each voter desiring to vote for the establishment and organization of said new county shall stamp a cross (X) opposite the words "For the new county of ————— Yes," and each voter desiring to vote against the establishment and organization of said new county shall stamp a cross (X) opposite the words "For the new county of ————— No," in the manner now required by law in other elections.

Publication of proclamation for election of officers. Ballots.

The board of supervisors before whom the petition for the organization of the new county is pending, shall also issue an election proclamation and notice for the election of officers and the locating of a county seat, which election shall be held only in the

territory included within the boundaries of the proposed new county as set forth in the petition. Said election proclamation and notice shall provide for holding the election of officers and the location of the county seat on the same day and at the same polling places within the territory described in the petition, and at which the election is held to determine whether such territory shall be established and organized into a new county and the same election officers shall serve at both elections. A copy of the election proclamation and notice for the election of officers and the locating of a county seat shall be immediately mailed by the county clerk of the county in which petition is filed to the county clerk of each county from which territory is taken for the proposed new county, such proclamation and notice shall require the voters to cast ballots which shall contain the words, "For county seat" with a blank space left below said words and the voter shall write his choice in said space, and the name so written shall be counted as the voter's choice for county seat whether a cross (X) shall be marked after said name or not, or whether said name shall be written in ink or pencil. And said proclamation shall also contain the names of persons to be voted for to fill the various offices designated in said proclamation for counties of the class to which said proposed new county will belong as determined by the board of supervisors as herein directed and in the manner provided by law, except as herein otherwise provided.

Election supplies.

The proclamation calling for the election of officers and the locating of the county seat shall be made and given exclusively by the board of supervisors with which is filed the petition for the formation and establishment of such new county and such board shall cause the clerk of said county to furnish to the officers of each precinct in said proposed new county, all ballots, poll lists, tally lists, registers for voters' signatures, ballot boxes and other election supplies and equipment necessary to conduct election, and which are not hereinafter specifically directed to be furnished by the clerk of another county or counties.

Conduct of election.

Such election shall be governed and controlled by the general election laws of the state so far as the same shall be applicable, except as herein otherwise provided.

Registers for election officers.

The county clerk of each county from which territory is taken for the proposed new county shall five days before the date of such election furnish to each board of election within said proposed new county the book of affidavits of registration for the precincts of such proposed new county as are within their respective counties, and the copies of indexes thereof required by law, containing the names of all persons who were qualified electors therein up to ninety days before the date of such election. All returns of elections held within the territorial limits of the proposed new county for the election of officers and locating county seat shall be made to the board of supervisors calling such election and all returns of the election held for the purpose of determining whether such territory shall be established into a new county shall be made to the board of supervisors of the then existing county in which said election is held.

Certificates of nomination.

All certificates of nomination of candidates for the offices required to be filled at said election shall be filed with the county clerk of the county represented by the board of supervisors calling said election. not less than ten days next before the date of such election.

Sample ballots not required.

The provisions of the election laws relating to preparation, printing and distribution of sample ballots and the provisions of said laws relating to primary elections in this state shall have no application to any election provided for in this act. [Amendment of March 8, 1909. Stats. 1909, p. 199.]

Canvass of returns. Declaration of board of supervisors. Resolution to be filed with secretary of state. Certificate of election.

§ 4. When the petition is for the organization of a new county out of the territory of two or more counties, each board of supervisors shall upon the completion of a canvass of the vote to determine whether such territory shall be established and organized into a new county, forward to the board of supervisors before whom the said petition is pending, a certified copy of the result of said canvass, giving the total number of votes cast in such county for the organization of said proposed new county, and the total number of votes cast against the establishment and organization of the new county. If upon canvass of all votes cast at such election, it appears that fifty per cent of the total number of all the votes cast in each and every county which will be territorially affected by the organization of such new county is "For the new county of _____ Yes," and sixty-five per cent of the votes cast within the territorial limits of the proposed new county as established by the board of supervisors is "For the new county of _____ Yes," the board of supervisors shall by a resolution entered upon its minutes declare such territory formed as a county of this state of the class to which the same shall belong under the name of _____ county (naming it), and that the place (naming it) receiving the highest number of votes cast at said election for county seat shall be the county seat of said county until removed in the manner provided by law, and designating and declaring the persons receiving respectively the highest number of votes for the several offices to be filled at said election, to be duly elected to such offices, and prescribing the amount in which such officers must execute official bonds, where official bonds are required by law. Said board shall forthwith cause a copy of its said resolution duly certified, to be filed in the office of the secretary of state, and from and after the date of such filing said new county shall be deemed to be fully created, and the organization thereof shall be deemed completed and such officers shall be entitled to enter immediately upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as herein required. The clerk of the board of supervisors with which said petition was filed, as herein provided, must immediately make out and deliver to each of said persons so declared and designated to be elected, a certificate of election authenticated by his signature and the seal of said board of supervisors. All the officers elected at said election or appointed under this act shall hold their offices until the time provided by general law for the election and qualification of such officers in this state and until their successors are elected and qualified and for the purpose of determining the term of office of such officers, the years said officers are to hold office, are to be computed respectively from and including the first Monday after the first day of January following the last preceding general election.

Proceedings if proposition be lost.

If, however, upon such canvass, it appears that more than thirty-five per cent of the votes cast at the election held for the purpose of determining whether such proposed new county shall be established and organized, within the territorial limits of the proposed new county as established by the board of supervisors is "For the new county of _____ (naming it) No," or if more than fifty per cent of the total vote of any county which will be territorially affected by the organization of said

proposed new county is "For the new county of _____ (naming it) No," the said board of supervisors shall pass a resolution in accordance therewith, and thereupon no further proceedings relative to the organization of said proposed new county nor any other proceeding for the division of any county any portion of which was included within said proposed new county, shall be instituted within one year after such determination. [Amendment of March 8, 1909. Stats. 1909, p. 202.]

The title of the amendatory act of 1909 stated that it amended sections 1, 2, and 3 of the act; but in the body of the act section 4 was also amended.

Officers of new county. Supervisors.

§ 5. At the election provided for in section three of this act there shall be chosen one judge of the superior court of said new county whose salary shall be \$3,000 per annum, payable at the same time and in the same manner as salaries of the judges of the superior court of the several counties of the state are paid; also such other county, township, and district officers as are now or may hereafter by general law be provided for in counties of the class to which said new county is determined to belong as herein provided; provided, however, that all duly elected, qualified and acting supervisors residing within the proposed new county at the time of the division of such county into supervisorial districts as hereinbefore in section 3 hereof provided, shall hold office of supervisors in said new county for the remainder of the term for which they were elected on qualifying as supervisors for the respective districts in which they reside, as said districts are organized as provided in this act.

Justices and constables. School trustees.

Provided also, that all duly elected, qualified, and acting justices of the peace and constables residing within the proposed new county at the time of the division of such county into judicial townships as hereinbefore in section 3 hereof provided, shall hold office as such justices of the peace or constables in said county for the remainder of the term for which they were elected on qualifying as justices of the peace or constables for the respective townships in which they reside, when said townships are organized as provided in this act; also provided that all duly elected, qualified and acting school trustees residing within the proposed new county at the time of the division of such county into school districts as hereinbefore in section 3 hereof provided shall hold office as school trustees in said new county for the remainder of the term for which they were elected on qualifying as school trustees for the respective districts in which they reside as said districts are organized as provided by this act.

Bond on oath of office. Duties of new officers.

Each person elected or appointed to fill an office of such new county under the provisions of this act shall qualify in the manner provided by law for such officers, except as herein otherwise provided and shall enter upon the discharge of the duties of his office within twenty days after the receipt of the certificate of his election. Each of such officers may take the oath of office before any officer authorized by the law of the state of California to administer oaths and the bond of any officer from which a bond is required shall be approved by any judge of the superior court of any county from which territory was taken to form such new county. The officers elected or appointed under the provisions of this act shall each perform the duties and receive the compensation now provided by general law for the office to which he has been appointed or elected in counties of the class to which such new county shall have been determined to belong as herein provided under the general classification of counties in this state.

Vacancies in office, old county.

§ 6. If by reason of the provisions of section 5 of this act, any vacancies in the offices of supervisors, justices of the peace, constables or school trustees are created

in the old county or counties, the vacancies shall be filled, as is now provided by general laws, for the unexpired terms of such officers respectively; and the board of supervisors of such old county shall redistrict the territory remaining therein into supervisorial districts and in any of such districts in which none of the remaining supervisors reside the office of supervisor shall be deemed to be vacant and supervisors for such district shall be appointed as by general law provided.

Supervisors to notify governor. Governor to appoint commissioners. Powers of commission. Sheriff to execute orders.

§ 7. It shall be the duty of the persons elected to or continuing to hold the office of supervisors of said new county to meet at the county seat thereof within five days after all of them shall have qualified, and upon organization of said board of supervisors, it shall notify the governor of the state of the organization of said county, and thereupon it shall be the duty of the governor to appoint three persons one of whom shall be a resident and taxpayer within the new county, and no two of whom shall be from any one county; the three persons so appointed shall form and be a board of commissioners. Such commissioners shall within ten days after the notice of their appointment, meet at the county seat of the new county and organize by electing from their number a chairman, and also elect a secretary who must not be a member of said commission. Thereafter such commission may meet at such place or places as it may select. A majority of said commissioners shall constitute a quorum for the transaction of business. Said commission shall have power to compel by citation or subpoena signed by their president and secretary the attendance of such persons and the production of such books and papers before said commission as may be required in the performance of the duties imposed by this act except that the official records of any county or counties from which said new county was formed shall in no case be taken from the county seat of said county. It shall be the duty of the sheriff of any county to execute in his county all lawful orders and citations of the said commission; and for any services so performed the sheriff shall be allowed the same fees as are allowed to him for services in civil actions and all witnesses attending before said commission shall be entitled to the same compensation and mileage as is allowed to witnesses in civil actions; provided, that no witness shall be excused from attendance at the time and place mentioned in said order or citation by reason of the failure of the officer making such service to tender to such witness his fees and mileage in advance.

General duties of board of commissioners. Indebtedness of old county, how apportioned. Indebtedness of new to old county.

§ 8. Said board of commissioners shall immediately after its organization ascertain the costs of the election held hereunder and apportion the same equally between each of the counties from which territory was taken to form such new county, and said new county, and shall also ascertain the indebtedness of each county from which territory was taken to form the new county, as the same existed at the time when the result of the election thereon was declared by the board of supervisors as hereinbefore provided, and also the total value of all property at that time belonging to each of said counties from which territory was taken, and situate within the limits of said old counties respectively. It shall also ascertain the assessed value of all property in each of the original old counties from which territory was so taken, according to the last completed assessment made for said county, and also the assessed value, under the same assessment, of all property within the territory of the new county which shall have been taken from the old county or counties from which said new county was formed. They shall then find the difference between the amount of the indebtedness of the old county and the value of the property belonging to the old county at the date of the declaration of the result of said election as hereinbefore provided, and if such indebtedness exceeds

the value of such property belonging to the old county, the new county shall pay to the old county a due proportion thereof, to be determined as follows: As said assessed value of the property in the old county is to the said assessed value of the property in the territory provided by this act to be incorporated within the new county from said old county, so is the amount of said excess to the amount to be paid by said new county to said old county. Said board of commissioners shall certify forthwith to the boards of supervisors of the new county and the old counties thereby affected, the amount constituting the due proportion of said excess payable by such new county to each of them; also the value of any property belonging to each old county at the time when said division took effect as hereinbefore provided, which is situated in the new county. The sum of said ascertained value of said last mentioned property added to the ascertained proportion of said excess which the new county is to pay to the old county, and its proportion of the expense of said election as aforesaid, shall be an indebtedness from the new county to the old county, and the said property situated as aforesaid in the new county, shall upon settlement therefor, as provided in this act, become the property of the new county, and the old county shall pay the entire indebtedness against it, and the expense of said election shall be paid by the county calling such election, and any other county affected thereby shall pay its proportion thereof as hereinbefore provided.

How debt may be paid.

The proceedings in this section required to be taken in the ascertainment and adjustment of property rights and debts shall be had and taken as between said new county and each of the counties from which territory is taken to form said new county in the manner and at the ratio in said section provided. If upon the settlement between the old and the new county as herein provided for, the new county shall be found to be indebted to the old county or either of the old counties, the money necessary to pay said indebtedness shall be raised by a tax levied upon the property contained in said new county and said new county shall pay the same; provided, however, that such payment by said new county may be made in not more than three equal annual payments, or by funds to be derived from the sale of bonds of said new county, as may be determined by a resolution of the board of supervisors of said new county adopted within one year after the receipt of the statement from the board of commissioners as aforesaid of the amount or amounts due from it.

Compensation of commissioners. Expenses, how payable.

§ 9. Members of the board of commissioners provided for under this act shall receive a compensation of not to exceed \$8 per day for every day they are actually employed under the provisions of this act, together with their actual expenses incurred in the performance of their duties, and the clerk of said board shall receive as compensation for his services not to exceed \$5 per day for every day that he is actually employed under the provisions of this act, all of which expenses, together with the reasonable expenses of stationery, postage, and incidental expenses shall be borne in equal proportions by the counties affected by such division including said new county, and the amounts payable by each county shall be paid by the treasurers of the respective counties after the same shall have been presented to and allowed by the board of supervisors as is provided by law for claims against any county.

General duties of officers of new county. Copies of assessments.

§ 10. After the creation of a new county as herein provided its officers shall proceed to complete all proceedings necessary for the assessment or collection of the state and county taxes for the then current year and all acts and steps theretofore taken by the officers of the old county or counties prior to the creation of the new county shall be deemed and taken as having been performed by the officers of the new county for

the benefit of the new county; and upon the creation of the new county it shall be the duty of the officers of the old county or counties to immediately execute and deliver to the board of supervisors of such new county copies of all assessments or other proceedings relative to the assessment and collection of the current state and county taxes of property in such new county. Such copies shall be filed with the respective officers of the new county who would have the custody of the same if the proceeding had been originally had in the new county and such certified copies shall be taken and deemed as originals, and original proceedings in the new county, and all proceedings therein recited shall be taken and deemed as original proceedings in the new county, and shall have the same effect as if the proceedings therein stated had been had at the proper time and in the proper manner by the respective officials of the new county, and the officials of the new county are hereby authorized and directed to proceed thenceforth with the assessment and collection of said taxes as if the proceedings originally had in the old county or counties had been originally had in the new county.

Duty of superintendent of schools. Duty of auditor. Transfer of moneys.

§ 11. The superintendent of public schools of the old county or each of the old counties respectively shall furnish the superintendent of public schools of the new county with a certified copy of the last school census of the different school districts in the territory set apart to form the new county, and draw his warrant on the treasurer of his county in favor of the treasurer in the new county, for all the money that is or may be due by any apportionment or otherwise to the different school districts embraced in the new county, from his county and the auditor of each old county shall in like manner respectively draw his warrant on the treasurer of his county in favor of the treasurer of the new county for all money that is or may be due by apportionment or otherwise to the different road and supervisorial or district funds, in the territory set apart to form the new county, from his county, which said amounts shall be properly credited in both counties. And whenever in the formation of a new county, a road, supervisorial or school district has been divided the board of supervisors shall by resolution direct the treasurer to transfer the proper proportionate amount of the money remaining in the fund of such district to the treasurer of the new county.

Books and records. Certificate of recorder.

§ 12. The board of supervisors of any new county formed as aforesaid must provide suitable books and have transcribed from the records of the old county or counties all such parts thereof as relate to or affect property or the title thereof situate in the new county, and said records when so transcribed and certified as herein provided shall have the same force and effect as such original records; and the compensation for said services shall be fixed and allowed by the board of supervisors of such new county at not to exceed eight cents per folio for transcribing. The recorder of the old county or counties shall compare the books of such transcripts and attach to each volume a certificate under his seal of office of the correctness of the records therein copied, for which service of comparing he shall be entitled to charge not to exceed two cents per folio, and for each certificate a sum not to exceed twenty-five cents.

Transfer of actions.

§ 13. All actions pending in the superior court of the old county or counties for the recovery of the possession of, quieting the title to or for the enforcement of liens upon, real estate lying in the new county shall on motion of any party thereto be transferred to the superior court of the new county; and thereafter shall be subject to the same laws as if said action had been originally brought in the superior court of the new county. All other actions or special proceedings pending in the superior court or courts

of said old county or counties, which might have been commenced in said new county if said new county had been in existence at the date of the commencing thereof, may in the discretion of the court in which it is pending and on motion of any party interested therein, be transferred to the superior court of such new county.

Posting notices.

§ 14. Whenever in this act publication of any notice is provided for and no newspaper of general circulation is published within the territory in which said notice is required to be published, notice shall be given by posting copies of such notice in at least ten public places in such territory for the same length of time said notice was required to be published.

Assembly and senatorial districts.

§ 15. The territory within the limits of any new county until otherwise provided by law shall constitute and continue a part of the assembly and senatorial districts to which the same belonged prior to such county division.

Notaries public.

§ 16. The notaries public of the old county who are residents of the territory embraced in the new county at the date of its creation shall hold their offices until the expiration of their terms and shall be re-commissioned as notaries public in and for the new county until the expiration of their terms and the governor shall from time to time appoint such additional notaries public for the new county as he may deem requisite.

Penalty for violation of act.

§ 17. Any member of any board of supervisors or any other officer who violates any of the provisions of this act, or fails to perform any duty imposed upon him hereunder, shall be guilty of a misdemeanor and of malfeasance in office and be deprived of his office by the decree of a court of competent jurisdiction after trial and conviction.

§ 18. All acts or parts of acts which are in conflict herewith are hereby repealed.

§ 19. This act shall take effect immediately.

MISAPPROPRIATED SCHOOL MONEY.

ACT 1076—An act granting relief to counties by extending the time within which county treasurers are required to make semi-annual settlements with the state controller and state treasurer in cases in which school money of such counties have been misappropriated.

History: Approved May 1, 1911, Stats. 1911, p. 1465.

Misappropriated school money may be deducted at semi-annual settlement.

§ 1. Whenever it shall chance that the state school money of any semi-annual settlement retained by any county treasurer, under the provisions of section 3866 of the Political Code, shall have been misappropriated, and as a result thereof, the primary schools of such county are embarrassed for lack of funds, a sum equal to the amount of school money so retained and misappropriated may be deducted from such moneys as the treasurer of such county shall be required to pay over to the state treasurer at the next semi-annual settlement.

Used for support of primary schools.

§ 2. The sum deducted from the moneys due the state at any semi-annual settlement, as provided in section 1 of this act, together with the sum authorized to be retained by the county treasurer, under the provisions of section 3866 of the Political Code, shall be used for the support of the primary schools of such county.

Supervisors to levy additional tax to pay state.

§ 3. The board of supervisors of any county availing itself of the provisions of this act, shall on the third Monday in September, immediately following the semi-annual settlement at which the deduction authorized in section 1 of this act is made, shall provide in the tax rate fixed for county purposes, for an additional tax sufficient to raise a sum equal to the amount deducted, as herein provided for, and said board of supervisors shall thereupon levy such additional tax, as will enable the county to repay the state of California such sum deducted from the semi-annual settlement, and such payment shall be made at the time of the semi-annual May settlement following the date of such levy.

§ 4. This act shall take effect immediately.

REPORTS OF FINANCIAL TRANSACTIONS.

ACT 1077—An act requiring the compilation and publication of reports of the financial transactions of the several counties and municipalities of the state, and making an appropriation therefor.

History: Approved April 21, 1911, Stats. 1911, p. 1071. Amended May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 659.

Controller to compile annual financial reports of counties and cities.

§ 1. The state controller is hereby directed to compile and publish annually reports of the financial transactions of each county and municipal corporation within the state, together with such other matter as said controller may deem to be of public interest. Such reports shall be made in the time, form and manner prescribed by the said controller.

County and city officers to furnish reports.

§ 2. It shall be the duty of the officers of each county and municipal corporation having charge of the financial records thereof to furnish to the controller in the time, form and manner required by him, full and true reports of all the financial transactions of such county or municipal corporation during the fiscal year next preceding the time of the making of such reports.

False financial reports misdemeanor. Penalty for failure to file report.

§ 3. Any officer of a county or of a municipality who wilfully and knowingly renders a false report shall be guilty of a misdemeanor. Any officer of a county or of a municipality when designated by the controller to make the report required by this act, who fails, neglects or refuses to make and file such report within twenty days after receipt of such designation and request, shall forfeit to the state one thousand dollars to be recovered in an action at law, which, upon the request of the controller, it shall be the duty of the attorney general to prosecute in the name of the people of the state of California. [Amendment of May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 659.]

Controller to appoint accountant to investigate false reports.

§ 4. In case reports are not made in the time, form and manner required or there is reason to believe that any report is false or incorrect, the controller shall appoint some qualified accountant to make an investigation thereof, and to obtain the information required. The accountant appointed shall report to the controller the results of investigation and a copy thereof shall be filed with the legislative body of the county or municipal corporation, the accounts of which were so investigated. In case a similar investigation has to be made of the accounts of any county or municipal corporation for two successive years, a certified copy of the results of the investigation last made shall

be transmitted to the grand jury of the county so investigated or in which the municipal corporation so investigated is situated.

Appropriation.

§ 5. The sum of two thousand dollars, or so much thereof as may be necessary is hereby appropriated out of any moneys not otherwise appropriated, to be expended by the controller for the purpose of carrying out the provisions of this act.

COUNTY AUDITOR.

See "Auditors."

CHAPTER 76.

COUNTY BOUNDARIES.

References: County boundaries of particular counties, see Kerr's Cyc. Political Code, particular county. See, also, particular counties, this book.

County boundary disputes, settlement of, see Kerr's Cyc. Political Code, § 3969.

CONTENTS OF CHAPTER.

- ACT 1085. LOCATION OF BOUNDARY LINE BETWEEN BUTTE AND PLUMAS COUNTIES.
- 1086. LOCATION OF BOUNDARY LINE BETWEEN BUTTE AND YUBA COUNTIES.
- 1087. LOCATION OF BOUNDARY LINE BETWEEN PLUMAS AND LASSEN COUNTIES.
- 1088. LOCATION OF BOUNDARY LINE BETWEEN GLENN AND COLUSA COUNTIES.
- 1091. DEFINING BOUNDARIES BETWEEN HUMBOLDT, MENDOCINO, TRINITY AND KLAMATH COUNTIES.
- 1092. LOCATION OF BOUNDARY LINE BETWEEN SHASTA AND PLUMAS COUNTIES.
- 1093. BETTER DEFINE THE BOUNDARY LINE BETWEEN SHASTA AND PLUMAS COUNTIES.
- 1094. SURVEY OF BOUNDARY LINE BETWEEN SISKIYOU AND LASSEN COUNTIES.
- 1095. DEFINE BOUNDARY LINE OF NAPA COUNTY ADJOINING LAKE AND YOLO COUNTIES.
- 1096. LOCATION OF BOUNDARY LINE BETWEEN SAN LUIS OBISPO AND KERN COUNTIES.
- 1097. ESTABLISHMENT OF COUNTY LINE BETWEEN FRESNO AND TULARE COUNTIES.
- 1098. CLEARLY DEFINING BOUNDARY LINE BETWEEN LAKE AND YOLO COUNTIES.
- 1099. LOCATION OF BOUNDARY LINE BETWEEN SHASTA AND LASSEN COUNTIES.
- 1100. ESTABLISHMENT OF BOUNDARY LINE BETWEEN HUMBOLDT AND DEL NORTE AND SISKIYOU COUNTIES.
- 1101. ELECTION TO CHANGE AND LOCATE BOUNDARY LINE BETWEEN KINGS AND FRESNO COUNTIES.
- 1102. CHANGING AND LOCATING BOUNDARY BETWEEN KINGS AND FRESNO COUNTIES.
- 1103. LOCATION OF BOUNDARY LINE BETWEEN LAKE AND GLENN, LAKE AND MENDOCINO AND LAKE AND COLUSA COUNTIES.
- 1104. LOCATION OF BOUNDARY BETWEEN MENDOCINO AND GLENN COUNTIES.
- 1105. LOCATION OF BOUNDARY BETWEEN BUTTE AND GLENN COUNTIES.
- 1106. LOCATION OF BOUNDARY BETWEEN MENDOCINO AND SONOMA COUNTIES.
- 1107. LOCATION OF BOUNDARY BETWEEN KERN AND SAN BERNARDINO COUNTIES.
- 1108. LOCATION OF BOUNDARY BETWEEN LAKE AND MENDOCINO COUNTIES.
- 1109. LOCATION OF BOUNDARY BETWEEN RIVERSIDE AND SAN BERNARDINO COUNTIES.

BUTTE AND PLUMAS.

ACT 1085—An act to change and permanently locate the boundary line between the counties of Butte and Plumas.

History: Approved March 23, 1901, Stats. 1901, p. 549.

Boundary line between Butte and Plumas counties.

§ 1. The boundary line between the counties of Butte and Plumas is hereby established and permanently located as follows: Beginning at the corner common to sections nine, ten, fifteen and sixteen, township twenty north, range eight east, Mount Diablo base and meridian, and running thence north one-quarter of a mile, thence west one-half mile, thence north three-quarters of a mile to the quarter section corner between sections four and nine, said township and range, thence west to the corner common to sections four, five, eight and nine, said township and range, thence north

one-half mile to the quarter section corner between said sections four and five, thence west one mile to the quarter section corner between sections five and six, said township and range, thence north one-half mile—more or less—to the north corner of sections five and six, said township and range, thence west on township line one and a quarter miles—more or less—to the southwest corner of sections thirty-one, township twenty-one north, range eight east, Mount Diablo base and meridian, thence north on township line, two miles to the east corner of sections twenty-four and twenty-five, township twenty-one north, range seven east, Mount Diablo base and meridian, thence west one mile to the corner common to sections twenty-three, twenty-four, twenty-five and twenty-six, said township and range, thence north one-half mile to the quarter section corner between sections twenty-three and twenty-four, said township and range, thence west one-half mile to the center of said section twenty-three, thence north one-half mile to the quarter section corner between sections fourteen and twenty-three, said township and range, thence west one-half mile to the corner common to sections fourteen, fifteen, twenty-two and twenty-three, said township and range, thence north one mile to the corner common to sections ten, eleven, fourteen and fifteen, said township and range, thence west one mile, thence north one mile, thence west one mile, thence north two miles, thence west one mile, thence north one mile, thence west one mile, to the east corner of sections twenty-four and twenty-five, township twenty-two north, range sixteen east, Mount Diablo base and meridian, thence north—on township line—one mile to the east corner of sections thirteen and twenty-four, said township and range, thence west one mile to the corner common to sections thirteen, fourteen, twenty-three and twenty-four, said township and range, thence north one mile to the corner common to sections eleven, twelve, thirteen and fourteen, said township and range, thence west one mile to the corner common to sections ten, eleven, fourteen and fifteen, said township and range, thence north one mile to the corner common to sections two, three, ten and eleven, thence west one quarter mile, thence north one quarter mile, thence west one quarter mile, thence north one quarter mile to the center of section three, said township and range, thence west three quarters of a mile, thence north one half mile to the north boundary of section four, said township and range, thence west on township line one half mile, thence north one mile, thence west three quarters of a mile to the quarter section corner between sections twenty-nine and thirty-two, township twenty-three north, range six east, Mount Diablo base and meridian, thence north one mile to the quarter section corner between sections twenty and twenty-nine, said township and range, thence west one mile to the quarter section corner between sections nineteen and thirty, said township and range, thence north one mile to the quarter section corner between sections eighteen and nineteen, said township and range, thence west one half mile to the west corner of said sections eighteen and nineteen, thence north—on township line—one mile to the east corner of sections twelve and thirteen, township twenty-three north, range five east, thence west one mile to the corner common to sections eleven, twelve, thirteen and fourteen, said township and range, thence north one half mile to the quarter section corner between said sections eleven and twelve, thence west one mile to the quarter section corner between sections ten and eleven, said township and range, thence north one half mile to the corner common to sections two, three, ten, and eleven, said township and range, thence, west one mile to the corner common to sections three, four, nine, and ten, said township and range, thence north one mile to the north corner of said sections three and four, two miles to the corner common to sections twenty-seven, twenty-eight, thirty-three, and thirty-four, township twenty-four north, range five east, Mount Diablo base and meridian, thence west one mile to the corner common to sections twenty-eight, twenty-nine, thirty-two, and thirty-three, said township and range, thence north one mile to the corner common to sections twenty, twenty-one, twenty-eight, and twenty-nine, said

township and range, thence east one mile to the corner common to sections twenty-one, twenty-two, twenty-seven, and twenty-eight, said township and range, thence north one mile to the corner common to sections fifteen, sixteen, twenty-one, and twenty-two, said township and range, thence west one half mile to the quarter section corner between said sections sixteen and twenty-one, thence north two miles to the quarter section corner between sections four and nine, said township and range, thence east one half mile to the corner common to sections three, four, nine, and ten, said township and range, thence north one mile to the north corner of sections three and four, said township and range, two miles to the corner common to sections twenty-seven, twenty-eight, thirty-three, and thirty-four, township twenty-five north, range five east, Mount Diablo base and meridian, thence west one half mile to the quarter section corner between said sections twenty-eight and thirty-three, thence north two miles to the quarter section corner between sections sixteen and twenty-one, said township and range, thence east one half mile to the corner common to sections fifteen, sixteen, twenty-one, and twenty-two, said township and range, thence north, one mile to the corner common to sections nine, ten, fifteen, and sixteen, said township and range, thence east one half mile to the quarter section corner between said sections ten and fifteen, thence north one and one half miles to the center of section three, said township and range, thence east one mile to the center of section two, said township and range, thence north one half mile—more or less—to the quarter section corner on north boundary of said section two, thence east on township line to the quarter section corner on south boundary of section thirty-five, township twenty-six north, range five east, Mount Diablo base and meridian, thence north one mile to the quarter section corner between sections twenty-six and thirty-five, said township and range, thence east one half mile to the corner common to sections twenty-five, twenty-six, thirty-five, and thirty-six, said township and range, thence north one mile to the corner common to sections twenty-three, twenty-four, twenty-five, and twenty-six, said township and range, thence west one half mile to the quarter section corner between said sections twenty-three and twenty-six, thence north one and one half miles to the center of section fourteen, said township and range, thence west one half mile to the quarter section corner between sections fourteen and fifteen, said township and range, thence north one half mile to the corner common to sections ten, eleven, fourteen, and fifteen, said township and range, thence west one mile to the corner common to sections nine, ten, fifteen, and sixteen, said township and range, thence north two miles to the north corner of sections three and four, said township and range, two and one half miles to the quarter section corner between sections thirty-three and thirty-four, township twenty-seven north, range five east, Mount Diablo base and meridian, thence west one and three quarters miles—more or less—to the Chico and Humboldt road at the corner common to Plumas, Butte, and Tehama counties.

§ 2. All other acts and parts of acts in conflict with this act are hereby repealed.
In effect.

§ 3. This act shall take effect immediately.

BUTTE AND YUBA.

ACT 1086—An act to change and permanently locate the boundary line between the counties of Butte and Yuba.

History: Approved February 25, 1897, Stats. 1897, p. 22

Boundary line between Butte and Yuba counties.

§ 1. The boundary line between the counties of Butte and Yuba is hereby established and permanently located as follows: Beginning at the intersection of the south line of section thirty-one, of township nineteen north, range six east, Mount Diablo base and meridian, with the west branch of the Honeut Creek, the present line between the

counties of Butte and Yuba, and running thence east to the southwest corner of the southeast one quarter of the southeast one quarter of section thirty-one, said township and range, thence north three quarters of a mile, thence east one quarter of a mile, thence north one quarter of a mile, to corner common to sections twenty-nine, thirty, thirty-one, and thirty-two, said township and range; thence east one half mile to the one quarter section corner between sections twenty-nine and thirty-two, said township and range, thence north one half mile to the center of section twenty-nine, thence east one half mile to the one quarter section corner between sections twenty-eight and twenty-nine, said township and range, thence north three quarters of a mile, thence east one quarter of a mile, thence north three quarters of a mile, thence east one quarter of a mile to the one quarter section corner between sections sixteen and twenty-one, said township and range, thence north one and one half miles to the center of section nine, said township and range, thence east one and one half miles to the one quarter section corner between sections ten and eleven, said township and range, thence south one half mile to the corner common to sections ten, eleven, fourteen, and fifteen, said township and range, thence east two miles to the corner common to sections twelve and thirteen, township nineteen north, range six east, and sections seven and eighteen, township nineteen north, range seven east, Mount Diablo base and meridian, thence north one mile to the corner common to sections one and twelve, township nineteen north, range six east, and sections six and seven, township nineteen north, range seven east, Mount Diablo meridian, thence east three miles to the corner common to sections three, four, nine, and ten, township nineteen north, range seven east, Mount Diablo meridian, thence south one half mile to one quarter section corner between sections nine and ten, said township and range, thence east one and one half miles to the center of section eleven, said township and range, thence north one half mile to the one quarter section corner between sections two and eleven, said township and range, thence east one half mile to the corner common to sections one, two, eleven, and twelve, said township and range, thence north two miles to the corner common to sections twenty-five, twenty-six, thirty-five, and thirty-six, township twenty north, range seven east, Mount Diablo meridian, thence east one half mile to one quarter section corner between sections twenty-five and thirty-six, said township and range, thence north one half mile to the center of section twenty-five, said township and range, thence east one and one half miles to the one quarter section corner between sections twenty-nine and thirty, township twenty north, range eight east, Mount Diablo meridian, thence north one quarter of a mile, thence east one half of a mile, thence north one and one quarter miles to the one quarter section corner between sections seventeen and twenty, said township and range, thence east one and one half miles to the corner common to sections fifteen, sixteen, twenty-one, and twenty-two, said township and range, thence north one mile to the corner common to sections nine, ten, sixteen, and fifteen, said township and range, thence east to the line between Plumas and Butte counties at its intersection with the northwest boundary line of Yuba county.

§ 2. All other acts and parts of acts in conflict with this act are hereby repealed.

§ 3. This act shall take effect immediately.

PLUMAS AND LASSEN.

ACT 1087—An act to change and permanently locate the boundary line between the counties of Plumas and Lassen.

History: Approved February 28, 1901, Stats. 1901, p. 76.

Boundary line between Plumas and Lassen counties.

§ 1. The boundary line between the counties of Plumas and Lassen is hereby established and permanently located as follows: Beginning on the south boundary of township twenty-two north, range sixteen east, Mount Diablo base and meridian, at the

corner common to sections thirty-five and thirty-six, and running thence north two miles to the corner common to sections twenty-three, twenty-four, twenty-five, and twenty-six, said township and range, thence east one mile to the east boundary of said township and range at the corner common to sections twenty-four and twenty-five, thence north one mile to the west corner of sections eighteen and nineteen, township twenty-two north, range seventeen east, Mount Diablo base and meridian, thence east one half mile to the quarter section corner between said sections eighteen and nineteen, thence north one mile to the quarter section corner between sections seven and eighteen, said township and range, thence east one half mile to the corner common to sections seven, eight, seventeen and eighteen, said township and range, thence north on section lines to the south corner of sections thirty-one and thirty-two, township twenty-three north, range seventeen east, Mount Diablo base and meridian, thence north six miles to the south corner of sections thirty-one and thirty-two, township twenty-four north, range seventeen east, Mount Diablo base and meridian, thence east one half mile, thence north two miles, thence west one half mile, thence north two miles, thence west one mile, to the east corner of sections twelve and thirteen, township twenty-four north, range sixteen east, Mount Diablo base and meridian, thence north one half mile to the quarter section corner on east side of said section twelve, thence west one half mile to the center of said section twelve, thence north one half mile to the quarter section corner between sections one and twelve, said township and range, thence west one half mile to the corner common to sections one, two, eleven, and twelve, said township and range, thence north one half mile to the quarter section corner between said sections one and two, thence west one half mile to the center of said section two, thence north one half mile to the quarter section corner on north boundary of said section two, thence west on township line one half mile to the south corner of sections thirty-four and thirty-five, township twenty-five north, range sixteen east, Mount Diablo base and meridian, thence north one mile to the corner common to sections twenty-six, twenty-seven, thirty-four and thirty-five, said township and range, thence west one half mile to the quarter section corner between said sections twenty-seven and thirty-four, thence north one mile to the quarter section corner between sections twenty-two and twenty-seven, said township and range, thence west one half mile to the corner common to sections twenty-one, twenty-two, twenty-seven, and twenty-eight, said township and range, thence north one mile to the corner common to sections fifteen, sixteen, twenty-one, and twenty-two, said township and range, thence west one mile to the corner common to sections sixteen, seventeen, twenty, and twenty-one, said township and range, thence north two miles to the corner common to sections four, five, eight, and nine, said township and range, thence west one half mile to the quarter section corner between said sections five and eight, thence north two miles to the corner common to sections twenty-eight, twenty-nine, thirty-two, and thirty-three, township twenty-six north, range sixteen east, Mount Diablo base and meridian, thence west one mile to the corner common to sections twenty-nine, thirty, thirty-one, and thirty-two, said township and range, thence north one mile to the corner common to sections nineteen, twenty, twenty-nine, and thirty, said township and range, thence west two miles to the corner common to sections twenty-three, twenty-four, twenty-five, and twenty-six, township twenty-six north, range fifteen east, Mount Diablo base and meridian, thence north one and a half miles to the quarter section corner between sections thirteen and fourteen, said township and range, thence west one mile to the quarter section corner between sections fourteen and fifteen, said township and range, thence north one half mile to the corner common to sections ten, eleven, fourteen, and fifteen, said township and range, thence west four miles to the west corner of sections seven and eighteen, said township and range, thence north, on township line, one half mile to the quarter section corner, on east boundary of section twelve, township twenty-six

north, range fourteen east, Mount Diablo base and meridian, thence west one mile to the quarter section corner between sections eleven and twelve, said township and range, thence north one half mile to the corner common to sections one, two, eleven and twelve, said township and range, thence west one mile to the corner common to sections two, three, ten and eleven, said township and range, thence north three quarters of a mile, thence west one mile, thence north one half mile to the north corner of sections three and four, said township and range, thence west on township line one half mile to the quarter section corner on south boundary of section thirty-three, township twenty-seven north, range fourteen east, Mount Diablo base and meridian, thence north one mile to the quarter section corner between sections twenty-eight and thirty-three, said township and range, thence west one half mile to the corner common to sections twenty-eight, twenty-nine, thirty-two and thirty-three, said township and range, thence north one half mile to the quarter section corner between said sections twenty-eight and twenty-nine, thence west one mile to the quarter section corner between sections thirty-nine and thirty, said township and range, thence north one half mile to the corner common to sections nineteen, twenty, twenty-nine and thirty, said township and range, thence west one half mile to the quarter sections corner between said sections nineteen and thirty, thence north one mile to the quarter section corner between sections eighteen and nineteen, said township and range, thence west one half mile to west corner of said sections eighteen and nineteen, thence north on township line one mile to the east corner of sections twelve and thirteen, township twenty-seven north, range thirteen east, Mount Diablo base and meridian, thence west one and one half miles to the quarter sections corner between sections eleven and fourteen, said township and range, thence north one mile to the quarter section corner between sections two and eleven, said township and range, thence west one half mile to the corner common to sections two, three, ten and eleven, said township and range, thence north one mile to the north corner of said sections two and three, thence west on township line one mile to the south corner of sections twenty-three and thirty-four, township twenty-eight north, range thirteen east, Mount Diablo base and meridian, thence north one mile to the corner common to sections twenty-seven, twenty-eight, thirty-three and thirty-four, said township and range, thence west one mile to the corner common to sections twenty-eight, twenty-nine, thirty-two, and thirty-three, said township and range, thence north one half mile to the quarter section corner between said sections twenty-eight and twenty-nine, thence west one mile to the quarter sections corner between sections twenty-nine and thirty, said township and range, thence north one half mile, thence west one and a half miles to the quarter section corner between sections twenty-four and twenty-five, township twenty-eight north, range twelve east, thence north one and a half miles to the center of section thirteen, said township and range, thence west two and one half miles to the quarter section corner between sections fifteen and sixteen, said township and range, thence north one half mile to the corner common to sections nine, ten, fifteen, and sixteen, said township and range, thence west one mile to the corner common to sections eight, nine, sixteen, and seventeen, said township and range, thence north one half mile to the quarter section corner between said sections eight and nine, thence west one half mile to the center of said section eight, thence north one half mile to the quarter section corner between sections five and eight, said township and range, thence west four miles to the quarter section corner between sections three and ten, township twenty-eight north, range eleven east, Mount Diablo base and meridian, thence north one half mile to the center of said section three, thence west two miles to the center of section five, said township and range, thence south one half mile to the quarter section corner between sections five and eight, said township and range, thence west one half to the corner common to sections five, six, seven, and eight, said township and range, thence south one half mile to the quarter section

corner between said sections seven and eight, thence west one mile, more or less, to the quarter section corner on the west boundary of said section seven, thence south on township line one and a half mile, more or less, to the east corner of sections thirteen and twenty-four, township twenty-eight north, range ten east, Mount Diablo base and meridian, thence west one mile to the corner common to sections thirteen, fourteen, twenty-three, and twenty-four, said township and range, thence south one half mile to the quarter corner between said section twenty-three and twenty-four, thence west one mile to the quarter section corner between sections twenty-two and twenty-three, said township and range, thence south one mile to the quarter section corner between sections twenty-six and twenty-seven, said township and range, thence west one half mile to the center of said section twenty-seven, thence south one half mile to the quarter section corner between sections twenty-seven and thirty-four, said township and range, thence west one half mile to the corner common to sections twenty-seven, twenty-eight, thirty-three and thirty-four, said township and range, thence south one half mile to the quarter section corner between said sections thirty-three and thirty-four, thence west one mile to the quarter section corner between sections thirty-two and thirty-three, said township and range, thence south three miles to the quarter section corner between sections sixteen and seventeen, township twenty-seven north, range ten east, Mount Diablo base and meridian, thence west one mile to the quarter section corner between sections seventeen and eighteen, said township and range, thence south one half mile to the corner common to sections seventeen, eighteen, nineteen and twenty, said township and range, thence west two miles to the corner common to sections thirteen, fourteen, twenty-three and twenty-four, township twenty-seven north, range nine east, Mount Diablo base and meridian, thence north one mile to the corner common to sections eleven, twelve, thirteen and fourteen, said township and range, thence west one mile to the corner common to sections ten, eleven, fourteen and fifteen, said township and range, thence north one mile to the corner common to sections two, three, ten and eleven, said township and range, thence west three miles to the corner common to sections five, six, seven and eight, said township and range, thence north one mile to the north corner of said sections five and six, thence west on township line two miles to the south corner of sections thirty-five and thirty-six, township twenty-eight north, range eight east, Mount Diablo base and meridian, thence north one and a half miles to the quarter section corner between sections twenty-five and twenty-six, said township and range, thence west one mile to the quarter section corner between sections twenty-six and twenty-seven, said township and range, thence north twelve miles, more or less, to the quarter section corner between sections twenty-two and twenty-three, township thirty north, range eight east, Mount Diablo base and meridian, thence west fourteen miles, more or less, to the corner common to the counties of Lassen and Shasta.

§ 2. All other acts and parts of acts in conflict with this act are hereby repealed.

§ 3. This act shall take effect immediately.

GLENN AND COLUSA.

ACT 1088—An act to change and permanently locate the boundary lines between the counties of Glenn and Colusa.

History: Approved March 11, 1893, Stats. 1893, p. 153.

Boundary line between Glenn and Colusa counties located.

§ 1. The boundary lines between the counties of Glenn and Colusa are hereby established and permanently located, as follows: Beginning at a point on the boundary line between the counties of Colusa and Lake, as now established by law, at the northwest corner of the southwest quarter of section thirty, township eighteen north, range eight west, Mount Diablo base and meridian; running thence east along the half section line, and one and one half miles north of the line dividing townships seventeen

and eighteen, of Mount Diablo base and meridian, to range line dividing township eighteen north, two and three west; running thence north two miles to northeast corner of southeast quarter of section thirteen, township eighteen north, range three west; running thence east along the half section line to the center of the Sacramento river; thence down the center of the said Sacramento river, in a southeasterly course, to a point where a line between Glenn and Colusa counties crosses the said Sacramento river; thence east to Butte creek.

§ 2. All other acts and parts of acts in conflict with this act are hereby repealed.

§ 3. This act shall take effect immediately.

COMMISSION TO DEFINE BOUNDARIES BETWEEN HUMBOLDT, MENDOCINO, TRINITY AND KLAMATH COUNTIES.

ACT 1091—An act to provide for defining the boundaries between Humboldt, Mendocino, Trinity and Klamath counties.

History: Approved March 30, 1872, Stats. 1871-72, p. 766.

Commission of survey.

§ 1. The board of supervisors of each of the counties of Humboldt, Mendocino, Trinity, and Klamath are authorized and empowered, on or before the first day of July, in the year eighteen hundred and seventy-two, to appoint a commission of survey to act in conjunction for the purposes hereinafter named.

Meeting.

§ 2. The commission of survey must meet together at the town of Arcata, in the county of Humboldt, on the first day of August after their appointment, or on such other day thereafter as any three of them may designate, take the oath of office, and by a majority vote select a competent surveyor to run out, mark, and define by proper monuments the boundary lines between the respective counties in accordance with the boundaries as now designated by statute.

Contract.

§ 3. The commission must make with the surveyor selected a contract for running, defining, and marking with proper monuments each line, at a compensation not to exceed the sum of thirty dollars per mile, the surveyor bearing all necessary expenses.

Monuments.

§ 4. The surveyor selected and contracted with must accurately run, thoroughly mark, and place monuments on the line between Mendocino county and the counties of Humboldt and Trinity, running east and west, and the line between Humboldt and Trinity, north and south, and the line between Humboldt and Klamath, running east and west, and map and report the same to the board of supervisors of each of the counties.

Expense how paid.

§ 5. The expense of running the line between Trinity and Mendocino must be paid by the respective counties, each paying one half thereof. The expense of running the line between Mendocino and Humboldt must be paid by the respective counties, each paying one half thereof; and the expense of running the line between Trinity and Humboldt must be paid by the respective counties, each paying one half thereof; and the expense of running the line between Humboldt and Klamath must be paid by the respective counties, each paying one half thereof.

Compensation.

§ 6. The commission are to receive, in going from the county seat of their respective counties to the town of Arcata and returning, the same mileage that the sheriff of their

respective counties receive for serving a summons, and five dollars for each day, not exceeding five, he remains at the town of Arcata on the business of the commission, to be paid by the county on behalf of which he is a commissioner.

Advertising for bids.

§ 7. The commission must, by advertisement and personal notices, request bids for the contracts from practical surveyors. Any contract made by any three (3) of the commissioners binds all the counties for their respective portions of the contract, whether represented in the commission or not. Three (3) of the commission meeting and acting on the first day of August, eighteen hundred and seventy-two, or on any day thereafter agreed on by them, are authorized to make the contract for the survey.

Filing of contract.

§ 8. The contract must be placed in writing; four (4) copies to be made and signed, and each commissioner must file one in the office of the county clerk of his respective county.

Bond.

§ 9. At the time of letting the contract the commissioners must require bonds of the surveyor contracted with to faithfully perform the service, and fix the time when the same must be completed, and fix a maximum which the expense of the survey must not exceed, and specify the character of the monuments to be fixed and of the report to be made.

Boundary lines.

§ 10. The lines run out, marked, and defined as required by this act are hereby declared to be the true boundary lines of the counties named herein.

§ 11. This act takes effect on its passage.

Editor's note: The act provided for the creation of a commission to define and mark the boundary lines between the counties, and declared that the boundaries so defined and marked should be the official boundaries. By the act of March 28, 1874, Stats. 1873-74, and the act of March 31, 1876, Stats. 1875-76, p. 603, amendatory and supplementary thereto, a portion of Klamath county was annexed to Humboldt county, and the remainder to Siskiyou county. The effect was to render all boundary lines defined and marked by the commission created under the act ineffective, with the exception of a portion of the line between Humboldt and Trinity counties, and the line between Mendocino and Trinity and Humboldt counties.

1. "Accurately run."—The requirement that the line should be "accurately run" was directory only, and the fact that it was inaccurately run did not render the survey void, in the absence of fraud.—Trinity County v. Mendocino County, 151 Cal. 279, 90 Pac. 685.

1a. Act not repealed by sections 3969, 3972, Political Code.—The act is not necessarily inconsistent with nor repugnant to §§ 3969, 3972, of the Political Code, and was not repealed thereby.—Trinity County v. Mendocino County, 151 Cal. 279, 90 Pac. 685.

2. Boundary defined and marked by the commission became and has since remained the true boundary line between Mendocino and Trinity counties, although a subsequent survey made under the authority of § 3969,

Political Code, disclosed the fact that the boundary line did not follow the boundary along the fortieth parallel established by §§ 3918 and 3919, Political Code.—Trinity County v. Mendocino County, 151 Cal. 279, 90 Pac. 685.

2a. Boundary line fixed by the act was the true boundary, whether it was along the fortieth parallel or not.—Trinity County v. Mendocino County, 151 Cal. 279, 90 Pac. 685.

3. Delegation of legislative power.—The survey of a boundary line is not a legislative act, and the act is not obnoxious as a delegation of legislative power, because it declares the line to be surveyed the true and official boundary line.—Trinity County v. Mendocino County, 151 Cal. 279, 90 Pac. 685.

4. Even if act were inconsistent with sections 3969, 3972, Political Code, it would prevail over those sections, since the Political Code was adopted as if passed December 4, 1872, and the special act making these sections effective May 1, 1872, was enacted March 22, 1872, and this act was therefore the latest enactment.—Trinity County v. Mendocino County, 151 Cal. 279, 90 Pac. 685.

See, also, County of Mariposa v. County of Madera, 142 Cal. 50, 75 Pac. 572.

5. Legislative power.—It was competent for the legislature to declare, in advance of the work, that the line which might be surveyed and marked, under the authority of the act passed by it, should be the true line.—Trinity County v. Mendocino County, 151 Cal. 279, 90 Pac. 685.

6. **Location of county lines** is a political question to be determined by the legislature, and if the location is inaccurately run it is for the legislature to correct, and not the courts.—*Trinity County v. Mendocino County* 151 Cal. 279, 90 Pac. 685.

7. **The act is a special law** relating to one of a particular class of subjects, and is not repealed by a general law, such as the act adopting the Political Code or the act

making §§ 3969 and 3972 of that code effective May 1, 1872, even if those acts had been subsequently enacted.—*Trinity County v. Mendocino County*, 151 Cal. 279, 90 Pac. 685.

8. **The survey of a boundary line** between two counties by authority of an act of the legislature is a purely ministerial act.—*Trinity County v. Mendocino County*, 151 Cal. 279, 90 Pac. 685.

SHASTA AND PLUMAS.

ACT 1092—An act to permanently locate the boundary line between the counties of Shasta and Plumas.

History: Approved March 23, 1901, Stats. 1901, p. 560.

Boundary line between Shasta and Plumas counties.

§ 1. The boundary line between the counties of Shasta and Plumas is hereby established and permanently located as follows: Beginning at the quarter section corner on the west boundary of section nineteen, township thirty north, range five east, Mount Diablo base and meridian, and running thence east eight miles—more or less—to the south corner of Shasta and Lassen counties.

§ 2. All acts and parts of acts in conflict with this act are hereby repealed.

§ 3. This act shall take effect immediately.

MARIPOSA AND FRESNO.

ACT 1093—An act to better define the boundary line of Mariposa and Fresno counties.

History: Approved April 1, 1872, Stats. 1871-72, p. 891. Amended February 11, 1874, Stats. 1873-74, p. 100.

Description of boundary line.

§ 1. The line at present known as the boundary line between Mariposa and Fresno counties, from the westerly point of junction of said counties, running easterly to the southwest corner of section eleven, and the northwest corner of section fourteen, in township six south, range twenty east, of Mount Diablo meridian; thence east to the northwest corner of section fourteen, in township six south, range twenty-one east; thence north to the northwest corner of section thirty-five, in township five south, range twenty-one east; thence east to the southwest corner of section thirty, in township five south, range twenty-two east; thence north to the southwest corner of the Mariposa Big Tree Grant; thence east along the line of said grant to the southeast corner of said grant; thence north along the line of said grant to the northeast corner of the same; thence north to the original boundary line between the counties of Mariposa and Fresno; thence along said line to the present boundary line of Tuolumne county; is hereby declared and constituted the boundary line between said counties.

Survey must be made. Umpire.

§ 2. The respective county surveyors of Mariposa and Fresno counties, shall proceed to survey and complete said defining line, with the necessary monuments, prior to the first day of September, eighteen hundred and seventy-two. Reasonable compensation (not to exceed one hundred and fifty dollars each,) may be allowed by the supervisors of Mariposa and Fresno counties, to be paid out of the county general funds of said counties; and in case of a disagreement they shall be empowered to call in a third surveyor as umpire, whose decision shall be final, but whose services shall in no case be an additional charge.

Repealed.

§ 3. The act entitled "An act to better define the boundary line between Fresno and Mariposa counties," approved March twenty-ninth, eighteen hundred and seventy, is hereby repealed.

§ 4. This act shall take effect immediately.

Not repealed by implication by sections 3938 and 3939, Political Code.—The act prevails over §§ 3938 and 3939, Political Code, not only because it is a subsequent enactment, but because under the rule of construction prescribed by §§ 4478 and 4479, Po-

litical Code, it would have the same effect if it had been passed and approved on the first day of that session of the legislature.—*County of Mariposa v. County of Madera*, 142 Cal. 50, 75 Pac. 572.

SISKIYOU AND LASSEN.

ACT 1094—An act providing for the survey of the line forming a portion of the southern boundary of Siskiyou county and the northern boundary of Lassen county.

History: Approved April 1, 1872, Stats. 1871-72, p. 886.

Surveyor general directed to establish boundaries.

§ 1. The surveyor general is hereby directed to survey and locate that portion of the southern boundary line of the county of Siskiyou, commencing at a point known as the Devil's Castle, near and on the opposite side from Soda Springs, on the upper Sacramento river, and running from said point due east, to the eastern boundary of the state of California, and shall plainly designate said line by suitable monuments, and describe the same upon the maps of state, in accordance with the several acts of the legislature of the state of California, defining the northern boundary of the county of Lassen and that portion of the southern boundary of the county of Siskiyou above described.

Limitation and payment of expenses. Appropriation.

§ 2. The necessary expenses of such survey and location of said line shall be paid by the state of California, out of the general fund thereof, to the surveyor general, upon his filing in the office of the state controller his certificate that such survey is completed according to law, together with his claim, setting forth the items of expense of such survey; provided, that the total expense of such survey shall not exceed the sum of twenty-five hundred dollars, and the sum of twenty-five hundred dollars is hereby appropriated for the payment of the expenses of such survey.

§ 3. This act shall take effect from and after its passage.

NORTHERN BOUNDARY OF NAPA.

ACT 1095—An act to define the northern boundary line of Napa county, adjoining Lake and Yolo counties.

History: Approved March 8, 1872, Stats. 1871-72, p. 305.

Boundary lines.

§ 1. The northern boundary line of Napa and the southeasterly boundary line of Lake counties shall commence at the highest point of the Mount St. Helena; thence running in an easterly direction along the present boundary line between said counties to the Buttes Cañon road; thence northeasterly in a direct line to the junction of Jericho and Putah creeks; thence up Jericho creek to the junction of Hunting creek, in Jericho valley; thence up Hunting creek to a large pile of rocks on the southeasterly side of the county road, at the lower and most easterly end of Hunting valley; thence in a straight line in the direction of the intersection of Bear and Cache creeks to the county line of Yolo county; thence along the line of Yolo county in a southeasterly direction to the present county line dividing Yolo and Napa counties.

Claim to be paid.

§ 2. The board of supervisors of Napa county shall order paid the claim of Lake county for the sum of thirty-five hundred dollars, and the auditor of said county of Napa shall draw a warrant for the same on the treasurer of the said county, payable from the general fund, and the treasurer of Napa county shall pay the same.

Repealing.

§ 3. All acts or parts of acts in conflict with this act are hereby repealed.

§ 4. This act shall take effect from and after its passage.

SAN LUIS OBISPO AND KERN.

ACT 1096—An act to change and permanently locate the boundary lines between the counties of San Luis Obispo and Kern.

History: Approved March 14, 1885, Stats. 1885, p. 139.

Boundary line between San Luis Obispo and Kern counties.

§ 1. The boundary line between the counties of San Luis Obispo and Kern are hereby established as follows: Beginning at the southeast corner of section thirty-one, in township ten north, of range twenty-four west, of San Bernardino base and meridian; thence north, on dividing section lines between thirty-one and thirty-two, thirty and twenty-nine, nineteen and twenty, eighteen and seventeen, seven and eight, six and five, to the northeast corner of section six, in the said township ten north, range twenty-four west, of San Bernardino base and meridian; thence continuing north through township eleven north, range twenty-four west, of San Bernardino base and meridian, on section lines between sections thirty-one and thirty-two, thirty and twenty-nine, nineteen and twenty, eighteen and seventeen, seven and eight, six and five, to the northeast corner of section six in said township eleven north, of range twenty-four west, of San Bernardino base and meridian; thence west, on township line between townships eleven and twelve north, range twenty-four west, of San Bernardino base and meridian, and along the north boundary of section six to the northwest corner of said township eleven north, range twenty-four west, of San Bernardino base and meridian; thence north, between sections thirty-one (in fractional township twelve north, range twenty-four west), and section thirty-six (in fractional township twelve north, range twenty-five west), to the eight standard parallel south of Monte Diablo base and meridian; thence westerly on the said eight standard parallel south to the common corner to townships thirty-two south, range twenty-two east, and thirty-two south, range twenty-three east, of Monte Diablo meridian; thence northerly, as per the United States survey, on line between said township and ranges last above named, to the northeast corner of the said township thirty-two south, range twenty-two east, of Monte Diablo meridian; thence westerly on the north boundary of said last above named township and range to the common corner to township thirty-one south, range twenty-one east, and thirty-two south, range twenty-one east, of Monte Diablo meridian; thence north to the northeast corner of said township thirty-one south, range twenty-one east, of Monte Diablo meridian; thence west eight miles to the southwest corner of section thirty-five, in township thirty south, range twenty east; thence north on section line between sections thirty-four and thirty-five, twenty-seven and twenty-six, twenty-two and twenty-three, fifteen and fourteen, ten and eleven, and three and two, to the northeast corner of section three in said township thirty south, range twenty east, of Monte Diablo meridian; thence west four miles to the northwest corner of said last above named township and range; thence north to the northeast corner of township twenty-nine south, range nineteen east; thence west to the northwest corner of said township twenty-nine south, range nineteen east, of Monte Diablo meridian; thence west one mile to the southeast corner of section thirty-five, in township twenty-eight south, range eighteen east, of Monte

Diablo meridian; thence north to the northeast corner of section twenty-six, in said township, twenty-eight south, range eighteen east; thence west to the northwest corner of said section twenty-six; thence north to the northeast corner of section twenty-two; thence west to the northwest corner of said section twenty-two; thence north to the northeast corner of section sixteen; thence west to the northwest corner of said section sixteen; thence north to the northeast corner of section eight; thence west to the northwest corner of said section eight; thence north to the township line at the northeast corner of section six; thence west to the northwest corner of said township twenty-eight south, range eighteen east; thence north on range line to northeast corner of township twenty-seven south, range seventeen east, of Monte Diablo meridian; thence west on township line to the northwest corner of said last above named township; thence north, on range line between township twenty-six south, range sixteen east, and township twenty-six south, and range seventeen east, to the northeast corner of said township twenty-six south, range sixteen east; thence north, on said range line between township twenty-five south, range sixteen east, and township twenty-five south, range seventeen east, of Monte Diablo meridian, to the northeast corner of said township twenty-five south, range eighteen east, on the sixth standard parallel south of Monte Diablo base; thence west, on said standard parallel, to the original common corner of San Luis Obispo, Kern, and Tulare counties.

§ 2. All other acts in conflict with this act are hereby repealed.

§ 3. This act shall take effect immediately after its passage.

FRESNO AND TULARE.

ACT 1097—An act to establish the county line between the counties of Fresno and Tulare.

History: Approved March 23, 1876, Stats. 1875-76, p. 397. Prior act superseded, approved March 27, 1874, Stats. 1873-74, p. 700.

Boundary line defined.

§ 1. The boundary line between the counties of Fresno and Tulare shall be as follows: Commencing at a point on the eastern boundary line of Monterey county, as described in section three thousand nine hundred and forty-eight of Political Code, being on the summit of coast range, which point is south forty-five degrees west from the point on Kings river where the northern line of township sixteen south crosses the same; thence north forty-five degrees east to said point on Kings river; thence east along northern line of township sixteen south and continuing on said line to the northwest corner of township sixteen south, range twenty-five (25) east; thence north to the northwest corner of township fifteen (15) south, range twenty-five (25) east; thence east to the northeast corner of township fifteen south, range twenty-seven (27) east; thence north to the northeast corner of township fourteen south of range twenty-seven east; thence east on the line between township thirteen and fourteen south to the summit of Sierra Nevada, being the western line of Inyo county.

§ 2. All acts and parts of acts in conflict with this act are hereby repealed.

§ 3. This act shall take effect and be in force from and after its passage.

The superseded act defines the boundary lines and natural and geographical points by section, township and range lines; while and lines.
this act defines it by township and range

LAKE AND YOLO.

ACT 1098—An act to more clearly define the boundary line between the counties of Lake and Yolo, in the state of California.

History: Approved April 1, 1872, Stats. 1871-72, p. 903.

Boundary line described and declared.

§ 1. The line established by H. H. Sanford, as deputy surveyor general, under special instruction of J. W. Bost, surveyor general of California, at the request of the boards

of supervisors of the counties of Lake and Yolo, and designated on a certain map on file in the office of the surveyor general of the state of California, indorsed "Map of the boundary line between Lake and Yolo counties, surveyed April, eighteen hundred and seventy-one, by H. H. Sanford, deputy surveyor general of California," is hereby declared the boundary line between the said counties of Lake and Yolo, provided the same is in accordance with the provisions of an act to more clearly define and establish the boundary line of Yolo county approved March third, eighteen hundred and sixty-six.

§ 2. This act shall take effect from and after its passage.

SHASTA AND LASSEN.

ACT 1099—An act to change and permanently locate the boundary line between the counties of Shasta and Lassen.

History: Became a law under constitutional provision, without governor's approval, March 14, 1899, Stats. 1899, p. 98.

Boundary line between Shasta and Lassen counties.

§ 1. The boundary line between the counties of Shasta and Lassen is hereby established and permanently located, as follows: Beginning at the quarter section corner to sections eight and nine, in township thirty north, range six east, Mount Diablo base and meridian, and running thence north one and one-half miles, to line dividing townships thirty and thirty-one at corner common to sections four and five, in township thirty north, range six east; thence east on township line to corner common to sections thirty-two and thirty-three, in township thirty-one north, range six east; thence north twenty-eight miles, to seventh standard parallel north, Mount Diablo base, at corner common to sections eight and nine, in township thirty-five north, range six east; thence west along said standard line to southwest corner of township thirty-six north, range six east; thence north to intersection with south boundary line of Modoc county, at a point seven and one-half chains north of the corner common to sections twenty-five and thirty-six, on east line of township thirty-nine north, range five east; Mount Diablo base and meridian.

§ 2. All other acts and parts of acts in conflict with this act are hereby repealed.

§ 3. This act shall take effect immediately.

HUMBOLDT AND DEL NORTE AND SISKIYOU.

ACT 1100—An act to establish the boundary line between the county of Humboldt and the counties of Del Norte and Siskiyou.

History: Approved March 23, 1901, Stats. 1901, p. 600.

Boundary line between Humboldt, Del Norte, and Siskiyou counties.

§ 1. The boundary line between the counties of Humboldt and Del Norte is hereby established as follows: Commencing at the point where the north line of township twelve north, range one east, Humboldt meridian, intersects with the Pacific ocean; thence east on said township line to the northeast corner of township twelve north, range three east, Humboldt meridian; thence south to the southeast corner of said township twelve north, range three east, Humboldt meridian; thence east on the north boundary line of township eleven north, range four east, eleven north five east, and eleven north six east, Humboldt meridian, to the Klamath river; thence following said Klamath river in a southerly direction to the mouth of Salmon river, the point which now is the northeast corner of Humboldt county; thence following the line already established.

§ 2. This act shall take effect immediately from and after its passage.

ELECTION TO CHANGE BOUNDARY BETWEEN FRESNO AND KINGS.

ACT 1101—An act to change, establish and permanently locate the boundary lines of the county of Kings, and a portion of the south boundary line of the county of Fresno, and to provide for the submission of such change, establishment and location of such boundary lines, to the qualified electors of the territory to be affected by the change.

History: Approved March 14, 1907, Stats. 1907, p. 260.

Proposed boundary lines of Kings county.

§ 1. The boundary lines of the county of Kings are hereby changed, established and permanently located as follows, viz.:

Beginning at the northeast corner of section one (1) in township seventeen (17) south, range twenty-two (22) east, Mount Diablo base and meridian; thence south six (6) miles; thence east three (3) miles; thence south nine (9) miles to the southeast corner of section sixteen (16) in township nineteen (19) south, range twenty-three (23) east, Mount Diablo base and meridian; thence west three (3) miles to the southeast corner of section thirteen (13) in township nineteen (19) south, range twenty-two (22) east, Mount Diablo base and meridian; thence south nine (9) miles to the southeast corner of township twenty (20) south, range twenty-two (22), Mount Diablo base and meridian; thence west to the northeast corner of township twenty-one (21) south, range twenty-two (22) east; thence south twenty-four (24) miles to the north boundary line of Kern county, as now established by law; thence west along said north boundary line of Kern county to the corner common to the counties of Monterey, San Luis Obispo and Kern, as now established by law; thence northerly along the summit of the Coast Range mountains, being also the eastern boundary of the counties of Monterey and San Benito, as now established by law, to the southwest corner of township eighteen (18) south, range thirteen (13) east, Mount Diablo base and meridian; thence north twelve (12) miles along the range line between ranges twelve (12) and thirteen (13) to the northwest corner of township seventeen (17) south, range thirteen (13) east, Mount Diablo base and meridian; thence due east along the fourth standard line parallel south to the place of beginning.

South line of Fresno county.

§ 2. The south boundary line of Fresno county between Kings and Fresno counties is hereby declared to be the fourth standard parallel line south.

Board of commissioners to conduct election to ratify annexation.

§ 3. The governor shall within ten days after this act takes effect and as hereinafter provided, appoint five persons, residents and electors of that certain territory within the following described boundaries, viz. Beginning at the northwest corner of township seventeen (17) south, range thirteen (13) east, Mt. Diablo base and meridian; thence due south along the range line between ranges twelve (12) and thirteen (13), to the summit of the Coast Range mountains; thence southerly along the summit of the Coast Range mountains, the same being also the boundary line between the counties of San Benito and Monterey and the county of Fresno as now established by law, to the corner common to the counties of Fresno, Monterey and Kings; thence northeasterly along and following the boundary line between Kings and Fresno counties, as now established by law, to a point where said boundary line intersects the fourth standard parallel line south; thence due west on said fourth standard parallel line south to the place of beginning, who shall be and constitute a board of commissioners to carry out the provisions of this act.

Expenses.

All costs and expenses that may be incurred by said commissioners, as such, in holding any election hereinafter provided for and any compensation due said com-

missioners, for services rendered as such, or any clerk employed by them, shall be legal charges against the county of Kings.

Compensation.

The said commissioners shall each receive five dollars per day for each and every day's services actually rendered as such commissioners, not exceeding twenty days' services by each commissioner, and their actual traveling expenses, the same to be audited and paid as other expenses are audited and paid by the board of supervisors of Kings county.

Organization. Quorum.

Said commissioners shall meet within said territory above described within ten days after their appointment, and after being duly sworn to faithfully discharge their duties as such commissioners, shall organize by electing one of their number president, and shall elect a clerk, who shall also be duly sworn to faithfully discharge the duties of clerk of said board of commissioners, and shall receive the sum of fifty dollars per month during his term of office. Three of the members of said board shall be necessary to transact any business and a majority of the members present at any meeting shall control in all matters coming before said board.

Election precincts. Powers of commissioners. Election returns.

It shall be the duty of said board of commissioners, after they shall have duly organized, to divide the territory last above described into not less than five nor more than nine election precincts, and to designate the place in each precinct where the election herein provided for must be held. Said commissioners and the clerk elected by them are hereby authorized, empowered and required to discharge the same duties as are now required by law of boards of supervisors and county clerks in the counties of this state so far as the same apply to holding elections, canvassing the returns and certifying the results thereof; they shall keep a full record of their proceedings, transmitting to the secretary of state a certified copy thereof, and filing the original, with the original election returns, in the office of the county clerk of the county of Fresno; and in case the qualified electors of said territory last above described shall vote in favor of such change as herein provided the said commissioners shall file a certified copy of all their proceedings and of said election returns with the county clerk of the county of Kings; and thereupon the powers and duties of said commissioners shall cease and terminate. Within sixty days from the time of the first meeting of the commissioners herein provided for, said commissioners shall order and hold an election in the said territory last hereinbefore described and in each precinct thereof created by said commissioners.

Question to be submitted to electors. Ballots.

At said election there shall be submitted to the qualified electors of said territory the question whether said territory herein described shall be annexed or added to Kings county; and for the purpose of ascertaining the choice of said electors the ballots used at said election shall have printed thereon the words: "For annexation to Kings County, Yes," "For annexation to Kings County, No," and all ballots on which a cross is marked with a stamp after the words "For annexation to Kings County, Yes," shall be counted in favor of such annexation of said territory hereinbefore described to Kings county, and all ballots on which a cross is marked with a stamp after the words "For annexation to Kings County, No," shall be counted against such annexation.

Conduct of election. Great register.

Said election shall be conducted in every respect, except as otherwise herein provided, in accordance with the general election law for the election of county and town-

ship officers. All qualified electors of this state who have been residents and electors of the said territory last herein described for ninety days preceding the election herein provided for shall be qualified to vote at said election. The great register of Fresno county used at the general election held in the year nineteen hundred and six in the territory last above described shall be prima facie evidence of the qualification of electors; the county clerk of the county of Fresno is hereby directed to furnish the said commissioners a certificate under seal, showing the additional names of the voters on the great register of the county of Fresno, registered as residing in the said territory hereinbefore described, since the last great register of Fresno county was printed, and the certificate of the county clerk of Fresno county under seal, showing the registration of any qualified voter residing in the said territory prior to three months before such election shall entitle the holder thereof, if otherwise qualified by law, to vote at said election.

Secretary of state to furnish ballot paper. Election returns.

It shall be the duty of the secretary of state to furnish to the clerk of said board of commissioners the quantity of ballot paper ordered by the said clerk for use at said election upon the payment of the cost of said paper. If at said election sixty per cent of the votes cast on the question of annexation of the said territory hereinbefore described to Kings county shall be in favor of such annexation, then the said territory shall be and become a part of the said county of Kings from and after the day upon which the returns of said election shall be ascertained and declared by said board of commissioners. But if at such election less than sixty per cent of the qualified electors voting for and against such annexation of said territory to the county of Kings shall be in favor thereof, then said territory hereinbefore described shall continue to be and remain a portion of the said county of Fresno. Sealed returns from the officers of election of the several precincts established by said board of commissioners shall be made to such board of commissioners at such office as they may select within the said territory within six days after the day of election.

Status of officers in proposed new territory.

All justices of the peace, and all constables, duly elected and qualified and residents of the said territory herein described at the taking effect of this act shall hold their offices for the terms provided by law for the respective townships in which they reside. All school trustees acting as such at the time of the taking effect of this act, and residents of the said territory herein described, shall hold their offices for the time provided by law, for the respective school districts in which they severally reside, as such districts are now organized. All notaries public residents of the said territory herein described shall hold their offices until the expiration of their terms.

§ 4. This act shall take effect and be in force from and after its passage, and all acts and parts of acts inconsistent with this act are hereby repealed.

1. Constitutionality.—The act is constitutional.—*Wheeler v. Herbert*, 152 Cal. 224, 92 Pac. 353.

2. Same—Change of county boundaries by special act.—Section 3 of article XI of the constitution, as amended in 1894, does not prohibit the legislature from changing the boundary by special act.—*Wheeler v. Herbert*, 152 Cal. 224, 92 Pac. 353.

3. Same—Legislative power to change county boundaries by special act includes the power to do so directly or indirectly through the result of an election, and to provide for an election for that purpose, and neither the provision for an election, nor the matter of the creation of offices

and of fixing their powers and duties, are within the prohibition of subdivisions 11 and 28 of section 25 of article IV of the constitution.—*Wheeler v. Herbert*, 152 Cal. 224, 92 Pac. 353.

4. Same—Special legislation.—The act is not obnoxious to subdivision 33 of section 25 of article IV of the constitution prohibiting special acts where a general law would be applicable.—*Wheeler v. Herbert*, 152 Cal. 224, 92 Pac. 353.

5. Same—Special privileges to electors.—The act is not violative of section 21 of article I of the constitution, in fixing ninety days residence, as the test of the privilege of voting, to electors in the territory to be

transferred to Kings county, and not granting to other electors of that territory or of other parts of Fresno county the same privilege.—*Wheeler v. Herbert*, 152 Cal. 224, 92 Pac. 353.

6. **Same—Delegation of power.**—The act is not obnoxious to section 13, article XI, of the constitution forbidding the delegation of power to a special commission for any municipal purpose.—*Wheeler v. Herbert*, 152 Cal. 224, 92 Pac. 353.

7. **Same—Title of act embraces but one subject, and the subject is sufficiently expressed in the title.**—*Wheeler v. Herbert*, 152 Cal. 224, 92 Pac. 353.

8. **Legislative districts in the territory taken from Fresno and added to Kings county remain unchanged until fixed by the next apportionment act.**—*Wheeler v. Herbert*, 152 Cal. 224, 92 Pac. 353.

9. **Time of election.**—The provision of the act as to the time of holding the election is directory merely.—*Wheeler v. Herbert*, 152 Cal. 224, 92 Pac. 353.

10. **Notice of election.**—The functions of the commissioners appointed to give notice of an election and canvass the returns, un-

der the act are purely ministerial, and not judicial, and they have no power to go behind the returns for any purpose.—*Cerini v. De Long*, 7 Cal. App. 398, 94 Pac. 582.

11. **Qualifications of electors.**—The act is not violative of section 1 of article II of the constitution in prescribing qualifications of electors different from those prescribed in that section.—*Wheeler v. Herbert*, 152 Cal. 224, 92 Pac. 353.

12. **Judicial power—Canvass of returns.**—The refusal of the commissioners appointed under the act to canvass the election returns on the ground the county clerk of Fresno county had failed to certify additional registrations up to the date of the election, after having certified registrations within forty days thereof, was an exercise of a judicial function which they did not possess.—*Cerini v. De Long*, 7 Cal. App. 398, 94 Pac. 582.

13. **Registration of voters not being provided for in the act is controlled by the general law, and the certificate of registration made by the clerk within forty days prior to the election was proper.**—*Cerini v. De Long*, 7 Cal. App. 398, 94 Pac. 582.

FRESNO AND KINGS.

ACT 1102—An act to change, establish and permanently locate the boundary lines of the county of Kings, and a portion of the south and east boundary lines of the county of Fresno.

History: Approved April 12, 1909, Stats. 1909, p. 827.

Boundary lines of Kings county.

§ 1. The boundary lines of the county of Kings are hereby changed, established and permanently located as follows, viz.:

Beginning at the northeast corner of section one (1) in township seventeen (17) south, range twenty-two (22) east, Mount Diablo base and meridian; thence south six (6) miles; thence east three (3) miles; thence south nine (9) miles to the southeast corner of section sixteen (16) in township nineteen (19) south, range twenty-three (23) east, Mount Diablo base and meridian; thence west three (3) miles to the southeast corner of section thirteen (13) in township nineteen (19) south, range twenty-two (22) east, Mount Diablo base and meridian; thence south nine (9) miles to the southeast corner of township twenty (20) south, range twenty-two (22) east, Mount Diablo base and meridian; thence west to the northeast corner of township twenty-one (21) south, range twenty-two (22) east; thence south twenty-four (24) miles to the north boundary line of Kern county, as now established by law; thence west along said north boundary of Kern county to the corner common to the counties of Monterey, San Luis Obispo and Kern, as now established by law; thence in a northwesterly direction along the line between the counties of Monterey and Kings as now established by law, to the corner common to the counties of Kings, Monterey and Fresno; thence in a northeasterly direction along the boundary line between Fresno and Kings county as now established by law to the corner common to sections thirteen (13) and twenty-four (24) in township twenty (20) south, range eighteen (18) east, Mount Diablo base and meridian and sections eighteen (18) and nineteen (19) in township twenty (20) south, range nineteen (19) east, Mount Diablo base and meridian, the same being the northwest corner of section nineteen (19) in township twenty (20) south range nineteen (19) east, Mount Diablo base and meridian; thence north fifteen miles (15) to the southwest corner of section thirty-one (31) in township seventeen (17) south of range nineteen (19) east, Mount Diablo base and meridian; thence east along the

township line a distance of eleven and one-half miles, more or less, to the point where said township line intersects the center line of the main channel of Kings river; thence northeasterly and easterly following the meander of the said center line of the main channel of Kings river to the point where said center line intersects the boundary line between the county of Fresno and the county of Kings as now established by law; thence northeasterly along said boundary line to the corner common to the counties of Tulare, Fresno and Kings; thence east along the fourth standard parallel line south, Mount Diablo base and meridian to the point of beginning.

Boundary line between Kings and Fresno counties.

§ 2. The boundary line of Fresno county between Fresno and Kings is hereby declared to be as follows: Beginning at the corner common to the counties of Kings, Monterey and Fresno; thence in a northeasterly direction along the boundary line between Fresno and Kings county as now established by law; to the corner common to sections thirteen (13) and twenty-four (24) in township twenty (20) south, range eighteen (18) east Mount Diablo base and meridian and sections eighteen (18) and nineteen (19) in township twenty (20) south, range nineteen (19) east, Mount Diablo base and meridian, the same being the northwest corner of section nineteen (19) in township twenty (20) south, range nineteen (19) east, Mount Diablo base and meridian; thence north fifteen miles (15) to the southwest corner of section thirty-one (31) in township seventeen (17) south, range nineteen (19) east, Mount Diablo base and meridian; thence east along the township line a distance of eleven and one-half miles more or less to a point where said township line intersects the center line of the main channel of Kings river; thence northeasterly and easterly following the meander of said center line of the main channel of Kings river to the point where said center line of the main channel of Kings river intersects the boundary line between the county of Fresno and the county of Kings as now established by law; thence northeasterly along said boundary line to the corner common to the counties of Tulare, Fresno and Kings.

Terms of officers in territory affected. School moneys. Notaries public.

§ 3. All justices of the peace, and all constables, duly elected and qualified and residents of the said territory therein described at the taking effect of this act shall hold their offices for the terms provided by law for the respective townships in which they reside. All school trustees acting as such at the time of the taking effect of this act, and residents of the said territory herein described, shall hold their offices for the time provided by law, for the respective school districts in which they severally reside, as such districts are now organized. The county superintendent of schools of Fresno county is hereby directed to draw his warrant in favor of the county treasurer of Kings county for all school moneys apportioned or to be apportioned on the basis of the present school year to the school districts situated within the exterior boundaries of the territory described in section one of this act and the treasurer of Fresno county is hereby directed to pay the same. All notaries public residents of the said territory herein described shall hold their offices until the expiration of their terms.

Taxes.

§ 4. All taxes assessed and levied prior to the first Monday of March, 1909, and constituting a lien on the territory now belonging to Fresno county and hereby annexed to Kings county shall belong to and be paid to Fresno county and all taxes assessed and levied on and after the first Monday of March, 1909, on said territory shall belong to and be paid to Kings county.

§ 5. This act shall take effect and be in force from and after its passage and all acts and parts of acts inconsistent with this act are hereby repealed.

LAKE AND GLENN, MENDOCINO, AND COLUSA COUNTIES.

ACT 1103—An act to definitely establish, and permanently locate, the boundary line between the county of Lake and the county of Glenn and a portion of the boundary line between the counties of Lake and Mendocino and the counties of Lake and Colusa, state of California.

History: Approved March 13, 1909, Stats. 1909, p. 326.

Lake county, northerly and easterly boundary.

§ 1. The northerly and easterly boundary of Lake county, between Mount Hull and the common section corner of sections 16, 17, 20 and 21 in township twenty (20), north range nine (9), west M. D. B. and M. is hereby established and permanently located as follows: Beginning at the monument on top of Mount Hull, established by T. P. Smythe and R. P. Hammond and party on October 20th, 1885; and approved by H. J. Willey, surveyor general of the state of California, on December 23rd, 1885; thence due north to the half section line running east and west through section two (2), township nineteen (19) north, range ten (10) west, M. D. B. and M.; thence east along said half section line through sections two (2) and one (1) of said township, range, base and meridian, and then through section five (5) to the southeast corner of the northeast quarter of said section five (5), township nineteen (19) north, range nine (9) west M. D. B. and M.; thence north along the line between and dividing sections four (4) and five (5) of said township, range, base and meridian, and continuing north along the line between and dividing sections thirty-two (32) and thirty-three (33), and twenty-eight (28), to the common section corner of section sixteen (16), seventeen (17), twenty (20), and twenty-one (21), township twenty (20) north, range nine (9) west.

Lake and Glenn counties, boundary line between.

§ 2. The boundary line between the county of Lake and the county of Glenn is hereby established and permanently located as follows: Beginning at a point established by section two of "An act to definitely establish and permanently locate the eastern boundary line of Mendocino county between Mount Hull and the southwest corner of Tehama county and establish the western boundary of the county of Glenn between Mendocino and Glenn counties," approved March 8th, 1907. Said point being the corner of sections sixteen (16), and seventeen (17), twenty (20), and twenty-one (21), township twenty (20) north, range nine (9) west, M. D. M. according to the United States survey thence east between sections sixteen (16), twenty-one (21), fifteen (15), twenty-two (22), fourteen (14), twenty-three (23), thirteen (13), twenty-four (24), of township twenty (20) north, range nine (9) west, M. D. M. and sections eighteen (18), nineteen (19), seventeen (17), twenty (20), sixteen (16), twenty-one (21), fifteen (15), twenty-two (22), township twenty (20) north, range eight (8) west, M. D. M. to corner of sections fourteen (14) fifteen (15), twenty-two (22), twenty-three (23), township twenty (20) north, range eight (8) west, M. D. M.; thence south between sections twenty-two (22), twenty-three (23), twenty-six (26), twenty-seven (27), thirty-four (34), thirty-five (35), township twenty (20) north, range eight (8) west, M. D. M. and sections two (2), three (3), ten (10), eleven (11), fourteen (14), fifteen (15), twenty-two (22), twenty-three (23), twenty-six (26), twenty-seven (27), thirty-four (34), thirty-five (35), township nineteen (19) north, range eight (8) west, M. D. M. and sections two (2), three (3), ten (10), eleven (11), fourteen (14), fifteen (15), twenty-two (22), twenty-three (23), twenty-six (26), twenty-seven (27), to one-quarter ($\frac{1}{4}$), section corner on section line dividing sections twenty-six (26), and twenty-seven (27), township eighteen (18) north, range eight (8) west, M. D. M.; said point being on boundary line between the county of Glenn and the county of Colusa as established by "An act to change and permanently locate the boundary line between the counties of Glenn and Colusa, approved March 11, 1893."

Lake and Colusa counties, boundary line between.

§ 3. The boundary between Lake county and Colusa county between the northwest corner of Colusa county and the southeast corner of the northeast one-quarter ($\frac{1}{4}$) of section twenty-seven (27), township eighteen (18) north, range eight (8) west, M. D. B. M. is hereby established and permanently located as follows: Beginning at the southeast corner of the northeast one-quarter ($\frac{1}{4}$) of section twenty-seven (27), township eighteen (18) north, range eight (8) west, M. D. B. and M.; running thence westerly along the half section line and one and one-half ($1\frac{1}{2}$) miles north of the line dividing townships seventeen (17), and eighteen (18), of Mount Diablo base and meridian, said one-half ($\frac{1}{2}$) section line being the northern boundary of Colusa county as fixed by "An act to change and permanently locate the boundary line between the counties of Glenn and Colusa, approved March 11th, 1893," to the northwest corner of the southwest one-quarter ($\frac{1}{4}$) of section thirty (30), township eighteen (18) north, range eight (8) west, M. D. B. and M.

§ 4. This act shall take effect immediately upon its passage.

Act locating portion of boundary between Lake and Mendocino counties south of Mount Hull.—See, post, Act 1108.

MENDOCINO AND GLENN.

ACT 1104—An act to definitely establish and permanently locate the eastern boundary line of Mendocino county, between Mount Hull and the southwest corner of Tehama county, and establish the western boundary of the county of Glenn between Mendocino and Glenn counties.

History: Approved March 8, 1907, Stats. 1907, p. 135.

Eastern boundary line of Mendocino county.

§ 1. The eastern boundary line of the county of Mendocino between Mount Hull and the southwest corner of Tehama county is hereby established and permanently located as follows: Beginning at the monument on top of Mount Hull, established by T. P. Smythe and R. P. Hammond and party on October 20th, 1885 and approved by H. J. Willey, surveyor general of the state of California, on December 23rd, 1885, being the northeast corner of Lake county; thence due north to the half section line running east and west through section two (2), township nineteen (19) north, range ten (10) west, M. D. B. & M.; thence east along said half section line through sections two (2) and one (1) of said township, range, base and meridian, and then through section five (5) to the southeast corner of the northeast quarter of said section five (5), township nineteen (19) north, range nine (9) west M. D. B. & M.; thence north along the line between and dividing section four (4) and five (5) of said township, range, base and meridian, and continuing north along the line between and dividing sections thirty-two (32) and thirty-three (33), twenty-eight (28) and twenty-nine (29), twenty (20) and twenty-one (21), sixteen (16) and seventeen (17), eight (8) and nine (9), and four (4) and five (5) township twenty (20) north, range nine (9) west M. D. B. & M., to the line dividing townships twenty (20) and twenty-one (21) north, range nine (9) west, M. D. B. & M.; thence west on said last mentioned line, the same being the fourth standard parallel line north, seven hundred and seventy-five (775) feet more or less to the southeast corner of section thirty-two (32), township twenty-one (21) north, range nine (9) west, M. D. B. & M.; thence north on the line between and dividing sections thirty-two (32) and thirty-three (33), twenty-eight (28) and twenty-nine (29), twenty (20) and twenty-one (21), sixteen (16) and seventeen (17), eight (8) and nine (9), four (4) and five (5), all in township twenty-one (21) north, range nine (9) west M. D. B. & M. to the southeast corner of section thirty-two (32) township twenty-two (22) north, range nine (9) west, M. D. B. & M.; thence west along the line between and dividing sections five (5) and thirty-two (32)

to the southeast corner of section thirty-six (36), township twenty-two (22) north, range ten (10) west, M. D. B. & M.; thence north on the range line between and dividing ranges nine (9) and ten (10) west, which said line also divides sections thirty-two (32) and thirty-six (36), twenty-five (25) and twenty-nine (29), twenty (20) and twenty-four (24) to the southeast corner of the northeast quarter of section twenty-four (24); thence west along the half section line through sections twenty-four (24) and twenty-three (23) to the center of said section twenty-three (23), all in township twenty-two (22) north, range ten (10) west M. D. B. & M.; thence north along the half section line running north through sections twenty-three (23), fourteen (14), eleven (11) and two (2) in said last mentioned township, range, base and meridian, to the southwest corner of Tehama county as established in section thirty-nine hundred and fifteen (3915) of the Political Code of the state of California.

Western boundary line of Glenn county.

§ 2. That portion of the line described in section one of this act, beginning at a point on said line where the line dividing sections seventeen (17) and twenty (20) and sections sixteen (16) and twenty-one (21), township twenty (20) north, range nine (9) west, M. D. B. & M. crosses the same; thence north on said line as described in section one of this act to the southwest corner of Tehama county shall constitute the western boundary of Glenn county between the counties of Glenn and Mendocino.

§ 3. This act shall take effect immediately.

BUTTE AND GLENN.

ACT 1105—An act to change and permanently locate the boundary line between the counties of Butte and Glenn.

History: Approved May 27, 1915. In effect August 8, 1915. Stats. 1915, p. 898.

Boundary between Butte and Glenn counties.

§ 1. The boundary line between the counties of Butte and Glenn is hereby established and permanently located as follows: From the point where the line between township 19 north, range 1 east and township 20 north, range 1 east intersects the line between sections three and four of the Aguas Frias Rancho according to the La Croze survey of the said Aguas Frias Rancho, said point being on the line between Butte and Glenn counties, running thence south along the said line between the said sections three and four to its point of intersection with the center line of Butte creek, said point of intersection being on the present line between Butte and Glenn counties.

Repealed.

§ 2. All other acts and parts of acts in conflict with this act are hereby repealed.

BETWEEN MENDOCINO AND SONOMA.

ACT 1106—An act to definitely establish and permanently locate the boundary line between the counties of Mendocino and Sonoma, state of California.

History: Approved May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1396.

Boundary line between Mendocino and Sonoma counties established.

§ 1. The boundary line between the counties of Mendocino and Sonoma is hereby established and permanently located as follows:

Commencing at a point in the Pacific ocean, three miles due west of a point in the center of the channel at the mouth of the Gualala river; thence due east three miles to said point in the center of the channel at the mouth of said Gualala river; thence up the center of the channel of said Gualala river to a point where the center of said channel intersects the section line running east and west between sections twenty-three

and twenty-six, township eleven north, range fifteen west, Mount Diablo meridian; thence east on said section line and its continuation between sections twenty-four and twenty-five, said township and range, to the range line between ranges fourteen and fifteen west, Mount Diablo meridian; thence continuing east on the section line between sections nineteen and thirty, twenty and twenty-nine, twenty-one and twenty-eight, twenty-two and twenty-seven, twenty-three and twenty-six, and twenty-four and twenty-five, township eleven north, range fourteen west, Mount Diablo meridian, to the range line between ranges thirteen and fourteen west, Mount Diablo meridian; thence north on said range line between said ranges thirteen and fourteen two miles more or less, to the section corner common to sections twelve and thirteen, township eleven north, range fourteen west, Mount Diablo meridian, and sections seven and eighteen, township eleven north, range thirteen west, Mount Diablo meridian; thence east on the section line between sections seven and eighteen, eight and seventeen, nine and sixteen, ten and fifteen, eleven and fourteen, and twelve and thirteen, township eleven north, range thirteen west, Mount Diablo meridian, to the intersection of said section line with the range line between ranges twelve and thirteen west, Mount Diablo meridian; thence continuing east on the section line between sections seven and eighteen, eight and seventeen, nine and sixteen, ten and fifteen, eleven and fourteen, and twelve and thirteen, township eleven north, range twelve west, Mount Diablo meridian, to the intersection of said section line with the range line between ranges eleven and twelve west, Mount Diablo meridian; thence north on said range line between ranges eleven and twelve, two miles, more or less, to the southwest corner of township twelve north, range eleven west, Mount Diablo meridian; thence east on the south boundary line of said township twelve north, range eleven west, three miles, more or less, to the southeast corner of section thirty-three, township twelve north, range eleven west; thence north on the section line between sections thirty-three and thirty-four, one mile more or less, to the northwest corner of said last named section thirty-four; and thence east on the section line between sections twenty-seven and thirty-four, twenty-six and thirty-five, and twenty-five and thirty-six, township twelve north, range eleven west, Mount Diablo meridian, and continuing east on the section line between sections thirty and thirty-one, twenty-nine and thirty-two, twenty-eight and thirty-three, twenty-seven and thirty-four, twenty-six and thirty-five, and twenty-five and thirty-six; township twelve north, range ten west, Mount Diablo meridian, and continuing east on the section line between sections thirty and thirty-one, twenty-nine and thirty-two, twenty-eight and thirty-three, twenty-seven and thirty-four, and twenty-six and thirty-five to the corner common to sections twenty-five, twenty-six, thirty-five, and thirty-six; township twelve north, range nine west, Mount Diablo meridian.

§ 2. All acts and parts of acts in conflict with the provisions hereof are hereby repealed.

KERN AND SAN BERNARDINO.

ACT 1107—An act to describe, establish and permanently locate the boundary line between the counties of Kern and San Bernardino.

History: Approved May 10, 1917. In effect July 27, 1917. Stats. 1917, p. 301.

Boundary line between counties of Kern and San Bernardino.

§ 1. The boundary line between the counties of Kern and San Bernardino is hereby established and permanently located as follows:

Beginning at the northwest corner of township eight north, range seven west, San Bernardino meridian, being the northeast corner of Los Angeles county; thence east along the township line to the section line between sections thirty-two and thirty-three, township nine north, range seven west, San Bernardino meridian; thence north, following section lines, to the eighth standard parallel south of Mount Diablo base; thence

east along said standard parallel to the southwest corner of township thirty-two south, range forty-one east, Mount Diablo meridian; thence north along township lines to the seventh standard parallel south of Mount Diablo base; thence along said standard parallel to the southwest corner of section thirty-six, township twenty-eight south, range forty east, Mount Diablo meridian; thence north along section lines to the northwest corner of section one, township twenty-five south, range forty east, Mount Diablo meridian, said point being hereby established as the northeast corner of Kern county and the northwest corner of San Bernardino county.

Repealed.

§ 2. All other acts and parts of acts in conflict with this act are hereby repealed.

LAKE AND MENDOCINO. .

ACT 1108—An act to definitely establish and permanently locate, a portion of the boundary line between the county of Lake and the county of Mendocino, state of California.

History: Approved June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1635.

Boundary line between Mendocino and Lake counties.

§ 1. That portion of the boundary line between Mendocino county and Lake county, between Mt. Hull and the southeast corner of Mendocino county is hereby established and permanently located as follows:

Beginning at the monument on top of Mt. Hull, established by T. P. Smythe and R. P. Hammond and party on October 20, 1885; and approved by H. J. Willey, surveyor general of the state of California, on December 23, 1885; thence due south to the half section line running east and west through section eleven, township nineteen north, range ten west, Mount Diablo base and meridian; thence west along said half section line through sections eleven, ten, nine, eight, and seven of said township, range, base and meridian; and thence through section twelve, township nineteen north, range eleven west, Mount Diablo base and meridian; to the center of said section twelve; thence south one-half mile to the quarter section corner on the south boundary of said section twelve; thence west one mile to the quarter section corner between sections eleven and fourteen, said last mentioned township and range; thence south one-half mile to the center of said section fourteen; thence west one mile to the center of section fifteen, said township and range; thence south along the half section line running through sections fifteen, twenty-two, twenty-seven, and thirty-four, to the quarter section corner on the south line of section thirty-four, said township nineteen north, range eleven west, Mount Diablo base and meridian; thence west along the township line between townships eighteen and nineteen north, range eleven west, Mount Diablo base and meridian, to the northwest corner of lot three, section three, township eighteen north, range eleven west, Mount Diablo base and meridian; thence south along the line dividing the east half of the west half from the west half of the west half of said section 3, a distance of one mile to the south boundary line of said section three; thence west along the south boundary of said section three to the corner common to sections three, four, nine, and ten, said township and range; thence south along the section line between sections nine and ten and fifteen and sixteen, a distance of two miles to the corner of sections fifteen, sixteen, twenty-one and twenty-two, said last mentioned township and range; thence east along the line between sections fifteen and twenty-two to the corner of sections fourteen, fifteen, twenty-two, and twenty-three, said township nineteen north, range eleven west; thence south along the section line between sections twenty-two and twenty-three, and twenty-six and twenty-seven, a distance of two miles to the corner of sections twenty-six, twenty-seven, thirty-four, and thirty-five, said township and range; thence east along the section line between sections twenty-six and thirty-

five, a distance of one-half mile to the quarter section corner between last mentioned sections; thence south along the half section line one mile to the quarter section corner on the south boundary of section thirty-five, township eighteen north, range eleven west, Mount Diablo base and meridian; thence east along the township line on the north boundary of township seventeen north, range eleven west, Mount Diablo base and meridian, to the northeast corner of section two, said township and range; thence south along the section line between sections one and two, and eleven and twelve a distance of two miles to the corner of sections eleven, twelve, thirteen, and fourteen; thence east along the section line between sections twelve and thirteen a distance of one-half mile to the quarter section corner between said sections; thence south along the half section line a distance of one mile to the quarter section corner between sections thirteen and twenty-four; thence east along the section line between said sections thirteen and twenty-four, a distance of one-half mile to the line between townships seventeen north, ranges ten and eleven west, Mount Diablo base and meridian; thence south along said line, a distance of three miles to the corner of townships sixteen and seventeen north, ranges ten and eleven west Mount Diablo base and meridian; thence east along the north line of township sixteen north, range ten west, Mount Diablo base and meridian, to the northeast corner of section six, said township and range; thence south along the section line between sections five and six and seven and eight, a distance of one and one-half miles to the quarter section corner between sections seven and eight; thence east along the half section line, a distance of one-half mile to the center of said section eight; thence south along the half section line, a distance of one and one-half miles to the quarter section corner between sections seventeen and twenty, said township and range; thence west along the section line, a distance of one mile to the quarter section corner between sections eighteen and nineteen; thence south along the half section line, a distance of one mile to the quarter section corner between sections nineteen and thirty; thence west one-half mile more or less, to the corner of sections nineteen, twenty-four, twenty-five, and thirty, township sixteen north, ranges ten and eleven west, Mount Diablo base and meridian; thence south along the range line between said ranges ten and eleven, a distance of one-half mile to the quarter section corner on the east boundary of section twenty-five, township sixteen north, range eleven west; thence west along the north line of lot 3, section twenty-five, said township and range, a distance of one-quarter mile, more or less, to the northwest corner of said lot three; thence south along the west line of lots three and four, said section twenty-five, a distance of one-half mile to the south boundary of said section twenty-five; thence west along the south line of said section twenty-five to the quarter section corner between sections twenty-five and thirty-six, said township and range; thence south along the half section line, a distance of one-half mile to the center of said section thirty-six; thence west along the half section line, a distance of one fourth mile to the northwest corner of the northeast quarter of the southwest quarter of said section thirty-six; thence south along the west line of the northeast quarter of the southwest quarter and the west line of lot six of said section thirty-six, to the north boundary of township fifteen north, range eleven west, Mount Diablo base and meridian; thence west along said township line to the quarter section corner on the north boundary of section two, township fifteen north, range eleven west, Mount Diablo base and meridian; thence south along the half section line to the quarter section corner between sections two and eleven, said township and range; thence west along the section line between sections two and eleven one-quarter mile to the northwest corner of the east half of the northwest quarter of said section eleven; thence south along the west line of the said east half of the northwest quarter of section eleven, a distance of one-half mile to the half section line running east and west through said section eleven; thence west along said half section line one and three-quarter miles to the center of section

nine, said township and range; thence south along the half section line, a distance of two and one-half miles to the quarter section corner between sections twenty-one and twenty-eight; thence west along the section line, a distance one-half mile to the corner of sections twenty, twenty-one, twenty-eight, and twenty-nine; thence south along the section line a distance of two miles to the line on the north boundary of township fourteen north, range eleven west, Mount Diablo base and meridian; thence east along said township line a distance of three and sixty-five hundredths chains to the northwest corner of section four, township fourteen north, range eleven west, Mount Diablo base and meridian; thence south along the section line a distance of one mile to the corner of sections four, five, eight, and nine, said township and range; thence west along the section line a distance of one-half mile to the quarter section corner between sections five and eight; thence south along the half section line to the quarter section corner on the south boundary of section eight; thence east along the section line between sections eight and seventeen, a distance of five and ninety hundredths chains more or less, to the quarter section corner on the north boundary of section seventeen; thence south along the half section line, a distance of one-half mile to the center of said section seventeen; thence east along the half section line a distance of one-half mile to the quarter section corner between sections sixteen and seventeen; thence south along the section line a distance of one-half mile to the corner of sections sixteen, seventeen, twenty, and twenty-one; thence east along the section line a distance of one mile to the corner of sections fifteen, sixteen, twenty-one, and twenty-two; thence south along the section line a distance of one mile to the corner of sections twenty-one, twenty-two, twenty-seven, and twenty-eight; thence east along the section line a distance of one-half mile to the quarter section corner between sections twenty-two and twenty-seven; thence south along the half section line two miles to the north boundary of township thirteen north, range eleven west, Mount Diablo base and meridian; thence east along the township line one-half mile to the northwest corner of section two, said township and range; thence south along the section line a distance of one-half mile to the quarter section corner between sections two and three; thence east along the half section line a distance of one-half mile to the center of said section two; thence south along the half section line a distance of one-half mile to the quarter section corner between sections two and eleven; thence east along the section line a distance of one-half mile to the corner of sections one, two, eleven, and twelve; thence south along the section line a distance of one-half mile to the quarter section corner between sections eleven and twelve; thence east along the half section line a distance of one-half mile to the center of said section twelve; thence south along the half section line a distance of one-quarter mile to the corner of lots two, three, six, and seven, said section twelve; thence east along the south line of lots one and two of said section twelve, a distance of one-half mile to the line between townships thirteen north, ranges eleven and twelve west, Mount Diablo base and meridian; thence north along said range line a distance of nine and twenty-five hundredths chains to the southwest corner of section five, township thirteen north, range ten west, Mount Diablo base and meridian; thence east along the section line a distance of eighty-nine chains to the corner of sections four, five, eight, and nine; thence south along the section line a distance of one mile to the corner of sections eight, nine, sixteen, and seventeen; thence east along the section line a distance of one-half mile to the quarter section corner between sections nine and sixteen; thence south along the half section line a distance of two and one-half miles to the center of section twenty-eight; thence east along the half section line a distance of one-half mile to the quarter section corner between sections twenty-seven and twenty-eight; thence south along the section line a distance of one mile to the quarter section corner between sections thirty-three and thirty-four; thence east along the half section line, a distance of one-half mile to the center of section thirty-four; thence

south along the half section line a distance of one-half mile to the north boundary of township twelve north, range ten west, Mount Diablo base and meridian; thence east along said township line a distance of fifty-five chains to the northeast corner of section three, township twelve north, range ten west; thence south along the section line a distance of one and one-half miles to the quarter section corner between sections ten and eleven; thence east along the half section line a distance of two miles to the line between townships twelve north, ranges nine and ten west, Mount Diablo base and meridian; thence south along the line between said ranges nine and ten a distance of one-half mile to the corner of sections seven, twelve, thirteen, and eighteen, said townships and ranges; thence east along the section line a distance of one mile to the corner of sections seven, eight, seventeen, and eighteen, township twelve north, range nine west, Mount Diablo base and meridian; thence south along the section line a distance of one mile to the corner of sections seventeen, eighteen, nineteen, and twenty; thence east along the section line a distance of one mile to the corner of sections sixteen, seventeen, twenty, and twenty-one; thence south along the section line a distance of one-half mile to the quarter section corner between sections twenty and twenty-one; thence east along the half section line a distance of one mile to the quarter section corner between sections twenty-one and twenty-two; thence south along the section line a distance of one-half mile to the corner of sections twenty-one, twenty-two, twenty-seven, and twenty-eight; thence east along the section line a distance of one mile to the corner of sections twenty-two, twenty-three, twenty-six, and twenty-seven; thence south along the section line a distance of one-half mile to the quarter section corner between sections twenty-six and twenty-seven; thence east along the half section line a distance of one mile to the quarter section corner between sections twenty-five and twenty-six; and thence south along the section line a distance of one-half mile to the corner of sections twenty-five, twenty-six, thirty-five, and thirty-six, township twelve north, range nine west, Mount Diablo base and meridian.

Repealed.

§ 2. All acts and parts of acts in conflict with the provisions hereof are hereby repealed.

Act locating portion of boundary between Lake and Mendocino counties north of Mount Hull.—See, ante, Act 1103.

RIVERSIDE AND SAN BERNARDINO.

ACT 1109—An act to establish and permanently locate the boundary line between the county of Riverside and the county of San Bernardino.

History: Approved April 15, 1919. In effect July 22, 1919. Stats. 1919, p. 99.

Boundary line between counties of Riverside and San Bernardino.

§ 1. The boundary line between the county of Riverside and the county of San Bernardino is hereby established and permanently located as follows, to wit:

Beginning at a point on the eastern boundary of the state of California, where the east and west center line of township one south, range twenty-four east, San Bernardino base and meridian, or the prolongation thereof, intersects said eastern boundary of the state of California, thence westerly along section lines to the southeast corner of section seventeen, township one south, range sixteen east, San Bernardino base and meridian, thence south to the southeast corner of section thirty-two, same township and range, said point being on the township line between townships one and two south, San Bernardino base and meridian, thence west on said township line to the northeast corner of township two south, range one west, San Bernardino base and meridian, thence south to the southeast corner of section twelve, township two south, range one west, San Bernardino base and meridian, thence west to the southwest corner of sec-

tion eight, township two south, range three west, San Bernardino base and meridian, thence north to the northwest corner of said section eight, thence west to the quarter corner on the south line of section two, township two south, range five west, San Bernardino base and meridian, thence north to the quarter corner on the north line of said section two, thence west to the southwest corner of section thirty-one, township one south, range six west, thence south along section lines to the northern boundary of the Jurupa rancho, thence southwesterly along said north boundary to the northwest corner of said rancho, thence south along the west boundary of said Jurupa rancho to the quarter corner on the east line of section nine, township three south, range seven west, thence west in a direct line to center of section seven, same township and range, thence south in a direct line, to the quarter corner on the south line of section nineteen, township three south, range seven west, thence west to the east boundary of the El Canyon De Santa Ana rancho, thence southerly along the easterly boundary of said rancho to an intersection with course number seven of the boundary line, established by joint survey in December, 1876, and January, 1877, as the line between Los Angeles and San Bernardino counties, said point being a corner common to Orange, Riverside and San Bernardino counties.

Repealed.

§ 2. All acts and parts of acts in conflict herewith are hereby repealed.

CHAPTER 77.

COUNTY CLERK.

References: Bond, deputies, duties, election, fees and oath of office of, see appropriate title, Kerr's Cyc. Political Code.

Clerk of superior court, duties as, see appropriate title, Kerr's Cyc. Code Civil Procedure.

See, also, tits. "Acknowledgments"; "Auditors"; "Pensions."

CONTENTS OF CHAPTER.

ACT 1111. DEPUTIES IN COUNTIES AND CITIES AND COUNTIES OF OVER 120,000 INHABITANTS
1113. COMPENSATION FOR ADDITIONAL HELP IN OFFICE.

DEPUTIES, ETC., IN COUNTIES OF OVER 120,000.

ACT 1111—An act in relation to deputies, assistants, and copyists of county clerks.

History: Approved April 2, 1880, Stats. 1880, p. 20. Amended February 14, 1891, Stats. 1891, p. 5.

This act provided for the appointment and compensation of deputies, clerks, and assistants in counties, and cities and counties of over 120,000 inhabitants.

Unconstitutional.—The act and the amendment is local and special legislation, and

are in violation of section 5, article XI, and subdivision 28, section 25, article XI, of the constitution.—San Francisco v. Broderick, 125 Cal. 188, 57 Pac. 887.

Superseded as to San Francisco by its charter.—See article V, chapter V, charter.

ADDITIONAL HELP IN OFFICE.

ACT 1113—An act to provide for the payment of compensation of additional help in the county clerk's office of the various counties throughout the state.

History: Approved June 2, 1913. In effect August 10, 1913. Stats. 1913, p. 363.

Additional help for county clerks.

§ 1. In any county where it was necessary for the county clerk to employ help in addition to that prescribed by law, in order to provide for the necessary work in registering voters, entailed by the adoption of the constitutional amendment extending the right of suffrage to women, the board of supervisors shall be and they are hereby authorized and empowered to allow the demand of any person for services so rendered

at the request of the county clerk of the said county upon a certificate of the county clerk that the services were necessary to conduct the work of his office by reason of the increased work occurring, as above set forth, at the rate of three dollars for each day of eight hours that any such person was so employed in rendering such services; provided, however, that no demand for such services shall be allowed or paid unless the same was filed with the board of supervisors prior to the first day of May, 1913.

CHAPTER 78.

COUNTY ENGINEER.

CONTENTS OF CHAPTER.

ACT 1115. "THE COUNTY ENGINEER ACT."

"THE COUNTY ENGINEER ACT."

ACT 1115—An act providing for a county engineer for each county in this state, providing for his appointment, manner of removal, qualifications, compensation and duties; transferring to such engineer certain powers, functions and duties heretofore vested in and performed by county surveyors and members of the board of supervisors; also authorizing the board of supervisors for each county to purchase and obtain all necessary equipment, materials and instrumentalities to carry out the objects of this act; to provide said county engineer with an office and necessary assistants; to provide for abolishing the office of county surveyor and for the fixing and levying of taxes for road purposes.

History: Approved May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1290.

Appointment of county engineer.

§ 1. The board of supervisors of any county at their option may appoint, and upon petition therefor signed by qualified electors of the county equaling in number not less than twenty-five per cent of the total vote cast in the county for governor at the last preceding election at which a governor was elected, they must appoint a competent civil engineer who has had within five years last past, not less than one year's actual experience in practical road building as county engineer, who shall be deemed an employee and not a county officer. The county engineer shall, under the general direction and supervision of the board of supervisors and except as otherwise provided in this act, have complete direction and control over all of the construction, improvement, maintenance and repair of county roads, highways and bridges.

Term.

§ 2. The county engineer shall hold his employment for the term of four years from the date of his appointment; provided, that he may be removed at any time by the board of supervisors for inefficiency, neglect of duty, malfeasance or misconduct in office, or other good cause shown, upon written charges to be filed with and heard by the board of supervisors and sustained by a three-fifths vote of said board after a hearing as herein provided. Said board is hereby vested with the power to administer oaths, compel the attendance of witnesses and the production of books, papers and testimony. A copy of such charges shall be personally served upon said county engineer and he shall be given not less than ten days' time in which to file a written answer to the charges, and if it appears to the satisfaction of such board that the charges have been substantiated, the said board shall so notify said county engineer by mail, and such notice shall specifically state the findings and judgment of said board, and the board of supervisors of such county must thereupon forthwith remove such county engineer from office and shall immediately appoint his successor in the manner provided in section two of this act. Prior to entering upon the duties of his employment

the county engineer shall file with the county clerk the oath of office as prescribed for the county officers and a bond conditioned upon the faithful performance of his duties, with sufficient sureties approved by a judge of the superior court, in the sum of five thousand dollars.

Salary.

§ 3. The salary of the county engineer shall be fixed by the board of supervisors, and said salary, together with the compensation of said engineer's assistants, shall be paid monthly out of the county treasury of the county in which he is appointed and in the same manner as county officers. The county engineer shall also be allowed from the county treasury his actual traveling and other necessary expenses incurred in the performance of the duties of his employment, and shall be a charge against the general fund. The salary of the county engineer in the several counties shall be fixed by the board of supervisors of said county; provided, however, that the compensation of county engineer in any county shall be not less than the compensation received by the county surveyor of that county at the time said county engineer is first appointed.

Ex officio road commissioner.

§ 4. The county engineer shall be ex officio road commissioner of and for each and every road district of his county, and, subject to the control and supervision of the board of supervisors as herein provided, shall have and exercise the powers and duties hereinafter set forth and specified, and such duties as may hereafter be provided by law.

Duties.

§ 5. The county engineer shall:

(a) Make, or cause to be made, all surveys, maps, plans, specifications and estimates necessary or required for the construction, improvement, maintenance and repair of the county roads, highways and bridges, and shall, from and after the first Monday in September, 1919, have and exercise all the powers and duties, and perform all the functions which are now by law conferred or imposed upon county surveyors, except as herein otherwise provided.

(b) Examine and inspect, or cause to be examined and inspected, the work performed on such roads, highways and bridges, and report to the board of supervisors whether or not the work has been done in accordance with the plans and specifications and contracts therefor.

(c) Approve and certify to the progress estimates and allowances for work performed under all contracts for the construction, improvement, maintenance, or repair of county roads, highways and bridges.

(d) Inspect, or cause to be inspected, all county roads, highways and bridges within the county, and keep such roads, highways and bridges clear from obstructions, and when authorized by the board of supervisors he may employ all men, teams and equipment necessary to keep such roads in good repair when the same is not let by contract, and report to the board of supervisors with respect to such inspection and such work from time to time as said board shall require; and certify to the correctness of all pay rolls for work done by day labor or force account on county roads, highways and bridges.

(e) Have control and management under the general supervision of the board of supervisors of all county rock quarries, oil pits and depots, gravel pits and all materials, property, implements, instruments, tools, machinery and other appurtenances necessary for the construction, improvement, maintenance and repair of county roads, highways and bridges, and shall be the custodian of the plans therefor.

(f) He may also hold and perform the duties of the office of county surveyor, but in all such cases no salary or other compensation shall be paid to him as county surveyor. He shall not be interested either directly or indirectly in any contracts within his juris-

diction, nor shall he be interested in the purchase of materials, supplies or equipment of any kind used in connection with the performance of his duties under the provisions of this act.

(g) Prepare annually a budget showing in detail the needs of the county for construction, improvement, maintenance or repair of county roads, highways and bridges for the ensuing year, and submit the same to the county auditor and board of supervisors at least sixty days prior to the date of the meeting at which the board of supervisors is required to fix the county tax rate and levy the county taxes.

(h) Make a written report to the board of supervisors at their first regular meeting of each month, and in it he shall state the amount and character of work done, during the preceding month, the progress of any contracts under way, approximate cost of the work and matters pertaining to the public roads, highways, streets and bridges or other public works, which, in his judgment, should be brought to their attention. This report shall contain the recommendation of acceptance or rejection of any public work completed, and all official announcements or statements which the engineer is required to make to the board. The size and form of these reports shall be uniform and upon blanks supplied by the state engineer and a copy shall be filed, one in the office of the board of supervisors and another in the office of the county engineer.

(i) On or before the first day of July of each year, file with the board of supervisors a complete report of the work of the preceding year, which report shall be in the form required and contain the information desired and requested by the state engineer and upon blank forms supplied by him. A copy of said report shall also be filed in the office of the board of supervisors.

(j) Perform such other duties pertaining to the construction, improvement, maintenance or repair of county roads, highways and bridges as the board of supervisors may prescribe.

Employment of additional help.

§ 6. The board of supervisors shall provide by ordinance or resolution for the employment, when necessary, of additional field and office help by said county engineer, and shall prescribe the compensation to be paid to all persons so employed, for the time during which they may be actually engaged in the service of the county and for their actual necessary expenses incurred in the performance of their duty.

Office accommodations.

§ 7. The board of supervisors shall provide and assign to the county engineer and his assistants a suitable office or offices in the court house, or in some place conveniently located with reference thereto with all necessary instruments, tools, implements, stationery and supplies.

Requisition for supplies.

§ 8. The county engineer shall make requisition upon the board of supervisors for the purchase of all tools, implements, machinery, materials and supplies required to carry out the intent of this act, and said requisition shall state plainly the estimated cost of the article or articles to be purchased. He shall approve all claims for the same before such claims are audited and passed by the board of supervisors. He shall be the custodian and be responsible for all equipment under his control. All such property shall be stored and protected from the weather when not in use. An inventory of all property in his custody shall be made annually and kept on file in the office of the county engineer.

Certificate of approval of contract work.

§ 9. Upon the completion of work done for the county on its roads, highways, streets, bridges and aqueducts, or in connection with the same, the county engineer must exam-

ine the same and if completed in accordance with the specifications thereof, he must submit to the board of supervisors a certificate over his signature and official seal to the effect that such work by the contractors thereof has been completed in accordance with the specifications thereof and recommending its acceptance. The board shall thereupon audit the same and direct its payment out of the proper fund or funds.

Purchase of material from state.

§ 10. Whenever the state department of engineering has authority to sell equipment, materials or supplies for road building, repairs or maintenance and a saving may be made to a county by purchasing from said department, the board of supervisors upon the recommendation of the county engineer may purchase such equipment, materials or supplies from the state.

County surveyor replaced by county engineer.

§ 11. The office of county surveyor of any county shall be and is hereby abolished upon the occurrence of any of the following conditions:

(a) Upon the appointment as county engineer of the person who holds the office of county surveyor at the time such appointment is made and the acceptance of such appointment by the county surveyor; or

(b) In other cases, upon the expiration of the term of the person who holds the office of county surveyor at the time the appointment of county engineer is made; provided, that if such appointment is made within six months of the expiration of the then current term of county surveyor, the office of surveyor in such county shall be and is hereby abolished upon the expiration of the next succeeding term.

Does not limit powers of supervisors.

§ 12. Nothing herein contained shall be held, deemed or construed to prevent members of boards of supervisors from visiting and inspecting work in progress within the county or from receiving for such services the mileage now allowed by law.

Title.

§ 13. This act shall be known as and when cited or amended may be designated as "the county engineer act."

COUNTY GOVERNMENT.

See Kerr's Cyc. Political Code, §§ 4000, et seq.

COUNTY WATER DISTRICTS.

See tit. "Water Districts."

COUNTY WATER WORKS DISTRICTS.

See tit. "Water Districts."

CHAPTER 79.

COURTS.

- References:** Attorneys, admission of, see Kerr's Cyc. Code Civil Procedure, §§ 276, et seq.
 City court, see tit. "Mayors."
 District Court of Appeals, see tit. "District Court of Appeals."
 District Court of Appeals, officers and reporters of, see Kerr's Cyc. Political Code, §§ 758, 759.
 Industrial Accident Commission, see tits. "Industrial Accident Commission"; "Master and Servant."
 Judges of courts and justices of the peace, see Kerr's Cyc. Political Code and Kerr's Cyc. Code Civil Procedure, particular title.
 Justices courts, jurisdiction of, see Kerr's Cyc. Code Civil Procedure, § 103.
 Justices courts, see tit. "Municipal Corporations," Act 3094.
 Juvenile court, see tits. "Juvenile Court Law"; "Preston School of Industry"; "Whittier State School."
 Juvenile court, jurisdiction of charge of "failure to provide for minor child," see Kerr's Cyc. Penal Code, § 270.
 Military court, see tit. "National Guard."
 Police court, see tits. "Municipal Corporations," Act 3094; "Police Courts."
 Railroad Commission, see tit. "Public Utilities."
 Restoration of records, see tit. "Burnt and Destroyed Records."
 Superior court, see appropriate title, Kerr's Cyc. Code Civil Procedure.
 Superior court of particular county, see particular title.
 Supreme court, particular subject, see particular title, Kerr's Cyc. Code Civil Procedure.
 Supreme Court, review of decisions of Railroad Commission, see tit. "Public Utilities."

CONTENTS OF CHAPTER.

- ACT 1128. TRANSFER OF RECORDS FROM OLD TO NEW COURTS.
 1129. APPOINTMENT OF SECRETARY OF SUPERIOR COURTS IN COUNTIES AND CITIES AND COUNTIES OF 200,000 INHABITANTS.
 1130. CONFER DISTRICT, COUNTY AND PROBATE JURISDICTION ON SUPERIOR COURT.

TRANSFER OF RECORDS.

ACT 1128—An act to transfer records, etc., from the courts existing prior to 1879.

History: Approved February 4, 1880, Stats. 1880, p. 2

This act provided for the transfer of the court records from the courts existing prior to the constitution of 1879 to the new courts created by that instrument.

Jurisdiction of superior court.—Section 5, article VI, of the constitution vested jurisdiction in all felony cases theretofore exercised by the San Francisco municipal

criminal court, and this act was not necessary to confer jurisdiction of such a case pending prior to the going into effect of the constitution and undisposed of in the municipal criminal court.—Ex parte Williams, 87 Cal. 78, 24 Pac. 602, 25 Pac. 248.

See, also, Shay v. Superior Court, 57 Cal. 542; Smith v. Hill, 89 Cal. 122, 26 Pac. 644.

APPOINTMENT OF SECRETARY.

ACT 1129—An act authorizing judges of superior court in counties, and cities and counties, having a population of two hundred thousand or over, to appoint a secretary.

History: Approved March 26, 1895, Stats. 1895, p. 98. Amended April 16, 1909, Stats. 1909, p. 940.

The amendment applied to cities and counties and counties of 300,000 population and fixed the salary at \$250 per month.

Jury commission, salary of secretary as.—See Kerr's Cyc. Code Civil Procedure, § 204e.

SUPERIOR COURT JURISDICTION.

ACT 1130—An act to confer upon the superior court of each county powers heretofore possessed by the district, county and probate court.

History: Approved April 3, 1880, Stats. 1880, p. 23.

As to the effect and necessity of this and similar acts.—Shay v. Superior Court, 57 Cal. 542; Ex parte Williams, 87 Cal. 78, 24

Pac. 602, 25 Pac. 248; Smith v. Hill, 89 Cal. 122, 26 Pac. 644.

COVINA.

See Act 3094, note.

CHAPTER 80.

CRESCENT CITY.

References: Incorporation, see Act. 3094, note.

CONTENTS OF CHAPTER.

- ACT 1146. AUTHORIZING LOCATION OF TOWNSITE.
1147. CEDING TIDE LANDS.

LOCATION OF TOWNSITE.

ACT 1146—An act to authorize the location of the townsite of Crescent City.

History: Approved February 12, 1859, Stats. 1859, p. 24. Amended April 10, 1862, Stats. 1862, p. 226; supplemented April 27, 1860, Stats. 1860, p. 278.

TIDE LAND GRANT.

ACT 1147—An act to cede certain property to the town of Crescent City.

History: Approved March 20, 1868, Stats. 1867-68, p. 335. Amended March 4, 1870, Stats. 1869-70, p. 131.

CHAPTER 81.

CRIMINAL IDENTIFICATION.

References: Convicts, photographs and marks of identification, duty of wardens of state prisons to furnish, see tit. "Convicts."

CONTENTS OF CHAPTER.

- ACT 1155. BUREAU OF CRIMINAL IDENTIFICATION CREATED.

BUREAU OF CRIMINAL IDENTIFICATION.

ACT 1155—An act creating a state bureau of criminal identification and investigation, providing for its organization and defining its powers and duties and making an appropriation to carry out the provisions hereof, and repealing an act entitled "An act to create a state bureau of criminal identification, and providing for the appointment of a director of said bureau, defining his duties and qualifications and powers; providing for the appointment of a clerk of said bureau and fixing his qualifications; fixing compensation of said director and clerk, providing for the manner of paying the same and providing for the expense of conducting the office," approved March 20, 1905.

History: Approved May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1391. Prior act approved March 20, 1905, Stats. 1905, p. 520, repealed by present act. A supplementary act, approved May 27, 1919, Stats. 1919, p. 1213, appropriated \$37,700 to carry out the purposes of the act.

Bureau of criminal investigation and identification.

§ 1. There is hereby created a state bureau of criminal identification and investigation.

Term of members.

§ 2. Within ten days after this act goes into effect, it will be the duty of the governor to appoint a board of managers of said bureau, consisting of three members; one of whom shall be a chief of police of an incorporated city within the state of California, and one to be a duly elected, qualified and acting sheriff of a county within said state, and one to be a duly elected, qualified and acting district attorney of a county within said state; one member of said board shall be appointed to hold office for the term of two years, one member shall be appointed to hold office for the term of three years, and one member to be appointed to hold office for the term of four years, and thereafter, all appointments shall be for the full term of four years; provided, however,

that should the term of any such member of the said board expire as such chief of police, or such sheriff, or such district attorney, he shall cease to be a member of the said board; and provided, further, that the governor shall fill all vacancies created in said board by the appointment of the same kind of an officer as was his predecessor.

Duties of board of managers. Superintendent.

§ 3. It shall be the duty of said board of managers within ten days after its appointment to take absolute control and management of said bureau, to meet and organize by choosing one of their number to be president, to make and adopt such rules as are necessary for proper conduct of their business as such board of managers, to provide for the appointment of a superintendent and such other employees as may be required; said appointments to be made by the said board of managers from an eligible list provided for such purpose by the civil service commission; also to provide equipment for said bureau, with necessary furniture, fixtures, apparatus, appurtenances, appliances and materials as are necessary for the collection, filing and preservation of all criminal records both as to identification and investigation of criminals, and stolen, lost, found, pledged or pawned property.

Photos, etc., of criminals.

§ 4. It shall be the duty of said board of managers to procure and file for record and report in their office, as far as such can be procured, all plates, photos, outline pictures, descriptions, information and measurements of all persons who have been or shall hereafter be convicted of felony, or imprisoned for violating any of the military, naval, or criminal laws of the United States of America, and of all well-known and habitual criminals from wherever procurable.

Information furnished.

§ 5. It shall be the duty of said board of managers to file or cause to be filed all plates, photographs, outline pictures, measurements, information and description which shall be received by it by virtue of its office and it shall make a complete and systematic record and index of the same, providing thereby a method of convenience, consultation and comparison. It shall be the duty of said board of managers to furnish, upon application, all information pertaining to the identification of any person, or persons, a plate, photograph, outline picture, description, measurement, or any data of which person there is a record in its office. Such information shall be furnished to the United States officers or officers of other states or territories, or possession of the United States or peace officers of other countries duly authorized to receive the same, and all peace officers of the state of California, which application shall be in writing and accompanied by a certificate signed by the officer making such application, stating that the information applied for is necessary in the interest of the due administration of the laws, and not for the purpose of assisting a private citizen in carrying on his personal interests or in maliciously, or uselessly, harassing, degrading or humiliating any person or persons.

Systems of identification.

§ 6. In this bureau may be used the following systems of identification: the Bertillon, the finger print system and any system of measurement that may be adopted by law in the various penal institutions of the state. It shall be the duty of said board of managers to keep on file in its office a record consisting of duplicates of all measurements, processes, operations, signaletic cards, plates, photographs, outline pictures, measurements and descriptions of all persons confined in penal institutions of this state as far as possible, in accordance with whatever system or systems may be in vogue in this state.

Offices.

§ 7. Suitable offices for the proper conduct of the bureau shall be provided for by the superintendent of capitol buildings and grounds.

Daily copies of finger prints. Daily reports of property stolen, etc.

§ 8. It is hereby made the duty of the sheriffs of the several counties of the state of California, the chiefs of police of incorporated cities therein and marshals of incorporated cities and towns therein to furnish to the said bureau daily copies of finger prints on standardized eight by eight inch cards, and descriptions of all such persons arrested who in the best judgment of such sheriffs, chiefs of police, or city marshals are persons wanted for serious crimes, or are fugitives from justice, or of all such persons in whose possession at the time of arrest are found goods or property reasonably believed by such sheriffs, chiefs of police or city marshals to have been stolen by them; or of all such persons in whose possession are found burglar outfits or burglar tools or burglar keys or who have in their possession high power explosives reasonably believed to be used for unlawful purposes or who are in possession of infernal machines, bombs or other contrivances in whole or in part and reasonably believed by said sheriffs, chiefs of police and city marshals to be used for unlawful purposes, or of all persons who carry concealed firearms or other deadly weapons and reasonably believed to be carried for unlawful purposes, or who have in their possession inks, dye, paper or other articles necessary in the making of counterfeit bank notes, or in the alteration of bank notes; or dies, molds or other articles necessary in the making of counterfeit money, and reasonably believed to be used by them for such unlawful purposes. This section is by no means intended to include violators of city or county ordinances or of persons arrested for other trifling offenses. It is further made the duty of the aforesaid sheriffs, chiefs of police or city marshals to furnish said bureau daily reports of lost, stolen, found, pledged or pawned property received into their respective offices.

Record of reports.

§ 9. In order to assist in the recovery of said property and in the arrest and prosecution of criminals, it is hereby made the duty of the said board of managers of said bureau to keep a complete record of all reports filed with the said bureau, of all personal property stolen, lost, found, pledged, or pawned in any city or county of this state.

File cards.

§ 10. To provide for the installation of a proper system, and file, and cause to be filed therein cards containing an outline of the method of operation employed by criminals in the commission of crime.

Salaries.

§ 11. The board of managers of this bureau shall serve without compensation; provided, however, that they shall receive their necessary traveling expenses while attending meetings of said board. The superintendent shall receive a salary of two thousand four hundred dollars per annum; the salaries of the other employees shall be fixed by the board of managers, subject to the approval of the board of control. The superintendent and the other employees shall be paid in the same manner and out of the same fund as the state officers are paid.

Appropriation.

§ 12. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of thirty-six thousand dollars, or so much thereof as may be necessary, to be used by said board of managers in furnishing, equipping and maintaining the said bureau in accordance with the provisions of this act, and for the payment of the salaries herein provided for, for the fiscal year ending June thirtieth,

one thousand nine hundred eighteen, and the fiscal year ending June thirtieth, one thousand nine hundred nineteen.

§ 13. The state controller is hereby directed to draw warrants in favor of the said board of managers at such times and such amounts as shall be approved by the state board of control, and the state treasurer is hereby directed to pay the same.

§ 14. All furniture, equipment and records now on file and in use in the office of the "bureau of criminal identification of the state of California," shall become a part of the furniture, equipment and records of the "state bureau of criminal identification and investigation," immediately upon the organization of the board of managers as provided for in this act.

Stats. 1905, p. 520, repealed.

§ 15. An act entitled, "An act to create a state bureau of criminal identification, and providing for the appointment of a director of said bureau, defining his duties and qualifications and powers; providing for the appointment of a clerk of said bureau and fixing his qualifications; fixing compensation of said director and clerk, providing for the manner of paying the same and providing for the expense of conducting the office"; approved March 20, 1905, is hereby repealed and all other acts and parts of acts in conflict herewith are hereby repealed.

Codified.—Code commissioners say the repealed act was codified by §§ 1572, et seq., Penal Code, as adopted in 1907.

CHAPTER 82.

CRUELTY TO ANIMALS.

References: Cruelty to animals, see Kerr's Cyc. Penal Code, §§ 597, et seq.

Societies for the prevention of cruelty to animals, see Kerr's Cyc. Civil Code, §§ 607, et seq.

As to what constitutes cruelty to animals, see note 47 Am. Rep. 310.

Dogs within act prohibiting cruelty.—See 39 L. R. A. 709.

Ordinance to prevent, under power to prohibit nuisance.—See 39 L. R. A. 520.

Shooting doves from traps.—See 33 L. R. A. 836.

Shooting pigeons at matches.—See 11 L. R. A. 522.

Editor's Note: An act for the more effectual prevention of cruelty to animals was approved March 30, 1868 (Stats. 1867-68, p. 604). This act was amended March 15, 1872 (Stats. 1871-72, p. 393). It was repealed by a later act approved March 20, 1874 (Stats. 1873-74, p. 499). This later act was amended March 14, 1901 (Stats. 1901, p. 285); March 2, 1903 (Stats. 1903, p. 69); March 20, 1905 (Stats. 1905, p. 498). These acts provided for the formation and management of societies for the prevention of cruelty to animals, and the procedure for the prosecution and punishment thereof. They were continued in force by the codes. See Kerr's Cyc. Penal Code, § 23, subd. 8; Kerr's Cyc. Political Code, § 19, subd. 8. The code commissioners say of these acts, in substance, that they were codified, or superseded, where not codified, by the sections of the Civil Code and Penal Code relating to the subject. See *supra*, References.

CONTENTS OF CHAPTER.

ACT 1162. USE OF BRISTLE BUR, TACK BUR, ETC., PROHIBITED.

USE OF BRISTLE BUR, ETC., PROHIBITED.

ACT 1162—An act to prohibit the use of the bristle bur, tack bur, or other like devices on horses or other animals in this state.

History: Approved March 13, 1903, Stats. 1903, p. 139.

Bristle bur, tack bur, etc., on horses prohibited.

§ 1. It shall be unlawful hereafter in this state for any one, owner, driver or other person, having the care, custody or control of any horse or other animal, to use what is known as the bristle bur, tack bur, or other like device, by whatsoever name known or designated, on any said horse or other animal for any purpose whatsoever.

Penalty.

§ 2. A violation of the provisions of this act shall be deemed a misdemeanor and any one found guilty thereof shall be punished by a fine of not less than twenty-five dollars nor more than two hundred and fifty dollars, or by imprisonment in the county jail not less than ten nor more than one hundred and seventy-five days, or may be punished by both such fine and imprisonment.

Repeal of conflicting acts.

§ 3. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 4. This act shall take effect and be in force from and after its passage.

CRUELTY TO CHILDREN.

See tit. "Infants."

CULVER CITY.

See Act 3094, note.

CHAPTER 83.**DAIRIES.**

References: Adulteration in dairy products, see tit. "Adulteration."

Butter, see tit. "Butter."

Cheese, see tits. "Butter"; "Cheese."

Dairy Bureau, see, ante, Act 621.

Dairy regulation by boards of health, see tit. "Public Health."

Director of agriculture, successor to Dairy Bureau, see tit. "Agriculture," Act. 96.

Enforcement of the law as to false tests for dairy products, see Kerr's Cyc. Pen. Code, § 381b.

CONTENTS OF CHAPTER.

- ACT 1166. DAIRY SANITATION AND INSPECTION ACT OF 1905.
- 1167. DAIRY SANITATION AND INSPECTION ACT OF 1911.
- 1168. STANDARD FOR CONDENSED AND EVAPORATED MILK.
- 1168a. USE OF CHEMICALS TO PREVENT FERMENTATION.
- 1169. PRODUCTION OF CERTIFIED MILK.
- 1171. DAIRY INSPECTION ACT OF 1917.
- 1172. IMITATION MILK.

DAIRY SANITATION AND INSPECTION ACT OF 1905.

ACT 1166—An act to prevent the sale of dairy products from unhealthy animals and produced under unsanitary conditions; to provide for the inspection of dairy stock, dairies, factories for the production of dairy products and places where dairy products are handled and sold; to improve the quality of dairy products of the state; to prevent deception in the sale of dairy products and to appropriate money for enforcing its provisions.

History: Approved March 20, 1905, Stats. 1905, p. 462. Former act of March 22, 1899, Stats. 1899, p. 171, repealed by present act. Largely superseded by later act, see, post, Act 1167.

Dairy products, sale of. Sanitary condition of creamery, store or depot. Cows affected by disease.

§ 1. No person or persons, firms or corporations, by themselves or their agents or employees, shall sell, expose for sale or offer for sale, or exchange, present or deliver to any creamery, cheese factory, milk condensing factory, or any other buyer or consumer, any unclean, unwholesome, stale, impure milk, cream, butter, condensed or evaporated milk or other article produced from such milk or cream. Neither shall any person or

persons, firms or corporations, by themselves or their agents or employees, sell, expose for sale, or offer for sale, or exchange, present or deliver to any consumer, creamery, cheese factory, milk condensing factory, or any other buyer or consumer, any milk, cream, butter, cheese, condensed milk or other products manufactured therefrom, which has been produced in or by a dairy, or factory of dairy products, or that is, or has been, handled in any store or depot that is in an unsanitary condition, or that is produced from cows affected by any disease or from cows within five days after or fifteen days preceding parturition.

Dairy deemed unsanitary, when.

§ 2. A dairy shall be deemed unsanitary under the meaning of this act when, among other causes that render milk, or products made therefrom, unclean, unwholesome, impure and unhealthy,

(b) If the drinking water is stagnant, polluted with manure, urine, drainage, decaying vegetable or animal matter.

(c) If the yards or inclosures are filthy or unsanitary, or if any part of such yards or inclosures, other than pastures, are made the depositories of manure in heaps or otherwise where it is allowed to ferment and decay.

If the walls become soiled with manure, urine or other filth.

(g) If to the interior of cattle stables, barns or milking sheds an application of lime whitewash is not made at least once in two years, or if the mangers, or other receptacles from which cows are fed, decaying food or other material is allowed to accumulate.

(i) If the pails, cans, bottles or other containers of milk, or its products, strainers, coolers or other utensils coming in contact with milk or its products are not sterilized by boiling water or superheated steam each and every time the same are used.

(j) If the person wearing apparel of the dairyman, his employees, or other persons, who come in contact with milk and its products are soiled or not washed from time to time.

Creamery deemed unsanitary, when.

§ 3. A creamery or any factory of dairy products or any store, depot or other place where milk is handled or kept for sale shall be deemed unsanitary under the meaning of this act when, among other causes that render milk, or products made therefrom, unclean, unwholesome, impure, stale or of low grade or inferior quality.

(a) If milk or cream is received that has reached an advanced stage of fermentation, or that shows a state of putrefactive fermentation, or if it is received in cans or other containers that have not been sterilized by means of boiling water or superheated steam after each delivery.

(b) If the utensils and apparatus that comes in contact with milk or its products in process of manufacture are not thoroughly washed and sterilized by means of boiling water or superheated steam.

(c) If the floor is so constructed that permits the flowing or soaking of water, milk or other liquids underneath or among the interstices of such floor where fermentation and decay may take place, or if such floor may not be readily kept free from dirt.

(d) If drains are not provided that will convey refuse milk, water and sewage at least fifty yards from such creamery or factory of dairy products, or if any cesspool, privy vault, hog-yard, slaughter-house, manure or any decaying vegetables or animal matter shall be within a distance that will permit foul odors from reaching any creamery or other factory of dairy products or store or depot where milk or its products is sold or handled.

(e) If such creamery or factory of dairy products does not permit access of light and air sufficient to secure good ventilation.

(f) If any building or buildings used in connection with any creamery, or factory of

dairy products, any insects or other species of animal life are permitted, or if upon the floor, the sides and walls any milk or its products, or if any other filth is allowed to accumulate and ferment and decay, or if the bodies or wearing apparel of persons employed, or coming in contact with any milk or its products in any creamery, or factory of any dairy products, shall be unclean and not washed from time to time.

Preparations, what may and what may not be used. Harmless coloring.

§ 4. No person or persons, firms or corporations, by themselves or their agents or employees, shall sell, expose for sale, or exchange, present or deliver to any creamery, cheese factory, milk condensing factory, ice-cream producer, or any other buyer, or consumer, any milk, or any product manufactured or prepared therefrom, to which any compound containing salicylic acid, formaldehyde, coloring matter or any other chemical or preparation other than common salt, or sodium chloride, shall have been added with intent to prevent fermentation, or to change the color (in case of milk and cream); provided, that such person or persons, firms or corporations or their agents or employees may use preparations of boron to prevent fermentation in milk or its products, but whenever any preparation of boron is used for such purpose, each and every package or container of milk or its products shall have plainly marked thereon, the fact that it contains such preparation of boron.

Neither shall any gelatine, or other substance, be added to milk or cream with intent to increase its viscosity or otherwise cause it to appear better in quality than it is, except each and every package and container of such milk or cream shall have marked thereon in a manner, or be accompanied by a statement, to be prescribed by the state dairy bureau, showing the nature of the substance added; provided, that this section shall not be construed to prevent the use of harmless coloring matter in butter, ice-cream or confectionery into which milk or its products enter.

Packages of butter marked with the word pasteurize.

§ 5. No person or persons, firms or corporations, by themselves or their agents or employees, shall manufacture for sale, offer for sale, expose for sale, or have in his or their possession for sale, any package of butter upon which, or upon the wrapper or container of which, there shall be printed, or otherwise marked, the word pasteurize or any of its derivatives unless in the process of the manufacture of the butter contained therein either the milk or cream from which the same was made shall have been exposed to a temperature exceeding one hundred and fifty degrees Fahrenheit.

Designs of producer of butter to appear on wrapper.

§ 6. In case any butter is sold or offered for sale in a package or wrapper purporting to designate the producer of such butter, such producer must be correctly designated; and if under a label purporting or calculated to designate the place of production, specifying county and state, must be correctly designated. No person, firm or corporation shall put up in package or wrapper or otherwise prepare for shipment or sale any butter under label purporting to designate the producer or place of production, except in accordance with the provisions herein; nor shall any person sell or offer for sale any butter in a package or wrapper purporting to designate the name of the producer or the place of production except in accordance with the provisions herein.

Dairy bureau, duty of. Officers, qualification, duties, compensation. Unsanitary conditions, duties and powers.

§ 7. It shall be the duty of the state dairy bureau, now existing under the laws of this state, to carry out and enforce the provisions of this act, and it is authorized and directed under this act out of the money appropriated as provided herein, to employ such assistant agents as inspectors as it may deem necessary and to fix therein compensation not to exceed \$4 per day, exclusive of their necessary and actual expenses, such

expenses to be itemized and rendered under oath, or \$100 per month **exclusive of their necessary and actual expenses.** Such agents shall have had experience in the manufacture of dairy products and the handling of dairy cattle. In carrying out the provisions of this act the secretary and agent of the state dairy bureau shall receive, in addition to the salary now received under the provisions of the act creating said state dairy bureau, such additional compensation as the dairy bureau may see fit, but not to exceed \$100 per month to be drawn from the amount appropriated herein. The state dairy bureau through its agent and secretary, and assistant agents shall inspect the dairies, dairy cattle, creameries and other factories of dairy products, markets, and other places where dairy products are prepared or handled, and keep a careful record of such inspection and report the same to the state dairy bureau, and upon evidence obtained that any of the provisions of this act are being violated, the state dairy bureau, through its agent and secretary, or its assistant agents, shall duly enter complaint against the party or parties, responsible for such violations and cause the same to be prosecuted, except in cases where any dairy, creamery or other factory of milk products or store or depot where milk and its products are handled and sold, is found to be in an unsanitary condition, in which case the agent and secretary, or the assistant agent, for the district in which the violation occurred, shall serve upon the owner, or owners, or person in charge of the dairy, creamery or other factory of milk products so found to be in an unsanitary condition, a written notice specifying in detail such changes that are to be made that will place such dairy, creamery, or other factory of milk products or store or depot in a sanitary condition as defined in this act. Should such changes not have been made at the expiration of thirty days after the date when the notice was served, the state dairy bureau, through its agent and secretary, or its assistant agents, shall enter complaint against the person or persons responsible for such unsanitary conditions and cause them to be prosecuted for violating this act.

Dairy bureau to compile statistics.

§ 8. The state dairy bureau is authorized under this act to gather and compile statistics relative to the dairy industry and to disseminate the same and other information useful to, and to the general good and development of the dairy industry of the state.

Agent or inspector to report cases of infectious diseases to state veterinarian.

§ 9. Whenever any agent or inspector of the state dairy bureau shall discover the existence of any contagious or infectious disease among dairy cattle, or have good reason to believe that such disease may exist the same shall be immediately reported to the state veterinarian.

Violation of this act, penalty. Interference with agent or inspector, punishment. Disposition of fines.

§ 10. Whoever shall violate any of the provisions of this act shall be deemed guilty of misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than two hundred dollars or by imprisonment in the county jail for a period of not less than ten days nor more than one hundred days, or by both such fine and imprisonment. Any person or persons who shall hinder or prevent an agent or inspector of the state dairy bureau, in the performance of his duty under this act, shall likewise be deemed guilty of a misdemeanor, and upon conviction, shall be fined as already provided in this act. One-half of all fines imposed for the violation of this act shall be paid to the state dairy bureau which shall pay the same to the state treasurer and the same shall become a part of the appropriation under this act. The remaining one-half of such fines shall be paid to the county in which the fine is imposed.

Duty of district attorney.

§ 11. It shall be the duty of the district attorney, upon application of the state dairy bureau, through its agent and secretary, or assistant agents to attend to the prosecution, in the name of the people, of any suit brought for the violation of any of the provisions of this act within his district.

Appropriation.

§ 12. There is hereby appropriated for the use of the state dairy bureau in enforcing and carrying out the provisions of this act, out of any money in the state treasury not otherwise appropriated, the sum of one thousand five hundred dollars (\$1,500) for the remainder of the fifty-sixth fiscal year; five thousand dollars, (\$5,000) for the fifty-seventh fiscal year and five thousand dollars (\$5,000) for the fifty-eighth fiscal year. All salaries, fees, costs and expenses shall be drawn from the money so appropriated, and the state controller shall draw his warrant on the state treasury in favor of the person or persons entitled to the same.

Repeal of former and inconsistent acts.

§ 13. An act approved March 22, 1899, entitled "An act to provide for the inspection of dairies, factories of dairy products, and of dairy products as to their sanitary condition, and as to the health of stock; to prevent the sale of milk and products of milk drawn from diseased animals; to prevent the spread of infectious and contagious diseases common to stock, and to appropriate money therefor," and all other acts or parts of acts inconsistent with this act are hereby repealed.

Time of taking effect.

§ 14. This act shall take effect thirty days after its passage.

DAIRY SANITATION AND INSPECTION ACT OF 1911.

ACT 1167—An act to prevent the manufacture or sale of dairy products from unhealthy animals, or that are produced under unsanitary conditions; to prevent deception or fraud in the production and sale of dairy products, and in the manufacture and sale of renovated butter and oleomargarine; to license the manufacture and sale of renovated butter, and oleomargarine; to regulate the business of producing, buying and selling dairy products, oleomargarine, renovated or imitation butter and cheese; to provide for the enforcement of its provisions and for the punishment of violations thereof, and appropriating money therefor and to repeal section 17 of an act approved March 4, 1897, entitled "An act to prevent deception in the manufacture and sale of butter and cheese, to secure its enforcement, and to appropriate money therefor," and to repeal all acts and parts of acts inconsistent with this act.

History: Approved April 21, 1911, Stats. 1911, p. 959. Amended May 4, 1915. In effect August 8, 1915. Stats. 1915, p. 332; May 4, 1915. In effect January 1, 1915. Stats. 1915, p. 352; June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1455; June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1654; May 5, 1919. In effect July 22, 1919. Stats. 1919, pp. 283, 297. This act supersedes all provisions of the act of 1905 (Act 1166) except possibly certain administrative features relating to the state dairy bureau.

Sale of unclean milk, etc., prohibited.

§ 1. No person, firm or corporation, by themselves or their agents or employees, shall sell, expose for sale, or offer for sale, or shall exchange, present, or deliver to any creamery, cheese factory, milk condensing factory, or other buyer or consumer of milk or milk products, any unclean, unwholesome, stale, or impure milk, cream, butter or condensed or evaporated milk, or other article produced from such milk or cream, neither shall any person or persons, firm or corporation, by themselves or their agents or employees, sell, expose for sale, or offer for sale, or exchange, present or deliver to

any consumer, creamery, cheese factory, milk condensing factory, or any other buyer or consumer, any milk, cream, butter, cheese, condensed milk or other products manufactured therefrom, which has been produced in or by a dairy, or factory of dairy products, or that is or has been handled in any store or depot, that is in an unsanitary condition, or that is produced from cows affected by any disease, or from cows within five days after or fifteen days preceding parturition.

Milk containers to be cleansed.

§ 1a. Every person, firm or corporation, not a common carrier, who receives from a common carrier in cans, bottles, vessels, or other containers, any milk, cream and ice cream intended for human consumption, which has been transported over any railroad, or boat or freight line, or by other common carrier, or auto truck, which said cans, bottles, vessels, or other containers, are to be returned to the consignor or shipper, shall cause the said empty cans, bottles, vessels, or other containers, to be thoroughly cleansed and sterilized by boiling water or superheated steam before return shipment of the same; provided, further, that all empty cans, bottles, vessels, or other containers, delivered to the consumer by the retailer shall be thoroughly and immediately cleansed before returning the same to the dealer or distributor. [New section added June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1657.]

Unsanitary dairies.

§ 2. A dairy shall be deemed unsanitary within the meaning of this act, among other causes that render milk, or products made therefrom, unclean, impure, and unhealthy, in the following cases:

(a) If the drinking water is stagnant, polluted with manure, urine, drainage, decaying vegetable or animal matter.

(b) If the yards or enclosures are filthy or unsanitary or if any part of such yards or enclosures, other than pastures, are made the depositories of manure in heaps or otherwise where it is allowed to ferment and decay.

(c) If a suitable milk house or room is not provided and maintained, properly screened to exclude flies and insects, for the purpose of cooling, mixing, canning, and keeping the milk. Said milk house or room, shall not be located in or be a part of any residence, or dwelling house, or any barn or poultry house, and shall not be used for any other purpose whatsoever.

(d) If any milk or cream shall be cooled, stored, mixed, canned, or kept in any room or place which is occupied by any person or persons as a sleeping or living apartment, or occupied by horses, cows, hogs or other animals, or fowls of any kind, and if the milk or cream shall not be cooled to as low a temperature as practicable within one hour after it is drawn from the cows.

(e) If any urinal, privy vault, open cesspool, horse stable, pig pen, stagnant water, accumulation of manure or other filth shall be permitted within one hundred feet of any such milk house or room, or within fifty feet of any cow stalls or stanchions or other place where milking is done.

(f) If the walls become soiled with manure, urine or other filth.

(g) If to the interior of cattle stables, barns, milking sheds, milk house or room, an application of lime whitewash is not made at least once in two years, or oftener if in the judgment of the agent of the state dairy bureau it is needed, or if in the managers, or other receptacles from which cows are fed, decaying food or other material is allowed to accumulate.

(h) If the pails, cans, bottles or other containers of milk, or its products, or the strainers, coolers or other utensils coming in contact with the milk or its products, are not sterilized by boiling water or superheated steam each and every time the same are used.

(i) If the person or wearing apparel of the dairyman, his employees, or other persons, who come in contact with milk and its products, are soiled or not washed from time to time with reasonable frequency. (Amendment of June 1, 1917. In effect August 31, 1917. Stats. 1917, p. 1655.)

Unsanitary creameries.

§ 3. A creamery or any factory of dairy products, or any store, depot, or other place where milk is handled or kept for sale, shall be deemed unsanitary under the meaning of this act, among other causes that render milk, or products made therefrom, unclean, unwholesome, impure, stale or of low grade or inferior quality, in the following cases:

(a) If milk or cream is received that has reached an advanced stage of fermentation, or that shows a state of putrefactive fermentation, or if it is received in cans, or other containers that have not been sterilized by means of boiling water or superheated steam after each delivery.

(b) If the utensils and apparatus that come in contact with milk or its products in the process of manufacture are not thoroughly washed and sterilized by means of boiling water or superheated steam, after each using.

(c) If the floor is so constructed as to permit the flowing or soaking of water, milk or other liquids underneath or among the interstices of such floor, where fermentation and decay may take place, or if such floor may not be readily kept free from dirt.

(d) If drains are not provided that will convey refuse milk, water and sewage away to a point at least fifty yards distant from such creamery or factory of dairy products, or if any cesspool, privy vault, hog-yard, slaughter-house, manure or any decaying vegetables or animal matter, shall be within a distance that will permit foul odors to reach any such creamery or other factory of dairy products or store or depot where milk or its products are sold or handled.

(e) If such creamery or factory of dairy products, does not permit access of light and air sufficient to secure good ventilation.

(f) If in any building or buildings used in connection with any creamery, or factory of dairy products, any insects or other species of animal life are permitted, or if upon the floor, the sides or the walls, any milk or its products, or any other filth is allowed to accumulate, or ferment, or decay, or if the bodies or wearing apparel of persons employed, or coming in contact with any milk or its products, in any creamery, or factory of any dairy products, shall be unclean and not washed from time to time with reasonable frequency.

Liquid gallon measure.

§ 4. No person, firm or corporation shall hereafter sell, offer for sale, or receive for the purpose of sale, any milk, skim milk or cream, except such sale, offer, or receipt, shall, as to quantity, be based upon the liquid gallon, containing two hundred and thirty-one cubic inches, or the liquid quart containing fifty-seven and seventy-five one-hundredths cubic inches or the proper and complete liquid subdivision thereof. Provided, that nothing in this act shall be construed as prohibiting the buying or selling of milk or cream either by weight or on the basis of its butter fat contents. And provided, further, that in any hotel, restaurant, or other eating place, where milk is sold with meals, or where it is sold to be drunk immediately, it may be sold by the glass.

Milk, etc., sold as pasteurized must conform to regulations of this act. Butter must be sold in terms of pounds.

§ 5. No person, firm or corporation shall sell, exchange, or offer or expose, or have in its possession for sale or exchange, any milk, cream, skim milk, ice cream, butter, buttermilk, cheese or other milk products, as and for pasteurized milk, cream, skim milk, ice cream, butter, buttermilk, cheese or other milk product, as the case may be,

nor use the word "pasteurize" or any of its derivatives in connection with the sale, designation, advertising, labeling or billing of any milk, cream, skim milk, ice cream, butter, buttermilk, cheese or other milk products, unless the same and all products of milk contained therein or used in the manufacture thereof consist exclusively of milk, skim milk or cream which has been treated by the process of pasteurization, as defined and regulated in subdivision fifteen, section twenty-nine, of this act. It shall be unlawful for any person, firm or corporation to sell, offer for sale, or to cause or permit to be sold or offered for sale, any butter in prints or packages or otherwise other than by or in terms of pounds and ounces, avoirdupois, or for a greater weight than the true net weight thereof. [Amendment of May 4, 1915. In effect August 8, 1915. Stats. 1915, p. 333.]

Registration of dairies.

§ 6. Every person, firm or corporation operating any dairy, where more than four cows are milked, and every creamery, cheese factory, receiving station, skimming station, ice cream or ice milk manufacturer, or milk condensary, shall on or before the first day of November of each year, cause to be registered with the secretary of the state dairy bureau a statement showing the full name and address of such person, firm or corporation so operating the same, and also the full name and address of the owner or owners of the business so being operated, in case the person operating the same is not the owner, together with a statement of the class of such business carried on by such person or corporation, and the number of cows then being milked, in case of a dairy.

Annual report.

§ 7. The secretary of the state dairy bureau shall provide blanks for reporting dairy statistics, and he shall annually, on or before the first day of October each year, cause to be mailed to each person, firm or corporation engaged in operating any dairy making butter or cheese from more than four cows, and to all dairies where more than four cows are milked, and to all creameries, cheese factories, ice cream or ice milk manufacturers, and milk condensaries, one or more of such blanks, and each such person, firm or corporation shall, on or before the first day of November following, make out and transmit to said secretary of the state dairy bureau a full and accurate report of the amount of butter, cheese or other dairy products, manufactured or produced during the year ending September 30th, and the dairies shall report the number of cows milked during said year.

Producer of butter must be designated. Place of production.

§ 8. In case any butter is sold or offered for sale, in a package or wrapper purporting to designate the producer of such butter, such producer must be correctly designated. In case any butter is sold, or offered for sale, in a package or wrapper, or under a label purporting or calculated to designate the place of production, such package, wrapper, or label must correctly name the place where made; or if such package, wrapper or label bears the name of any county, city and county, city or town in this state or any other geographical designation, such package, wrapper, or label must also correctly name the place where made. No person, firm or corporation shall put up in package or wrapper, or otherwise prepare for shipment or sale, any butter under a label purporting to designate the producer, place of production, or bearing the name of any county, city and county, city, or town of this state, or any other geographical designation, except in accordance with the provisions hereof; nor shall any person, firm or corporation sell or offer for sale any butter in a package, wrapper, or under a label purporting to designate the name of the producer or the place of production or bearing the name of any county, city and county, city or town of this state or geographical

designation, except in accordance with the provisions hereof. [Amendment of May 4, 1915. In effect January 1, 1916. Stats. 1915, p. 353.]

Oleomargarine defined.

§ 9. For the purposes of this act certain manufactured substances, certain extracts, and certain mixtures and compounds, including such mixtures and compounds with butter, milk or cream, shall be known and designated as "oleomargarine," namely: All substances heretofore known as oleomargarine, oleo, oleomargarine-oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine-oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef-fat, suet, lard, lard-oil, cocoanut-oil, peanut-oil, intestinal fat, and offal-fat made in imitation or semblance of butter, or when so made, calculated or intended to be sold as butter or for butter; or butter substitute; and for the purposes of this act, every article, substance, or compound, other than that produced from pure milk, or cream from the same, made in semblance of cheese, and designed to be used as a substitute for cheese made from pure milk or cream, is hereby declared to be imitation cheese; provided, that the use of salt, rennet, and harmless coloring matter for coloring the product of pure milk or cream, shall not be construed to render such product an imitation; and provided, that nothing in this section shall prevent the use of pure skimmed milk in the manufacture of cheese. [Amendment of May 5, 1919. In effect July 22, 1919. Stats. 1919, p. 298.]

Sale of imitation butter prohibited.

§ 10. No person, by himself or his agents or servants, shall render, manufacture, sell, offer for sale, expose for sale, or have in his possession with intent to sell or to use or to serve to patrons, guests, boarders, or inmates in any hotel, eating-house, restaurant, public conveyance or boarding-house, or public or private hospital, asylum or eleemosynary or penal institution, any article, product or compound made wholly or partly out of any fat, oil or oleaginous substance or compound thereof, not produced directly and at the time of manufacture from unadulterated milk or cream from the same, which article, product, or compound shall be colored in imitation of butter or cheese produced from unadulterated milk or cream, or be made to resemble yellow butter in color, by whatever means the coloring is accomplished; provided, that nothing in this section shall be construed to prohibit the manufacture or sale, under the regulations hereinafter provided, of substances or compounds, designed to be used as an imitation, or as a substitute for butter or cheese made from pure milk or cream from the same, in a separate and distinct form not resembling butter or cheese, and in such a manner as will advise the purchaser and consumer of its real character, free from coloration or ingredients that cause it to look like butter or cheese made from pure milk or cream, the product of the dairy.

Branding oleomargarine. Absence of markings.

§ 11. Each person, who, by himself or another, lawfully manufactures any oleomargarine, or any substance designed to be used as a substitute for butter or cheese, shall mark the same by branding, stamping, or stenciling upon the top and sides of each tub, firkin, box, or other package in which such article or substance shall be kept, and in which it shall be removed from the place where it is produced or put up, in a clear and durable manner, in the English language, the words "oleomargarine," or "substitute for butter," or "substitute for cheese," as the case may be, in printed letters in plain roman type, each of which shall not be less than one inch in height by one-half inch in width, and in addition to the above shall prepare a statement, printed in plain roman type, of a size not smaller than pica, stating in the English language its name, and the name and address of the manufacturer, the name of the place where manufactured or put up, and also the names and actual percentages of the various

ingredients used in the manufacture of such oleomargarine, imitation butter or imitation cheese; and shall place a copy of said statement within and upon the contents of each tub, firkin, box, or other package, and next to that portion of each tub, firkin, box, or other package, as is commonly and most conveniently opened, and shall label the top and sides of each tub, firkin, box, or other package by affixing thereto a copy of said statement, in such manner, however, as not to cover the whole or any part of said mark of "oleomargarine," "substitute for butter," or "substitute for cheese." The absence of the markings and labelings specified in section 11 hereof shall always be construed as a representation that the contents or substance in question is butter, or cheese, as the case may be.

Shipping oleomargarine.

§ 12. No person, by himself or another, shall knowingly ship, consign, or forward by any common carrier, whether public or private, any oleomargarine, or any substance designed to be used as a substitute for butter or cheese, unless the same be marked and contain a copy of the statement, and be labeled as provided by section 11 of this act; and no carrier shall knowingly receive the same for the purpose of forwarding or transporting, unless it shall be manufactured, marked, and labeled as hereinbefore provided, and unless it is consigned and by the carrier receipted for by its true name; provided, that this act shall not apply to any goods in transit between foreign states across the state of California.

All oleomargarine packages to be marked.

§ 13. No person or his agent shall knowingly have in his possession or under his control any oleomargarine, or any substance designed to be used as a substitute for butter or cheese, unless the tub, firkin, box, or other package containing the same, shall be clearly and durably marked and labeled as provided by section 11 of this act, and also contain a copy of the statement required by said section 11 of this act; and if the tub, firkin, box, or other package be opened, then a copy of the statement described in said section 11 of this act, shall be kept with its face up, upon the exposed contents of said tub, firkin, box, or other package; provided, that this section shall not be deemed to apply to persons who have the same in their possession for the actual consumption of themselves or family, and for no other purpose.

Conditions covering sale of oleomargarine.

§ 14. No person, by himself or another, shall sell, or offer for sale, or take orders for the future delivery of any oleomargarine, or any substance designed to be used as a substitute for butter or cheese, under the name of butter, or under the pretense that the same is butter or cheese; and no person, by himself or another, shall sell any substance designed to be used as a substitute for butter or cheese, unless he shall inform the purchaser distinctly, at the time of the sale, of its true name and character, and that the same is a substitute for butter or cheese, as the case may be, and shall deliver to the purchaser, at the time of the sale, a separate and distinct copy of the statement described in section 11 of this act; and no person shall use in any way in connection or association with the sale, or exposure for sale, or advertisement of any oleomargarine or any substance designed to be used as a substitute for butter or cheese, the words "butterine," "creamery," or "dairy," or the representation of a cow or any breed of dairy cattle, or any combination of such words and representations, or any other words or symbols, or combinations thereof, commonly used by the dairy industry in the sale of butter or cheese.

Hotel-keepers to notify patrons when serving oleomargarine.

§ 15. No keeper or proprietor of any bakery, hotel, boarding-house, restaurant, saloon, lunch-counter, or other place of public entertainment, and no person having

charge thereof or employed thereat, and no person furnishing board, for others than members of his own family, and no employee where such board is furnished as the compensation or as a part of the compensation of any employee, shall place before any patron or employee, for use as food, any oleomargarine, or any substance designed to be used as a substitute for butter or cheese, unless the same be accompanied by a copy of the statement described in section 11 of this act, and by a verbal notification to said patron that such substance is a substitute for butter or cheese.

Maintaining actions on contract.

§ 16. No action can be maintained on account of any sale or other contract made in violation of, or with intent to violate, this act, by or through any person, who was knowingly a party to such wrongful sale or other contract.

Every person having possession or control of any oleomargarine, or any substance designed to be used as a substitute for butter or cheese, which is not marked as required by the provisions of this act shall be presumed to have known, during the time of such possession or control, that the same was imitation butter, or imitation cheese, as the case may be.

Erasing labels.

§ 17. No person shall efface, erase, cancel, or remove any mark, statement, or label required by this act, with intent to mislead, deceive, or with intent to violate any of the provisions of this act.

Butter used in charitable institutions.

§ 18. No butter or cheese not made wholly from pure milk or cream, salt, and harmless coloring matter, shall be used in any of the charitable or penal institutions that receive assistance from the state.

Having possession of oleomargarine. Officer serving bench warrant to take samples.

§ 19. Whoever shall have possession or control of any imitation butter or imitation cheese or any oleomargarine, or any substance designed to be used as a substitute for butter or cheese, or any renovated butter, contrary to the provisions of this act, shall be construed to have possession of property with intent to use it as a means of committing a public offense, within the meaning of chapter three, of title twelve, of part two, of an act to establish a penal code; provided, that it shall be the duty of the officer who serves a bench warrant issued for imitation butter or imitation cheese, or oleomargarine, or any substance designed to be used as a substitute for butter or cheese, or any renovated butter, to deliver to the agent or inspector of the state dairy bureau, or to any person by such dairy bureau authorized in writing to receive the same, a perfect sample of each article seized by virtue of such warrant, for the purpose of having the same analyzed, and forthwith to return to the person from whom it was taken the remainder of each article seized as aforesaid. If any sample be found to be imitation butter or imitation cheese, or oleomargarine, or a substance designed to be used as a substitute for butter or cheese, or renovated butter, it shall be returned to and retained by the magistrate as and for the purpose contemplated by section 1536 of an act to establish a penal code; but if any sample be found not to be imitation butter or imitation cheese, or oleomargarine, and not a substance designed to be used as a substitute for butter or cheese, or renovating butter, it shall be returned forthwith to the person from whom it was taken.

Each package of oleomargarine to be marked.

§ 20. No person, firm or corporation, by themselves or their agents or employees, shall sell, offer for sale, or expose for sale, or have in his, its, or their possession for sale, any oleomargarine or any renovated butter, unless the same shall have printed

upon each and every package, roll, print, square, and upon any container of such renovated butter or oleomargarine, the words "renovated butter," or the word "oleomargarine," as the case may be in letters not less than one-half inch in height, and who shall not have secured from the state dairy bureau, now existing under the laws of this state, a license as provided hereinafter.

Renovated butter defined.

§ 21. The term renovated butter as used in this act is hereby defined to mean and include butter that has been reduced to a liquid state by melting and drawing off such liquid or butter oil and churning or otherwise manipulating it in connection with milk or any product thereof.

License required of manufacturer, etc. Application to dairy bureau. Fees. Definitions.

Licenses on display. Unlawful to handle, etc., without license.

§ 22. No person, firm or corporation, shall engage in the business or occupation of manufacturing, selling, dealing in, or furnishing renovated butter, oleomargarine, or any substance designed to be used as a substitute for butter, without first having applied for and obtained a license so to do, as hereinafter provided. Any person, firm, or corporation, desiring to engage in the business or occupation of manufacturing, selling, dealing in or furnishing to his, its or their patrons, oleomargarine, or any substance designed to be used as a substitute for butter, or imitation butter, or adulterated butter, or renovated butter, as in this act defined, shall first make application each year to the state dairy bureau for a license, and upon payment of a license fee of the amount mentioned herein, to the state dairy bureau, said bureau shall issue to the applicant a license. All such licenses shall contain the following proviso: Provided that this license does not authorize the holder hereof to manufacture, sell, deal in or furnish any oleomargarine, or similar substances designed to be used as a substitute for butter, which contain any coloring matter or which resemble yellow butter in appearance. All said licenses shall expire on June 30th of each year, and may be issued in periods of one year, or less than one year, upon payment of a proportionate part of the license fee. The fees for issuing said licenses are hereby fixed at the amounts below named, annually. The fee for issuing said license to manufacturers of any of said substances within this state shall be one hundred dollars, and if issued to wholesale dealers in, or importers or agents for importers of any of said substances the fee shall be fifty dollars, and if issued to retail dealers in any of said substances the fee shall be five dollars, and if issued to the keeper of any hotel, restaurant, boarding-house or other place where meals are served and payment is received therefor, either immediately or by the day, week or month, the fee shall be two dollars. The term "wholesale dealer," as used in this section 22 hereof includes all persons, firms or corporations, who sell any of said substances in quantities of ten pounds or more at a time or in the same transaction. The term retail dealer includes all persons who sell only in quantities of less than ten pounds. All licenses, while in force, shall be kept conspicuously displayed in the place of business of the party or parties to whom they have been issued.

It shall be unlawful for any person, firm or corporation, to manufacture, buy, sell, deal in, or furnish to his, its or their patrons, or to have in possession, for any purpose whatsoever other than for consumption in his own family, or for transportation in case of a boat or railroad company, or for the purpose of storage in case of a warehouse or cold storage company, any oleomargarine, or similar substance designed to be used as a substitute for butter, or any substance resembling butter, but not made wholly from pure milk or cream, or any imitation butter, or adulterated butter, or renovated butter, as in this act defined, without first having applied for and obtained from the state dairy bureau of the state of California, the license herein required.

Disposition of fees.

§ 23. All license fees paid to the state dairy bureau under this act shall be paid by said bureau into the state treasury, and shall be added to the appropriation made for the same fiscal year for the state dairy bureau, and its expenditure shall be at the disposal of said bureau for its use.

Records of sales, etc., of oleomargarine. Records open to inspection. Failure to keep records a misdemeanor.

§ 24. Every person, firm, or corporation who is required by the provisions of section 22 hereof to obtain and hold a manufacturer's or a wholesaler's or importer's license shall keep a correct record in a form separate from all other business in which every sale and purchase of renovated butter, imitation butter, oleomargarine, or any substitute for butter or substance designed to be used as a substitute for butter, or resembling butter, which substance is not made wholly from pure milk or cream, or any imitation cheese or imitation dairy products of any kind, shall be recorded at the time of the transaction, giving in detail the quantity sold or purchased, the name and location of the buyer or seller, the date, and the place to which it was shipped or delivered, and by whom the order or sale was put up and delivered. Every warehouse, cold storage company, boat, railroad or other transportation company shall keep a correct record of all oleomargarine, imitation butter, renovated butter, substitute for butter, imitation cheese, or other imitation dairy products, which at any time may be in their possession, or which may be transported or stored by them, showing the owner, the quantity and kind of goods, the date when stored, and when removed, in case of warehouses and cold storage companies, and showing the character of goods billed, the quantity, the name and address of consignor and consignee, and the date of transportation, in case of boats and railroad companies. All said records, herein required to be kept, shall at all times during business hours, be open to the inspection of the agents and inspectors of the state dairy bureau, and of any officer of any city or county board of health, and of any peace officer of any city or any county of the state. A failure to keep any of the records herein required to be kept or to permit the inspection of such records, by any inspector or agent of the state dairy bureau, or of any city or county board of health, or by any peace officer of any city or county, as herein required, is hereby declared to be a misdemeanor, and punishable as provided herein.

Weighing and sampling milk.

§ 25. It shall be unlawful for any hauler of milk, or cream, or any person, firm or corporation receiving or purchasing milk or cream by weight or test or both, or by measure or test or both, to fraudulently manipulate the weight, measure or test of milk or cream of any person or to take unfair samples thereof, or to fraudulently manipulate such samples. The hauler or other agent shall weigh or measure the milk or cream of each patron accurately and correctly and shall report such weight or measurements accurately and correctly to the creamery or factory. He shall thoroughly mix the milk or cream of each patron by pouring or stirring until such milk or cream is uniform and homogeneous in richness, before the sample is taken from such milk or cream. When the weighing or sampling is done at the creamery, shipping station or factory, the same rule shall apply.

Testing milk. Tester licensed by state dairy bureau.

It shall be unlawful for any person, firm or corporation, by himself or as the agent, servant, employee or officer of any person, firm or corporation receiving or purchasing milk or cream on the basis of the amount of butter fat contained therein, to under-read, over-read or otherwise fraudulently manipulate the Babcock test used for determining the per cent of butter fat in milk or cream, or to falsify the records thereof or to read the test at any other temperature than the correct one, which is one hundred thirty

degrees to one hundred forty degrees Fahrenheit, or to pay on the basis of any measurement or weight except the true measurement or weight, which is seventeen and six-tenths cubic centimeters for milk and nine grams or eighteen grams for cream; provided, that in all tests for cream the cream shall be weighed into the test bottle. All testing of milk or cream purchased on the basis of the amount of butter fat contained therein, shall be done by a licensed tester which shall supervise and be responsible for the operation of the Babcock test of milk or cream. The license shall be issued to such person by the state dairy bureau whose duty it shall be to examine into the qualifications of all applicants for such license, and every such applicant shall satisfy said bureau of his qualifications and comply with the provisions herein before any license shall be issued to him.

License to receive milk on basis of butter fat contained.

Every creamery, shipping station, milk factory, cheese factory, ice cream factory, condensory, or any person, firm or corporation receiving or purchasing milk or cream on the basis of butter fat contained therein, shall be required to hold a license so to do. The license shall be issued to such creamery, shipping station, milk factory, condensory, ice cream factory, cheese factory, or person, firm or corporation by the state dairy bureau upon complying with all sanitary laws, rules and regulations of the state of California and upon complying with the provisions of this act and upon payment of a license fee as provided for in this section.

License valid one year.

All licenses required herein shall expire on the thirty-first day of December of each year and the fee for issuing same shall be one dollar for a full year or twenty-five cents for each remaining quarter or fraction thereof. The licenses may be revoked by the state dairy bureau if, after due notice, the licensee fails or has failed to comply with the laws, rules, and regulations under which the license was granted; provided, that the provisions of this section shall not apply to individuals, hotels, restaurants, or boarding houses buying milk or cream for private use.

License fees to be paid into state treasury.

The money for license fees as provided for in this section shall be paid by the state dairy bureau into the state treasury and shall become a part of the funds for the use of the state dairy bureau. [Amendment of May 5, 1919. In effect July 22, 1919. Stats. 1919, p. 298.]

The original section 25 was repealed June 1, 1917, Stats. 1917, p. 1657; and a new section 25 was added by the same act.

Inspection of Babcock test bottles. Fee for testing.

§ 26. Every person, firm or corporation receiving or purchasing milk or cream on the basis of the amount of butter fat contained therein as determined by the Babcock test, shall use the standard Babcock test bottles, pipettes and accurate weights and scales as defined in this act, and all Babcock test bottles and pipettes shall have been inspected for accuracy by the state dairy bureau or its agent and shall be legibly and indelibly marked by the state dairy bureau or its agent with the letters "D. B."

It shall be unlawful for any firm or corporation or any of their agents to use any other than standard test bottles and pipettes which have been examined and marked as provided by this section, to determine the amount of fat in milk or cream received or purchased on the butter fat basis.

For all testing of glassware by the said state dairy bureau or its agent, a fee of five cents shall be paid by the owner of said glassware to the state dairy bureau for every piece of glassware so examined, and said fee shall be used by the state dairy bureau to

to defray the cost of testing such glassware. [New section added June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1659.]

The original section 26 was repealed June 1, 1917, Stats. 1917, p. 1657, and a new section added by the same act.

Specifications for standard Babcock testing glassware.

§ 27. The term "standard Babcock testing glassware" shall apply to glassware and weights complying to the following specifications: (a) Graduation for milk test bottles. The total per cent graduation shall be eight. The graduated portion of the neck shall have a length of not less than sixty-three and five-tenths millimeters (two and one-half inches) and the graduation shall represent whole per cent, five-tenths per cent, and tenths per cent. The tenths per cent graduation shall not be less than three millimeters in length; the five-tenths per cent graduation shall be one millimeter longer than the tenths per cent graduations, projecting one millimeter to the left; the whole per cent graduations shall extend at least one-half way around the neck to the right and projecting two millimeters to the left of the tenths per cent graduations. Each per cent graduation shall be numbered, the number being placed on the left of the scale. The error at any point of the scale shall not exceed one-tenth per cent.

The neck shall be cylindrical and the cylindrical shape shall extend for at least nine millimeters below the lowest and above the highest graduation mark. The top of the neck shall be flared to a diameter of not less than ten millimeters.

The capacity of the bulb up to the junction of the neck shall not be less than forty-five cubic centimeters. The shape of the bulb may be either cylindrical or conical with the smallest diameter at the bottom. If cylindrical, the outside diameter shall be between thirty-four and thirty-six millimeters; if conical, the outside diameter of the base shall be between thirty-one and thirty-three millimeters, and the maximum diameter between thirty-five and thirty-seven millimeters. The charge of the bottle shall be eighteen grams. The total height of the bottom shall be between one hundred fifty and one hundred sixty-five millimeters (five and seven-eighths and six and one-half inches).

(b) Two types of bottles shall be accepted as standard cream test bottles, a fifty per cent nine gram long-neck bottle, and a fifty per cent eighteen gram long-neck bottle.

Fifty per cent, nine gram, long-neck bottle: Graduation—The total per cent graduation shall be fifty. The graduated portion of the neck shall have a length of not less than one hundred twenty millimeters (four and three-quarters inches). The graduation shall represent five per cent, one per cent and five-tenths per cent. The five per cent graduations shall extend at least half way around the neck (to the right). The five-tenths per cent graduations shall be at least three millimeters in length and the one per cent graduations shall have a length intermediate between the five per cent and the five-tenths per cent graduations. Each five per cent graduation shall be numbered, the number being placed on the left of the scale.

Neck—The neck shall be cylindrical and of uniform internal diameter throughout. The cylindrical part of the neck shall extend at least five millimeters below the lowest and above the highest graduation mark. The top of the neck shall be flared to a diameter of not less than ten millimeters.

Bulb—The capacity of the bulb up to the junction of the neck shall not be less than forty-five cubic centimeters. The shape of the bulb may be either cylindrical or conical with the smallest diameter at the bottom. If cylindrical the outside diameter shall be between thirty-four and thirty-six millimeters; if conical, the outside diameter of the base shall be between thirty-one and thirty-three millimeters and the maximum diameter between thirty-five and thirty-seven millimeters.

The charge of the bottle shall be nine grams. All bottles shall bear on top of the neck above the graduations, in plain legible characters, a mark defining the weight of the charge to be used (9 grams).

The total height of the bottle shall be two hundred ten to two hundred thirty-five millimeters (eight and one-fourth to nine and one-quarter inches) and the maximum error in the total graduation or in any part thereof shall not exceed fifty per cent of the volume of the smallest unit of the graduation.

The fifty per cent, eighteen gram, long-neck bottle. The same specifications in every detail as specified for the fifty per cent, nine gram, long-neck bottle, shall apply, with the exception that the charge of the bottle shall be eighteen grams, and the mark defining the weight of the charge placed at the top of the neck shall be eighteen.

The total length of the standard Babcock pipette shall be not more than three hundred thirty millimeters (thirteen and one-fourth inches). Outside diameter of suction tube, six to eight millimeters. Length of suction tube, one hundred thirty millimeters. Outside diameter of delivery tube four and five-tenths to five and five-tenths millimeters. The length of delivery tube one hundred to one hundred twenty millimeters. Distance of graduation mark above bulb, thirty to sixty millimeters. Nozzle straight. Delivery seventeen and six-tenths cubic centimeters of water at twenty degrees centigrade in five to eight seconds.

The sensibility of all scales used for weighing cream samples into the test bottles shall be not more than thirty milligrams and the standard weights shall be nine grams and eighteen grams.

Speed of tester.

In all testing of milk or cream where the same is received or purchased upon the basis of the amount of butter fat contained therein the Babcock tester shall be operated at the proper speed, which is as follows:

For tester with diameter of fourteen inches the speed shall be between eight hundred twenty-five and nine hundred seventy-five revolutions per minute.

For tester with diameter of sixteen inches, the speed shall be between eight hundred twenty-five and eight hundred seventy-five revolutions per minute.

For tester with diameter of eighteen inches, the speed shall be between seven hundred seventy-five and eight hundred twenty-five revolutions per minute.

For tester with diameter of twenty inches, the speed shall be between seven hundred twenty-five and seven hundred seventy-five revolutions per minute.

For tester with a diameter of twenty-four inches, the speed shall be between five hundred seventy-five and six hundred twenty-five revolutions per minute. (Amendment of May 5, 1919. In effect July 22, 1919. Stats. 1919, p. 300.)

The original section 27 was repealed June 1, 1917, Stats. 1917, p. 1657, and a new section 27 added by the same act, Stats. 1917, p. 1659.

Unlawful to sell adulterated milk. "Product of milk." Labels to conform. Unlawful to use "milk," etc., when articles do not conform.

§ 28. It shall be unlawful for any person to produce, manufacture or prepare for sale, or to sell or offer for sale, or have on hand for sale, any milk, including condensed or evaporated milk, or any product of milk, that is adulterated within the meaning of this act. The words "product of milk" as used in this act, shall not apply to any product into which milk, or a product of milk, may enter as an ingredient or component of a food product that does not consist of milk, or milk products alone, such as pastry, and confectionery; provided, that this section shall not be construed to prevent the use of common salt (chloride of sodium) in dairy products. Any label, printed matter, or advertising or descriptive matter appearing upon, or in connection with any package, parcel or quantity of milk or milk products when being sold, offered for sale, or having on hand for sale, and having reference to the article being sold, offered for sale, or on hand for sale, shall conform to the provisions of this act, and if it fails to conform to the provisions of this act, such article shall be deemed

adulterated within the meaning of this act. It shall be unlawful for any person under this act, when selling, or offering for sale, or having on hand for sale, milk or any product of milk to use the words "milk," "condensed milk," "sweetened condensed milk," "skim milk," "condensed skimmed milk," "evaporated cream," "cream," "butter," "cheese," "buttermilk," "ice-cream," or "ice milk," either verbally, or printed or written on any label or printed matter, in connection with the sale, or offering for sale, or having on hand for sale, of milk or any product of milk, or upon any bill of fare used in any hotel, restaurant or other places where meals are served, when the article shall not conform to the standards and provisions of section 29 of this act.

Definitions and standards.

§ 29. Milk and the products of milk enumerated in this section shall be deemed adulterated within the meaning of this act if it or they shall not conform to the following definitions and standards:

Milk.

(1) Milk is the fresh, clean, lacteal secretion all parts of which within forty-eight hours, if raw, and within sixty hours, if pasteurized, last prior to its delivery to the consumer or purchaser shall have been obtained from the udder by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within fifteen days before and five days after calving, and contains not less than three per cent of milk fat, and not less than eight and five-tenths per cent of solids—not fat.

Skim milk.

(2) Skim milk is milk from which a part or all of the cream has been removed and contains not less than eight and eight-tenths per cent of milk solids.

Condensed milk.

(3) Condensed milk or evaporated milk, is milk from which a considerable portion of water has been evaporated. The standard of purity of condensed milk and evaporated milk shall be than proclaimed and established by the secretary of the United States department of agriculture.

Condensed skim milk.

(4) Condensed skim milk is skim milk from which a considerable portion of water has been evaporated, and contains not less than eighteen per cent of milk solids.

Cream.

(5) Cream is that portion of milk, rich in milk fat which rises to the surface of milk on standing, or is separated from it by centrifugal force, is fresh and clean and contains not less than eighteen per cent of milk fat.

Evaporated cream.

(6) Evaporated cream, or clotted cream, is cream from which a considerable portion of water has been evaporated.

Milk fat.

(7) Milk fat, or butter fat, is the fat of milk and has a Reichert-Meissel number not less than twenty-four and a specific gravity not less than .905 (40 degrees C.).

Butter.

(8) Butter is the clean, non-rancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, which also contains a small portion of the other milk constituents, with or without salt, and a harmless coloring, and contains not less than eighty per cent of milk fat.

Cheese.

(9) Cheese is the sound, solid, and ripened product made from milk or cream, by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning, and with or without salt and harmless coloring matter. All cheese marked "Full cream cheese," or "Full milk cheese," must contain in the water-free substance, not less than fifty per cent of milk fat. All cheese marked "Half skim cheese," must contain in the water-free substance not less than twenty-five per cent of milk fat. All cheese not plainly marked or branded as to its quality must contain in the water-free substance not less than fifty per cent of milk fat.

Buttermilk.

(10) Buttermilk is that portion of the cream which remains after the separation and removal therefrom of the butter fat in the process of churning, without the addition of water.

Ice cream.

(11) Ice cream is the frozen product, made from pure sweet milk or condensed milk or cream and sugar with or without a harmless flavoring or coloring, and contains not less than ten per cent of milk fat, and not more than six-tenths of one per cent of pure and harmless vegetable gum or gelatin.

Fruit ice cream.

(12) Fruit ice cream is the frozen product made from pure sweet cream, sugar, and sound, clean, mature fruits, and contains not less than eight per cent of milk fat, and not more than six-tenths of one per cent of pure and harmless vegetable gum or gelatin.

Nut ice cream.

(13) Nut ice cream is the frozen product made from pure, sweet cream, sugar, and sound, non-rancid nuts, and contains not less than eight per cent of milk fat, and not more than six-tenths of one per cent of pure and harmless vegetable gum or gelatin.

Ice milk.

(14) Ice milk is the frozen product, containing less fat than ice cream, and made from pure, sweet milk and sugar, with or without a harmless flavoring or coloring, and contains not less than two and four-tenths per cent of milk fat, and not more than six-tenths of one per cent of pure and harmless vegetable gum or gelatin.

Pasteurization. Repasteurization forbidden.

(15) The process of pasteurization, as applied to milk, skim milk, cream and milk products, is hereby defined to be a process for the elimination therefrom of organisms harmful to human beings, which process shall consist of uniformly heating such milk, skim milk or cream, as the case may be, to a temperature of not less than one hundred forty degrees Fahrenheit and of holding the same at the said temperature for a period of not less than twenty-five minutes, and immediately thereafter of cooling the same to a temperature of not above fifty degrees Fahrenheit; provided, that when cream is pasteurized to be used and is used in the manufacture of butter, or when milk is pasteurized to be used and is used in the manufacture of cheese, and where the process of ripening or starting in each case is to be commenced immediately, then it shall not be required that such cream or milk be cooled to a lower degree than is necessary for such ripening or starting. All pasteurized cream or milk used in the manufacture of pasteurized butter and cheese, respectively, shall be pasteurized at and in the plant where such butter or cheese, as the case may be, is manufactured therefrom. Repasteurization of any milk is hereby expressly forbidden.

Pasteurization apparatus to be kept clean.

Also all apparatus used for the pasteurization of milk, skim milk or cream shall be kept in strictly clean and sanitary condition and shall be equipped with a recording thermometer device which will accurately record the temperature to which, and the length of time for which the pasteurized product has been heated. All recording thermometer devices used in the pasteurization of any such milk, skim milk or cream must be approved by and at all times subject to the approval of the state dairy bureau, the state board of health, and of all other state, county and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health; and all persons, firms or corporations using pasteurizing apparatus within the state of California shall preserve and keep on file, for a period of not less than two months after the same are made, all records made by such thermometer, or in lieu of such preservation may deliver such records to any public officer authorized by law or ordinance to receive the same, and said records shall, at all times, be open to the inspection of the state dairy bureau, the state board of health, and of all other state, county and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health. [Amendment of May 4, 1915. In effect August 8, 1915. Stats. 1915, p. 333.]

Unlawful to sell skimmed milk not properly labeled.

§ 30. It shall be unlawful for any person, firm or corporation to sell, exchange or deliver, or to offer for sale, exchange or delivery, or to cause or permit to be sold, exchanged or delivered, or to be offered for sale, exchange or delivery, or to have in possession for sale, exchange or delivery, any milk from which any part of the cream shall have been removed, or any skimmed milk, unless the same be offered for sale and sold as skimmed milk, or unless there shall be attached to the outside of every vessel, can or package from or in which such skimmed milk is sold or held for exchange or delivery, a tag upon which shall be printed in black letters at least one inch in height the word "skim" or the words "skimmed milk."

Rules and standards for marketing.

§ 30a. The following rules and standards must be observed by all persons, firms or corporations engaged in the preparation of dairy products for market or delivery thereto:

(1) The owner's name, or other identification mark, the nature of which shall be made known to the dairy inspectors shall appear permanently and in a conspicuous place on or be attached to every milk or cream bottle, can or container.

(2) All milk, cream and ice cream cans, bottles and containers shall be kept clean and shall be thoroughly washed and sterilized after each using. [New section added May 5, 1919. In effect July 22, 1919. Stats. 1919, p. 284.]

Standards for carriers.

§ 30b. All carriers of dairy products, whether producer, gratuitous private carrier other than the producer, private carrier for hire, or common carrier, in transporting milk and cream shipping containers shall observe and maintain the following standard:

(1) All cars or other vehicles, while hauling milk or cream, shall be kept clean and all containers shall be so covered as to protect the milk or cream at all times from dust and from the rays of the sun.

(2) All milk or cream cans or other shipping containers, while containing milk, cream, or other dairy products, shall be handled carefully, and kept right end up.

(3) Every vehicle, railway car or boat in which milk or cream is transported shall be kept in a sanitary condition. Every vehicle and every boat transporting milk or cream either shall be enclosed or shall provide canvas covering to protect the milk and cream at

all times from the sun or from the outside warm air, except only while taking on or discharging freight. No fowls, fresh meat or other contaminating things shall be kept or carried on top or in close proximity to milk, cream, or other dairy products.

(4) No milk or cream and no empty cans, bottles, or other containers shall be hauled in any vehicle for hauling manure or garbage or in any other unclean vehicle, car or boat.

(5) Nothing herein shall be construed to derogate from any powers or authority of the railroad commission of the state of California. [New section added May 5, 1919. In effect July 22, 1919. Stats. 1919, p. 284.]

Rules for assembled dairy products.

§ 30c. Persons producing or marketing assembled dairy products must conform to the following rules: All the ingredients used in the process of assembling must conform to all the standards of purity set for such ingredients and must have been produced under the same sanitary conditions and regulations required for the production of milk and cream where such products are sold, and such products must be labeled as herein provided for assembled products in imitation of milk, cream and ice cream.

All assembled dairy products to which has been added any condensed or evaporated milk, or any condensed or evaporated skimmed milk, or any dry milk or milk powder or any skimmed milk or skimmed powder or any butter or sweet butter or dairy products that have been produced by the mechanical assembling of any of the natural ingredients of milk or cream, shall be so labeled on each container thereof with the words "Assembled from milk, butter, milk powder, skim milk or other milk products," as the case may be, correctly naming on the label, bill of sale, invoice and bill of fare, all the ingredients used in such assembled goods, in plain letters of the English language at least one-eighth of an inch in height; and no other names or prefixes shall be used than those by which such ingredients are separately known to the commercial trade. [New section added May 5, 1919. In effect July 22, 1919. Stats. 1919, p. 284.]

Penalties.

§ 30d. Any person who violates any provision of section thirty c of this act or who directs or knowingly permits in employee to violate any of said provisions, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than sixty days, or by both such fine and imprisonment.

Any firm, corporation, society or association which violates any of said provisions shall be guilty of a misdemeanor and upon conviction shall be fined as above provided.

In the event an officer, director, manager or managing agent of any firm, corporation, society, or association violates any of the provisions of section thirty c of this act, or directs or knowingly permits any employee to violate any of said provisions, such officer, director, manager or managing agent shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine or imprisonment or both as above provided; and, in such a case, the firm, corporation, society or association shall also be guilty and upon conviction shall be fined as above provided. One-half of all such fines shall be paid into the state treasury and placed to the credit of the general fund. [New section added May 5, 1919. In effect July 22, 1919. Stats. 1919, p. 285.]

Milk wagons, etc., to bear name of owner.

§ 31. All wagons, vehicles, or carts from which market milk, cream, butter, ice cream, buttermilk, or ice milk are sold, marketed, delivered, or peddled, shall have the name and address of the owner plainly painted thereon, in letters at least three inches high, and one and a half inches wide, on both sides of such vehicle.

"Ice milk" to be properly labeled.

§ 32. It shall be unlawful for any person, firm or corporation to manufacture for sale, sell, or furnish with meals or drinks which are sold, any frozen edibles, made principally of skimmed milk, or principally of milk, unless the same shall conform to the definitions and standards herein fixed in section 29 for "ice milk" or "ice cream."

Unlawful to use borax, etc., to prevent souring. Adding coloring, etc.

§ 33. It shall be unlawful for any person to produce, manufacture or prepare for sale, or to sell, or to offer for sale, or to have on hand for sale, any milk, or product of milk, to which has been added, or that may contain, any compound of boron, salicylic acid, formaldehyde, or other chemical or substance for the purpose of preventing or delaying fermentation or souring. It shall be unlawful for any person to produce, manufacture or prepare for sale, or to sell, or to offer for sale, or to have on hand for sale, any milk, cream or condensed milk to which any coloring matter has been added by any person, or to which any gelatin or other substance has been added by any person to increase the consistency of such milk, cream or condensed milk, so as to make such milk, cream or condensed milk appear richer or of better quality; provided, that this section shall not be construed to prohibit the use of harmless coloring matter and common salt (chloride of sodium) in butter and cheese.

Unlawful to sell ice cream not conforming to standard. Marking ice milk receptacles. Marking ice milk wagons. Sellers to post ice milk signs.

§ 34. It shall be unlawful for any person, firm or corporation, manufacturing any frozen goods, which do not conform to the standards and provisions of this act for ice cream, to sell, or offer to sell, or represent the same as ice cream, or under the name of ice cream; and all frozen goods which do not conform to the standards and requirements of this act for "ice cream," but which do conform to the standards and requirements for "ice milk" herein, for the purpose of this act, shall be known as "ice milk," and shall be sold and designated as "ice milk," and not otherwise, and shall be billed as "ice milk," and every person, firm or corporation selling, furnishing or delivering to any person any such "ice milk" shall distinctly inform the purchaser at the time in each and every instance that the said goods are "ice milk." The absence of such declaration shall always be construed as a representation on the part of the vendor that the goods are ice cream.

Every tub, receptacle or packer in which there shall be kept, sold, or delivered, at any time, any "ice milk," as herein defined, shall have conspicuously and securely attached thereto a durable tag, giving the name and address of the manufacturer or vendor of the same, and containing the words "ice milk" in letters at least one inch high and one-half inch wide, and containing no other reference to the name or character of the goods therein contained. The absence of such tag or label shall always be construed as a representation on the part of the maker or vendor that said goods are ice cream.

Every wagon, vehicle or cart, in or from which any "ice milk" shall be sold, furnished, delivered or peddled, shall have plainly and durably painted on both sides thereof, the name and address of the owner, in letters at least three inches high, and one and a half inches wide, and also the words "ice milk" on each side thereof, in letters at least four inches high, and two inches wide, and there shall be no other reference to the name or character of the goods being sold or delivered. The absence of such words and letters shall always be construed as a representation on the part of the owner or vendor that said goods are ice cream.

Every person, firm or corporation, who sells, keeps for sale, delivers, or furnishes in connection with meals, or in connection with drinks, or otherwise, any ice milk, within the meaning of this act, to be used or eaten on the premises where sold, shall

keep at all times posted or hung in at least two conspicuous places within the premises, and in plain view of the public, durable signs having printed or painted thereon the words "we sell ice milk," or "we serve ice milk," in letters at least four inches high and two inches wide. The absence of such signs, words and letters, as herein required shall always be construed as a representation on the part of the owner, or person selling or serving the goods, that they are ice cream. It shall be unlawful for any person, firm or corporation to manufacture, sell, deliver, furnish, serve, or keep on hand any ice milk, within the meaning of this act, unless the same is done in compliance with all the requirements hereof.

Branding cheese.

§ 35. Every person, firm or corporation, who shall manufacture cheese in the state of California, shall at the place of manufacture, brand distinctly and durably on each and every cheese manufactured, and upon the package or box, when shipped, the grade of cheese manufactured, as follows: "full-cream cheese," or "half-skim cheese," or "skim cheese."

Dairy bureau to issue brands.

All brands for branding the different grades of cheese shall be procured from the state dairy bureau, and said bureau is hereby directed and authorized to issue to all persons, firms or corporations, upon application therefor, uniform brands, consecutively numbered, of the different grades specified in this section. The state dairy bureau shall keep a record of each and every brand issued, and the name and location of the manufacturer receiving the same. No manufacturer of cheese in the state of California other than the one to whom such brand is issued, shall use the same, and in case of a change of location, the party shall notify the bureau of such change.

Grades of cheese defined. Unlawful to sell without brand.

The different grades of cheese are hereby defined as follows: First: Such cheese only as shall have been manufactured from pure milk, and from which no portion of the butter fat has been removed by skimming or otherwise, and having not less than fifty per cent of butter fat in its water-free substance, which shall be conspicuously branded as "full-cream cheese." Second: Such cheese only as shall have been made from pure milk, and having not less than twenty-five per cent of butter fat in its water-free substance, which shall be conspicuously branded as "half-skim cheese." Third: Such cheese only as shall have been made from pure skim milk, which shall be conspicuously branded as "skim cheese."

No person or persons, firm, association or corporation shall sell or offer for sale in this state any cheese which is not branded either "full-cream cheese," "half-skim cheese," or "skim cheese," in accordance with its butter fat content. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1656.]

"Persons" defined. Act of agent deemed act of corporation.

§ 36. The word "persons," as used in this act, shall be construed to import both the singular and plural, as the case demands, and shall include individuals, corporations, companies, societies and associations. When construing and enforcing the provisions of this act, the act, omission or failure of any employee, officer, agent or other person, acting for or employed by any individual, corporation, company, society or association, within the scope of his employment or office, shall in every case also be deemed to be the act, omission or failure of such individual, corporation, company, society or association, as well as that of the person. The provisions of this act shall be construed to apply to hotel-keepers, restaurant-keepers and boarding-house keepers or any person who shall serve meals and accept money therefor.

Agent of dairy bureau may enter premises. Unlawful to interfere with inspectors.

§ 37. Every agent and inspector of the state dairy bureau, and every inspector of any city, county or state board of health is hereby authorized to enter upon and inspect any dairy, dairy premises, creamery, cheese factory, ice cream factory, or other place where dairy products of any kind are being produced, sold, delivered or used, or where they suspect that oleomargarine, or other substances designed to be used as a substitute for butter, or renovated butter, or imitation butter, or imitation cheese are being manufactured, sold, kept, delivered, transported or stored in violation of any of the provisions of this act.

It shall be unlawful for any person, firm or corporation to prevent or interfere with the duly authorized inspectors or agents of the state dairy bureau, or any city, county or state board of health, or the inspectors thereof, from entering or inspecting any place or premises where milk or products of milk or where oleomargarine, or imitation butter or cheese, or renovated butter, or any substance designed to be used as a substitute for butter, are produced, manufactured, prepared, sold, kept for sale, furnished or served, or to prevent or interfere with such inspectors or agents in the event they deem it advisable to secure samples of milk or milk products, or oleomargarine, or imitation butter or cheese, or renovated butter, or any substance designed to be used as a substitute for butter, at or from any such place or person, for the purpose of ascertaining whether this act is being violated, or to interfere with or prevent any such inspector or agent from examining any record or books required by the provisions of this act to be open to the inspection of the state dairy bureau, or its agents.

Failure to conform to act a misdemeanor.

§ 38. It shall be unlawful for any person, firm or corporation to fail, neglect or refuse to do any of the things required to be done by the provisions of this act; and it shall be unlawful for any person, firm or corporation to do any of the things prohibited by the provisions of this act; and in every case the failure, neglect or refusal to do anything required by this act, and the doing of anything prohibited by this act, is hereby declared to be a misdemeanor, and shall be punished as herein provided.

Penalty for violating sections 9 to 24.

§ 39. Whoever shall violate any of the provisions of sections 9 to 24 both inclusive of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished for the first offense, by a fine of not less than fifty dollars, nor more than one hundred and fifty dollars; or by imprisonment in the county jail for not exceeding thirty days; and for each subsequent offense, by a fine of not less than one hundred and fifty dollars nor more than three hundred dollars, or by imprisonment in the county jail for not less than thirty days, nor more than six months, or by both such fine and imprisonment, at the discretion of the court.

Penalty for violating sections 25 to 35, and 37.

§ 40. Whoever shall violate any of the provisions of sections 25 to 35, both inclusive, or of section 37 of this act, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars; or by imprisonment in the county jail for not less than ten days and not exceeding sixty days, or by both such fine and imprisonment, at the discretion of the court.

Other sections.

§ 41. Whoever shall violate any of the provisions of this act other than sections 9 to 35, both inclusive, and section 37 (the punishment for which is provided in sections 39 and 40 hereof) shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than two

hundred dollars, or by imprisonment in the county jail for a period of not less than ten days nor more than one hundred days, or by both such fine and imprisonment.

Disposition of fines.

§ 42. One-half of all the fines imposed for the violation of any of the provisions of this act shall be paid to the county in which the fine is imposed. The other one-half shall be paid to the state treasurer and shall become part of the general fund. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1657.]

Dairy bureau to enforce act. Statistics of dairy industry. Report of contagious diseases among cattle. Officers of dairy bureau. Inspections.

§ 43. It shall be the duty of the state dairy bureau, now existing under the laws of this state, to enforce the provisions of this act; provided, that nothing in this act shall be construed to prevent any city or county board of health or other city or county official from enforcing the provisions of this act; and provided, further, that no conviction shall be had where a conviction is sought upon any alleged sample of milk, or product of milk, unless such sample has been taken in duplicate, sealed and marked for identification and one of such samples left with the person accused. The state dairy bureau is authorized under this act to gather and compile statistics relative to the dairy industry, and to disseminate the same and other information useful to, and to the general good and development of the dairy industry of the state, and to do such other things as will tend to promote the dairy industry of the state. Whenever any agent or inspector of the state dairy bureau shall discover the existence of any contagious or infectious disease among dairy cattle, or have reason to believe that such disease may exist, the same shall be immediately reported to the state veterinarian. The state dairy bureau shall have power to employ an agent or secretary at a salary of twenty-four hundred dollars a year, and such inspectors, assistants and chemists as from time to time it may deem necessary for the proper enforcement of the provisions of this act, and to fix the compensation of such inspectors at not to exceed five dollars per day, exclusive of their necessary and actual expenses, such expenses to be itemized and rendered under oath, or one hundred and twenty-five dollars per month exclusive of their necessary and actual expenses. Such agents shall have had experience in the manufacture of dairy products and the handling of dairy cattle. The state dairy bureau, through its agent and secretary, and assistant agents, shall inspect the dairies, dairy cattle, creameries and other factories of dairy products, markets and other places where dairy products are prepared or handled, and keep a careful record of such inspection and report the same to the state dairy bureau and upon evidence obtained that any of the provisions of this act are being violated, the state dairy bureau, through its agent and secretary, or its inspectors, shall duly enter complaint against the party or parties, responsible for such violations and cause the same to be prosecuted, except in cases where any dairy, creamery or other factory of milk products, or store or depot where milk and its products are handled and sold, is found to be in an unsanitary condition, in which case the agent and secretary, or the inspector, for the district in which the violation occurred, shall serve upon the owner, or owners, or person in charge of the dairy, creamery or other factory of milk products so found to be in an unsanitary condition, a written notice specifying in detail the changes required to be made to place such dairy, creamery, or other factory of milk products or store or depot in a sanitary condition as defined in this act. Should such changes not have been made at the expiration of thirty days after the date when the notice was served, the state dairy bureau, through its agent and secretary, or its inspectors, shall enter complaint against the person or persons responsible for such unsanitary conditions and cause them to be prosecuted for violating this act.

Duty of district attorney to bring actions.

§ 44. It shall be the duty of the district attorney of each and every county of this state, upon application of the state dairy bureau, or its agent and secretary, or any of its inspectors or assistant agents, to attend to the prosecution, in the name of the people, of any action brought for the violation of any of the provisions of this act within his county.

Act of 1897 continued. Repealed.

§ 45. The provisions of section 15 of the act approved March 4, 1897, entitled "An act to prevent deception in the manufacture and sale of butter and cheese, to secure its enforcement, and to appropriate money therefor," are hereby expressly continued in force; and the present state dairy bureau shall continue in existence in all respects as now constituted under existing laws; and the members thereof shall continue to be chosen and appointed in all respects as now provided under existing laws; the intention being that the existing laws, under which said bureau is constituted and now exists and by which its powers are conferred and its duties are prescribed, shall in no way be impaired or affected by this act.

Repeal.

§ 46. Section 17 of an act entitled "An act to prevent deception in the manufacture and sale of butter and cheese, to secure its enforcement, and to appropriate money therefor," approved March 4, 1897, is hereby repealed.

§ 47. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

1. *Certiorari* will not lie to review a judgment of conviction for the sale of adulterated milk as defined by section 29 of the act, where no attack was made upon the validity of the act, and where the lower court clearly had jurisdiction.—*Revis v. Superior Court*, 22 Cal. App. 479, 134 Pac. 1159.

2. **Unregistered dairy.—Action for sale of milk.**—The act does not prohibit the sale

of milk that is pure and wholesome from an unregistered dairy, but merely makes the failure to register a misdemeanor, and it is no defense to an action for the price of milk sold under contract that the plaintiff sold the milk from an unregistered dairy required by the act to be registered.—*Luchini v. Roux*, 29 Cal. App. 755, 157 Pac. 554.

STANDARD FOR CONDENSED AND EVAPORATED MILK.

ACT 1168—An act to establish a standard for evaporated milk and condensed milk.

History: Approved April 24, 1911, Stats. 1911, p. 1101.

Standard of condensed milk.

§ 1. The standard of purity of condensed milk and evaporated milk shall be that proclaimed and established by the secretary of the United States department of agriculture.

Repeal of inconsistent acts.

§ 2. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Standard of condensed milk.—See § 29, subdv. (3) of Act 1167, which became a law by amendment of original act August 8, 1915.

USE OF CHEMICALS TO PREVENT FERMENTATION.

ACT 1168a—An act to prohibit the use of chemicals and other materials in milk and milk products to prevent fermentation therein.

History: Approved March 23, 1907, Stats. 1907, p. 971.

Milk, use of substances to prevent fermentation prohibited.

§ 1. It shall be unlawful for any person to produce, manufacture or prepare for sale, or to sell, or to offer for sale, or have on hand for sale, any milk or product of milk to

which has been added, or that may contain, any compound of boron, salicylic acid, formaldehyde or other chemical or substance for the purpose of preventing or delaying fermentation. It shall be unlawful for any person to produce, manufacture or prepare for sale, or to sell, or to offer for sale, or have on hand for sale, any milk, cream or condensed milk to which any coloring matter has been added by any person or to which any gelatine or other substance has been added by any person to increase the consistency of such milk, cream or condensed milk, so as [to] make such milk, cream or condensed milk appear richer or to [sic] better quality; provided, that this section shall not be construed to prohibit the use of harmless coloring matter and common salt (chloride of sodium) in butter and cheese. The word "person" as used in this act shall be construed to import both the singular and plural, as the case demands, and shall include individuals, corporations, companies, societies and associations. When construing and enforcing the provisions of this act, the act, omission or failure of any employee, officer, agent or other person, acting for or employed by any individual, corporation, company, society or association, within the scope of his employment or office, shall in every case also be deemed to be the act, omission or failure of such individual, corporation, company, society or association, as well as that of the person. The provisions of this act shall be construed to apply to hotel-keepers, restaurant-keepers and boarding-house keepers, or to any other person who shall serve meals and accept money therefor.

Duty of state dairy bureau.

§ 2. It shall be the duty of the state dairy bureau, now existing under the laws of this state, to enforce the provisions of this act; provided, that nothing in this act shall be construed to prevent any city or county board of health or other city or county official from enforcing the provisions of this act.

Penalty for violation. Samples of milk. Disposition of fines.

§ 3. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00) or by imprisonment in the county jail for not less than ten days nor more than sixty days; provided that no conviction shall be had when a conviction is sought upon any alleged sample of milk, or product of milk, unless such sample has been taken in duplicate, sealed, and marked for identification, and one of such samples left with the person accused. All fines collected under this act shall be paid to the state dairy bureau when the complaint is made through the state dairy bureau and the state dairy bureau shall pay the same to the state treasurer and the amount paid by the state dairy bureau to the state treasurer is hereby appropriated to the use of the state dairy bureau for the fiscal year in which the amount is paid to the state treasurer.

Interference with inspectors.

§ 4. It shall be unlawful for any person to prevent or interfere with the duly authorized inspectors or agents of the state dairy bureau, or any city or county board of health, from entering any place or premises where milk or products of milk are produced or manufactured, or prepared, or to prevent or interfere with such inspectors or agents, in the event they deem it advisable to secure samples of milk or milk products from any person producing or selling milk or products of milk for the purpose of analyzing the same to ascertain whether this act is being violated.

Duty of district attorney.

§ 5. It shall be the duty of the district attorney, upon application by the state dairy bureau or by any city or county board of health to attend to the prosecution, in the name of the people, of any complaint entered for the violation of any of the provisions of this act within his district.

Inconsistent acts repealed.

§ 6. All acts, or parts of acts, inconsistent with this act are hereby repealed.

Act takes effect when.

§ 7. This act shall take effect and be in force sixty days after its passage.

ACT 1169—An act to regulate the production of certified milk, cream, ice cream, butter and cheese; and repealing an act entitled "An act to regulate the production of certified milk," approved March 18, 1909, and all acts and parts of acts inconsistent with this act.

History: Approved April 25, 1913. In effect August 10, 1913. Stats. 1913, p. 83. Former act of March 18, 1909, Stats. 1909, p. 402, repealed by present act; also, act of March 17, 1911, Stats. 1911, p. 382, superseded by present act.

Certified milk regulations.

§ 1. No person, firm or corporation shall sell or exchange, or offer or expose for sale or exchange, as and for certified milk, any milk which does not conform to the rules and regulations and to the methods and standards for the production and distribution of "certified milk" adopted by the American association of medical milk commissions on May 1st, 1912, and which does not bear the certification of a milk commission appointed by a county medical society organized under and chartered by the medical society of the state of California, and which has not been pronounced by such authority to be free from antiseptics, added preservatives, and pathogenic bacteria, or bacteria in excessive numbers. All milk sold as certified milk shall be conspicuously marked with the name of the commission certifying it. Such milk commission shall make all requirements for the production and handling of certified milk uniform and fair, and shall not refuse to certify milk for any applicant for certification who shall comply with the provisions of this act.

Certified cream, butter, milk, etc.

§ 2. No person, firm or corporation shall sell or exchange or offer or expose for sale or exchange, any cream, skimmed milk, buttermilk, ice cream, butter or cheese as and for certified cream, certified skimmed milk, certified buttermilk, certified ice cream, certified butter or certified cheese, as the case may be, or use the word "certified" in connection with the sale, designation, advertising, labeling or billing of any cream, skimmed milk, buttermilk, ice cream, butter or cheese unless the same and all products of milk contained therein or used in the manufacture thereof are obtained exclusively from milk which conforms to the requirements of this act for certified milk and which bears the certification of a milk commission in accordance with the provisions of section 1 of this act, and unless in addition thereto the methods and conditions under which such cream, skimmed milk, buttermilk, ice cream, butter and cheese, as the case may be, have been prepared or manufactured, as regards cleanliness and sanitation, shall conform to the requirements of the milk commission whose certification is sought. All cream, skimmed milk, buttermilk, ice cream, butter and cheese sold, designated, advertised or offered for sale, as certified cream, certified skimmed milk, certified buttermilk, certified ice cream, certified butter or certified cheese shall be conspicuously marked with the name of the commission certifying it and certifying the milk from which such cream, ice cream, butter and cheese is obtained.

Penalty.

§ 3. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five (25) dollars nor more than two hundred (\$200) dollars, or by imprisonment in the county jail for not less than ten (10) nor more than sixty (60) days.

Act repealed.

§ 4. An act entitled "An act to regulate the production of certified milk," approved March 18, 1909, and all acts and parts of acts inconsistent with this act, are hereby repealed.

Adulteration and deception in sale of dairy products, in general.—See, ante, Act 36.

Definition of butter.—See, ante, Act 36.

Definitions of imitation butter and cheese.
—See, ante, Act 1167.

The director of the department of agriculture is given power of administering and enforcing this act.—See, post, Act 96, § 9.

DAIRY INSPECTION ACT OF 1917.

ACT 1171—An act to prevent the sale of impure and unwholesome milk, butter, ice cream and other milk products; to declare ice cream a milk product; to grade milk; to provide rules and regulations therefor, and to empower cities, groups of cities, counties and groups of counties, or cities and counties, to establish inspection service; to provide for the enforcement of this act; to prescribe penalties for violation of the provisions hereof; and to repeal an act entitled, "An act to prevent the sale of impure and unwholesome milk, to grade milk, to provide rules and regulations therefor, and to empower cities, groups of cities, counties and groups of counties, or cities and counties, to establish inspection service; to provide for the enforcement of this act; to prescribe penalties for violation of the provisions hereof; and to make an appropriation therefor," approved June 15, 1915.

History: Approved May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 803. Amended May 6, 1919. In effect July 22, 1919. Stats. 1919, p. 326. Former act of June 11, 1915, Stats. 1915, p. 1478, repealed by the present act.

Milk must be pasteurized. Cream for butter. Butter used in manufacture of foodstuffs. Marking of butter. Ice cream a milk product.

§ 1. It shall be unlawful for any person, firm or corporation, except in bulk to the wholesale trade, to sell or exchange or offer or expose for sale or exchange for human consumption any milk from cows that have not passed the tuberculin test, until it has been pasteurized by the holding process at a temperature not less than one hundred forty degrees Fahrenheit for twenty-five minutes; provided, that milk for drinking purposes shall not be heated for more than one hour nor above one hundred forty-five degrees Fahrenheit; provided, further, that cream that is to be manufactured into butter may be pasteurized by heating it to a higher degree than milk and, when the same is uniformly heated to and held at a higher degree of temperature than one hundred fifty-one degrees Fahrenheit, the time for holding may be decreased from twenty-five minutes by one minute for each degree of temperature over one hundred fifty-one degrees Fahrenheit. It shall further be unlawful for any person, firm or corporation to sell or exchange or offer or expose for sale or exchange for human consumption any butter, ice cream or other milk products except cheese and butter as hereinafter provided, into the composition of which any milk enters other than that permitted in this section of this act, to be sold at retail for human consumption; provided, that nothing in this act shall be construed to prohibit the use or sale of butter that is not pasteurized or butter that is not the product of nonreacting tuberculin-tested cows; provided, that said butter be used by manufacturers of foodstuffs only and in the manufacture of such foodstuffs said butter shall be subjected to a minimum temperature of two hundred twenty-five degrees Fahrenheit; and provided, further, that it shall be unlawful to use any such butter except in the manufacture of food subjected to said temperature. Butter offered for sale for human consumption shall be marked: "From nonreacting tuberculin-tested cows," or "Pasteurized," as the case may be. Butter, which, by the provisions of this act, is permitted to be used for cooking and baking purposes only shall be marked "For cooking and baking only." Ice cream is hereby declared to be a milk product. For the purpose of this act milk shall be construed to include cream.

Sale of milk where milk inspection service established.

§ 2. It shall be unlawful for any person, firm or corporation to sell or exchange, or offer or expose for sale or exchange, in any city, county, or city and county, in which a milk inspection service, approved by the state dairy bureau, has been established, any milk otherwise than as hereinafter provided in this act, and for the purpose of this act, the term "inspecting department" shall be construed to mean the health department of a county or group of counties, city or group of cities, or city and county maintaining a milk inspection service approved by the state dairy bureau, and such inspecting department shall include at least one regularly licensed physician. It shall be unlawful for any person, firm or corporation to sell or exchange, or offer or expose for sale or exchange any milk as and for, or under the designation, label or other representation of "guaranteed," "grade A," or "grade B" milk, except within a county or group of counties, city or group of cities, or city and county maintaining a milk inspection service approved by the state dairy bureau; provided, that a person, firm or corporation, which is authorized to sell milk within the jurisdiction of an inspecting department may sell milk from the same supply, of the same quality, in similar containers, and under the same label in territory outside the jurisdiction of any inspecting department, if local ordinances are not thereby violated, and also in territory within the jurisdiction of any other inspecting department; provided, the consent of said other inspecting department has been previously obtained.

Milk not to be sold for human consumption.

§ 3. All milk sold or exchanged or offered or exposed for sale or exchange except in bulk to the wholesale trade in any county or group of counties, city or group of cities, or city and county, in which a milk inspection service, approved by the state dairy bureau has been established, except certified milk, guaranteed milk, grade A milk and grade B milk, is hereby declared to be impure and unwholesome and must not be sold for human consumption.

Grades of milk. Grade marked.

§ 4. Where an inspection service is maintained as provided in section two of this act, milk shall be graded as follows: certified milk, guaranteed milk, grade A milk, grade B milk and milk not suitable for human consumption; provided, that milk sold or exchanged or offered or exposed for sale or exchange as and for, or under the designation, label or other representation of "guaranteed," "grade A," or "grade B," milk shall have the grade and whether raw or pasteurized marked on the container or cap of the container in capital letters not less than one-eighth inch long and one-sixteenth inch wide; and provided, further, that milk not suitable for human consumption shall be plainly so marked.

Approval of inspecting department.

§ 5. No person, firm or corporation shall sell or exchange, or offer or expose for sale or exchange, as or for guaranteed milk, any milk, raw or pasteurized the quality of which is guaranteed by the dealer, without approval in writing of the inspecting department, which milk must be of a higher standard than that required for grade A raw milk.

Requirements for grade A milk. Dairies having not more than two cows.

§ 6. No person, firm or corporation shall sell or exchange, or offer or expose for sale or exchange, as and for grade A milk, any milk that does not conform to the rules and regulations and the methods and standards for production and distribution of grade A milk adopted by the inspecting department.

Grade A milk shall conform to the following requirements as a minimum: if raw, it shall consist of the clean raw milk from healthy cows as determined by physical examination at least once in six months by a qualified veterinarian under the supervision of

the inspecting department, and by the tuberculin test by a qualified veterinarian under the supervision of the state veterinarian, and from dairies that score not less than seventy per cent on the score card hereinafter set forth; provided, however, that dairies having not more than two milking cows, and, which are found by any such inspecting department to comply fully with the remaining provisions of this act are hereby exempted from such scoring requirements and from the use of the labels prescribed in section four hereof. The tuberculin test must be repeated annually if no reacting animals are found in the herd. If reacting animals are found they must be removed from the herd, and the tuberculin test repeated in six months. All cows are to be fed, watered, housed and milked under conditions approved by the inspecting department. All persons who come in contact with the milk must exercise scrupulous cleanliness and must not harbor the germs of typhoid fever, tuberculosis, diphtheria or other infectious diseases liable to be conveyed by milk. Absence of such infections shall be determined by cultures and physical examination, to the satisfaction of the inspecting department.

Sterile containers. Bacteria content.

This milk is to be delivered in sterile containers and is to be kept at a temperature established by the inspecting department until it reaches the ultimate consumer, when it must contain less than one hundred thousand bacteria per cubic centimeter. If pasteurized it shall come from cows free from diseases as determined by physical examination at least once in six months, by a qualified veterinarian under the supervision of the inspecting department. It shall contain less than two hundred thousand bacteria per cubic centimeter before pasteurization and less than fifteen thousand bacteria per cubic centimeter at the time of delivery to the ultimate consumer. Dairies from which this milk is derived must score at least sixty on the score card hereinafter set forth.

Requirements for grade B milk.

§ 7. No person, firm or corporation shall sell or exchange, or offer or expose for sale or exchange, as and for grade B milk, any milk that does not conform to the following requirements as a minimum; it must be obtained from cows in no way unfit for the production of milk for use by man, as determined by physical examination at least once in six months by a qualified veterinarian under the supervision of the inspecting department. Before pasteurization such milk shall contain less than one million bacteria per cubic centimeter. After pasteurization it shall contain less than fifty thousand bacteria per cubic centimeter.

Pasteurization.

Milk for pasteurization must be kept at a temperature established by the inspecting department up to the time of delivery to the pasteurization plant and rapidly cooled after pasteurization to a temperature of fifty degrees Fahrenheit or below and so maintained to the time of delivery of the same. Pasteurization shall be by the holding method at a temperature not less than one hundred forty degrees Fahrenheit; provided, that milk for drinking purposes shall not be heated above one hundred forty-five degrees Fahrenheit.

Records.

Such pasteurization plant shall be equipped with a self-registering device for record of the time and temperature of pasteurization. Such records shall be kept for two months and be available for inspection by any health department, the state veterinarian or any of his agents, or the state dairy bureau. Pasteurized milk shall be marked with the day of the week of pasteurization and must be delivered to the consumer within forty-eight hours thereafter. If milk is repasteurized, it must not be sold except as not suitable for human consumption; provided, however, if graded, cream of any grade shall conform to all the standards set for milk of the same grade, except that the maximum

bacteria count for cream shall be not more than three times as great as that of the corresponding grade of milk. [Amendment of May 6, 1919. In effect July 22, 1919. Stats. 1919, p. 327.]

Milk not suitable for human consumption.

§ 8. Milk not suitable for human consumption may be sold for industrial purposes, provided it be heated to a higher temperature than necessary for pasteurization, and delivered in a distinctive container, plainly marked with the words "Not suitable for human consumption," in letters not less than one-quarter inch in length and one-twelfth inch stroke.

Counties, etc., may maintain inspection service.

§ 9. Counties, or groups of counties, cities or groups of cities, or cities and counties, are hereby authorized to maintain a milk inspection service and laboratory conformable to requirements as set forth by the state dairy bureau, and to establish pasteurizing plants.

Penalties for violation.

§ 10. Any person who violates any provision of this act or the rules made in accordance with section eleven of this act or who directs or knowingly permits an employee to violate any of said provisions or said rules, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than sixty days, or by both such fine and imprisonment.

Any firm, corporation, society or association which violates any of said provisions or of said rules shall be guilty of a misdemeanor and upon conviction shall be fined as above provided.

In the event an officer, director, manager or managing agent of any firm, corporation, society or association violates any of the provisions of this act, or the rules made in accordance with section eleven of this act or directs or knowingly permits any employee to violate any of said provisions or said rules, such officer, director, manager or managing agent shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine or imprisonment or both as above provided; and, in such case, the firm, corporation, society or association shall also be guilty and upon conviction shall be fined as above provided. One-half of all such fines shall be paid into the state treasury and placed to the credit of the general fund. [Amendment of May 6, 1919. In effect July 22, 1919. Stats. 1919, p. 327.]

Duty of state dairy bureau.

§ 11. It shall be the duty of the state dairy bureau, with the assistance of the pure food and drugs laboratory, to enforce all the provisions of this act except the tuberculin testing of cows and the marketing of reactors; and said bureau, with the approval and assistance of the pure food and drugs laboratory, is hereby empowered to make such rules and regulations as may be necessary and advisable for such enforcement.

Duty of state veterinarian.

§ 12. It shall be the duty of the state veterinarian, as soon as practicable, either directly or through local inspecting departments, to enforce the provisions of this act as to the tuberculin testing of cows and the exclusion of reacting animals from the herds, and to mark indelibly by tattooing the ear with the capital letter "T" one inch long any cattle which have been tested with tuberculin under the provisions of this act and found to react to the test. For such purpose he may appoint such veterinarians as may be necessary.

Dairyman not operating under inspecting department.

§ 13. If any dairyman not operating under an inspecting department desires to sell milk, he may file with the state veterinarian a written request that his cows be tuberculin tested. After the filing of such request, said dairyman shall not be liable under the provisions of this act until such time as the state veterinarian shall be able to make the required test. The provision of this section shall apply also to any dairyman, operating under an inspecting department, if such inspecting department approves.

§ 14. The following score card shall be used in scoring dairies under the provisions of this act:

DAIRY FARM SCORE CARD OF THE UNITED STATES BUREAU OF ANIMAL INDUSTRY.
[As approved by the bureau for use under California conditions.]
DAIRY FARM SCORE CARD.

COWS.			COWS.		
Equipment	Per- fect	Al- lowed	Methods	Per- fect	Al- lowed
Health			Clean	8	.....
Apparently in good health... 1			(Free from visible dirt, 6.)		
If tested with tuberculin			STABLES.		
within a year and no tu-			Cleanliness of stables.....	6	.....
berculosis is found, or if			Floor	2	
tested within six months			Walls	1	
and all reacting animals			Ceiling and ledges.....	1	
removed	5		Mangers and partitions....	1	
If tested within a year and			Windows	1	
reacting animals are found			Stable air at milking time....	5	.....
and removed	3		Freedom from dust.....	3	
Food (clean and wholesome)....	1	.....	Freedom from odors.....	2	
Water (clean and fresh).....	1	.....	Cleanliness of bedding.....	1	
STABLES.			Barnyard	2	.....
Location of stable.....	2	.....	Clean	1	
Well drained	1		Well drained	1	
Free from contaminating sur-			Removal of manure daily to 50		
roundings	1		feet from stable.....	2	.....
Construction of stable.....	4	.....	MILK ROOM OR MILK HOUSE.		
Tight, sound floor and proper			Cleanliness of milk room.....	3	.....
gutter	2		UTENSILS AND MILKING.		
Smooth, tight walls and ceil-			Care and cleanliness of utensils..	8	.....
ing	1		Thoroughly washed	2	
Proper stall, tie, and manger. 1			Sterilized in steam for 15		
Provisions for light: Four square			minutes	3	
feet of glass per cow.....	4	.....	(Placed over steam jet, or		
(Three square feet of glass or			scalded with boiling water, 2.)		
four square feet of opening,			Protected from contamina-		
3; two square feet of glass or			tion.....	3	
three square feet of opening,			Cleanliness of milking.....	9	.....
2; one square foot of glass, 1.			Clean, dry hands.....	3	
Deduct for uneven distribu-			Udders washed and wiped... 6		
tion.)			(Udders cleaned with moist		
Bedding, or clean pasture for bed	1	.....	cloth, 4; cleaned with dry		
Ventilation	7	.....	cloth or brush at least 15		
Ventilators in roof.....	2		minutes before milking, 1.)		
Windows hinged at bottom.. 2			HANDLING THE MILK.		
(Sliding windows, 1.5; other			Cleanliness of attendants in milk		
openings, 1.)			room	2	.....
Cubic feet of space per cow,			Milk removed immediately from		
500 feet	3		stable without pouring from		
(Less than 500 feet, 2; less than			pail	2	.....
400 feet, 1; less than 300 feet,			Cooled immediately after milking		
0.)			each cow	2	.....
UTENSILS.			Cooled below 50° F.	5	.....
Construction and condition of			(51° to 55°, 4; 56° to 60°, 2.)		
utensils	1	.....	Stored below 50° F.	3	.....
Water for cleaning.....	1	.....	(51° to 55°, 2; 56° to 60°, 1.)		
(Clean, convenient and abun-			Transportation below 50° F.	2	.....
dant.)			(51° to 55°, 1.5; 56° to 60°, 1.)		
Small-top milking pail.....	5	.....	(If delivered twice a day, allow		
Milk cooler	1	.....	perfect score for storage and		
Clean milking suits.....	1	.....	transportation.)		
MILK ROOM OR MILK HOUSE.			Total	60	.....
Location: Free from contaminat-					
ing surroundings	1	.....		
Construction of milk room.....	2	.....		
Floor, walls, and ceiling... 1					
Light, ventilation, screens.. 1					
Separate rooms for washing uten-					
sils and handling milk.....	1	.....		
Facilities for steam.....	1	.....		
(Hot Water, 0.5)					
Total	40	.....		

Equipment+Methods=Final Score.

NOTE 1.—If any exceptionally filthy condition is found, particularly dirty utensils, the total score may be further limited.

NOTE 2.—If the water is exposed to dangerous contamination, or there is evidence of the presence of a dangerous disease in animals or attendants, the score shall be 0.

Stats. 1915, p. 1478, repealed.

§ 15. The purpose of this act is to amend and supersede an act entitled "An act to prevent the sale of impure and unwholesome milk, to grade milk, to provide rules and regulations therefor, and to empower cities, groups of cities, counties and groups of counties, or cities and counties, to establish inspection service; to provide for the enforcement of this act; to prescribe penalties for violation of the provisions hereof; and to make an appropriation therefor," which is hereby repealed.

Higher percentage of solid content.—A municipal ordinance of Los Angeles, requiring vended milk to have a percentage of solid content higher than that required by

the act of 1907 (Stats. 1907, p. 265; ante, Act 36), does not for that reason conflict with that act.—In re Hoffman, 155 Cal. 114, 132 Am. St. Rep. 75, 99 Pac. 517.

IMITATION MILK.

ACT 1172—An act to define imitation milk and to regulate the business of producing, buying or selling imitation milk or imitation milk products, providing for the licensing of said business by the state dairy bureau, and prescribing penalties for a violation or the provisions hereof, and repealing all acts or parts of acts inconsistent herewith.

History: Approved April 15, 1919. In effect July 22, 1919. Stats. 1919, p. 89.

Imitation milk defined.

§ 1. For the purposes of this act certain manufactured substances, certain mixtures and compounds shall be known and designated as "imitation milk," namely: (a) any mixture or compound composed of skim milk or condensed, evaporated or powdered skim milk and any edible oil or fat other than natural milk fat, whether with or without any other ingredient or ingredients; (b) any mixture or compound made in imitation or semblance, or having the appearance or semblance, of milk or condensed or evaporated milk, or when so made or having such appearance or semblance calculated or intended, whether by intent of the compounder or other person, or by reason of the appearance or other characteristic of the mixture or compound, for use or disposition as or for milk, or as or for condensed or evaporated milk, or to induce its purchase, or use as or for milk or condensed or evaporated milk.

Manufacture and sale of imitation milk.

§ 2. No person by himself, his agents or servants shall render, manufacture, sell, offer for sale, expose for sale, or have in his possession with intent to sell or to use, or to serve to patrons, customers, boarders or inmates of any hotel, dwelling-house, restaurant, public conveyance or boarding house, any article, product or compound made wholly or in part, out of any imitation milk; provided, that nothing in this section shall be construed to prohibit the manufacture or sale, under regulations hereinafter provided, of imitation milk, of substances or compounds that may be used as imitation milk, of a separate and distinct character not resembling milk or condensed or evaporated milk, and in such a manner as will advise the purchaser and consumer of its real character, colored or containing ingredients that cause to look unlike pure whole cow's milk or the condensed or evaporated product made therefrom; and provided, further, it is not adulterated within the meaning of this act; and provided, further, that nothing in this act shall be construed to prevent or prohibit the manufacture, sale, or use, for cooking purposes, of imitation milk as defined by section one of this act.

Imitation milk to be labeled.

§ 3. Each person, who by himself, or another, lawfully manufactures any imitation milk, or any substitute that may be used as and substituted for milk or condensed or evaporated milk, shall mark the same by printing, stamping or stenciling upon the top, if the top be of sufficient size and upon the sides of each case, box, carton, or other package, in which that article or substance shall be kept, and in which it shall be

removed from the place where it is produced or put up in a clear manner, in the English language, the words, "imitation milk," in printed letters in plain roman type, each of which shall not be less than one inch in height and one-half inch in width, and in addition to the above shall prepare a statement, printed in plain roman type, of a size not smaller than pica, stating in the English language its name, and the name and address of the manufacturer, the name of the place where manufactured or put up, and also the name and actual percentages of the various ingredients used in the manufacture of such imitation milk; and shall place a copy of said statement within and upon the contents of each case, box, carton, or other package, and next to that portion of each case, box, carton, or other package as is commonly and most conveniently opened, and in addition thereto shall label each bottle, can, container, or other package containing imitation milk with the words "imitation milk" printed in black-face plain roman capital letters of a size not less than twelve point, and said words shall appear upon the main or principal label of said bottles, cans, containers, or other packages containing any imitation milk, and in addition thereto said main or principal label shall contain or bear the words: "Not suitable for infant food," in plain legible type.

Adulteration.

§ 4. Imitation milk, not condensed or evaporated, shall be deemed adulterated within the meaning of this act if it contains less than three per cent of edible fats, or oils, and imitation milk, if evaporated or condensed, shall be deemed adulterated within the meaning of this act if it contains less than seven and eight-tenths per cent of edible fats or oils.

Display of sign by restaurants, etc.

§ 5. No keeper or proprietor of any bakery, hotel, boarding house, restaurant, saloon, lunch counter, or any place of public entertainment, and no person having charge thereof, or employee thereat, and no employer when such board is furnished as compensation, or part of the compensation of any employee, shall place before any patron or employee for use as food, any imitation milk, unless there shall be displayed in a prominent place in said bakery, hotel, boarding house, restaurant, saloon, lunch counter, or other place of public entertainment in each room where meals are served, a sign bearing the words: "Imitation milk used and served here," in black-faced letters and not less than four inches in length upon a white ground.

License for manufacture and sale of imitation milk. Licenses issued annually. Fee.

§ 6. No person, firm or corporation shall engage in the business or occupation of manufacturing, selling, dealing, or in furnishing imitation milk, without first having applied for and obtained a license so to do as hereinafter provided. Any person, firm or corporation dealing in or engaged in the business or occupation of manufacturing, selling, dealing in or furnishing to his, its or their patrons, imitation milk, as in this act defined shall first make application each year to the state dairy bureau for a license, and upon payment of license fee of the amount mentioned herein to the state dairy bureau, said bureau shall issue to the applicant a license. All such licenses shall contain the following proviso; provided, that this license does not authorize the holder thereof to manufacture, sell, deal in or furnish any imitation milk and similar substances that may be used as a substitute for milk or condensed or evaporated milk which resembles in appearance pure whole cow's milk, or the condensed or evaporated product made therefrom. All such licenses shall expire on June thirtieth of each year, and may be issued in periods of one year or less than one year, on payment of a proportionate part of the license fee, provided that no license shall be issued for a period of less than three months. The fee for issuing said license to said manufacturers, of any of the said substances within this state shall be one hundred dollars; for issuing to wholesale

dealers in, or importers or agents for importers, of any of said substances the fee shall be fifty dollars; for issuing to retail dealers in any of said substances the fee shall be five dollars; and for issuing to the keeper of any hotel, restaurant, boarding house, and any other place where meals are served and payment is received therefor, either immediately or by the day, week or month, the fee shall be two dollars. The term "wholesale dealer" as used in this section includes all persons, firms or corporations who sell any of said substances in quantities of one full case or more at a time or in the same transaction. The term "retail dealer" includes all persons who sell only in quantities less than one case. All licenses while in force shall be kept conspicuously displayed in the places of business of the party or parties to whom they have been issued.

It shall be unlawful for any person, firm or corporation to manufacture, buy, sell, deal in or furnish to his, its or their patrons, or to have in their possession, for any purpose whatsoever other than for consumption in his own family, or for transportation in case of a boat or railroad company, or for the purpose of storage in case of a warehouse or cold storage company, any imitation milk or similar substance designed to be used as a substitute for milk or for condensed or evaporated milk without having first applied for and obtained from the state dairy bureau of the state of California a license herein required.

Penalty.

§ 7. Any person, firm or corporation found guilty of violating any of the provisions of this act shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment.

Enforcement.

§ 8. It shall be the duty of the state dairy bureau, now existing under the laws of this state, to enforce the provisions of this act; provided, that nothing in this act shall be construed to prevent any city or county or state board of health or other city or county official from enforcing the provisions of this act.

Repealed.

§ 9. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

DAIRY BUREAU.

See tit. "State Dairy Bureau."

DALY CITY.

See Act 3094, note.

DAVIS.

See Act 3094, note.

CHAPTER 84.

DEADLY WEAPONS.

References: Arrested person, taking from, see Kerr's Cyc. Penal Code, § 846.

Assault with, see Kerr's Cyc. Penal Code, § 245.

Assault with, by prisoner, see Kerr's Cyc. Penal Code, § 246.

Bringing into jail, state prison, or reformatory, see Kerr's Cyc. Penal Code, § 171a.

Exhibiting in rude, etc., manner, see Kerr's Cyc. Penal Code, § 417.

Possession of with intent to assault, see Kerr's Cyc. Penal Code, § 467.

CONTENTS OF CHAPTER.

ACT 1181. REGISTRATION OF PURCHASERS OF PISTOLS.

1182. CONCEALED WEAPONS ACT.

REGISTRATION OF PURCHASERS.

ACT 1181—An act providing for the registration of the purchasers of pistols; and providing for the punishment of dealers neglecting to register such purchasers.

History: Approved March 6, 1909, Stats. 1909, p. 163.

Registration required.

§ 1. Every person engaged in the business of selling at retail pistols shall keep a register in which shall be entered the name, age, occupation and residence (if residing in a city then the street number of such residence) of each and every purchaser of such pistols, together with the number or other mark of identification if any on such pistol, which said register shall be open to the inspection of all peace officers at all times.

Penalty.

§ 2. Every person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and shall on conviction be fined a sum not to exceed fifty dollars or in default of the payment of said fine shall be imprisoned in the county jail not to exceed one day for each two dollars of said fine.

Superseded.—This act was probably superseded by the act of 1917.—See, post, Act 1182.

CONCEALED WEAPONS.

ACT 1182—An act relating to and regulating the carrying, possession, sale or other disposition of firearms capable of being concealed upon the person; prohibiting the possession, carrying, manufacturing and sale of certain other dangerous weapons and the giving, transferring and disposition thereof to other persons within this state; providing for the registering of the sales of firearms; prohibiting the carrying or possession of concealed weapons in municipal corporations; providing for the destruction of certain dangerous weapons as nuisances and making it a felony to use or attempt to use certain dangerous weapons against another.

History: Approved May 4, 1917. In effect July 27, 1917. Stats. 1917, p. 221.

Manufacture, etc., of certain dangerous weapons misdemeanor.

§ 1. Every person who manufactures or causes to be manufactured, or leases, or keeps for sale, or offers, or gives, or otherwise disposes of any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, bludgeon, or metal knuckles, a dirk or dagger, to any person within this state is guilty of a misdemeanor, and if he has been previously convicted of a crime made punishable by this section, he is guilty of a felony.

Possession of certain dangerous weapons misdemeanor.

§ 2. Every person who possesses any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, bludgeon, metal knuckles, bomb or bombshells, or who carries a dirk or dagger, is guilty of a misdemeanor, and if he has been convicted previously of any felony or of a crime made punishable by this act, he is guilty of a felony.

Carrying firearms without license misdemeanor.

§ 3. Every person who carries in any city, city and county, town or municipal corporation of this state any pistol, revolver, or other firearm concealed upon his person, without having a license to carry such firearm as hereinafter provided in section six of this act, shall be guilty of a misdemeanor, and if he has been convicted previously of any felony, or of any crime made punishable by this act, he is guilty of a felony.

Unlawful possession of weapon, etc., nuisance. Surrender of weapons, etc. Destruction of weapons, etc.

§ 4. The unlawful possession or carrying of any of the instruments, weapons or firearms enumerated in section one to section three inclusive of this act, by any person other than those authorized and empowered to carry or possess the same as hereinafter provided, is a nuisance, and such instruments, weapons or firearms are hereby declared to be nuisances, and when any of said articles shall be taken from the possession of any person the same shall be surrendered to the magistrate before whom said person shall be taken, except that in any city, city and county, town or other municipal corporation the same shall be surrendered to the head of the police force, or police department thereof. The officers to whom the same may be so surrendered, except upon certificate of a judge of a court of record, or of the district attorney of any county that the preservation thereof is necessary or proper to the ends of justice, shall proceed at such time or times as he deems proper, and at least once in each year to destroy or cause to be destroyed such instruments, weapons or other firearms in such manner and to such extent that the same shall be and become wholly and entirely ineffective and useless for the purpose for which it was manufactured.

Attempted use of weapons felony.

§ 5. Any person who attempts to use, or who with intent to use the same unlawfully against another, carries or possesses a dagger, dirk, dangerous knife, razor, stiletto, or any loaded pistol, revolver or other firearm, or any instrument or weapon commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, bomb, or bombshell or any other dangerous or deadly instrument or weapon, is guilty of a felony. The carrying or possession of any of the weapons specified in this section, by any person while committing, or attempting or threatening to commit a felony, or breach of the peace, or any act of violence against the person or property of another, shall be presumptive evidence of carrying or possessing such weapon with intent to use the same in violation of this section.

License to carry concealed firearm.

§ 6. It shall be lawful for the board of police commissioners, chief of police, city marshal, town marshal, or other head of the police department of any city, city and county, town, or other municipal corporation of this state, upon proof before said board, chief, marshal or head, that the person applying therefor is of good moral character, and that good cause exists for the issuance thereof, to issue to such person a license to carry a concealed pistol, revolver or other firearm; provided, however, that the application to carry concealed such firearm shall be filed in writing and shall state the name and residence of the applicant, the nature of the applicant's occupation, the business address of applicant, the nature of the weapon sought to be carried and the reason for the filing of the application to carry the same.

Register of sales of firearms. Duplicate sheet mailed to police. Violation misdemeanor.

§ 7. Every person in the business of selling, leasing or otherwise transferring a pistol, revolver or other firearm, of a size capable of being concealed upon the person, whether such seller, lessor or transferrer is a retail dealer, pawnbroker or otherwise, except as hereinafter provided, shall keep a register in which shall be entered the time of sale, the date of sale, the name of the salesman making the sale, the place where sold, the make, model, manufacturer's number, caliber or other marks of identification on such pistol, revolver or other firearm. Such register shall be prepared by and obtained from the state printer and shall be furnished by the state printer to said dealers on application at a cost of three dollars per one hundred leaves in duplicate and shall be in the form hereinafter provided. The purchaser of any firearm, capable of being con-

sealed upon the person shall sign, and the dealer shall require him to sign his name and affix his address to said register in duplicate and the salesman shall affix his signature in duplicate as a witness to the signatures of the purchaser. Any person signing a fictitious name or address is guilty of a misdemeanor. The duplicate sheet of such register shall on the evening of the day of sale, be placed in the mail, postage prepaid and properly addressed to the board of police commissioners, chief of police, city marshal, town marshal or other head of the police department of the city, city and county, town or other municipal corporation wherein the sale was made; provided, that where the sale is made in a district where there is no municipal police department, said duplicate sheet shall be mailed to the county clerk of the county wherein the sale is made. A violation of any of the provisions of this section by any person engaged in the business of selling, leasing or otherwise transferring such firearms is a misdemeanor. This section shall not apply to wholesale dealers in their business intercourse with retail dealers, nor to wholesale or retail dealers in the regular or ordinary transportation of unloaded firearms as merchandise by mail, express or other mode of shipment, to points outside of the city, city and county, town or municipal corporation wherein they are situated. The register provided for in this act shall be substantially in the following form:

Form of register.

Series No.

Sheet No.

ORIGINAL.

Dealers' Record of Sale of Revolver or Pistol. State of California.

Notice to dealers: This original is for your files. If spoiled in making out, do not destroy. Keep in books. Fill out in duplicate.

Carbon duplicate must be mailed on the evening of the day of sale, to head of police commissioners, chief of police, city marshal, town marshal or other head of the police department of the municipal corporations wherein the sale is made, or to the county clerk of your county if the sale is made in a district where there is no municipal police department. Violation of this law is a misdemeanor. Use carbon paper for duplicate. Use indelible pencil.

Sold by Salesman

City, town or township

Description of arm (state whether revolver or pistol).....

Maker number caliber

Name of purchaser age years.

Permanent residence (state name of city, town or township, street and number of dwelling)

Height feet inches. Occupation

Color skin eyes hair

If traveling or in locality temporarily, give local address

.....

Signature of purchaser

(Signing a fictitious name or address is a misdemeanor.) (To be signed in duplicate.)

Witness, salesman.

(To be signed in duplicate.)

Series No.

Sheet No.

DUPLICATE.

Dealers' Record of Sale of Revolver or Pistol. State of California.

Notice to dealers: This carbon duplicate must be mailed on the evening of the day

of sale as set forth in the original of this register page. Violation of this law is a misdemeanor.

Sold by Salesman

City, town or township

Description of arm (state whether revolver or pistol)

Maker number caliber

Name of purchaser age years.

Permanent address (state name of city, town or township, street and number of dwelling)

.....

Height feet inches. Occupation

Color skin eyes hair

If traveling or in locality temporarily, give local address

.....

Signature of purchaser

(Signing a fictitious name or address is a misdemeanor.) (To be signed in duplicate.)

Witness, salesman.

(To be signed in duplicate.)

Exceptions.

§ 8. Nothing in this act shall be construed to apply to sheriffs, constables, marshals, policemen or other duly appointed peace officers, nor to any person summoned by any such officers to assist in making arrest or preserving the peace while said person so summoned is actually engaged in assisting such officer; nor to duly authorized military or civil organizations while parading nor to the members thereof when going to and from the places of meeting of their respective organizations; nor to the possession or transportation by any merchant of unloaded firearms as merchandise; nor to bona fide members of any club or organization now existing or hereinafter organized, for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while such members are using any of the firearms referred to in this act upon or in such target ranges, or while going to and from such ranges.

Constitutionality.

§ 9. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

1. **Constitutionality — Reasonable police regulation.**—Section 3 of the act relating to carrying of concealed weapons in a municipality is a reasonable police regulation, and is not unconstitutional.—*People v. Smith*, 36 Cal. App. 88, 171 Pac. 696.
2. **Same—Class legislation.**—The act operates uniformly upon all persons in the same category, and there is a reasonable basis for the classification, whereby persons previously convicted of a felony are punished more heavily than one who has sustained no prior conviction.—*People v. Smith*, 36 Cal. App. 88, 171 Pac. 696.
3. **Same—Ex post facto law.**—The law is not ex post facto because it authorizes the offender's past conduct to be taken into account in the graduation of the punish-

- ment.—*People v. Smith*, 36 Cal. App. 88, 171 Pac. 696.
4. **Same—Invalidity not considered.**—The question of the invalidity of the second sentence of section 5 of the act of 1917, relating the effect of certain facts as presumptive evidence, is not considered, but even if invalid, its invalidity would not render the provision void.—*In re Dare*, 176 Cal. 83, 168 Pac. 19.
5. **The first sentence of section 5 of the act of 1917 (1917-221) is a valid exercise of the legislative power.**—*In re Dare*, 176 Cal. 83, 168 Pac. 19.
6. **Carrying concealed weapons.**—Not a municipal affair, and prevention is always a proper subject for state legislation.—*People v. Smith* (Cal. App.), 171 Pac. 696.

CHAPTER 85.

DEAF, DUMB, AND BLIND ASYLUM.

References: California school for the deaf and dumb, see Kerr's Cyc. Political Code, §§ 2236, et seq.

County relief for needy blind, see tit. "Blind."

Industrial home for the adult, see Kerr's Cyc. Political Code, §§ 2207, et seq.

Pensions for teachers in California school for deaf and dumb, see tit. "Pensions."

CONTENTS OF CHAPTER.

ACT 1185. BEQUESTS OF MONEY AND PROPERTY.

1186. WATER SUPPLY.

1187. REMOVAL OF FENCE TO PERMIT THE USE OF THE PUBLIC HIGHWAY.

1188. MANUAL AND INDUSTRIAL ARTS BUILDING AUTHORIZED.

1189. SEPARATION OF THE DEAF AND BLIND DEPARTMENTS.

1190. READERS FOR BLIND STUDENTS. ATTENDANCE OF STUDENTS AT NATIONAL COLLEGE FOR DEAF.

1191. REMOVAL OF FENCE TO ALLOW USE OF CERTAIN LAND AS HIGHWAY.

BEQUESTS AND DONATIONS OF MONEY AND PROPERTY.

ACT 1185—An act to confer certain powers upon the directors of the deaf, dumb and blind asylum.

History: Approved April 1, 1876, Stats. 1875-76, p. 686.

The act empowered the directors to receive and invest money and property bequeathed and donated to the asylum.

WATER SUPPLY.

ACT 1186—An act to provide a supply of water for the university, and for the asylum for the deaf, dumb, and blind.

History: Approved April 1, 1876, Stats. 1875-76, p. 816.

This act provided for the condemnation of certain springs and rights of way.

1. Award of commissions did not become a final judgment under the act until after its approval and confirmation by the governor.—People v. Pfeiffer, 59 Cal. 89.

2. Condemnation of springs and lands for right of way.—Under the act the appraisal by the superior court, a jury or

commissioners, is not operative without the concurrence of the governor with the appraisal.—Berryman v. Perkins, 55 Cal. 483.

3. Mandamus.—The court can not control the discretion of the governor in a matter which is confided to it by the act, or determine his decision by mandamus.—Berryman v. Perkins, 55 Cal. 483.

REMOVAL OF FENCE TO PERMIT THE USE OF THE PUBLIC HIGHWAY.

ACT 1187—An act to authorize certain improvements upon the grounds and streets adjacent to the grounds of the California Institution for the Deaf and Blind, at Berkeley, California, and making an appropriation therefor.

History: Approved April 10, 1911, Stats. 1911, p. 845.

See Act 1191 on similar subject.

This act authorized the directors to move the fence on the southern boundary line so

that certain property could be used as a public highway.

MANUAL AND INDUSTRIAL ARTS BUILDING.

ACT 1188—An act to provide for the erection and equipment of a building at the California Institution for the Deaf and Blind at Berkeley, to be used for instruction in manual and industrial arts, and to make an appropriation therefor.

History: Approved May 1, 1911, Stats. 1911, p. 1256.

This act appropriated sixty thousand dollars for the purpose indicated.

SEPARATION OF DEAF AND BLIND DEPARTMENTS.

ACT 1189—An act to provide for the separation of the deaf and the blind departments in the California School for the Deaf and the Blind.

History: Approved April 1, 1915. In effect August 8, 1915. Stats. 1915, p. 20.

Separation of deaf and blind departments.

§ 1. The board of directors of the California School for the Deaf and the Blind are hereby authorized and empowered, with a view to the separation of the departments of the deaf and the blind in said school, to select and purchase as soon as the necessary funds for said purpose shall have been appropriated, and subject to the approval of the state board of control, a suitable tract of land for the purpose of effecting said separation.

READERS FOR BLIND STUDENTS. ATTENDANCE OF STUDENTS AT NATIONAL COLLEGE FOR DEAF.

ACT 1190—An act to provide readers for blind students in the University of California, and to assist deaf students attending the National College for the Deaf at Washington, D. C., and making an appropriation therefor.

History: Approved June 9, 1915. In effect August 8, 1915. Stats. 1915, p. 1329.

Appropriation: readers for blind students. Expenses of deaf students.

§ 1. The sum of three thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to be expended under the supervision of the board of directors of the California School for the Deaf and the Blind, during the biennial period ending June 30, 1917, in providing readers for blind persons who shall be residents of the State of California and graduates of the California School for the Deaf and the Blind, and who shall regularly matriculate in, and work for a degree in the University of California; and in defraying the expenses of deaf persons who shall be citizens of the State of California, and graduates of the California School for the Deaf and the Blind, taking a collegiate course of instruction in the National College for the Deaf at Washington, D. C.; provided, however, that no more than three hundred dollars shall be expended for any one student during any one school year.

REMOVAL OF FENCE, ETC.

ACT 1191—An act to authorize certain improvements upon the grounds of the California School for the Deaf and Blind at Berkeley, California.

History: Approved May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 578.

Fences on grounds of California School for Deaf and Blind.

§ 1. The directors of the California School for the Deaf and Blind are hereby authorized to remove the present fence on the grounds of said school, which extends thirty feet across the eastern terminus of Derby street, and also the fence which extends a distance of one hundred twenty-four and sixty-five one-hundredths feet from said terminus along Tanglewood road, as said street and road are delineated upon a map entitled, "plat of Tanglewood road opening, Berkeley, California," filed in the office of the county recorder of Alameda county on the third day of April, one thousand nine hundred sixteen, and recorded in liber fourteen of maps, page twenty-five, and to replace said fence along a line described as follows:

Commencing at the point of intersection of the northerly line of Derby street and the easterly line of Belrose avenue extended northerly, as said street and avenue are delineated on said plat of Tanglewood road opening, Berkeley, California; thence easterly parallel to the southerly line of plot seventy-eight, as said plot is shown and designated upon Kellersberger's map of rancho of Vicente and Domingo Peralta, and filed in the office of the county recorder of Alameda county, a distance of eighteen and five-tenths feet; thence along a circular arc of two hundred two and ninety-four one-hundredths feet radius easterly and southerly to its intersection with the said southerly line of plot

seventy-eight at a point distant therein easterly one hundred twenty-four and sixty-five one-hundredths feet from the intersection of the easterly line of Belrose avenue and the said southerly line of plot seventy-eight, in order that the following described triangular piece of land may be used as a public highway:

Beginning at the intersection of the eastern line of Belrose avenue with the dividing line between plot seventy-seven and plot seventy-eight as shown upon said Kellersberger's map of rancho of Vicente and Domingo Peralta, and running thence northerly along the said eastern line of Belrose avenue thirty feet; thence easterly parallel to the southern line of said plot seventy-eight, a distance of eighteen and five-tenths feet; thence along a circular arc of two hundred two and ninety-four one-hundredths feet radius easterly and southerly to its intersection with the said southern line of plot seventy-eight at a point distant therein easterly one hundred twenty-four and sixty-five one-hundredths feet from the point of beginning; thence westerly in a straight line to the point of beginning; being a portion of said plot seventy-eight and containing six-hundredths acre, more or less.

See Act 1187 on similar subject.

DEATH.

See tit. "Vital Statistics."

(Action for death, see Kerr's Cyc. Code Civil Procedure, § 377.)

DEBRIS COMMISSION.

See tits. "Mines and Mining"; "State Engineering."

CHAPTER 86.

DEEDS.

References: Acknowledgments of deeds, see tit. "Acknowledgements."
Deeds referring to defective maps, see tit. "Maps."

CONTENTS OF CHAPTER.

ACT 1206. CONVEYANCES BY PERSONS WITH CHANGED NAMES.

ACT 1206—An act relating to conveyances of real estate.

History: Approved March 11, 1874, Stats. 1873-74, p. 345.

Set forth name.

§ 1. Any person in whom the title of real estate is vested, who shall afterwards, from any cause, have his or her name changed, shall, in any conveyance of said real estate so held, set forth the name in which he or she derived title to said real estate.

Index of grantors.

§ 2. All conveyances of real estate, except patents issued by the state as a party made by any public officer pursuant to any law of this state, shall, when recorded by the county recorder, be by him alphabetically indexed in the "Index of Grantors," both in the name of the officer making such sale, and in the name of the person owning the property so sold.

Title name.

§ 3. It is hereby made the duty of all county recorders to alphabetically index, in the "Index of Grantors," both in the name by which title was acquired, and also by which the same was conveyed, all conveyances referred to in section one of this act.

§ 4. This act shall be in force from and after its passage.

1. **Code commissioner's note:** "Section 1 of the statute of 1873-74, p. 345, relating to conveyances of real estate, is codified in the above section. The rest of the statute should be added to the Political Code."

This advice does not seem to have been followed, and §§ 2 and 3 are apparently still in force. As to § 1, see Kerr's Cyc. Civil Code, § 1096.

2. **Construction of act.**—The act was in-

tended for such cases as that of a married woman conveying land to which she acquired title before her marriage, or of a man whose name has been changed by law, conveying property the title to which was invested in him prior to such change of name; but it does not apply to a case where, by an erroneous statement of the grantee's name, he acquired title in other than his real name; and such error can not be corrected by reciting the fact in a subsequent deed.—*Peckham v. Stewart*, 97 Cal. 147, 31 Pac. 928.

3. **Title acquired in other than real name of grantee.**—If a person chooses to take the title to real estate in a name other than his true name, so far as that property is concerned, he has assumed the name in which he takes title, as his true name, and he may be sued so far as that title is concerned by the name he thus assumes.—*Emery v. Kepp*, 154 Cal. 83, 129 Am. St. Rep. 141, 16 Ann. Cas. 792, 19 L. R. A. (N. S.) 983, 97 Pac. 17.

DELANO.

See Act 3094, note.

CHAPTER 87.

DEL NORTE COUNTY.

References: Boundary, see tit. "County Boundaries."

Boundary, see *Kerr's Cyc. Political Code*, § 3909.

Classification, see *Kerr's Cyc. Political Code*, §§ 4005c, 4006.

County government, see *Kerr's Cyc. Political Code*, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 1211. FENCE AND POUND DISTRICTS.

FENCE AND POUND DISTRICTS.

ACT 1211—An act to make applicable to Del Norte county an act entitled "An act in relation to fence and pound districts in the county of Sonoma," approved March second, A. D. eighteen hundred and seventy-two.

History: Approved March 23, 1875, Stats. 1875-76, p. 391.

1. **Code commissioners' note as to original act:** "Superseded as to pounds by subdivision 14, sec. 25, Co. Gov. Act 1897: 463."

—See *Kerr's Cyc. Political Code*, § 4041, subd. 14.

General fence laws.—See tit. "Fences."

CHAPTER 88.

DENTISTRY.

References: Reproduction of register of board of dental examiners, see tit. "Burnt and Destroyed Records."

CONTENTS OF CHAPTER.

ACT 1226. PRACTICE OF DENTISTRY ACT OF 1915.

1227. OFFICE OF STATE DENTAL SURGEON CREATED.

DENTAL PRACTICE ACT OF 1915.

ACT 1226—An act to insure the better education of dental surgeons and to regulate the practice of dentistry in the state of California providing penalties for the violation hereof.

History: Approved May 21, 1915. In effect August 8, 1915. Stats. 1915, p. 698. Former acts: Act of March 12, 1885, Stats. 1885, p. 110; amended March 3, 1893, Stats. 1893, p. 70; repealed by the act of March 23, 1901, Stats. 1901, p. 564, which was amended March 20, 1903, Stats. 1903, p. 322; March 20, 1905, Stats. 1905, p. 430; March 6, 1907, Stats. 1907, p. 111; April 6, 1909, Stats. 1909, p. 800; June 11, 1913. In effect August 10, 1913. Stats. 1913, p. 573; and superseded though not in terms repealed by the present act.

The title of the act of 1901 referred expressly to the repeal of the act of 1885, but in the body of the act was no express repeal. The act of 1901 took effect September 1, 1901.

License required to practice dentistry.

§ 1. It shall be unlawful for any person to engage in the practice of dentistry in the State of California unless such person shall have obtained a license from the board of dental examiners of the state of California, as hereinafter provided, except that the license of any dentist, existing at the time of the passage of this act shall continue in force until forfeited in the manner hereinafter provided and the annual tax paid by any such dentist under the terms of the laws of the state of California existing at the time of the passage of this act shall keep such license in force until the expiration of the time for which the same was paid, and thereafter the holder of such license shall be subject to the annual tax in this act provided. Nothing herein contained shall be construed to exempt from the payment of the annual tax any person authorized to practice dentistry in the state of California, and every person practicing dentistry in this state shall irrespective of the time when he was licensed or first had the right to lawfully practice dentistry in this state or elsewhere, pay an annual tax of two dollars as hereinafter provided.

Board of dental examiners created. Term of office. Vacancies.

§ 2. A board of dental examiners to consist of seven practicing dentists is hereby created, to be known as the board of dental examiners of California, whose duty it shall be to carry out the purposes and enforce the provisions of this act. The members of this board shall be appointed by the governor of California, all of whom shall have been actively and legally engaged in the practice of dentistry in the state of California, for at least five years next preceeding the date of their appointment, and none of whom shall be members of the faculty of any dental college or dental department of any medical college in the state of California, or shall have any financial interest in any such college. The term for which the members of said board shall hold office shall be four years and until their successors are duly appointed and qualified. Their terms of office shall be so classified that the terms of not more than two members shall expire in any one year. The present members of the board of dental examiners of California appointed under the provisions of the laws of this state in force at the time that this law takes effect shall continue to serve and act as members of the said board, but under the provisions of this act, during their respective terms or until their successors are appointed and qualified. Vacancies occurring in the board of dental examiners shall be filled by appointment by the governor, within thirty days after such vacancy occurs. The governor shall have the power to remove from office at any time any member of the board for continued neglect of duty required by this act, or for incompetency, unprofessional or dishonorable conduct.

President. Secretary. Meetings. Examination of applicants.

§ 3. It shall be the power and duty of said board to elect from its membership a president, vice-president and a secretary. The secretary shall receive such compensation as may be fixed by the board, which shall be in addition to his per diem as a member of the board, and all necessary traveling expenses incurred in connection with the performance of the duties of his office. The board shall meet regularly at least twice a year, at such time and place as the board may designate, for the purpose of transacting its business, and special meetings may be held at such other times as the board may elect, or on the call of the president of the board, or of not less than four members thereof. A written notice of the time, place and object of such special meeting shall be mailed by said secretary to all the members not parties to the call, at least fifteen days before the day of meeting. Meetings may be held at any time and place and without notice by unanimous consent evidenced either by writing or by the presence of any member whose consent is necessary. The said board shall examine all applicants for license to practice dentistry according to the provisions of this act

and issue licenses to practice dentistry in this state to such applicants as successfully pass the examination of the board and otherwise comply with the provisions of this act; collect and apply all fees as directed by this act; keep a book showing the names of all persons to whom licenses have been granted by said board to practice dentistry, and such other books as may be necessary to plainly show all the acts and proceedings of said board; to have and use a seal bearing the name "Board of Dental Examiners of California."

Annual report. Quorum.

The board shall make an annual report of its proceedings to the governor of California by the fifteenth day of December of each year, together with an account of all moneys received and disbursed by it, pursuant to this act. The board shall have power to adopt rules concerning its meetings and the holding of examinations and the manner of issuance and reissuance of licenses not inconsistent with the provisions of this act. Four members of said board shall constitute a quorum for the transaction of business at any meeting of the board. Each member of the board shall, upon his qualification, file with the secretary his post office address, and thereafter any notice of any change thereof. Any notice mailed to the address so on file, shall be deemed to comply with the requirements of this act as to notice to such member of the board.

Books, public records. Examination papers kept one year.

§ 4. All books of said board shall be of public record and at all times during business hours open to public inspection, and a copy of any part or all thereof duly certified by the secretary of said board shall be primary evidence in any court of this state. The original books, records and papers of the board shall be kept at the office of the secretary of said board which office shall be at such place as may be designated by the board. Said secretary shall furnish to any person making application therefor a copy of any part thereof, certified by him as such secretary, upon payment of a fee of twenty-five cents per hundred words so copied, the said fee to be deposited in the state treasury to the credit of the board. The examination papers of any applicant shall be kept for the period of one year and may then be destroyed, but such examination papers shall be open to inspection only by members of the board and by such applicant or by some one appointed by the latter to inspect the same, or by a court of competent jurisdiction in a proceeding where the question of the contents of such paper is properly involved.

Compensation.

§ 5. Each member of the board shall receive a per diem of ten dollars as compensation for each day spent in actual attendance at meetings of the board and at committee meetings of the members of the board, when such meetings shall be specially authorized by the board, and for each day actually spent performing necessary work in connection with the enforcement of this act, together with his necessary traveling expenses.

Eligibility to take examination. Apprentices.

§ 6. Any person over twenty-one years of age shall be eligible to take an examination before the board of dental examiners of California, upon making application therefor and upon (1) paying a fee of twenty-five dollars; (2) furnishing satisfactory testimonials of good moral character; and (3) furnishing satisfactory evidence of having graduated from a reputable dental college, which must have been approved by the board of dental examiners of California; provided, that after August 1, 1918, he shall also file his diploma or certificate of graduation with recommendations from a high school accredited to the University of California or any other university of equal standing; or a certificate signed by a state superintendent of public instruction, or

similar officer, to the effect that such applicant has had scholastic preparation equivalent in all respects to that demanded for graduation with recommendations from a high school giving a four year course of instruction in the state from which such certificate is issued; (4) in lieu of such diploma or certificate from an accredited high school, such applicant, after said date, may and with like effect furnish to said board of dental examiners a certificate from the board of dental examiners, or similar official body, of some other state in the United States, showing that such applicant has been a duly licensed practitioner of dentistry in such other state for a period of at least five years; provided, however, that every person actually engaged as an apprentice to a regularly licensed dentist who has practiced in the state of California for ten years or more shall be eligible for examination, if, within thirty (30) days after the passage of this act, he shall file with the secretary of the board an affidavit stating his name, age, the length of time for which he has been actually apprenticed and with whom; and who, at the time of his application for examination, shall show to the satisfaction of the board that he has served an apprenticeship of at least five (5) years and is a graduate from a high school or similar institution of learning in this or some other state of the United States requiring a three (3) years' course of study; and provided, that no examination shall be given to an applicant claiming the right to take the same as an apprentice later than December 30, 1915.

Examinations.

§ 7. The examination by the board of applicants for license to practice dentistry in this state shall be sufficiently thorough to test the fitness of the applicant to practice dentistry. It shall include, written in the English language, questions on the following subjects: Anatomy, histology, physiology, anaesthesia, materia medica, pathology, bacteriology, therapeutics, oral surgery, chemistry, metallurgy, operative dentistry, prosthetic dentistry and orthodontia; the answers to which shall be written in the English language. Said written examination may be supplemented by an oral examination. Demonstrations of the applicant's skill in operative and prosthetic dentistry must also be given. All persons successfully passing such examination shall be registered as licensed dentists on the board register, as provided in section three, and shall be granted by the board a license to practice dentistry in the state of California. When a candidate for a license shall have received a grading of eighty-five per cent or above in any given subject, he shall be exempt from re-examination on that subject in subsequent examinations before the said board held at the first or second meeting thereafter. Any member of the board may inquire of any applicant for examination concerning his character, qualifications or experience and may take testimony of any one in regard thereto, under oath, which he is hereby empowered to administer.

Dentists already licensed to register. Certificate of registration. Registration fee. Notation of change of name. Failure to register forfeits license.

§ 8. Every person licensed to practice dentistry in this state within six months prior to the passage of this act whose license is not at the time of such passage registered under the provisions of the law under which the same was issued shall register the same as herein provided within six (6) months after this act becomes effective. Every person who shall hereafter be licensed to practice dentistry in this state, shall within six months thereafter register in the office of the county clerk of the county where his place of business is located (if he has no place of business in this state, then in the office of the county clerk of that county in this state wherein at the time shall be situated the office of the secretary of the board of dental examiners of California), in a book kept by the clerk for such purpose, and called a register of dentists, his name, age, office address, the date and number of his license to practice

dentistry, and the date of such registration, which registration he shall be entitled to make only upon showing the county clerk his license or a copy thereof certified by the secretary of the board over its seal, and upon making and filing an affidavit stating his name, age, birthplace, the number of his license and the date of its issue, that he is the identical person named in the license; that before receiving the same he complied with all the preliminary requirements of this statute (and the rules of the board of dental examiners as to the terms and the amount of study and examination); that no money other than the fees prescribed by this statute (and said rules), was paid directly or indirectly for such license, and that no fraud, misrepresentation or mistake in a material regard was practiced, employed or occurred by any person in order that such license should be conferred. Said person need not personally register before the county clerk but may make the said affidavit before any officer authorized by law to administer oaths, and which affidavit together with the other information and license, or the certified copy therefor as afore provided, shall be forwarded to the said county clerk, who shall act in the same manner as if the party was personally present. The county clerk shall preserve such affidavits in a bound volume and shall issue to every licentiate duly registering and making such affidavit, a certificate of registration in his county, which shall include a transcript of the registration. Such transcript and license may be offered as primary evidence in all courts of the facts therein stated. A copy of such certificate of registration shall be sent by the county clerk to the secretary of the board within five days after it is made. The county clerk's fees for taking such registration and affidavit and issuing such certificate of registration shall be one dollar. A practicing dentist having registered a lawful authority to practice dentistry in one county of the state and removing such practice or part thereof to another county shall show or send by registered mail to the clerk of such other county his certificate of registration, if such certificate clearly shows that the original registration was on an authority issued by the board of dental examiners, or if the certificate of registration itself is indorsed by the secretary of the board of dental examiners as entitled to registration, the clerk shall thereupon register the applicant in the register of dentists of the latter county on receipt of a fee of fifty cents, and shall stamp or indorse on such certificate of registration the date and his name preceded by the words "registered also in county," and return the certificate of registration to the applicant. Any lawfully registered person who shall thereafter change his or her name according to law shall register the new name with a marginal note of the former name with the clerk of the county or counties where he or she is practicing. The clerk shall forthwith notify the secretary of the board of such change. Any county clerk who knowingly shall make or suffer to be made upon the register of dentists kept in his office any entry other than that provided for in this act, shall be liable to a penalty of fifty dollars, to be recovered by and paid to the said board of dental examiners in a suit in any court having jurisdiction. Any failure, neglect or refusal on the part of any person holding such license to register the same with the clerk of said county as above directed for a period of six months after the issuance thereof shall ipso facto work a forfeiture of his or her license, and it shall not be restored except upon the written application and payment to said board of twenty-five dollars. Any suspension, revocation or reinstatement of a license shall with the date thereof be forthwith noted by the county clerk on the margin of the registration thereof upon receipt of notice from the secretary of the board.

License to practice. Fee. Annual license tax.

§ 9. Before any person can practice dentistry in this state, he shall obtain a license to do so from the board of dental examiners. Each application for license shall be accompanied by a fee of twenty-five dollars, which shall in no case be refunded, except

that in the case of applicants requiring examination the said fee shall be refunded if the applicant shall be found ineligible to take such examination. Such license shall remain in force until the following first day of May and thereafter so long as the holder thereof shall comply with the provisions of this section relating to an annual tax but not otherwise, and notwithstanding the payment of such tax such license may at any time be forfeited or revoked for a violation of the further requirements of this act. To provide a fund for the enforcement of the provisions of this act every person holding a license to practice dentistry in this state without exception shall pay an annual license tax for the year commencing with the first day of May next following the issuance of such license and annually thereafter. Such payment to be effective shall be made prior to the commencement of the year for which the same accrues and the receipt of the secretary of the board shall be indispensable evidence that the same has been made. The failure, neglect or refusal of any person who was a regularly licensed dentist to pay in advance said annual tax of two dollars during the time his or her license remained in force shall ipso facto work a forfeiture of his or her license, and it shall not be restored except upon a written application therefor and the payment to said board of twenty-five dollars, except that such person shall not be required to submit to any examination.

Disposition of fines. Disbursements. Revolving fund.

§ 10. All fines, penalties and forfeitures including the examination fee, imposed or collected by the board under any of the foregoing provisions of this act shall be paid to the secretary of the board. All fines and penalties imposed or collected in any court for violations of any of the provisions of this act shall be paid by such court to such secretary. The secretary shall on or before the tenth day of each month pay to the state treasury and report to the state controller all fines, penalties and forfeitures received for violations of this act, together with all examination fees, renewal and license fees received by him prior to the date of such report and payment. All funds received by the state treasurer from the secretary of said board shall be placed in a fund to be known as the state dentistry fund, which is hereby created. All disbursements by the board made in the transaction of its business and in the enforcement of this act shall be paid out of said fund upon claims to be presented and audited in the manner usual with other claims against the state; provided, that as to the amount of seven hundred dollars of said fund the same shall constitute a revolving fund and may be drawn upon the warrant of the president and secretary of the said board without being audited in the usual manner, in cases of emergency or where cash advances are necessary, but after the sum of seven hundred dollars has been so expended no further warrant shall be drawn on said revolving fund until expenditures previously made from said revolving fund shall be substantiated by vouchers and itemized statements and audited; and provided, further, that all expenditures from said revolving fund shall at the end of each fiscal year, or at any other time when demand therefor is made by the board of control or by the state controller, be so substantiated and audited unless previously done.

Practicing dentistry defined.

§ 11. Any person shall be understood to be practicing dentistry within the meaning of this act who shall (1) by card, circular, pamphlet, newspaper, or in any other way advertise himself as a dentist, or (2) who shall, for a fee, salary or reward, paid directly or indirectly either to himself or to some other person, perform an operation of any kind upon, or treat diseases or lesions of the human teeth or jaws, or correct malimposed positions thereof, or (3) in any way indicate that he will perform by himself or his agents or servants any operations upon the human teeth or jaws, or (4) make an examination of, with intent to perform or cause to be performed any

operation on the human teeth or jaws, or (5) who manages or conducts as manager, proprietor, conductor, or otherwise a place where dental operations are performed; but nothing in this act contained shall prohibit bona fide students of dentistry from operating in the clinical departments or the laboratory of a reputable dental college, or an unlicensed person from performing merely mechanical work upon inert matter in a dental laboratory or a licensed physician from practicing oral surgery.

Penalty for selling certificates, etc. False use of "D. D. S."

§ 12. Any person, company or association shall be guilty of a misdemeanor, and upon conviction thereof shall be punished, by imprisonment in the county jail not less than ten (10) days nor more than one (1) year, or by a fine of not less than one hundred dollars nor more than one thousand five hundred dollars, or by both such fine and imprisonment, who (1) shall sell or barter or offer to sell or barter any dental degree or any certificate or transcript, made or purporting to be made, pursuant to the laws regulating the license and registration of dentists; or (2) shall purchase or procure by barter any such diploma, certificate or transcript, with intent that the same shall be used as evidence of the holder's qualification to practice dentistry, or in fraud of the laws regulating such practice; or (3) shall with fraudulent intent, alter in a material regard any such diploma, certificate or transcript; or (4) shall use, attempt or cause to be used any such diploma, certificate or transcript, which has been purchased, fraudulently issued, counterfeited or materially altered, either as a license to practice dentistry, or in order to procure registration as a dentist; or (5) shall within ten days after demand made by the secretary of the board, fail to furnish to said board the name and address of all persons practicing or assisting in the practice of dentistry in the office of said person, company or association, at any time within sixty days prior to said notice, together with a sworn statement showing under and by what license or authority said person, company or association, and said employees are or have been practicing dentistry, but such affidavit shall not be used in any prosecution under this section, and any person shall be guilty of a misdemeanor and punishable as in this section above provided who (1) shall assume the degree of "doctor of dental surgery" or "doctor of dental medicine," or shall append the letters "D.D.S." or "D.M.D." to his or her name not having duly conferred upon him or her, by diploma from a recognized dental college or school legally empowered to confer the same, the right to assume said title; or shall assume any title, or append any letters to his or her name, with the intent to represent falsely that he or she has received a dental degree or license; or (2) shall in an affidavit, required of an applicant for examination, license or registration, under this act, willfully make a false statement in a material regard; or (3) shall engage in the practice of dentistry without causing to be displayed in a conspicuous manner and in a conspicuous place in his or her office the name of each and every person employed in the practice of dentistry therein, together with the word mechanic after the name of each unlicensed person employed; or (4) is practicing dentistry in the state without a license, or whose license has been revoked or suspended, or (5) shall under any false, assumed or fictitious name, either as an individual, firm, corporation or otherwise or any name other than the name under which he is licensed, practice, advertise or in any other manner indicate that he is practicing or will practice dentistry. Nothing in this section contained shall be held to prohibit the conferring of degrees and the bestowing of diplomas, by reputable dental colleges of this state, which have been indorsed by the board of dental examiners of California.

Revocation of license.

§ 13. Any dentist may have his license revoked or suspended by the board of dental examiners for any of the following causes:

(1) His conviction of a felony or misdemeanor involving moral turpitude, in which

case the record of conviction or a certified copy thereof, certified by the clerk of the court, or by the judge in whose court the conviction is had, shall be conclusive evidence.

(2) The rendition of a final judgment against any such dentist in a court of competent jurisdiction upon a cause of action alleging grossly unskillful or negligent dental practice.

(3) For unprofessional conduct or for gross ignorance or inefficiency in his profession. Unprofessional conduct is hereby defined to be: The employment of persons known as cappers or steerers, to obtain business; the obtaining of any fee by fraud or misrepresentation; willfully betraying professional secrets, employing directly or indirectly any student or any suspended or unlicensed dentist to perform operations of any kind, or to treat lesions of the human teeth or jaws, or correct malimposed formations thereof; aiding or abetting any unlicensed person to practice dentistry unlawfully; habitual intemperance; gross immorality; the use of any false, assumed or fictitious name, either as an individual, firm, corporation or otherwise or any name other than the name under which he is licensed, practice, advertise or in any other manner indicate that he is practicing or will practice dentistry.

Proceedings to revoke license.

§ 14. The proceedings to revoke or suspend any license under the first subdivision hereof, must be taken by the board on the receipt of a certified copy of the record of conviction. The proceedings under the second subdivision hereof may be taken upon the information of another. All accusations must be in writing, verified by some party familiar with the facts therein charged, and three copies thereof must be filed with the secretary of the board. Upon receiving the accusation the board shall, if it deem the complaint sufficient, make an order setting the same for hearing, at a specified time and place, and the secretary shall cause a copy of the order and of the accusation to be served upon the accused at least ten days before the day appointed in the order for said hearing. The accused must appear at the time appointed in the order and answer the charges and make his defense to the same, unless for sufficient cause the board assign another day for that purpose. If he does not appear the board may proceed and determine the accusation in his absence. If the accused plead guilty or refuse to answer the charges, or upon the hearing thereof the board shall find them or any of them true, it may proceed to a judgment revoking his license or suspending it. The board and the accused may have the benefit of counsel, and the board shall have power to administer oaths, take the deposition of witnesses in the manner provided by law in civil cases, and to compel them to attend before it in person the same as in civil cases, by subpoena issued over the signature of the secretary and the seal of the board and in the name of the people of the state of California. The board shall have power in proper cases to authorize the payment of fees and traveling expenses of necessary witnesses required to appear before the board and actually examined in any proceeding properly before it. Upon the revocation of any license, the fact shall be noted upon the records of the board of dental examiners and the license shall be marked as canceled, upon the date of its revocation. Written notice of such suspension or revocation shall be mailed by the secretary of the board to the county clerk of each county in which such license is then registered.

Complaint for violation of act.

§ 15. The board of dental examiners, or any member or officer thereof, may prefer a complaint for violation of this act, or any part thereof, before any court of competent jurisdiction, and may by its officers, counsel and agents, assist in presenting the law or facts at the trial. It shall be the duty of the district attorney of each county

in this state to prosecute all violations of the aforesaid provisions of this act in their respective counties in which such violations occur.

§ 16. All acts and parts of acts in conflict with this act are hereby repealed.

1. Constitutionality—Special legislation.—The act is not local or special legislation within the meaning of section 25, article IV of the constitution.—*People v. Keseling*, 35 Cal. App. 501, 170 Pac. 627.

2. Same—Question of fact.—Whether one is guilty of aiding and abetting an unlicensed person to practice dentistry is a question of fact, and the act is not invalid because it leaves the determination of that fact to the board of dental examiners.—*Lassen v. Board of Dental Examiners*, 24 Cal. App. 767, 142 Pac. 505.

3. Same—Power of legislature.—The legislature had power to define what it meant by the phrase "practicing dentistry" in declaring what acts it intended to make unlawful.—*People v. Fortch*, 13 Cal. App. 770, 110 Pac. 823.

4. Same—Impairment of the obligation of contracts.—Section 14 of the act of 1901, as amended in 1909, is not violative of section 16, article I of the constitution.—*In re Victor*, 27 Cal. App. 73, 148 Pac. 975.

5. Same—Levy of tax on nontaxable property.—Section 14 of the act of 1901, as amended in 1909, is not violative of section 1, article XIII of the constitution.—*In re Victor*, 27 Cal. App. 73, 148 Pac. 975.

6. Same—Local and special taxation.—Section 14 of the act of 1901, as amended in 1909, is not violative of subdivision 10, section 25, article IV, of the constitution.—*In re Victor*, 27 Cal. App. 73, 148 Pac. 975.

7. Same—Special law for the punishment of a misdemeanor.—Section 14 of the act is not violative of subdivision 2, section 25, article IV of the constitution.—*In re Victor*, 27 Cal. App. 73, 148 Pac. 975.

8. Same—Title of act is broad enough to cover the subject of the payment of annual license fee.—*In re Victor*, 27 Cal. App. 73, 148 Pac. 975.

9. Same—Special privileges.—The act is not unconstitutional on the ground that by exempting previous practitioners of dentistry it confers special privileges and immunities upon them.—*Ex parte Whitley*, 144 Cal. 167, 1 Ann. Cas. 13, 77 Pac. 879.

10. Same—Legislative power to determine qualifications of dentists for admission to practice.—The legislature is empowered to determine the qualifications to be required of those admitted to practice dentistry in the state, and to fix any reasonable standard for determining such qualifications, and to vest in a state board of dental examiners the power to determine whether particular dental colleges are reputable.—*Ex parte Whitley*, 144 Cal. 167, 1 Ann. Cas. 13, 77 Pac. 879.

11. Same—Police power.—The acts of 1885 and 1901 are held to be a constitutional and valid exercise of the police power.—*Ex parte Whitley*, 144 Cal. 167, 1 Ann. Cas. 13, 77 Pac. 879.

12. The act of 1901 is held to be consti-

tutional on all the points raised in the case of *Ex parte Whitley*, 144 Cal. 167, 1 Ann. Cas. 13, 77 Pac. 879; *Ex parte Hornef*, 154 Cal. 355, 97 Pac. 891.

13. Same—Special legislation.—The act is not unconstitutional as obnoxious to subdivision 3, section 25, article IV of the constitution.—*People v. Keseling*, 35 Cal. App. 501, 170 Pac. 627.

14. Same—Unreasonable classification—Constitutionality.—The act is not unconstitutional on the ground that it is discriminatory.—*People v. Keseling*, 35 Cal. App. 501, 170 Pac. 627.

15. Jurisdiction of police court.—The police court of San Francisco is vested by the charter with jurisdiction of violations of the city and county ordinances, and has no jurisdiction of a violation of the dentistry act.—*People v. Fortch*, 13 Cal. App. 770, 110 Pac. 823.

16. Superior court—Original jurisdiction.—The superior court has original jurisdiction of prosecutions for violation of the dentistry act.—*People v. Fortch*, 13 Cal. App. 770, 110 Pac. 823.

17. Same.—Under section 5 of article VI of the constitution the superior court has jurisdiction of an information charging a violation of the dentistry act as amended in 1909.—*People v. Fortch*, 13 Cal. App. 770, 110 Pac. 823.

18. Construction of act.—The words "any person" in section 14 of the act of 1901, as amended in 1909, is to be construed as limited by the proviso of section 1 of the act exempting persons who were lawfully practicing dentistry when the original act went into effect.—*In re Victor*, 27 Cal. App. 73, 148 Pac. 975.

19. Same.—Section 1 of the act of 1901 does not have effect of limiting the application of subdivision 10 of section 19 to persons who first commenced to practice dentistry in the state after the act became a law.—*Ex parte Hornef*, 154 Cal. 355, 97 Pac. 891.

20. Same—Employment of unlicensed practitioner.—Upon the hearing before the board of dental examiners of an accusation of unprofessional conduct in knowingly employing an unlicensed practitioner in his office for the purpose of practicing dentistry therein, the burden is upon the accused to prove that the employee had been licensed as a dentist at the time of the employment if such was a fact.—*Anderson v. Board of Dental Examiners*, 27 Cal. App. 336, 149 Pac. 1006.

21. Repeal of prior act.—Section 25 as to the time of taking effect of the entire act, including the repeal of the prior act, and there was no interregnum in the law between such repeal and the taking effect of the new act, so as to permit an unlicensed person to practice dentistry.—*People v. Keseling*, 35 Cal. App. 501, 170 Pac. 627.

22. Annual license tax.—Under the provision of section 1, as amended in 1909, all dentists are required to pay the license tax, without regard to when or how they became entitled to practice.—*In re Victor*, 27 Cal. App. 73, 148 Pac. 975.

23. Revocation of license.—The provisions of section 21½ of the act of 1901, are not in conflict with the provisions of section 14, as amended in 1909.—*In re Victor*, 27 Cal. App. 73, 148 Pac. 975.

24. Judicial functions of board of examiners.—The board of dental examiners does not exercise judicial functions in the sense prohibited by the constitution.—*Ex parte Whitley*, 144 Cal. 167, 1 Ann. Cas. 13, 77 Pac. 879.

The case of Van Vleck v. Dental Examiners, 5 Cal. Unrep. 636, 48 Pac. 223, held not to be authority, because a rehearing had been granted and the case thereafter dismissed.—*Ex parte Whitley*, 144 Cal. 167, 1 Ann. Cas. 13, 77 Pac. 879.

25. Same — Examination.—The duties of the board of dental examiners under the act of 1885 is judicial, and their finding that the result of an examination is unsatisfactory is final.—*Van Vleck v. Dental Examiners*, 5 Cal. Unrep. 636, 48 Pac. 223.

26. Same — Endorsement of diploma.—The duties of the board of dental examiners under section 5 of the act of 1885, as to endorsement of diplomas are judicial, and their action in finding a diploma unsatisfactory is final.—*Van Vleck v. Dental Examiners*, 5 Cal. Unrep. 636, 48 Pac. 223.

27. Judicial notice.—The board of dental examiners may take judicial notice of its records for the purpose of ascertaining whether a license was ever issued to a person alleged to have been employed wrongfully as a practitioner in a dental office.—*Anderson v. Board of Dental Examiners*, 27 Cal. App. 336, 149 Pac. 1006.

28. Information — Exceptions must be negated only when the exception or proviso is so incorporated with the definition of the offense as to constitute a part of it.—*Ex parte Hornef*, 154 Cal. 355, 97 Pac. 891.

29. Same—Right to practice at time of passage of act need not be negated.—*Ex parte Hornef*, 154 Cal. 355, 97 Pac. 891.

30. Same.—Information under act of 1901 is sufficient where it alleges, in effect, that the defendant was guilty of "practicing dentistry in the state without a license."—*Ex parte Hornef*, 154 Cal. 355, 97 Pac. 891.

31. Same.—It is not necessary for an information charging the practice of dentistry without a license to traverse the exceptions provided in the act.—*People v. Keseling*, 35 Cal. App. 501, 170 Pac. 627.

32. Same—Payment of fee.—An information charging the practice of dentistry without a license need not charge that the fee was paid by the person upon whom the work was performed.—*People v. Keseling*, 35 Cal. App. 501, 170 Pac. 627.

33. Accomplices.—Persons employed to get evidence for the state and who seek and submit to the services of a person charged with a violation of practice of dentistry act

are not accomplices within the meaning of § 1111, Penal Code, and corroboration of their testimony is not required.—*People v. Keseling*, 35 Cal. App. 501, 170 Pac. 627.

34. Testimony of feigned accomplices, employed by officers of the state to obtain evidence against one charged with criminal acts is sufficient to sustain a conviction though uncorroborated.—*People v. Keseling*, 35 Cal. App. 501, 170 Pac. 627.

35. Verification of accusation of dentist.—The phrase, "except as to such matters therein stated on information and belief," in such verification is held to be surplusage in a verification held sufficient, by reason of the fact that no allegations were made on information and belief therein.—*Lassen v. Board of Dental Examiners*, 24 Cal. App. 767, 142 Pac. 505.

36. Amendment of judgment to correct clerical error.—A judgment of conviction for practicing dentistry without a license which by a clerical mistake recites a conviction for practicing "medicine" without a license may be amended by the trial court to correct such mistake, and the amended judgment is not a new judgment.—*Ex parte Hornef*, 154 Cal. 355, 97 Pac. 891.

37. Instruction — Practicing dentistry.—It was not error to give as an instruction to the jury the language of the statute defining what is meant by the phrase "practicing dentistry" in the act.—*People v. Forth*, 13 Cal. App. 770, 110 Pac. 823.

38. Mandamus is not available to one aggrieved by the refusal of the board of dental examiners to endorse a dental diploma.—*Van Vleck v. Dental Examiners*, 5 Cal. Unrep. 636, 48 Pac. 223.

Cited in support of a decision to the same effect as to the board of medical examiners.—*Raaf v. State Board*, 11 Idaho 718, 84 Pac. 36.

As to practitioner of medicine or surgery, see 28 L. R. A. 139; 45 L. R. A. 269.

As to clearness of act providing for examination of, see 49 L. R. A. 695.

As to delegating appointment of examiners in state dental association, see 51 L. R. A. 748.

As to legislative regulation; exercise of police power, see brief in 51 L. R. A. 748.

"May" construed as "must" in action for examination.—See 49 L. R. A. 635.

Mandamus to compel dental examiners to indorse diploma.—See 44 L. R. A. 635.

Regulating qualifications—as to, see brief in 49 L. R. A. 696.

As to discrimination in allowing dental students to practice, see 6 L. R. A. 119.

As to discrimination in favor of those practicing in same place for certain time, see 6 L. R. A. 709.

As to injunction against practice of, see 20 L. R. A. 432.

As to insufficiency of allegations as to dental college, see 44 L. R. A. 635.

As to judicial power to review action of board in respect to license of dentist, see note, 20 L. R. A. 355.

Requiring examination of applicants to

practice except graduates of regular college of dentistry.—See 49 L. R. A. 695.

Requiring diploma as condition of granting license.—See 6 L. R. A. 119.

Unconstitutional.—"Statute requiring examination and license as prerequisite to ownership of dental office unconstitutional."—See 3 Mich. L. Rev. 465.

STATE DENTAL SURGEON.

ACT 1227—An act to create the office of state dental surgeon, prescribing his duties, fix his manner of appointment, salary and term of office, and to make an appropriation for the expenses of his office.

History: Approved April 16, 1909, Stats. 1909, p. 947. Amended June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1430.

Office of state dental surgeon created.

§ 1. The office of state dental surgeon is hereby created. It shall be the duty of the governor, on or before the tenth day July, 1909, to appoint a skilled dental surgeon for the state of California to fill said office of state dental surgeon, who at the date of such appointment shall be a graduate in good standing of a recognized college of dental surgery, legally qualified to practice as such in this state, and shall hold said office for the period of four years from and after the date of qualification; provided, however, when a vacancy occurs in the office of state dental surgeon from whatever cause the governor shall fill by appointment said term for the unexpired part thereof only. The salary of said state dental surgeon shall be thirty-six hundred dollars per annum, and shall be paid at the same time and in the same manner as are the salaries of other state officers. [Amendment of June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1430.]

Duties.

§ 2. The duties of the state dental surgeon shall be to perform the dental services for the inmates of the various state hospitals. Said dental services shall be performed in an efficient and durable manner as possible, and shall consist of cement and amalgam fillings, treatment and extracting teeth, inserting artificial teeth on vulcanite plates, and perform such oral surgery operations as may be referred to him by the superintendents of the various state hospitals. No services shall be performed by the state dental surgeon for any officer or employee of any state institution, except in the case of extreme emergency.

Must visit state hospitals.

§ 3. The state dental surgeon must visit every state hospital at least twice in each year, and shall at all times be under the supervision of the California state commission in lunacy.

Appropriation.

§ 4. For the purpose of carrying out the provisions of this act the sum of three thousand five hundred (\$3,500) dollars is hereby appropriated to pay the traveling expenses of the state dental surgeon to the various state hospitals and for the purchase of operating and extracting instruments and such apparatus as may be needed for the making of plates, and such other expenses as may be required in the discharge of his duties.

Time of taking effect.

§ 5. This act shall be in force and effect from and after July 1, 1909.

DEPARTMENT OF AGRICULTURE.

See tit. "Agriculture."

DEPARTMENT OF ENGINEERING.

See tit. "State Engineering."

DESCENT AND DISTRIBUTION.

See Kerr's Cyc. Civil Code, §§ 1386, et seq.

CHAPTER 89.**DETECTIVES.**

Reference: Regular and special police, see tit. "Police."

CONTENTS OF CHAPTER.**ACT 1235. PRIVATE DETECTIVES AND DETECTIVE AGENCIES.****PRIVATE DETECTIVES AND DETECTIVE AGENCIES.**

ACT 1235—An act to license and regulate the business of private detectives and detective agencies.

History: Approved June 7, 1915. In effect August 8, 1915. Stats. 1915, p. 1253.

License for private detective agencies.

§ 1. No person, firm, association, co-partnership, or corporation shall engage in the business of private detective for hire or reward or advertise such business to be that of detective or of conducting a detective agency without having first obtained a license so to do from the state board of prison directors of the state of California in the manner hereinafter provided. Nor shall any person, firm, association, co-partnership or corporation engage for hire and reward, or hire or reward, in the business of furnishing or supplying information as to the personal character of any person or firm, or as to the character or kind of the business and occupation of any person, firm, or corporation, or own or conduct a bureau or agency for the above-mentioned purpose without having first obtained a license so to do from the state board of prison directors of the state of California in the manner hereinafter provided. Nothing contained in this act, however, shall apply to the business of obtaining and furnishing information as to the financial rating of persons, firms, or corporations.

Application to prison directors.

§ 2. Every person who desires to conduct, either as an individual or as manager for a firm, association, co-partnership, or corporation, the business of detective or detective agency or of furnishing or supplying information as to the personal character of any person or firm or as to the character or kind of the business and occupation of any person, firm, or corporation, shall present to the state board of prison directors and file in their office a written application which shall state the age, residence, present and previous, occupation of such applicant and the name of the city, town or village where the principal place of business is to be located and such further facts as will tend to show the good character, competency and integrity of such applicant. Such application shall be duly signed and verified by the applicant and shall be approved by not less than five reputable freeholders of the county where such applicant resides or where it is proposed to conduct such business, which approval shall be signed by such freeholders and acknowledged by them before an officer authorized to take acknowledgments of deeds. The state board of prison directors when satisfied, from examination of such application and such further inquiry and investigation as they shall deem proper, that the applicant is a person of good character, competency and integrity, shall issue and deliver to such applicant a license entitling the applicant to conduct such business for a period of five years next ensuing upon the applicant's paying to the state board of prison directors for the use of the state a license fee of ten dollars per annum and shall be payable in advance on September 1, 1915, and annually thereafter, and upon his executing, delivering,

and filing in the office of the state board of prison directors a surety bond to be executed by such applicant with one or more sureties in the sum of two thousand dollars, conditioned for the faithful and honest conduct of such business by such applicant, which bond as to its form, execution and sufficiency of the surety must be approved by the said state board of prison directors. Such bond shall be taken in the name of the people of the state of California, and every person injured by the wilful or malicious or wrongful act of the principal may bring an action on said bond in his own name to recover damages suffered by reason of said wilful or malicious or wrongful act. The license granted pursuant to this act shall be revocable at any time by the state board of prison directors for cause shown.

Not applicable.

§ 3. Nothing in this act shall apply to employees of such duly licensed private detective or detective agencies for whose good conduct in the business, however, the employers shall be responsible, or to any detective or officer belonging to the police force of the state, or any county, city and county, city, town or village thereof appointed or elected by due authority of law.

Penalty.

§ 4. Any person violating any of the provisions of this act shall be guilty of a misdemeanor and for the enforcement of this act the state board of prison directors of the state of California are hereby authorized to expend annually any necessary moneys received as license fees in the employment of an agent or agents, and of other proper measures to aid in the detection or prosecution of all violations of this act.

Authority of license.

§ 5. A license obtained from the said board of prison directors by any person or persons, firm, association, co-partnership or corporation mentioned in section one of this act, shall be sufficient to give the said person or persons, firm, association, co-partnership or corporation obtaining said license, their employees or operatives, the authority to act under said license as a detective or uniformed patrolman or watchman in any county, city and county, city or town in this state.

Acts superseded.

§ 6. This act shall supersede and take the place of any rule, regulation or ordinance of any county, city and county, city or town in the state of California conflicting herewith.

1. **Municipal affair—Municipal ordinance supersedes state law.**—The establishment of a private patrol service or system over a designated area within the corporate limits of the city of Oakland is strictly a municipal affair and the private detective act of 1915, must yield to a city ordinance so far as their conflicting provisions are concerned.—In re Hitchcock, 34 Cal. App. 111, 166 Pac. 849.

DIABLO CREEK.

See Kerr's Cyc. Political Code, § 2349.

DINUBA.

See Act 3094, note.

DISSECTION.

See Kerr's Cyc. Political Code, §§ 3093, et seq.

DISTRICT ATTORNEY.

References: Bond, compensation, duties, oath, qualifications, etc., as county officer, in general, see Kerr's Cyc. Political Code, tit. "County Government."

Duty, etc., in particular instances, see Kerr's Cyc. Political Code, particular title.

Duty in criminal prosecutions, in particular instances, see Kerr's Cyc. Penal Code, particular title.

Duty as to enforcement of particular acts, see particular title.

CHAPTER 90.**DISTRICT COURT OF APPEAL.**

References: Admission to bar, examination of applicants, see Kerr's Cyc. Code Civil Procedure, § 276, et seq.

Appellate jurisdiction, see Kerr's Cyc. Code Civil Procedure, §§ 52, 52a.

Creation of court, see article VI, § 4 of the constitution.

Districts, appellate, see Kerr's Cyc. Political Code, § 135.

Officers, fees and compensation, etc., see Kerr's Cyc. Political Code, §§ 758, et seq.

Opinions of, see §§ 16, 24, article VI, of the constitution.

CONTENTS OF CHAPTER.

ACT 1252. PROPER ACCOMMODATIONS FOR COURT AND LIBRARY, SECOND DISTRICT.

ACCOMMODATIONS FOR COURT AND LIBRARY OF SECOND APPELLATE DISTRICT.

ACT 1252—An act to authorize the justices of the district court of appeal for the second appellate district to provide proper rooms for the accommodation of the court and its officers and library, and declaring the expenses thereof to be an annual charge against the general fund in the state treasury.

History: Approved May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1239. Former act of March 21, 1907, Stats. 1907, p. 846, superseded by present act.

Rooms and accommodations for second district court of appeal.

§ 1. The justices of the district court of appeal for the second appellate district are hereby authorized to provide proper rooms in which to hold court and for the proper accommodation of its officers and library, and the presiding justices of the two divisions of said district court of appeal are hereby authorized to enter into any contract or lease with reference thereto, approved by at least two justices of each division of said court; and the expenses thereof, certified to be correct by at least two justices of each division of said court, shall be paid out of the state treasury; and for such expenses a sufficient sum shall be annually appropriated out of any funds in the state treasury not otherwise appropriated.

Acts repealed.

§ 2. All acts and parts of acts inconsistent herewith are hereby repealed.

DITCHES.

See tit. "Canals"; "Drainage"; and Kerr's Cyc. Civil Code, §§ 842, 843.

DIVORCES.

See Kerr's Cyc. Civil Code, § 82, et seq.; Kerr's Cyc. Code Civil Procedure, §§ 76, 125, 137, 426a, 940, 963, 1019, 2079.

DIXON.

See Act 3094, note.

DOGS.

See tits. "Cruelty to Animals"; "Sheep"; Kerr's Cyc. Civil Code, § 3341; Kerr's Cyc. Penal Code, § 491.

DONNER MONUMENT.

See tit. "California Pioneers."

DORRIS.

See Act 3094, note.

CHAPTER 91.**DORRIS BRIDGE.**

References: Alturas, Act 3094, note.

CONTENTS OF CHAPTER.

ACT 1275. CHANGE OF NAME TO ALTURAS.

ACT 1275—An act to change the name of Dorris Bridge to Alturas.

History: Approved March 28, 1876, Stats. 1875-76, p. 513.

CHAPTER 92.**DRAINAGE.****CHAPTER 92.****DRAINAGE DISTRICTS.**

References: Conversion of drainage districts into irrigation districts, see tit. "Irrigation Districts," "Irrigation Act of 1919."

Drainage construction fund, see tit. "Funds."

Drainage of Lake Earl, see tit. "Lake Earl."

Health, protection of, from pollution by drainage, see tit. "Public Health."

Irrigation districts, see tit. "Irrigation."

Levee districts, see tit. "Levee Districts."

Overflow districts, see tit. "Overflow Districts."

Protection districts, see tit. "Protection Districts."

"Reclamation Board Act," see tit. "Sacramento and San Joaquin District."

Reclamation districts, see tit. "Reclamation Districts."

Sacramento and San Joaquin Drainage District, see tit. "Sacramento and San Joaquin Drainage District."

Sale of public lands uncovered by drainage, see Kerr's Cyc. Political Code, §§ 3493m, et seq.

State engineering in connection with drainage, see tit. "State Engineering."

Storm water districts, see tit. "Storm Water Districts."

CONTENTS OF CHAPTER.

ACT 1280. DRAINAGE COMMISSIONERS, DISTRICTS AND FUND.

1281. DRAINAGE FOR AGRICULTURAL, SWAMP AND OVERFLOWED LANDS.

1282. DRAINAGE DISTRICT ACT OF 1885.

1283. DRAINAGE DISTRICT IMPROVEMENT ACT OF 1919.

1284. DRAINAGE DISTRICT ACT OF 1903.

1285. VALIDATE BONDS OF BELLEVUE-WILFRED DRAINAGE DISTRICT.

1286. VALIDATE WORK ON BUTTE COUNTY DRAINAGE DISTRICT No. 1.

1287. VALIDATE PROCEEDINGS IN BUTTE COUNTY DRAINAGE DISTRICT No. 100.

1288. CREATE KNIGHTS LANDING RIDGE DRAINAGE DISTRICT.

1289. BOUNDARIES OF KNIGHTS LANDING RIDGE DRAINAGE DISTRICT.

1290. VALIDATING FORMATION OF LOS ANGELES COUNTY DRAINAGE DISTRICT IMPROVEMENT No. 1.

1291. VALIDATING FORMATION OF LOS ANGELES COUNTY DRAINAGE DISTRICT IMPROVEMENT No. 3.

1292. VALIDATING FORMATION AND DETERMINING BOUNDARIES OF MERCED COUNTY DRAINAGE IMPROVEMENT DISTRICT No. 1.

1293. VALIDATING FORMATION AND DETERMINING BOUNDARIES OF MERCED COUNTY DRAINAGE IMPROVEMENT DISTRICT No. 2.

1294. SACRAMENTO RIVER DRAINAGE DISTRICT.

1295. YOLO BASIN DRAINAGE DISTRICT.

1296. YOLO AND COLUSA DRAINAGE DISTRICT.

DRAINAGE COMMISSIONERS, DISTRICTS AND FUND.

ACT 1280—An act to promote drainage.

History: Approved April 23, 1880, Stats. 1880, p. 123.

1. Constitutionality.—Title of act is violative of section 24, article IV, of the constitution providing that every act shall embrace but one subject, which shall be expressed in the title.—*People v. Parks*, 58 Cal. 624; *Doane v. Weil*, 58 Cal. 334.

2. Where a subject embraced in the title of the act is so conjoined inseparably with other subjects not embraced in the title that it is impossible to disjoin them, the court can not adjudge one void and the other valid, as it might do otherwise under section 24, article IV, of the constitution.—*People v. Parks*, 58 Cal. 624; *Doane v. Weil*, 58 Cal. 334.

3. Same—"Other operations."—The phrase "other operations" has no clear meaning in the act, and so many subjects not expressed in the title may be concealed under it that its presence renders it obnoxious to section 24, article IV of the constitution.—*People v. Parks*, 58 Cal. 624; *Doane v. Weil*, 58 Cal. 334.

4. Same—"Storage of debris" and "Promotion of drainage" of a district are subjects so essentially different as to render the act obnoxious to the provisions of section 24, article IV of the constitution.—*People v. Parks*, 58 Cal. 624; *Doane v. Weil*, 58 Cal. 334.

5. The storage of debris is a private enterprise and the legislation has no power to impose taxes for such a purpose, as it has for the promotion of drainage which is a public purpose.—*People v. Parks*, 58 Cal. 624; *Doane v. Weil*, 58 Cal. 334.

6. Same — Two heterogeneous subjects which can not be segregated are embraced in the title, and the title does not express all the subjects of legislation embodied in the act, and the act is therefore obnoxious to the provisions of section 24, article IV of the constitution and is invalid.—*People v. Parks*, 58 Cal. 624; *Doane v. Weil*, 58 Cal. 334.

7. Same—Delegation of legislative power.—The act is a delegation of legislative power to the drainage commissioners, and is therefore obnoxious to the provisions of section 1, article III of the constitution.—*People v. Parks*, 58 Cal. 624; *Doane v. Weil*, 58 Cal. 334.

7a. Delegation of legislative power to an executive officer.—The power of the county surveyor under the act are ministerial and not legislative, and the act is not violative of section 1, article III of the constitution.—*Holley v. Orange County*, 106 Cal. 420, 39 Pac. 790.

8. Same—Power of taxation.—The act is void because it authorizes duplicate and triplicate taxation for the same purpose upon the same property in territory which has not been made a special taxing district, and is void as violative of that equality and uniformity of taxation required by the constitution.—*People v. Parks*, 58 Cal. 624; *Doane v. Weil*, 58 Cal. 334.

9. Same—Local taxation.—The act authorizes a quasi municipal corporation to levy taxes for the general public benefit, without constitutional power to do so (§ 12, article XI, constitution), and is for that reason, void.—*People v. Parks*, 58 Cal. 624; *Doane v. Weil*, 58 Cal. 334.

10. Some—Act of March 10, 1885, Stats. 1885, p. 78, appropriating money to pay warrants for claims incurred under the act of April 23, 1880, is constitutional and valid, notwithstanding the latter act has been declared unconstitutional by the court.—*Miller v. Dunn*, 72 Cal. 462, 1 Am. St. Rep. 67, 14 Pac. 27. See *Miller v. Dunn*, 2 Cal. Unrep. 673, 11 Pac. 604, department decision, overruled.

11. Repeal of act by county government act.—The act is not repealed by the county government act of 1893.—*Holley v. Orange County*, 106 Cal. 420, 39 Pac. 790.

DRAINAGE OF AGRICULTURAL, SWAMP AND OVERFLOWED LANDS.

ACT 1281—An act to provide a system of drainage for agricultural, swamp, and overflowed lands.

History: Approved March 3, 1881, Stats. 1881, p. 15. Amended March 27, 1897, Stats. 1897, p. 220.

See later act, Act 1283.

1. Constitutionality—Private use.—The act is unconstitutional on the ground that it authorizes the taking of private property for private use, in contravention of section 1, article XIV, of the constitution.—*Nickey v. Stearns Ranchos Co.*, 126 Cal. 150, 58 Pac. 459.

2. Same — Prior decision.—The case of *Holley v. County of Orange*, 106 Cal. 420,

39 Pac. 790, did not involve the question of constitutionality here involved, and was between different parties, and has no binding force in this case.—*Nickey v. Stearns Ranchos Co.*, 126 Cal. 150, 58 Pac. 459.

3. Superseded.—The act was not inconsistent with the act of 1885, and was not superseded by that act.—*Nickey v. Stearns Ranchos Co.*, 126 Cal. 150, 58 Pac. 459.

DRAINAGE DISTRICT ACT OF 1885.**ACT 1282—An act to promote drainage.**

History: Approved March 18, 1885, Stats. 1885, p. 204. Amended March 31, 1891, Stats. 1891, p. 262; February 19, 1909, Stats. 1909, p. 25; May 21, 1917. In effect July 27, 1917. Stats. 1917, p. 782.

Petition for drainage procedure. Publication.

§ 1. Whenever the owners of two-thirds of any body of land susceptible of one mode of drainage desire to drain the same, they may present to the board of supervisors of the county in which the land, or the greater portion thereof, is situated, at a regular meeting of the board, a petition setting forth that they desire to adopt measures to drain the same, a description of the land, the number of acres in the proposed district, and the number of acres in each tract, and the names of the owners thereof, and names of three persons whom they desire to serve as trustees for the first three months; the petition must be verified by the affidavit of one of the petitioners, and must be published for four weeks next preceding the hearing thereof, in some newspaper published in the county in which the lands are situated, or if there is no newspaper published in the county, then it must be published in some newspaper having a general circulation in the county, together with a notice stating the date of the meeting of said board on which the petition will be heard, and directing all parties interested to appear on said date and show cause, if any they have, why said petition should not be granted, and an affidavit of such publication must be filed with the clerk of said board at or before the date of said hearing. [Amendment approved February 19, 1909. Stats. 1909, p. 25. In effect immediately.]

District lying in different counties.

§ 2. When a district is situated partly in different counties, the trustees must, after the petition has been granted, forward a copy thereof to the clerk of the board of supervisors of any county in which any portion of the district may lie, and the board to which the same is forwarded must not allow another district to be formed within such district, unless with the consent of the trustees thereof.

Lands improperly included. Boundaries to be defined.

§ 3. If the board of supervisors find upon the hearing of such petition that lands have been improperly included in such district, they may, before fixing the final boundaries, exclude from such district any land which may have been so included, or include any lands adjacent thereto, on petition of any owner of such lands presented at such time of hearing, as they may deem for the best interests of such district. If from the petition and evidence produced at such hearing the board finds that said petition should be granted, it must thereupon, by order, define the boundaries of said district and declare said district duly formed, and the persons named in said petition for the formation of such district, as such, to be the trustees thereof for the first three months, or, until their successors are appointed. [Amendment approved February 19, 1909. Stats. 1909, p. 26. In effect immediately.]

This section was also amended in 1891, Stats. 1891, p. 262.

Recording petition.

§ 4. The petition for the formation of the district, together with the order of the board, defining its boundaries and forming the same, must be recorded in the office of the recorder of the county in which any of the lands of the district are situated. [Amendment approved February 19, 1909. Stats. 1909, p. 26. In effect immediately.]

By-laws, adoption of.

§ 5. After the approval of the petition the owners of lands embraced within the boundaries of the district, or those owning a majority in acreage thereof must adopt

by-laws, not inconsistent with the laws of this state for the government and control of the affairs of the district, and for the future appointment of trustees. The by-laws thus adopted must be signed by the owners of lands in the district representing a majority in acreage thereof. By-laws thus adopted may be amended at any time in the same manner in which the original by-laws were adopted. [Amendment approved February 19, 1909. Stats. 1909, p. 26. In effect immediately.]

Recording by-laws.

§ 6. The by-laws and all amendments thereto must be filed for record in the office of the recorder in which the district was organized, and recorded in a book kept for the purpose of recording instruments in writing relating to reclamation or drainage districts. [Amendment approved February 19, 1909. Stats. 1909, p. 27. In effect immediately.]

Powers of trustees. Compensation of trustees.

§ 7. The board of trustees shall have power to elect one of its members president thereof and also a clerk; to employ engineers and others to survey, plan, locate and estimate the cost of the works necessary for the drainage of the lands of the district, and the land needed for a right of way, including drains, canals, sloughs, water-gates, embankments, watercourses and material for construction; to thereafter, at any time, in its discretion, modify or change such original plan or plans, or adopt new, supplemental or additional plan or plans, when, in its judgment, the same shall become necessary; to construct, maintain and keep in repair all works necessary to carry into effect the objects sought to be attained; and to do all other acts and things necessary or required for the drainage of the lands embraced in the district. And the several members of the board shall each be entitled to receive for actual and necessary services performed, and for expenses incurred by them, respectively, for and in the interest of the district, such compensation as the board may determine to be just and reasonable, and shall allow, and the same shall constitute an indebtedness of the district for which warrants of the district must be drawn and paid in the same manner and out of the same fund as other warrants of the district; provided, that no warrant thus drawn shall be valid until approved by the board of supervisors of the county which formed the district. [Amendment approved February 19, 1909. Stats. 1909, p. 27. In effect immediately.]

Plans and estimates.

§ 8. The board of trustees must report to the board of supervisors of the county, or if the district is situated in more than one county then to the board of supervisors of each county in which the district is situated, the plans of the work and estimates of the costs, together with the estimates of the incidental expenses of superintendence, repairs, etc.

Assessment commissioners.

§ 9. The board of supervisors of the county in which the district was formed must appoint three commissioners disinterested persons residing in the county in which the district or some part thereof is situated, and such commissioners must view and assess upon the lands situated in the district a charge proportionate to the whole expense, and to the benefit which will result from such work, which charges must be collected and paid into the county treasury either in cash or in regularly issued warrants of the district as hereinafter provided, and must be placed by the treasurer to the credit of the district, and paid out for the work of drainage upon the warrants of the trustee approved by the board of supervisors of the county. [Amendment approved February 19, 1909. Stats. 1909, p. 27. In effect immediately.]

Warrants, how paid.

§ 10. The warrants drawn by the trustees must, after they are approved by the board of supervisors, be presented to the treasurer of the county, and if they are not paid on presentation, like indorsements must be made thereon, and they must be registered in like manner as county warrants and paid in the order of their registration. All warrants from the date of their registration shall bear interest at the rate of six per cent per annum; provided, however, that warrants may be used in the payment of assessments made hereunder without regard to the order of registration. [Amendment approved February 19, 1909. Stats. 1909, p. 28. In effect immediately.]

Payments when district in different counties.

§ 11. If a district is situated partly in different counties the charges must be paid into the treasury of the county in which the particular tract may be situated.

Further assessment.

§ 12. If the original assessment is insufficient to provide for the complete drainage of the lands of the district, or if further assessments are from time to time required to provide for the protection, maintenance, and repairs of the works, the trustees must present to the board of supervisors by which the district was formed a statement of the work to be done and its estimated cost, and the board must make an order directing that the commissioners who made the original assessment, or other commissioners to be named in such order, to assess the amount of such estimated cost as a charge upon the land in the district, which assessment must be made and collected in the same manner as the original assessment.

List of charges assessed. Equalization of assessments.

§ 13. The commissioners appointed by the board of supervisors must make a list of the charges assessed against each tract of land, and the list must contain:

1. A description of each tract assessed.
2. The number of acres in each tract.
3. The names of the owners of each tract, if known, and if unknown, that fact; but no mistake in the name of the owner, or supposed owners of the property assessed shall render the assessment thereof invalid.
4. The amount of the charge assessed against each tract.

The board of commissioners must, on the completion of such list, cause a notice to be published in some paper published in the county where such district is situated, and also have such notice posted in three places in such district, to the effect that the board of commissioners will, in ten days from the publication of such notice, meet (and they shall also name the time and place of such meeting) as a board of equalization for the purpose of equalizing assessments, and will continue in session as long as may be necessary, not to exceed ten days, at the end of which time, having equalized and adjusted such assessments, the list must then be filed as hereinafter provided. [Amendment approved February 19, 1909. Stats. 1909, p. 28. In effect immediately.]

This section was also amended in 1891, Stats. 1891, p. 263.

Assessment list, where filed. Payments of charges. Unpaid assessments. Actions Procedure.

§ 14. The list so made must be filed with the county treasurer of the county, or if the district is partly situated in different counties, then the original list must be filed in the county first in order in alphabetical arrangement, and copies thereof, certified by the commissioners, must be filed with the treasurers of each of the other counties. From and after the filing of the list, or certified copies thereof, the charges assessed upon any tract of land in the district constitute a lien thereon, and the list thus prepared must remain in the office of the treasurer for thirty days, or longer if ordered by the board of trustees, and during the time it so remains in the office of said treasurer

any person may pay the amount of the charges assessed against any tract to the treasurer without costs, either in cash or in regularly issued warrants of the district; or, if so ordered by the board of trustees, said payments may be by installments which installments may be paid either in cash or in regularly issued warrants of the district; and if, at the end of thirty days, or of the longer period fixed by the trustees, all the charges, or all of any installments ordered by them, have not been paid, the treasurer must return the list to the board of trustees of the district, and all unpaid assessments shall bear legal interest from the date of the return of the lists to said board, and shall thereafter be collected and paid in separate installments, of such amounts, and at such times, respectively, as the board, from time to time, in its discretion, may, by order entered in its minutes, direct; and a cause of action for the collection of any such installments shall accrue at the expiration of twenty days from the date of the order directing its payment; provided, that if any such installments shall remain unpaid at the expiration of said twenty days, then the whole of the assessment against the land owned by the person failing to pay such installment shall become due and payable at once, and may, in the discretion of the board, be collected immediately, in one and the same action. The board of trustees of the district must commence actions for the collection of such delinquent installments, and delinquent assessments, with interest thereon, and costs, and for the enforcement of the lien thereof on the land assessed, in the superior court of the county in which the land, or some portion of it, is situated, in which action all persons claiming any interest in said land upon which said assessment is levied, and any person necessary to a complete determination of the action, may be joined as defendants in said action. No person holding a conveyance from or under the person to whom the land was assessed or having a lien thereon, which conveyance or lien does not appear, of record in the proper office at the time of the commencement of the action, need be made a party to such action, and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been a party to the action. Notice of the pendency of such action may be filed in the office of the county recorder of the county in which the land affected by said action is situated in the same manner and with like effect as in other actions affecting real property. When the name of any person, properly a defendant in any such action, as herein provided, is unknown to the said trustees such person may be joined in said action and be sued by a fictitious name, and if his true name is thereafter, and before final judgment discovered or ascertained the same may be, thereafter, substituted for such fictitious name. Service of the summons in such action shall be made in the same manner as is provided by law for the service or publication of summons in other actions. Assessments on several tracts may be included in the same action, if listed to the same persons, and causes of action on separate assessments on the same land may be included in the same action. In all actions for the collection of delinquent assessments, the court may decree and adjudge a lien against each tract for the amount assessed against the same, and may order it to be sold, on execution or decree, as in other cases of sale of real estate on execution. In any action to enforce said lien or to determine the validity of the same, said list, duly executed by said commissioners, or a certified copy thereof shall be prima facie evidence of the matters therein contained, and that said commissioners were duly appointed and qualified, as required by law, and that they did view and assess upon the lands set forth in said list the charges therein contained, and that said charges are in proportion to the whole expense and the benefits which will result from the work of drainage for which said assessment was so levied. The judgment or decree must direct that the sale be made for lawful money of the United States. The board of trustees must pay the moneys collected to the county treasurer, who must place the same to the credit of the district. [Amendment approved February 19, 1909. Stats. 1909, p. 28. In effect immediately.]

Executing work.

§ 15. The work must be executed under the direction and in the manner prescribed by the board of trustees.

Account of expenditures.

§ 16. The board must keep accurate accounts of all expenditures, which accounts, and all contracts that may be made by them, are open to the inspection of the board of supervisors, and every person interested.

Purchases by trustees.

§ 17. The trustees may acquire, by purchase, all property necessary to carry out and maintain the system of drainage provided for.

Eminent domain.

§ 18. The trustees may acquire, by condemnation, the right of way for canals, drains, embankments, and other works necessary, and may take materials for the construction, maintenance, and repair thereof from lands outside of as well as in the limits of said district.

Same.

§ 19. The provisions of Title VII, Part III, of the Code of Civil Procedure are applicable to, and condemnation herein provided for must be made thereinunder.

Drainage entirely by owners, procedure.

§ 20. Whenever any district of lands susceptible of one mode of drainage is entirely owned by parties who desire to drain the same, and to manage such drainage without the intervention of trustees or the establishment and adoption of by-laws, such parties may file the petition provided for in sections 1 and 2, and they must state therein that they intend to undertake such drainage on their own responsibility. If the petition is granted, the owners of the land shall have all the rights, immunities and privileges possessed by boards of trustees, and in all proceedings the names of owners may be used instead of the names of trustees. [Amendment approved February 19, 1909. Stats. 1909, p. 30. In effect immediately.]

Disincorporation of drainage district. Taxes for payment of indebtedness.

§ 20½. Any drainage district organized under the provisions of this act may be disincorporated at any time by proceedings had in the following manner:

Whenever a petition praying for such disincorporation shall be presented to the trustees of said district, signed by a majority of the electors therein, they shall call an election in the same manner as elections for members of the board of trustees are called, and submit to the electors of said district the question of disincorporation. Said election shall be held in all respects in the same manner as regular elections of trustees of the district. If it appears that two-thirds of the electors voting at said election have voted in favor of disincorporation, the trustees shall cause such fact to be entered upon their minutes, and shall forward a copy of such entry to the board of supervisors of the county in which the district was formed, who shall file the same with their clerk, and from the date of such filing, said district shall be deemed disincorporated; provided, that if at the time of the dissolution, or disincorporation of said district, there be any outstanding bonded or other indebtedness of such district, then taxes for the payment of such bonded or other indebtedness shall be levied and collected the same as if such district has not been dissolved and disincorporated, but for all other purposes such district shall be deemed dissolved and disincorporated from the time of the forwarding of said copy of such entry to said board of supervisors. [New section added May 21, 1917; Stats. 1917, p. 782.]

§ 21. This act shall take effect upon its passage.

1. **Constitutionality—Raising question as to.**—A person whose land is not embraced within a proposed drainage district is not entitled to a notice of hearing of the petition to form the district, nor to a notice of any assessment that may be levied and is not entitled to raise the question of the constitutionality of the act for its failure to provide for such notices in a condemnation proceeding for land for a drainage ditch.—*Laguna, etc., Dist. v. Chas. Martin Co.*, 144 Cal. 209, 77 Pac. 933.

2. **Same — Police power.**—Constitutionality of act is upheld as an exercise of the police power.—*Laguna, etc., Dist. v. Chas. Martin Co.*, 144 Cal. 209, 77 Pac. 933. See, also, *Hagar v. Supervisors of Yolo county*, 47 Cal. 222.

3. **Same—Public use.**—The land taken under this act is taken for a public use, is for the public benefit, and is taken by a public corporation acting as a state agency and the act is, therefore, valid.—*Laguna, etc., Dist. v. Chas. Martin Co.*, 144 Cal. 209, 77 Pac. 933.

4. **Same—Public use.**—The fact that the taking of land for a drainage district will benefit only those within the district, and that the area of the overflowed land to be drained is less than 160 acres, do not affect the question of the public use.—*Laguna, etc., Dist. v. Chas. Martin Co.*, 144 Cal. 209, 77 Pac. 933.

5. **Adjustment of assessment.**—The action of the board of equalization in adjusting an assessment under the act is subject to review by the courts.—*Payne v. Ward*, 23 Cal. App. 492, 138 Pac. 967.

6. **Assessments, validity of.**—The land-owners may bring suit to nullify the action of the board of equalization in adjusting the

assessments and to restrain the trustees from foreclosing the assessment liens.—*Payne v. Ward*, 23 Cal. App. 492, 138 Pac. 967.

7. **Discretion of commissioners as to benefits.**—While no arbitrary assessment can be levied, the judgment of the commissioners upon the assessment, after a view of the land as contemplated by the statute, must be presumed to have been the result of a consideration of all the elements necessary to a just apportionment of the assessment.—*Payne v. Ward*, 23 Cal. App. 553, 153 Pac. 462. See, also, *Reclamation Dist. No. 70 v. Sherman*, 11 Cal. App. 399, 105 Pac. 277.

8. **Findings as to benefits sufficiently supported,** by presumptions of fairness and justice and correctness that attends the action of the commissioners in apportioning the cost and making the levy.—*Payne v. Ward*, 23 Cal. App. 553, 153 Pac. 462.

9. **The act makes the findings of the commissioners as to benefits prima facie evidence of their correctness.**—*Payne v. Ward*, 23 Cal. App. 553, 153 Pac. 462.

10. **Fixing benefits is a matter of judgment,** and all that is required of the commissioners and all that could be expected of them, is that they should honestly and intelligently investigate the situation, examine the lands, and fix the tax that each piece of land should, in their opinion, properly pay, upon an apportionment of the whole amount to be raised, according to benefits.—*Payne v. Ward*, 23 Cal. App. 553, 153 Pac. 462.

11. **Superseded.**—This act was not inconsistent with the act of 1881 (Act 1281) and did not supersede that act.—*Nickey v. Stearns Ranchos Co.*, 126 Cal. 150, 58 Pac. 459.

DRAINAGE DISTRICT IMPROVEMENT ACT OF 1919.

ACT 1283—An act to promote the drainage of wet, swamp and overflowed lands, and to promote the public health in the communities in which they lie; providing for the issuance of bonds and levying of assessments on lands benefited, to pay the costs and expenses thereof.

History: Approved May 18, 1919. In effect July 22, 1919. Stats. 1919, p. 731. Former act of March 21, 1903, Stats. 1903, p. 354, amended May 7, 1915, Stats. 1915, p. 359, repealed by present act, but the latter makes no mention in its title of such repeal.

Petition for establishment of drainage system. Hearing.

§ 1. Whenever twenty or more property owners or the owners of a majority of the land within a district proposed to be organized under this act, which district contains a body of wet, swamp or overflowed lands, susceptible of drainage by a ditch or drain or a system of ditches or drains, and which said district is to be benefited by the construction of any improvements contemplated by this act, shall file with the board of supervisors of the county in which said lands are situated, a petition for the establishment of such ditch or drain, or system of ditches or drains, for the draining of said body of lands, defining the boundary of the district proposed to be benefited and defining the boundaries of such body of lands to be drained and giving a general description and approximate location of such ditch or drain, or system of ditches or drains, and shall give said board of supervisors a good and sufficient bond, in an amount to be determined by said board, for the payment of

all costs that may accrue; provided, said petition shall not be granted, said board shall, within thirty days after the filing of said petition, appoint a day for the hearing of the same, which shall be not less than fifteen nor more than forty days after such appointment; and shall, also, cause to be published in some newspaper published and having a general circulation in the county, a copy of said petition, together with a notice by the clerk of said board of the time and place set for hearing said petition; said publication shall be at least once each week in a daily or weekly newspaper and for at least two weeks next preceding the time set for said hearing.

When lands lie within more than one county.

§ 2. Whenever a portion of the lands in the district proposed to be formed hereunder, and to be benefited thereby, lie within the boundaries of more than one county, the petition shall be presented to the board of supervisors of the county within which lie the greatest portion of lands of the proposed district, signed by at least ten property owners or the owners of a majority of the land of the district within each of the counties to be affected, which petition shall set forth and particularly describe the proposed boundaries of such district, and all other matters required by section one hereof.

Jurisdiction.

Said board of supervisors of the county within which lie the greatest portion of the lands of the proposed district shall have jurisdiction to proceed as in the manner herein provided, and the officers of said county having jurisdiction, shall, as provided in this act, be the officers of said district and shall have the powers and duties herein provided. The several notices in this act provided to be given or published shall, whenever possible, be respectively given or published in the manner prescribed, within the boundaries of the several counties respectively.

Payment of assessments by counties.

Upon filing with the recorder and tax collector of said counties of the certified copy of the plat and report of the engineer of construction and the order of said board levying the special assessments as hereinafter provided, said county or counties other than the county having jurisdiction shall each year collect and pay over to the county having jurisdiction, the total amount of the assessments levied for said year upon the lands within their respective boundaries as levied in said report of the engineer of construction and adopted by the order of the board of supervisors of the county having jurisdiction. Thereafter all costs of every nature which may be incurred or made necessary in the keeping up or preservation of any work or improvement done under the provisions of this section, shall be borne by the county or counties affected by such work or improvement.

When part of municipality included.

Whenever a portion of any ditch or drain or system of ditches or drains for the drainage of any such body of wet, swamp, or overflowed lands will cross or run along the boundary line of any municipal corporation, or when said board of supervisors find that adjacent territory within a municipality will be benefited by such work or improvement, such adjacent territory may be included within the boundaries of such proposed district. Any such territory included within a district formed under this act shall be subject to its provisions. Any work of any improvement herein contemplated to be done may be done either within or without the boundaries of the district organized therefor as may be necessary properly to drain by a ditch or drain or a system of ditches or drains any body of wet, swamp or overflowed lands within said district.

Action on petition.

§ 3. The board of supervisors shall, in its discretion, in conclusion of the aforementioned hearing and as a sufficient determination of all questions arising at said hearing, by resolution to be entered upon its minutes, grant or deny said petition. Said petition shall not be granted unless the public health, safety, convenience or welfare will be promoted by the organization of such district. If said petition is granted the resolution granting the same shall so state. If the petition includes any portion of an incorporated municipality, as provided in section two of this act, the board of supervisors shall by resolution find that said portion of said incorporated municipality will be benefited thereby.

Duty of county surveyor. Consulting engineer. Attorney.

§ 4. The county surveyor shall be the engineer of construction of said district and his deputies shall be deputy engineers of construction. He shall cause the surveying and other necessary engineering work under this act to be done, and shall survey and measure the work to be done, and shall estimate the costs and expenses thereof, and furnish all plans and specifications, and do all acts appertaining to the duties of the engineer of construction. Every certificate signed by him or by any of his deputies shall be prima facie evidence of the truth of its contents. He shall as in other cases keep a record of all surveys made under the provisions of this act. The board of supervisors may appoint a consulting engineer to assist the engineer of construction, or an attorney for the district, or both, should said board deem it for the best interests of the district. The compensation of said consulting engineer and of said attorney, if appointed, or the rate, or basis for computing the same shall be fixed and stated in the resolution of appointment, which said resolution shall be entered in the minutes of the board of supervisors.

Specifications. Approval by state reclamation board.

§ 5. Before the passing of any resolution of intention under this act, plans and specifications for work substantially the same as that described in the petition for the establishment of said district, and for a district substantially the same as that described in said petition, shall be prepared by the engineer of construction. If the work to be constructed is of such a nature and in such location as to be within the jurisdiction of the state reclamation board, the approval of that said board shall be obtained before the plans are adopted.

Said specifications shall include an estimate of the aggregate amount of the cost and incidental expenses of the work and the cost of the proceedings and shall be signed by the engineer of construction and be filed with the clerk of the board of supervisors.

Resolution of intention.

§ 6. Before ordering any work to be done under this act, the board of supervisors shall pass a resolution of intention so to do. Such resolution may in form, and shall in substance, be as following (filling all blanks):

In the matter of drainage district improvement No. —

Resolution of Intention No. (both numbers being that of the district).

Resolved, That it is the intention of the board of supervisors of the county of, state of California, proceeding under and by virtue of the drainage district improvement act of 1919, and in the matter of drainage district improvement district No. (the number being that of the district), on the day of, 19...., at the hour ofm. of that day, or as soon thereafter as the matter can be heard, at the chambers of said board, to order work to be done, as follows: (here insert a description of the work, stating the territorial extent thereof with all reasonable exactness, and other particulars generally, yet so as to

indicate fairly and approximately its probable cost), the said work to be done in accordance with the plans and specifications therefor filed with the clerk of said board on the day of, 19...., except as the boundaries of the district and the plans and specifications may be changed at the hearing hereinafter provided, which plans and specifications are made a part hereof, and to which all persons are referred for further particulars. For the cost and incidental expenses of the work and the cost of the proceeding, bonds will be issued in the total amount thereof, due and payable in annual installments bearing interest at the rate of per cent per annum, payable semiannually, all in gold coin of the United States.

A special fund for the payment of said bonds and interest thereon, to be designated drainage district improvement No. (the number being that of the district) interest and sinking fund, is to be constituted by the levy and collection of special assessment taxes upon all land within a district to be known as "drainage improvement district No. of the county of"

Such district (as proposed) being all that territory in the county or counties of, state of California, within exterior boundaries as follows, to wit: (the blank to be filled with a careful statement of the exterior boundaries of the district).

Notice is hereby given that at the time herein specified for ordering the work, the matter of said drainage district improvement No. will come up for hearing, and all objections which under the provisions of said drainage district improvement act of 1919, are entitled to be heard or determined, will then be heard and determined, and the boundaries of said district and the plans and specifications will be then finally determined and established.

The (here insert name and character of newspaper. If the district include lands within more than one county, as provided in section two, a newspaper, if any, published in each county, shall be designated) is (or are) hereby designated as the newspaper (or newspapers) for making publication of this resolution and for making all other publications in the proceeding.

The county surveyor is hereby appointed to superintend the work of said improvement. The foregoing resolution was, on the day of, 19...., passed by the board of supervisors of the county of, state of California.

Attest:

.....,
Clerk of the board of supervisors of said county of
.....,
By, deputy clerk.

Publication and posting of resolution. Affidavit of publication.

§ 7. Such resolution of intention shall be filed, and be published by at least two insertions in the newspaper or newspapers therein designated, which shall be a newspaper or newspapers published and circulated in the county or counties, or, if there be no such newspaper, then in any newspaper designated by said board of supervisors in such resolution. Printed copies of such resolution, headed, "notice of drainage district improvement," such heading to be in letters not less than one inch in height, shall, by the engineer of construction, be posted along the line of work described in said resolution, at a distance of not more than three hundred feet apart, but not less than three notices in all. Affidavits by the person so publishing or posting, in proof of such publication and posting, shall be filed with the clerk of the board of supervisors. When, before the day of the hearing specified in the resolution of intention, twenty days, including Sundays and holidays, have elapsed since the posting and the first publication (they need not be simultaneous) of the resolution of intention, the board of supervisors shall have acquired power to proceed with such hearing and to act in the proceeding as herein authorized. The determination of the board of super-

visors to proceed with such hearing, whether evidenced by an express declaration or by its proceedings with the hearing, shall be prima facie evidence of the existence of all the facts upon which the power of the board to proceed depends, except such as are required to appear of record in the proceeding, and except, also, in so far as rebutted by the record in the proceeding.

Objections.

§ 8. At any time before the day in the resolution of intention specified for ordering the work and the hearing of the matter, any property owner may, alone or with other property owners, file with the clerk of the board of supervisors written objection to the ordering of the work, as an entirely [sic] but not merely to some part thereof, as described in the resolution of intention; provided, that the objection of any person who ceases to be such property owner before the day of said hearing shall not then be heard. Property owners within the meaning of this act are those and those only, who own property which will be liable to assessment hereunder, and an executor or administrator shall be deemed representative of his decedent, and a trustee of an express trust in land other than as security for the payment of money, of the land so held in trust, and a trustee in bankruptcy, of the bankrupt.

Next after in order of hearing, the board shall proceed to hear such objections as may be made to the plans and specifications, and then such objections as shall be made to the boundaries of the district as set forth in the resolution of intention. Objection to the plans and specifications or to the boundaries of the district may be made by any property owner upon the hearing without filing any written statement thereof. The hearing may be continued from time to time by the board of supervisors by an order to be entered in the minutes of the board.

Finding of board. Boundaries. Notice inviting sealed proposals.

§ 9. The board of supervisors shall in conclusion of the aforementioned hearing, and as a sufficient determination of all questions arising thereat, by resolution or resolutions to be entered upon its minutes, declare its finding determining, in its discretion, either that the work shall be ordered or that all proceedings shall be abandoned. If said board determines that said work shall be ordered it shall further determine the boundaries of the district and finally approve the plans and specifications. If no changes be made in the boundaries of the district as set forth in the resolution of intention, it shall be sufficient to state that the boundaries of the district are those set forth in the resolution of intention; if any change of such boundaries is made, the boundaries of the district, as finally determined, shall be fully set forth. If no change be made in the plans and specifications, it shall be sufficient to state that such plans and specifications are approved. In either case, the boundaries of the district so determined shall be the boundaries of the district for all purposes of the proceeding and until any bonds to be issued for the cost of the work shall have been fully paid and discharged; the plans and specifications so approved shall be the plans and specifications of the district for all the purposes of proceeding. The boundaries of the district, as set forth in the resolution of intention, shall not be so changed as to include within the district any territory not within the boundaries as set forth in said resolution, nor so that the place or locality of any work as finally approved and originally planned to be within the district shall be excluded from the boundaries of the district as finally determined. In like manner the board of supervisors may order the work to be done, and if it so do, shall fix a time for receiving proposals or bids for doing the work, and direct the clerk to give notice, inviting sealed proposals or bids. Such notice shall include a statement that the work is to be done under the provisions of the drainage district improvement act of 1919, and according to the plans and specifications on file, except in so far as such plans and specifications were changed by the board of supervisors in conclusion of the hearing in said act provided; to which said

act, to the resolution of intention and all proceedings had thereunder the attention of bidders is hereby directed, and which are by this reference made part of this notice.

Publication of notice.

§ 10. The notice inviting sealed proposals or bids shall be published by at least two insertions in the newspaper or newspapers designated in the resolution of intention, and (though it need not be simultaneously) a copy or copies of the same shall be posted and kept posted for five days, at or near the chamber door of the board of supervisors. All proposals or bids shall be accompanied by a check, payable to the county, certified by a responsible bank in an amount not less than ten per cent of the aggregate of the proposal or bid, or by a bond in such amount running to the county, signed by the bidder, with two sureties qualifying before an officer competent to administer oaths, each in said amount over and above all statutory exemptions, or executed by some bonding company acceptable to said board of supervisors. Said proposals or bids shall be delivered to the clerk of said board.

Award to lowest bidder. Notice of award. Bidder to pay expenses of publishing resolutions.

§ 11. Said board shall, in open session, open and examine and declare the same. No proposal or bid shall be considered unless accompanied by such check or such bond in terms satisfactory to the board. The board may reject any and all proposals or bids should it deem it for the public good, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work to the lowest responsible bidder at the price named in his bid.

A notice of such award, attested by the clerk of the board of supervisors shall be transmitted to the successful bidder by mail by the clerk of the board of supervisors, and shall also be published and posted in the manner herein provided as to the notice inviting proposals or bids.

The check or bond accompanying such accepted proposal or bid shall be kept by the clerk of said board until the contract for doing said work, as hereinafter provided, has been entered into. Checks or bonds of unsuccessful bidders shall be returned by the clerk of said board. If said successful bidder fails, neglects or refuses for fifteen days after being awarded the contract to execute the same, the certified check accompanying his bid, and the amount thereof shall be declared forfeited to the county, and may be collected by it and paid into the interest and sinking fund of the district, and any bond forfeited may be prosecuted, and the amount thereof collected and paid into said fund.

Before being entitled to a contract the bidder to whom the award thereof has been made must advance and pay to the clerk of the board of supervisors, the costs and expenses of publishing and posting the resolutions, notices and orders required under this act to be made, which have been made, given, posted or published in the proceeding.

If for fifteen days after being awarded the contract, the awardee fails, neglects or refuses to execute the same, the board of supervisors may direct the clerk of the board to give notice as in the first instance, inviting sealed proposals or bids, and thereupon, after receiving bids shall award as in the first instance; and as in the case of the default of a first awardee, so also in the case of a second or any subsequent awardees.

Estimate of cost of work. Assessment of benefits. Report to board. Notice of hearing on report. Objections. Hearing. Action of board. Levy of special assessment. Special fund to retire bonds. Delinquent installments. Ad valorem tax for maintenance fund.

§ 12. After adopting said plans and specifications as hereinabove provided, and before executing a contract for the construction of the improvement, the board of

supervisors shall direct the engineer of construction to estimate the total cost of making the proposed improvements and performing such proposed work (which estimate shall include all expenses of every kind incurred or to be incurred, either directly or indirectly, in carrying out said work and improvements), and to assess the same in proportion to the benefits thereof to the lands in said district, and to do all things proper and necessary to carry out the provisions of this act.

Said engineer of construction shall proceed to view the lands within the district and may examine witnesses under oath. He shall proceed to assess against the land within said district the estimated amounts of the cost of the proposed work or improvement and the expenses incident thereto, in proportion to the benefits to be derived from said work or improvement so far as he reasonably can estimate the same, including in such estimate of benefits the real property of any railroad company within said district, if such there be. He shall state the amounts to be assessed on each parcel of land separately, and shall divide the total assessment on each parcel of land into yearly installments of amounts clearly sufficient to retire the bonds and to pay the interest thereon for each year that said assessment shall continue.

In estimating the total cost and expenses of doing said work, the engineer of construction shall be governed by the amount he deems necessary to pay the principal and interest on bonds to be issued therefor as herein set forth and all incidental expenses to be incurred as herein authorized. Such estimate shall be based upon the amount bid by the successful bidder for doing the work as set forth in the plans and specifications together with an estimate of the incidental expenses to be incurred.

The engineer of construction having made his assessment of the benefits, shall with all diligence, and before the board of supervisors declares the work to have been completed, make a written report thereof to, and file the same with, said board, and shall accompany said report with a plat of the district showing the relative location of each block, lot or portion of lot, or other piece of land and its dimensions so far as he can reasonably ascertain the same. Each block and lot, or portion of lot, or other parcel or parcels of land affected or assessed shall be designated and described in said plat by an appropriate number and a reference to it by such descriptive number shall be sufficient description of it in all respects. Said report of said engineer of construction shall also state the names of the persons owning lands over which a right of way for said improvement has been obtained, as well as the name of any lessee, encumbrancer, or other person having an interest in said land over which a right of way has been obtained, together with the particulars of their interest therein, and together with a waiver of any interest they may have had in said land so obtained for said right of way. Errors in the designation of the owner or owners of any land or improvement or any interest therein, or of the particulars of their interest, shall not affect the validity of the assessment.

The report of such engineer of construction and the affidavit accompanying it shall be filed with the clerk of the board of supervisors, and said board shall thereupon fix a time for the hearing thereon, and thereupon the clerk of said board shall give notice of said hearing by publication once each week for at least three weeks prior to the time fixed for said hearing, in the newspaper or newspapers designated in the resolution of intention. Such notice shall be substantially in the following form:

Notice of the filing of the report of the engineer of construction of drainage improvement district No. (the number being that of the district) of the county of

Notice is hereby given that the engineer of construction of drainage improvement district No. (the number being that of the district), did on the day of, 19...., file his report of the assessment of benefits in said district with the clerk of the board of supervisors of said county, which said report is now on file in the office of the said board of supervisors in the city of, of said county,

and that said report will be heard by said board at its chamber on the day of, 19...., at the hour ofm. Said report and the map, plans and specifications of the improvements mentioned therein are hereby referred to for further particulars. All persons interested are hereby required to show cause, if any they have, at the time and place fixed for said hearing, why such report should not be adopted and confirmed by said board, and why the several parcels of land referred to in said report should not be assessed for said improvement as therein set forth. All objections shall be in writing, signed by the person objecting, and filed with the clerk of said board at least one day prior to the time fixed for the hearing of said report.

Signed,
Clerk of the board of supervisors, county.

Any property owner may file with the clerk of said board at least one day before the time fixed for the hearing, a written objection to said report, or to any part thereof, to the assessment as a whole or to the assessments on the several parcels of land, as set forth in said report. At the time fixed for such hearing or at any time to which the hearing may be adjourned, the board of supervisors shall hear and pass upon all objections so filed, and shall proceed to pass upon said report and the assessments therein contained, and may confirm, correct or modify the same, or may direct the engineer of construction to make a new assessment, report and plat which shall be filed, heard and acted upon in the same manner, and on like notice as an original report. The action of the board upon the report and objections thereto shall be final and conclusive as to all matters therein, and no assessment shall be set aside except upon such hearing for any error, defect, or informality therein, or in the proceedings prior thereto, where notice of the hearing of the report has been given as herein prescribed. The board of supervisors shall, upon the adoption of said report, by order entered upon its minutes, levy against and upon all lands within said drainage improvement district No. (being the district as described and bounded in the order for the work to be done) a special assessment upon the lands found to be benefited by such improvement in the amount set forth in the said report of the engineer of construction as adopted by the board of supervisors, and which said amount shall be available for the payment of said bonds and the interest thereon. Said assessment shall be payable as herein provided at the times and in the amounts indicated in said report of said engineer of construction. When the said board has levied the special assessment as hereinabove set forth, the clerk of said board shall cause to be filed with the recorder, and with the tax collector of the county or counties in which the district is situated, certified copies of the plat and report as adopted and confirmed by said board, together with certified copies of the order of said board levying said special assessment, and also give to the county auditor notice of the total amount of the installments for each year. If the district lies within more than one county as provided in section two, said certified copies shall be filed with the recorder and tax collector of each county affected. Upon the filing of such certified copies the charges assessed upon each piece of land for the first year shall immediately become due and payable, and shall constitute a lien thereon; thereafter the installments for the succeeding year shall become due and payable on the third Monday of October of each year, and shall thereupon constitute a lien upon the land against which it is assessed.

All moneys paid upon such assessment, either by property owners or by the county or municipality affected, shall be placed in the county treasury of the county in which such district was organized in a special fund to be known as drainage district improvement No. interest and sinking fund (the number being that of the district), and shall be used only to retire the bonds issued to pay the cost of constructing the improvement and the incidental expenses thereof, and to pay the interest on said bonds. Any surplus remaining shall be paid into the maintenance fund of said district. Upon the filing of the certified copy of the report, assessment plat, and order with the tax

collector of the county or counties as above provided, the tax collector shall give notice by ten days publication in the newspaper designated in the resolution of intention, that the assessment list of drainage improvement district No. has been filed in his office, with the date of such filing; that the first installments entered thereon are due and payable, and that if not paid on or before the last Monday of April next ensuing the same will become delinquent and will be collected as are delinquent taxes. He shall note on said assessment list all assessments paid, and give receipts as upon the payment of taxes, and shall pay all money collected into the county treasury at the same time and in the same manner as money collected for taxes.

Subsequent collections of installments shall be made in the manner above set forth, and the tax collector shall annually publish a like notice, and the same proceedings shall be had as upon the collection of the first installment.

When said installments have become delinquent the tax collector of the county shall proceed to collect the same, together with an additional ten per cent added thereon, and pay the same over to the county treasurer as state and county taxes are collected and paid over; for the purpose of collecting such assessments and delinquent installments and penalties, all of the provisions of chapter seven, title nine, part three of the Political Code not in conflict with any of the provisions of this act are hereby made applicable. The entire assessment against a parcel of land within the district, subsequent installments as well as the installment for the current year, may at any time be paid in full.

The board of supervisors shall each year, at the time of making the levy of taxes for county purposes, levy an ad valorem tax upon the real estate in each drainage improvement district in their county organized under this act in an amount sufficient to raise the revenue which will be needed for the current year for maintaining and repairing the works and improvements for said district. Said tax, when levied, shall be entered upon the assessment roll and collected in the same manner as state and county taxes. When collected it shall be placed in the treasury of the county in a fund to be designated "drainage district improvement No. maintenance fund," (the number being that of the district), and shall be used only for the purpose for which it was raised. If said district includes land within more than one county as above provided in section two, the ad valorem tax herein provided to be levied, shall, by each of said counties be collected as to the lands lying within its boundaries; and said counties shall pay said tax so collected over to the county having jurisdiction of said district.

Execution of contract.

§ 13. The chairman of the board of supervisors is hereby authorized, in the name of the county to execute the contract with the awardee thereof, and to receive and approve all bonds required by this act on the part of the awardee, and shall, by the terms of said contract, fix the time for the beginning of the work, which shall not be more than twenty days from the date thereof. The contract shall provide that the work shall be prosecuted with diligence until completed, and shall fix a time for such completion. Such time of completion may be extended from time to time by the board of supervisors, in its discretion, and by resolution, entered by the clerk in the minutes of said board, a copy of which shall by said clerk be endorsed upon or annexed to the contract.

Bond of contractor.

Before the execution of such contract, a bond shall be executed and filed, running to the county, in an amount not less than one-half of the contract price of the work, signed by the contractor and two or more sureties, who, unless surety companies, shall qualify before an officer entitled to administer the oath, in a sum aggregately equal to the amount of the bond, each surety in the amount for which he becomes surety.

Such bond shall be conditioned for the faithful execution of the contract by the contractor, and for the payment by him for all labor and materials furnished for or in the doing of the work. The form and sufficiency of said bond shall be passed upon by some member of the board of supervisors, and such bond shall inure as well to the benefit of any and all persons furnishing labor or materials for the work as to that of the county.

County to issue bonds.

By said contract the county shall undertake that the board of supervisors will, upon the fulfillment and performance of the contract on the part of the contractor, and under the provisions of the drainage district improvement act of 1919 take all steps, in or by said act authorized to be taken, to effect the issuing by the county treasurer of the bonds in said act authorized to be issued, and provide a fund for their payment, as in or by said act prescribed. The contract shall state that in no case shall the county be liable thereunder, nor any officer thereof be holden thereunder except for the discharge of official duty under the law.

Taking over or reletting contract.

If the contractor shall fail to begin in good faith the work provided for in said contract within the time in said contract set forth, or shall fail thereafter to prosecute said work in a workmanlike and diligent manner, or shall fail in any other respect to carry out the terms of said contract, then the board of supervisors shall cause written notice to be served upon said contractor, specifying the particular in which he is not fulfilling the requirements of said contract, and if for a period of three days thereafter said contractor shall fail to remedy the defects set forth in said notice, and to prosecute said work thereafter with diligence and in a workmanlike manner, then the board of supervisors shall either take over said contract and complete said work, or shall relet said contract, without the necessity of advertising for bids, and cause the work to be completed, and shall declare the bond given by said contractor forfeited and order suit brought thereon, and all moneys collected therefrom shall be paid into the interest and sinking fund of the district.

Action on bond for material or labor furnished.

If the contractor shall fail to pay for any labor or material furnished for or in the doing of said work by any person, such person may within ninety days after the making of the final order hereinafter referred to, file with the county treasurer a verified statement of such facts, and such person may thereafter, within six months after the filing of such statement, bring an action on said bond in his own name, or if he has assigned his claim, the action may be brought in the name of the assignee; provided, however, that the right of the county to recover on said bond shall be superior to the rights of any such person to recover thereon; provided, moreover, that if such statement shall be filed before the expiration of twenty days from the making of such final order, then the county treasurer shall be authorized to withhold from the contractor sufficient of the bonds, issued as herein provided, to satisfy said claim, and costs, which can reasonably be anticipated.

Declaration that work has been completed. Hearing to determine whether work will be accepted.

§ 14. As soon as in good faith may be done, there shall be filed with the clerk of the board of supervisors a declaration that the work has been completed according to the contract, together with an itemized statement of all the incidental costs and expenses of the work and the cost of the proceedings inclusive of the estimated cost of publishing the notice of final hearing hereinafter provided. The aggregate amount of such items shall be stated, and also the amount due under the contract; and also the

gross sum for a bond issue representing the entire amount thereof, as claimed by the contractor. The said declaration and statements shall be signed and verified by the engineer of construction and by the contractor or by some person cognizant of the facts signing on his behalf and stating why he, instead of the contractor, so signs and verifies. Either signer may except from his signature and verification any amount or item to which he does not assent. The chairman of the board of supervisors shall fix a time for a hearing, to be known as the final hearing, for the purpose of determining whether the work shall be accepted as completed according to the contract, and for determining the aggregate amount for which bonds shall be issued representing the total costs of the work and the incidental costs and expenses of the work and the proceedings, all of which have been charged to and are payable by the contractor. Notice of such hearing shall be given and may, in form, and shall, in substance be as follows (filling the blanks):

Notice of final hearing.

NOTICE OF FINAL HEARING.

In the matter of drainage district improvement No.

Notice is hereby given that a final hearing in the above named matter will be had at the hour ofm. on the day of, 19...., at the chamber of the board of supervisors of the county of, state of California, for the purpose of determining whether the work done under the contract with under resolution of intention No. in drainage improvement district No. of the county of shall be accepted as being performed according to the contract, and for determining the aggregate amount for which bonds shall issue representing the cost of such work, including the incidental costs and expenses of the work and the proceedings, of which a statement has been filed with the clerk of said board of supervisors of the county of to which statement the attention of all persons interested is hereby directed.

.....
..... of the board of super-
visors of the county of

Attest:

Clerk of said board of supervisors.

Publication and posting. Objections. Continuance of hearing.

Such notice shall be signed by the chairman of the board of supervisors and attested by the clerk of the board of supervisors and published by at least two insertions in the newspaper or newspapers designated in the resolution of intention, and a copy or copies thereof posted and kept posted for two days at or near the chamber door of the board of supervisors, the first day of such publication and that of such posting (they need not be simultaneous) to be not less than five days before the day in said notice specified for the hearing. Proof of such publication shall be made by affidavit or affidavits, and the same shall be filed. If a quorum be not present at the time specified in the notice of the hearing, the members of the board then present may continue the hearing; and at all stages the hearing may, by resolution entered in the minutes, be continued from time to time. At any time before the day in said notice specified for the hearing any property owner may file written objection to the acceptance of the work on the ground that the work has not been completed or done according to the contract, specifying in ordinary language the particulars in which the work has not been so completed or done. Any person interested in the proceeding, as of the interest of the contractor, shall be presumed to take issue with such objection and shall be heard accordingly. Questions as to the incidental costs or expenses of the work or the proceedings may be raised orally by any property owner within the

district. Evidence may be adduced as to any of the matters to be determined, and in such order as the board may direct. If, when the matter has been fully heard, whether under, or in the absence of, objections, the board of supervisors is of the opinion that the work has not been completed or done according to the contract, it shall in writing specify what must be done in order to complete the work, and shall, by an order or resolution to be entered in its minutes, continue the further hearing of the whole matter to a specified day, expressly stating that such continuance is for the purpose of enabling the contractor to complete his contract. On said continued hearing, the objections to the work filed before the day of the first hearing shall continue in force, and evidence shall be received, if offered, as to what has been done by way of completing the contract in the particulars specified in the order of the board on the said continuance of the hearing. If, upon such continued hearing, the board is of the opinion that the work is still uncompleted in the particulars as to which it was ordered to be completed, it shall be discretionary with said board to order or refuse a second continuance of the hearing. If the board does order such second continuance, it shall be ordered in the same manner, with like effect as upon the first continuance; and likewise as to a second and any other or further continuance. Objections to any item of incidental costs and expenses shall pend and be heard on said day, or at any continued hearing had as above in this section provided. Every continuance of said hearing for the purpose of enabling the contractor to complete his contract or the work shall continue or revive such powers in the proceeding as the board of supervisors had under the provisions of this act, at the time of the filing of the contractor's declaration that the work was completed, as above provided, and also operate to extend the time for the completion of said contract in such manner that its completion within the time to which the hearing is continued, shall be as valid performance of such contract as if completed at the time of filing such declaration.

Acceptance of work.

§ 15. Whenever upon the hearing in section fourteen provided, whether original or continued, the board shall be of the opinion that the work has been completed and done according to the contract, said board shall by resolution to be entered upon its minutes so declare, and shall in said resolution declare that the work is accepted and the amount of the contract price for doing the work and the amount of the incidental costs and expenses of the work and proceedings and the aggregate amount for which bonds are to be issued and shall make final order that bonds be issued therefor as hereinafter provided. The decision and determination of said board at the hearing provided for in section fourteen shall, as to all matters determined at said hearing and as to all errors, informalities, irregularities, or omissions which said board might have avoided or remedied during the progress of the proceedings, or which it can at that time remedy, be final and conclusive upon all persons entitled to be heard before said board on said matters, and no assessment or tax levied for the payment of the bonds, and the interest thereon, to be issued for said work and expenses, shall be held invalid by any court for any error, informality, omission or other defect in the proceedings where the resolution of intention has been actually published as in this act provided, before the said board shall have ordered the work to be done.

Bonds to be issued by treasurer.

§ 16. Upon the expiration of twenty days after the making of the final order provided in section fifteen of this act, the clerk of the board of supervisors shall transmit to the county treasurer of the county an attested copy of said final order, and upon receipt of the same, the treasurer shall proceed to issue bonds amounting in the aggregate to the principal sum for which bonds are to be issued as the same is stated in said final order. A bond may be issued in any amount, provided that the aggregate of the bond or bonds made payable in any one year is the proper part of the whole principal

of the bond issue as specified in said final order, and that the interest thereon shall be payable as hereinafter provided. The said bonds may in form, and shall in substance, be as follows:

Drainage district improvement bond.

DRAINAGE DISTRICT IMPROVEMENT BOND.

County of, State of California.
Drainage Improvement District No.

\$..... Bond No.....

Under and by virtue of an act of the legislature of the state of California, known as the "drainage district improvement act of 1919" (here may be inserted a further designation of the act if desired) the county of, state of California, will pay to the bearer, out of the fund hereinafter designated, at the office of the treasurer of the said county, on the day of, 19...., the sum of dollars in gold coin of the United States of America, with interest thereon, in like gold coin at the rate of per cent per annum, payable semiannually on the day of and the day of of each year from the date hereof (the last installment thereof shall be payable at maturity of this bond) upon presentation and surrender, as they respectively become due, of the proper interest coupons hereto attached, the first of which is for interest from date hereof to the next date of interest payment, and the last for interest to maturity hereof from the last preceding date of interest payment.

This bond is issued under and in conformity with the provisions of said drainage district improvement act of 1919 and the amendments thereof, and is one of a series of bonds of like date and effect numbered from one to consecutively, amounting in the aggregate to dollars, issued in behalf of drainage improvement district No. of said county, which constitute the only indebtedness of said district. It is hereby certified, recited and declared that all proceedings, acts and things required by law precedent to or in the issuance of this bond have been regularly had, done and performed, and this bond is by law made conclusive evidence thereof.

This bond is payable out of drainage district improvement No. interest and sinking fund exclusively, as the same appears on the books of the treasurer of said county, and neither said county nor any officer thereof shall be holden for its payment otherwise.

In witness whereof said county has caused this bond to be signed by the chairman of its board of supervisors and countersigned by its treasurer and the seal of said board to be hereto affixed and said interest coupons to be signed by the said treasurer this day of, 19....

.....
Chairman of the board of supervisors of
the county of.....
Countersigned:
Treasurer of the county of.....

[Seal of board of supervisors]

Term and interest.

Said bonds shall be signed by the chairman of the board of supervisors and countersigned by the treasurer of the county, and shall have the seal of said board of supervisors thereto affixed, and when so signed shall be binding according to the terms thereof as prescribed in said form. The interest coupons attached to said bonds shall be in such form as said treasurer may determine, subject to the provisions of this act and the approval of the board of supervisors. Said coupons need be signed only by the treasurer either in writing or by lithographed or printed facsimile. Said bonds

shall be delivered by the said treasurer to said contractor or to his order, assignee, or lawful representative.

The board of supervisors is hereby vested with power to determine the number of years, not to exceed twenty, within which the aggregate principal of bonds to be issued under this act shall be paid and discharged, and to fix the rate of interest, not to exceed seven per cent per annum, to be paid thereon, and it shall be a sufficient determination and fixing of the same to set forth in the resolution of intention that bonds will issue for the work in any terms that will fairly indicate such time and such rate and the fractional part of the principal to be paid each year, which fractional part, for each year except the last, shall be that multiple of one hundred dollars nearest the amount obtained by dividing the amount of the total bond issue by the number of years through which said bond issue is to continue, and for the last year shall be for the balance of the total bond issue not provided to be paid in the previous years.

Manner of making payments.

The interest payments on said bonds shall become due and payable semiannually on such dates as will cause the final installment thereof to become due and payable on the date of the maturity of the bond in the manner indicated in said form of bond. Interest and principal shall be payable at the office of the county treasurer in gold coin of the United States of America; but it shall not be necessary, either in the resolution of intention or otherwise, to set forth or determine the days of the month on which payments of interest are to be made, nor that payments shall be made in such gold coin, nor that payments shall be made at such treasurer's office, but all persons are charged with notice of the contents of this section, especially in the aforesaid particulars.

Bonds evidence of prior proceedings.

§ 17. Said bonds by their issuance shall be conclusive evidence of the regularity of all proceedings prior thereto under this act, and after the same are issued, no tax levied or collected for the purpose of paying the principal or interest on said bonds shall be held to be illegal or set aside or refunded by reason of any informality, irregularity, omission or defect in any of the proceedings prior to the issuance of said bonds, nor shall any action be maintained to cancel or set aside said bonds, or to prevent the payment thereof or the levy or collection of a tax for such payment.

Costs paid by contractor.

§ 18. All costs, charges and expenses of the proceeding, including the salaries of the engineer of construction and of any assistants or employees necessarily employed by or under him in his work as herein provided, and in making the report and spreading the assessment as by this act required, and the costs of all publications provided to be made, and any and all other expenses, whether for material or labor, necessary in the performance of the duties of said engineer of construction, as in this act provided, shall be paid by the county. But the amount thereof shall thereupon become a charge upon the contractor and shall have been repaid by him to the county before delivery of the bonds shall be made by the county treasurer; provided, however, that if said costs and expenses are not paid within ten days after notice given that said bonds, excepting such number thereof as may be withheld to satisfy claims filed as hereinabove provided are ready for delivery, a sufficient number of said bonds may be sold at not less than ninety-five per cent of their face value to fully satisfy said costs and expenses, any surplus over said costs and expenses obtained by such sale to be paid to said contractor; provided, further, that the county treasurer may make delivery of such bonds, if there be deposited with him, subject to the order of the board of supervisors, money to the amount of the costs and expenses chargeable to the contractor as the same is stated in the final order of the board of supervisors, provided

for in section fifteen of this act; provided, further, that for furnishing plans and specifications and posting and publishing the resolution of intention and other notices which have been posted or published, the county shall be liable in case the proceedings cease or are abandoned, before the award of the contract. The contractor and all persons claiming under him any interest in said bonds, whether of ownership, lien or otherwise, shall be deemed to have notice of the contents of this section.

Publication in newspaper.

§ 19. If publication in the newspaper or newspapers designated in the resolution of intention become impossible for any reason, the board of supervisors may by a resolution to be entered in its minutes, stating the facts, designate another newspaper for each required publication as occasion therefor arises.

Papers filed with clerk of board.

§ 20. All papers in a proceeding under this act (save such as thereunder may be returnable to owners) shall be filed with the clerk of the board of supervisors, and by him kept together in a package appropriately labeled. Whenever in this act the term "clerk of the board of supervisors" is employed, it shall be deemed to include one who is, ex officio, such, and it shall be immaterial that he designate himself as county clerk where the county clerk is ex officio clerk of the board of supervisors, nor shall it be material that his act be by deputy.

Augmenting other streams or drains.

§ 21. The provisions of this act shall not be so construed as to permit waters to be carried out of their natural course to augment other streams or drains, to the damage of the residents along the banks of the streams or drains so augmented.

Securing rights of way.

§ 22. It shall be the duty of the engineer of construction where possible, to obtain options on rights of way necessary to the carrying out of the plans and specifications and to submit the same to the board of supervisors for ratification. Whenever the board of supervisors of any county in which a district is formed under this act can not purchase at a reasonable price or procure the right of way, or any lands found by them to be necessary in order to carry out the plans and specifications for the proposed drainage of any such district, or procure the consent of all parties interested to join or connect with any existing ditches or outlets, the board may proceed to condemn the same under the provisions of title seven, part three of the Code of Civil Procedure.

Costs charge on contractor.

The costs of such rights of way or such condemnation proceedings shall be paid by the county, but the amount thereof shall thereupon become a charge upon the contractor as provided in section eighteen of this act.

Incidental expenses.

§ 23. In all cases, when, after the bonds have been issued, it is found that the contractor has failed, through error or oversight, to pay any item of incidental expenses, the county shall pay the same and reimburse itself from the interest and sinking fund. Likewise, when the contractor has paid to the county an amount more than sufficient to cover the incidental expenses, for which bonds have been issued, the county shall pay such surplus to said interest and sinking fund.

Advance by county to pay interest or retire bonds.

If, for any reason whatsoever, there be insufficient money in the interest and sinking fund to pay the interest or retire said bonds when such interest or bonds become due

and payable, the county shall advance the balance necessary to pay such interest or retire such bonds becoming due at that time, and shall reimburse itself from moneys paid into said interest and sinking fund.

Maintenance of improvement.

§ 24. The engineer of construction shall, subject to the approval of the board of supervisors, do all things necessary for the proper maintenance of the improvement. The compensation of any assistants or employees or the cost of any material necessary shall be payable out of the maintenance fund.

In a like manner the engineer of construction shall maintain all existing drainage district improvements constructed under the act of 1903, being the act referred to in section twenty-seven of this act.

Construction.

§ 25. This act shall be liberally construed with a view to promoting the objects and purposes thereof.

Title.

§ 26. This act shall be known as the drainage district improvement act of 1919, and by such designation shall be sufficiently identified in any proceeding thereunder, and whenever in the resolution of intention it shall be set forth or recited that the proceeding is under the "drainage district improvement act of 1919," this act shall be construed as the paramount statute for such proceeding.

Act Stats. 1903, p. 354, repealed. Alternative act.

§ 27. This act shall supersede and repeal an act of the legislature of the state of California approved March 21, 1903, and amendments thereto entitled "An act to promote the drainage of wet, swamp and overflowed lands, and to promote the public health in the communities in which they lie"; provided, however, that nothing contained herein shall operate to invalidate any proceedings heretofore taken under the provisions of said act approved March 21, 1903, as amended; provided, further, that any district formed under the provisions of the said act of 1903, but not completed at the time this act takes effect, shall be completed, accepted by the board of supervisors and bonds shall be issued in accordance with the provisions of the said act of 1903, but may be issued for all the purposes specified in this act including expenditures made to procure rights of way whether inside of such drainage district or outside thereof, where the board finds it necessary for such district, but such district shall thereafter be maintained under the provisions of section twenty-four of this act. Otherwise this act is not intended to supersede or repeal any other act for the construction of work for drainage purposes, but is intended as an independent and alternative act of the legislature of the state of California.

See Act 1281.

1. **Construction of act of 1903—Repugnancy.**—Upon a consideration of the whole act, and the clear intention of the legislature it is held that the act should be construed to provide for the issuance of bonds to the contractor equal to his bid, plus such sum as he, under the requirements of the act, should advance to cover incidental and preliminary work, and that the repugnancy between the provisions of sections 8d and 8e should not be treated as fatal to the validity of the act.—*Van de Water v. Pridham*, 33 Cal. App. 252, 164 Pac. 1136.

2. **Construction of a drainage system to include an incorporated municipality, or a portion of its territory, for the purpose of**

draining a swamp adjacent to such city, is not a municipal affair although the drainage ditches extend through the city streets.—*Van de Water v. Pridham*, 33 Cal. App. 252, 164 Pac. 1136.

3. **Drainage canal.**—The consent of the legislative body of a municipality, whatever may be the character of its charter, is a prerequisite to the extending of a drainage canal through its streets.—*Van de Water v. Pridham*, 33 Cal. App. 252, 164 Pac. 1136.

4. **Drainage canal through city streets.**—An ordinance of the city of Long Beach, operating under a freeholder charter giving it plenary control of all uses of its streets, together with all matters of internal sanitation, authorizing a drainage district to

lay and maintain drainage canals through the streets of the city, was valid, notwithstanding certain conditions attached to the grant which were protective of the public interest and germane to the subject of the grant.—*Van de Water v. Pridham*, 33 Cal. App. 252, 164 Pac. 1136.

5. Public benefit.—The act of 1903 is not void for failure to provide that the doing of the work shall depend upon its being a public benefit; besides, section 4 of the act makes the determination of the board to proceed with the hearing referred to pre-

sumptive evidence of the existence of all facts upon which the power of the board to proceed depends, including the fact that the work is for the public benefit, although a finding to that effect is not expressly required.—*Van de Water v. Pridham*, 33 Cal. App. 252, 164 Pac. 1136.

6. Superseded.—The act of 1903 was not superseded by the Los Angeles county flood control district act of 1915 (Stats. 1915, p. 1502).—*Van de Water v. Pridham*, 33 Cal. App. 252, 164 Pac. 1136.

DRAINAGE DISTRICT ACT OF 1903.

ACT 1284—An act to provide for the organization and government of drainage districts, for the drainage of agricultural lands other than swamp and overflowed lands, and to provide for the acquisition or construction thereby of works for the drainage of the lands embraced within such districts.

History: Approved March 20, 1903, Stats. 1903, p. 291. Amended April 22, 1909, Stats. 1909, p. 1061; June 8, 1915. In effect August 8, 1915. Stats. 1915, p. 1321. Former act of March 31, 1897, Stats. 1897, p. 334; amended March 23, 1901, Stats. 1901, p. 554; repealed by present act.

Organization of drainage districts. Who can sign petition.

§ 1. Whenever fifty or a majority of the holders of title, or evidence of title as herein provided, to agricultural lands other than swamp and overflowed lands, which are susceptible of one general mode of drainage by the same system of works, desire to provide for the drainage of such lands, they may propose the organization of a drainage district under the provisions of this act, and when so organized, such district shall have the powers, rights and duties conferred, or which may be conferred by law, upon such drainage districts. The equalized county assessment roll next preceding the presentation of a petition for the organization of a drainage district under the provisions of this act, shall be sufficient evidence of title for the purposes of this act; provided, that no person who has received or acquired title to land within such proposed district for the purpose of enabling him or her to join in such petition or to become an elector of said district, shall be allowed to sign such petition or to vote at any election to be held in such district, under the provisions of this act. Such illegal signing, however, shall not invalidate such petition when there shall be found a sufficient number of other legal petitioners.

Petition to board of supervisors. Bond. Publication.

§ 2. In order to propose the organization of a drainage district, a petition shall be presented to the board of supervisors of the county in which the lands within the proposed district or the greater portion thereof, are situated, signed by the required number of holders of title, or evidence of title, to lands within such proposed district, which petition shall set forth and particularly describe the proposed boundaries of such district, and shall pray that the same be organized under the provisions of this act. The petitioners must accompany the petition with a good and sufficient bond, to be approved by the said board of supervisors, in double the amount of the probable cost of organizing such district, conditioned that the obligors will pay all the costs in case such an organization will not be effected. The petition shall be presented at a regular meeting of said board of supervisors, and shall have been published for at least two weeks before such presentation, in some newspaper printed and published in the county where the petition is presented, together with a notice stating the date of the meeting of said board at which the petition will be presented; and if any portion

of the proposed district lies within another county, or counties, then said petition and notice shall be likewise published in a newspaper printed and published in each of such counties.

Hearing of petition.

§ 3. When such petition is presented, the board of supervisors shall hear the same, and may adjourn such hearing from time to time not exceeding four weeks in all, and on the final hearing said board shall make such changes in the proposed boundaries as may be deemed advisable and shall define and establish such boundaries. But said board shall not modify said boundaries so as to exclude from such proposed district any territory which is susceptible of drainage by the same system of works applicable to the other lands in such proposed district; nor shall any lands which will not, in the judgment of said board, be benefited by drainage, by means of said system of works, be included within such proposed district. Any person whose lands are susceptible of drainage by the same system of works, may, upon his application, in the discretion of said board, have such lands included within said proposed district. Upon such hearing of said petition, the board of supervisors, shall determine whether or not said petition complies with the requirements of sections one and two of this act, and for that purpose must hear all competent and relevant testimony offered in support or in opposition thereto. Such determination shall be entered upon the minutes of said board of supervisors.

Right to appeal from order of board. Remittitur.

§ 4. The right of appeal from said order to the superior court of the county where said petition is heard, is hereby given to any person interested, who is a party to the record; provided, that if more than one appeal be taken they shall be consolidated and tried together. Such appeal shall be taken within ten days after the entry of such order upon the minutes of the board of supervisors. The appeal shall be taken and heard in the same manner as appeals from justices' courts to the superior court, except as herein otherwise provided. Upon the appeal, the superior court may make and enter its judgment affirming, modifying, or reversing the order appealed from. Within ten days thereafter, the superior court must cause its remittitur to issue to said board of supervisors, and if said order of the board of supervisors is modified or reversed, the judgment of the superior court and its remittitur shall direct the board of supervisors what order it shall enter. Such remittitur shall be filed by the clerk of the board of supervisors, and at the first regular meeting of the board thereafter, it shall cause to be entered in its minutes the order as directed by said superior court. The appeal herein provided for shall be heard and determined within thirty days from the time of filing the notice of appeal.

District directors.

§ 5. When, under the provisions of the preceding sections, the boundaries of the proposed district are defined and established, said board shall make an order dividing said district into three or five divisions, as nearly equal in size as practicable, which divisions shall be numbered consecutively, and one director who shall be an elector and a resident freeholder of the division, shall be elected, as hereinafter provided, by each division; provided, that when requested in the petition three directors who shall be residents, electors and freeholders of the district, shall be elected at large by the qualified electors of the district.

Election to determine proposed organization. Ballots.

§ 6. Said board of supervisors shall then give notice of an election to be held in such proposed district for the purpose of determining whether or not the same shall be organized under the provisions of this act. Such notice shall designate a name for

such proposed district, and describe the boundaries thereof and the boundaries of the precincts established therein, when more than one, together with a designation of the polling place and board of election for each precinct; and said notice shall be published for at least three weeks previous to such election, in a newspaper published within the county in which the petition for the organization of the proposed district was presented; and if any portion of such proposed district is within another county or counties, then such notice shall be published for the same length of time in a newspaper published in each of said counties. Such notice shall require the electors to cast ballots, which shall contain the words "drainage district—yes" or "drainage district—no" or words equivalent thereto, and also the names of one or more persons (according to the divisions of the proposed district as prayed for in the petition and ordered by the board) to be voted for to fill the office of director. Such election shall be conducted as nearly as practicable in accordance with the general election laws of the state but no particular form of ballot shall be required.

Qualification of electors.

§ 7. No person shall be entitled to vote at any election held under the provisions of this act unless he possesses all the qualifications required of electors under the general election laws of the state.

Declaration of organization.

§ 8. The said board of supervisors shall, on the first Monday succeeding such election if then in session, or at its next succeeding general or special session, proceed to canvass the votes cast thereat, and if upon such canvass it appears that a majority of all the votes cast are "drainage district—yes" the board shall by an order entered in its minutes, declare such territory duly organized as a drainage district, under the name theretofore designated, and shall declare the persons receiving, respectively the highest number of votes for directors to be duly elected to such offices. [Amendment approved April 22, 1909. Stats. 1909, p. 1061.]

Copy of order to be recorded.

§ 9. Said board shall then cause a copy of such order, duly certified, to be immediately filed for record in the office of the county recorder of any county in which any portion of the lands embraced in such district are situated, and must also immediately forward a copy thereof to the clerk of the board of supervisors of each of said last mentioned counties and no board of supervisors of any county in which any portion of the lands embraced in such district are situated, shall, after the date of the organization thereof, allow another district to be formed including any portion of said lands, without the consent of the board of directors of the district in which they are situated. From and after such filing, the organization of the district shall be complete.

Election may be contested.

§ 10. Such election on organization may be contested by any person owning property within the proposed district liable to assessment. The directors elected at such election shall be made parties defendant. Such contest shall be brought in the superior court of the county where the petition for organization is filed; provided, that if more than one contest be pending they shall be consolidated and tried together. The court having jurisdiction shall speedily try such contest, and determine, upon the hearing, whether the election was fairly conducted and in substantial compliance with the requirements of this act, and enter its judgment accordingly. Such contest must be brought within twenty days after the canvass of the vote and declaration of the result by the board of supervisors. The right of appeal is hereby given to either party to the record within thirty days from entry of judgment. The appeal must be heard and determined by the supreme court within sixty days from the time of filing the notice of appeal.

When directors shall enter upon duties.

§ 11. The directors elected at the election hereinbefore provided for shall immediately enter upon their duties as such upon qualifying in the manner herein provided. Said directors shall hold office respectively until their successors are elected and qualified.

Term of office. President and secretary.

§ 12. The directors of any district created after the passage of this act, on the first Tuesday after their election, after they shall have qualified, shall meet and classify themselves by lot into two classes, as nearly equal in number as possible, and the term of office of the class having the greater number shall expire at the next general February election in this act provided for; and the term of office of the class having the lesser number shall terminate at the next general February election thereafter. After such classification, said directors shall organize as a board, shall elect a president from their number, and appoint a secretary, who shall each hold office during the pleasure of the board. The salary of the secretary and the amount of the bonds to be given by him for the faithful performance of his duties shall be fixed by the board of directors.

Meetings. Publication of financial statement.

§ 13. The board of directors shall hold regular meetings in their office on the first Tuesday in March, June, September and December, and such special meetings as may be required for the proper transaction of business; provided, that all special meetings must be ordered by a majority of the board by an order entered in the minutes specifying the business to be transacted. Three days' notice to any member not joining in the order must be given by the secretary, and only the business specified in the order must be transacted at such special meeting. All meetings of the board must be public, and a majority of members shall constitute a quorum for the transaction of business. A minute of all proceedings of the board shall be kept by the secretary, and all records of the board shall be open to public inspection during business hours. The board of directors shall, on the first Tuesday in March of each and every year, render, and immediately thereafter cause to be published, a verified statement of the financial condition of the district, showing particularly the receipts and disbursements of the last preceding year, together with the source of such receipts and purpose of such disbursements. Said publication shall be made at least once a week for two weeks, in some paper published in the county where the office of the board of directors of such district is situated.

Powers and duties of board of directors.

§ 14. The board shall have the power and it shall be their duty, to manage and conduct the business and affairs of the district; make and execute all necessary contracts; to adopt a seal for the district to be used in the attestation of proper documents; provide for the payment, from the proper fund, of all the debts and just claims against the district; employ and appoint when necessary, engineers to survey, plan, locate, and estimate the cost of the works necessary for drainage and the land needed for right of way, including drains, canals, sluices, water-gates, embankments and material for construction, and to construct, maintain, and keep in repair all works necessary for the purpose of drainage. The board and its agents and employees shall have the right to enter upon any land to make surveys, and may locate the necessary drainage works and the line for any canals, sluices, water-gates and embankments, and the necessary branches for the same, on any lands which may be deemed best for such location. Said board shall also have the right to acquire, hold and possess either by donation, purchase or condemnation, any land or other property, necessary

for the construction, use, maintenance, repair, and improvement of any works required for the purpose of drainage as provided herein. The board may establish equitable by-laws, rules and regulations necessary or proper for carrying on the business herein contemplated, and generally may perform all such acts as shall be necessary to fully carry out the purposes of this act.

Change of boundaries.

§ 15. The board of directors, when they deem it advisable for the best interests of the district and the convenience of the electors thereof, may at any time, but not less than sixty days before an election to be held in the district, change the boundaries of the divisions and election precincts of the district; provided, such changes shall be made to keep each division as nearly equal in area and population as may be practicable. Such change of boundaries of the division must be shown on the minutes of the board.

Condemnation proceedings.

§ 16. In case of condemnation proceedings, the board shall proceed, in the name of the district, under the provisions of Title VII, Part III, of the Code of Civil Procedure, which said provisions are hereby made applicable for that purpose, and it is hereby declared that the use of the property which may be condemned, taken, or appropriated under the provisions of this act, is a public use, subject to regulation and control of the state in the manner prescribed by law.

Biennial election of directors. Official bond. Vacancies, how filled.

§ 17. In each district organized as herein provided, an election shall be held on the first Wednesday in February, nineteen hundred and five, and on the first Wednesday of February of each second year thereafter, at which a board of directors for the district, as provided in section 5 of this act, shall be elected. The person receiving the highest number of votes for the office to be filled at such election is elected thereto. Within ten days after receiving their respective certificates of election, each of said persons shall qualify as such by taking and subscribing the official oath and filing a bond as herein provided. Each director shall execute an official bond in the sum of one thousand dollars, which shall be approved by the judge of the superior court of the county where the organization of the district was effected and shall be recorded in the office of the county recorder of such county, and then, together with his official oath, filed with the secretary of the board of directors. All official bonds herein provided for shall be in the form prescribed by law for the official bonds of county officers. If a vacancy shall occur in the office of director the same shall be filled by appointment by the supervisors of the county where such district is organized. A director so appointed shall qualify within ten days after receiving notice of his appointment as in said act provided, if he were elected to such office and he shall hold such office only until the next regular election for said district and until his successor is elected and qualified.

Organization after election. Term of office.

§ 18. On the first Tuesday in March next following the election, the directors who shall have been elected at the general February election, shall meet and organize as a board, elect a president and appoint a secretary, who shall each hold office during the pleasure of the board. And the directors of districts now organized who shall have been elected at the general February election of nineteen hundred and five, shall, on the first Tuesday in March next thereafter, when they meet to organize, first classify themselves by lot into two classes as nearly equal in number as possible. And the terms of office of the class having the greater number shall be two years; and the term of office of the lesser number shall be four years. The full term of office of directors

is hereby fixed at four years. The office of the board of directors of any such district may be established by said board of directors at the county seat, or at some proper and convenient place within the district, but after the office is once established it shall not be changed without giving notice thereof by posting in three public places in the district and by publishing a similar notice for thirty days in some newspaper of general circulation published in the county where such district is organized.

Notice of election.

§ 19. Fifteen days before any election held under this act, subsequent to the organization of any district, the secretary of the board of directors shall cause notices to be posted in three public places in each election precinct, of the time and place of holding the election, and shall also post a similar notice of the same in a conspicuous place in the office of the said board, specifying the polling-places of each precinct, and the names of the members of the boards of election, for each precinct. Prior to the time for posting such notices, the board must appoint for each precinct, from the electors thereof, one inspector and one judge and one clerk, who shall constitute a board of election for such precinct. If the board fail to appoint a board of election, or the members appointed, or any of them, do not attend at the opening of the polls on the morning of election, the electors of the precinct present at that hour, may appoint the board, or supply the place of an absent member thereof. The board of directors must in its order appointing the board of election, designate the place within each precinct where the election must be held.

Duty of election board. Polls open. Form of ballot.

§ 20. The inspector is chairman of the election board, and may administer all oaths required in the progress of an election; and appoint judges and clerks, if, during the progress of the election, any judge or clerk cease to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election. The board of election for each precinct must, before opening the polls, appoint two persons to act as clerks of the election. Before opening the polls, each member of the board and each clerk must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The polls must be open at 9 o'clock a. m., and be kept open until 4:00 p. m., when the same must be closed. The provisions of the general election laws concerning the form of ballots to be used shall not apply to elections held under this act.

General election laws to govern.

§ 21. Voting may commence as soon as the polls are opened, and may be continued during all the time the polls remain opened, and shall be conducted, as nearly as practicable, in accordance with the provisions of the general election laws in this state.

Election returns.

§ 22. As soon as all the votes are read off and counted, a certificate shall be drawn up on each of the papers containing the poll list and tallies, or attached thereto, stating the number of votes each one voted for has received, and designating the office to fill which he was voted for, which number shall be written in figures and in words at full length. Each certificate shall be signed by the clerk, judge and the inspector. One of said certificates with the poll list and the tally paper to which it is attached, shall be retained by the inspector, and preserved by him at least six months. The ballots shall be strung upon a cord or thread by the inspector, during the counting thereof, in the order in which they are entered upon the tally list by the clerks; and said ballots together with the other of said certificates, with the poll list and tally paper to which it is attached, shall be sealed by the inspector in the presence of the judges and clerks,

and indorsed "Election returns of (naming the precinct) precinct" and be directed to the secretary of the board of directors and shall be immediately delivered by the inspector, or by some other safe and responsible carrier designated by said inspector, to said secretary, and the ballots shall be kept unopened for at least six months, and if any person be of the opinion that the vote of any precinct has not been correctly counted, he may appear on the day appointed for the board of directors to open and canvass the returns and demand a recount of the vote of the precinct that is so claimed to have been incorrectly counted.

Canvass of returns.

§ 23. No list, tally paper, or certificate from any election, shall be set aside or rejected for want of form if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election to canvass the returns. If, at the time of meeting, the returns from each precinct in the district in which the polls were opened have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until the returns have been received, or until six postponements have been had. The canvass must be made in public and by opening the returns and estimating the vote of the district for each person voted for and declaring the result thereof.

Statement of result.

§ 24. The secretary of the board of directors, must, as soon as the result is declared, enter in the records of such board, a statement of such result, which statement must show; (a) the whole number of votes cast in the district and in each precinct thereof if there be more than one precinct; (b) the names of the persons voted for; (c) the office to fill which each person was voted for; (d) the number of votes given in each precinct to each of such persons; (e) the number of votes given in each division for the office of director. The board of directors must declare elected the persons having the highest number of votes given for each office. The secretary must immediately make out and deliver to such person a certificate of election, signed by him, and authenticated with the seal of the board.

Number of directors may be changed.

§ 25. In any district the board of directors thereof may, upon the presentation of a petition therefor, by a majority of the holders of title, or evidence of title, of said district, evidenced as above provided, order that on and after the next ensuing general election for the district, there shall be either three or five directors, as said board may order, and they shall be elected, by the district at large, or by divisions, as so petitioned and ordered; and after such order such directors shall be so elected.

Title to property shall vest in district.

§ 26. The legal title to all property acquired under the provisions of this act shall immediately and by operation of law vest in such drainage district, and shall be held by such district in trust for and is hereby dedicated and set apart to the uses and purposes set forth in this act. And said board is hereby authorized and empowered to hold, use, acquire, manage, occupy, and possess said property as herein provided. The said board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of this act, in the name of such drainage district, to and for the uses and purposes herein expressed, and to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this act, or to enforce, maintain, protect, or preserve any and all rights, privileges and immunities created by this act, or acquired in pursuance thereof. And in all courts, actions, suits, or proceedings, the

said board may sue, appear, and defend in person or by attorneys, and in the name of such drainage district.

Provisions for bond election. Ballots.

§ 27. For the purpose of constructing necessary conduits, drains, sluices, water-gates, embankments and all works necessary for the purpose of drainage, and acquiring the necessary property and rights therefor, and otherwise carrying out the provisions of this act, the board of directors of any such district must, as soon after such district has been organized as may be practicable, and also whenever thereafter the construction fund has been exhausted by expenditures as herein authorized therefrom, and it is necessary to raise additional money for said purposes, estimate and determine the amount of money necessary to be raised. And thereafter said board shall immediately call a special election, at which shall be submitted to the electors of such district the question whether or not the bonds of said district shall be issued in the amount so determined. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notices must specify the time of holding the election, the amount of bonds proposed to be issued; and said election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act governing the election of officers; provided, that no informalities in conducting such an election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds—Yes" or "Bonds—No," or words equivalent thereto. If a majority of the votes cast are "Bonds—Yes," the board of directors shall cause bonds in said amount to be issued; if a majority of the votes cast at any bond election are "Bonds—No," the result of such election shall be so declared and entered of record. Whenever thereafter, a petition of the character hereinbefore provided for in this section, is presented to the board, it shall so declare of record in its minutes, and shall thereupon submit such questions to said electors in the same manner and with like effect as at such previous election.

Drainage district bonds payable in ten series. Interest. Denomination. Coupons.

§ 28. All bonds issued under the provisions of this act shall be payable in gold coin of the United States, in ten series as follows, to wit: On the first day of January, after the expiration of eleven years, five per cent of the whole number of said bonds; on the first day of January after the expiration of twelve years, six per cent; on the first day of January after the expiration of thirteen years, seven per cent; on the first day of January after the expiration of fourteen years, eight per cent; on the first day of January after the expiration of fifteen years, nine per cent; on the first day of January after the expiration of sixteen years, ten per cent; on the first day of January after the expiration of seventeen years, eleven per cent; on the first day of January after the expiration of eighteen years, thirteen per cent; on the first day of January after the expiration of nineteen years, fifteen per cent; and on the first day of January after the expiration of twenty years, sixteen per cent; that the several enumerated percentages being of the entire amount of the bond issue, but each bond must be made payable at a given time for its entire amount and not for a percentage. Said bonds shall bear interest at the rate of six per cent per annum, payable semiannually, on the first day of January and July of each year. The principal and interest shall be payable at the place designated therein. Said bonds shall be each of the denomination of not less than one hundred dollars nor more than five hundred dollars; shall be negotiable in form, signed by the president and secretary, and the seal of the board of directors shall be affixed and the bonds of each issue shall be numbered consecutively, and bear date

at the time of their issue. Coupons for the interest shall be attached to each bond, signed by the secretary. Said bonds shall express on their face that they were signed by authority of this act, stating its title and date of approval, and shall also so state the number of the issue of which such bonds are a part. The secretary shall keep a record of the bonds sold, their number, the date of sale, the price received, and the name of the purchaser. [Amendment of June 8, 1915. In effect August 8, 1915. Stats. 1915, p. 1321.]

Sale of bonds.

§ 29. The board may sell bonds from time to time in such quantities as may be necessary and most advantageous, to raise money for the construction of said drains and works, the acquisition of said property and rights, and otherwise to fully carry out the objects and purposes of this act. Before making any sale the board shall, at a meeting, by resolution, declare its intention to sell a specified amount of the bonds, and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes, and notice of the sale to be given, by publication thereof at least three weeks in some newspaper published in the county where the office of the board of directors is located, and in any other newspaper, at its discretion. The notice shall state that sealed proposals will be received by the board at their office, for the purchase of bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals, and award the purchase of the bonds to the highest responsible bidder; provided, however, that they may reject all bids. Said board shall in no event sell any of the said bonds for less than the par value thereof.

Bonds shall be lien upon property of district.

§ 30. Any bonds issued under the provisions of this act, shall be a lien upon the property of the district and the lien for the bonds of any issue shall be a preferred lien to that of any subsequent issue. Said bonds, and the interest thereon, shall be paid by revenue derived from an annual assessment upon the real property of the district; and all the real property in the district shall be and remain liable to be assessed for such payments as hereinafter provided.

Assessment shall be submitted to people. Election. Ballots.

§ 31. In case the money raised by the sale of bonds be insufficient or in case the bonds be unavailable for the completion of the plan of drainage and works adopted, and additional bonds be not voted, it shall be the duty of the board of directors to provide for the completion of said plan by levy of assessments therefor; provided, however, that such levy of assessments shall not be made except first an estimate of the amount required for such purposes has been made by said board, and the question as to the making of said levy submitted to a vote of the electors of the district. Before such question is submitted, the order of submission shall be entered in the minutes of the board, stating the amount to be levied and the purpose therefor, and if submitted at a special election said order shall, in addition, fix the day of election. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notices must specify the time of holding the election, and the amount of assessment proposed to be levied. Said election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act governing the election of officers; provided, that no informalities in conducting such an election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Assessment—Yes," or "Assessment—No," or words equivalent thereto. If a majority of the

votes cast are "Assessment—Yes," the board of directors shall proceed in the manner prescribed in sections 40-43 herein provided for raising funds for the annual requirements; if a majority of the votes cast are "Assessment—No," the result of such election shall be so declared and entered of record.

Refunding indebtedness.

§ 32. Whenever a district organized under the provisions of this act, has outstanding bonds, coupons, or other evidences of indebtedness, the payments thereof may be provided for by the issuance of new bonds, in the manner hereinafter prescribed.

Petition to fund indebtedness.

§ 33. In order to propose the funding of such bonds, coupons, or other evidences of indebtedness a petition shall be presented to the board of directors of such drainage district, signed by a majority in number of holders of title or evidence of title to real property in such district, which petition shall set forth the amount of bonds, coupons, or other evidences of indebtedness proposed to be funded, together with a general description of same, also the total amount of the bonds sought to be issued (provided, that said amount shall in no case be greater than the total amount of bonds, coupons, and other evidences of indebtedness then outstanding and sought to have funded), together with a full and complete statement of the purposes for which such bonds are to be used. On presentation of such petition, the same shall be entered in full on the minutes of the board.

Special election. Ballots.

§ 34. Immediately after the recording of said petition, the board shall call a special election, at which shall be submitted to the electors of such district the question whether or not the bonds of such district in the amount set forth in said petition shall be issued. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks before such election. Such notice must specify the time of holding the election, the amount of bonds proposed to be issued, the amount of bonds, coupons or other evidences of indebtedness proposed to be funded, together with a general description of the same. Said election shall be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions governing the election of officers; provided, that no informalities in conducting such an election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election, the ballots shall contain the words "Bonds—Yes" or "Bonds—No" or words equivalent thereto. If two-thirds of the votes cast are "Bonds—Yes" the board of directors shall cause bonds in said amount to be issued. If more than one-third of the votes cast at such election are "Bonds—No," the result of such election shall be so declared. The result in either case shall be duly entered of record.

When payable.

§ 35. If said bonds are directed to be issued as herein provided for the board of directors shall cause the same to be issued. Said bonds shall be made payable in gold coin of the United States, in twenty series, as follows, to wit: On the first day of January after the expiration of twenty years, five per cent of the whole amount of said bonds, and on the first day of January of each year thereafter, an equal amount of such bonds until all shall have been finally paid; that is, five per cent of the whole issue of bonds—not five per cent of each bond, each being wholly payable when due. Said bonds shall bear interest at the rate of six per cent per annum, payable semi-

annually on the first day of January and July of each year. They shall be negotiable in form, and shall be of denominations of not less than one hundred dollars nor more than five hundred dollars. Said bonds shall in all respects conform to the form of bonds prescribed hereinbefore. [Amendment of June 8, 1915. In effect August 8, 1915. Stats. 1915, p. 1322.]

Value of bonds.

§ 36. It shall be unlawful to sell or exchange any of the bonds as herein provided for less than their par value.

Duty of county treasurer.

§ 37. When bonds issued under section 35 of this act shall be duly executed, they shall be deposited with the treasurer of the county wherein the district was organized, who is hereby authorized and charged with the duty of receiving the same, and his receipt shall be taken therefor, and he shall be charged with the same on his official bond, and shall have no power to deliver the same in exchange for any bonds or indebtedness proposed to be funded until the bonds or evidence of indebtedness proposed to be funded shall have been surrendered to him, and he shall have been ordered by the board of directors of the district, by an order duly entered on their records to make such delivery. When such bonds have been exchanged for other bonds, coupons, or other evidences of indebtedness, the said treasurer shall at once cancel such other bonds, coupons, or other evidences of indebtedness by writing across the face thereof "Canceled" and the date of cancellation, and report the same with his next regular report hereinafter provided for to the board of directors of the district designating the bond, coupon, or other evidence of indebtedness, so that it can be identified, the date of cancellation, and the person from whom it was received, together with the amount paid therefor, or the terms of exchange, in case there is an exchange.

Bonds may be sold from time to time.

§ 38. When said bonds are issued for the purpose of sale to the highest bidder, the board may sell said bonds from time to time, in such quantities as may be necessary and most advantageous, to raise money to pay bonds, coupons, or other evidences of indebtedness of the district which were outstanding at the time of the filing of said petition, and generally described therein. Resolution of intention must be declared, and notice given, and the sale conducted in the manner prescribed in section 29 of this act for the sale of original bonds. Said bonds shall in no event be sold for less than their par value including accrued interest. All moneys realized from the sale of bonds, issued under the provisions of this section, shall be paid into the hands of the said treasurer, and by him kept in a separate fund, known as the funding fund, and shall be applied exclusively to the payment of bonds, coupons, or other evidences of indebtedness of the district outstanding at the time of filing of the said petition, and described therein.

Bonds may be exchanged. Conditions.

§ 39. The bonds issued as herein provided for may be exchanged, at not less than their par value, including accrued interest, for any of the indebtedness set out and described in the notice of the election authorizing the issuance of said refunding bond. A contract for such exchange may be made by the board of directors upon such terms as said board may deem advisable; provided, that they must receive not less than par value for the bonds so exchanged.

Directors shall furnish estimate of moneys needed.

§ 40. The board of directors must, on or before the first meeting of the board of supervisors in September of each year, furnish the supervisors and the auditor of the

county wherein the district is situated, or if such district is not entirely within one county, then as hereinafter provided, to the supervisors and auditors of each county in which any portion of the district is situated, an estimate in writing of the amount of money needed for the purposes of the district for the ensuing fiscal year. This amount must be sufficient to raise the annual interest on the outstanding bonds, to pay the estimated cost of repairs, the incidental expenses of the district, and in any year in which any bonds shall fall due, an amount sufficient to pay the principal of the outstanding bonds as they mature.

When district is in more than one county.

§ 41. If such district is in more than one county the total estimate as provided for in the preceding section shall be divided by the board of directors in proportion to value of the real property of the district in each county. The value must be determined from the equalized values of the last assessment-rolls of such counties. When such division of the estimate has been made, the board shall furnish the supervisors and auditors of the respective counties a written statement of that part of the estimate apportioned to that county.

Drainage district tax levy.

§ 42. The board of supervisors of each county wherein is situated a district or any part thereof organized under the provisions of this act, must, annually, at the time of levying county taxes, levy a tax to be known as the “—— (name of district) drainage district tax,” sufficient to raise an amount reported to them as herein provided, by the board of directors. The supervisors must determine the rate of such tax by deducting fifteen per cent for anticipated delinquencies from the total assessed value of the real property of the district within the county as it appears on the assessment-roll of the county, and then dividing the sum reported by the board of directors as required to be raised by the remainder of such total assessed value.

Duty of auditor.

§ 43. The tax so levied shall be computed and entered on the assessment-roll by the county auditor, and if the supervisors fail to levy the tax as provided in the preceding section, then the auditor must do so. Such tax shall be collected at the same time and in the same manner as state and county taxes, and when collected shall be paid into the county treasury for the use of said district.

General revenue laws govern.

§ 44. The provisions of the Political Code of this state prescribing the manner of levying and collecting taxes and the duties of the several county officers with respect thereto, are, so far as they are applicable and not in conflict with the specific provisions of this act, hereby adopted and made a part hereof. Such officers shall be liable upon their several official bonds for the faithful discharge of the duties imposed upon them by this act.

What treasury shall be repository.

§ 45. If the district is in more than one county, the treasury of the county wherein the district was organized shall be the repository of all the funds of the district. For this purpose the treasurers of any other counties wherein is situated a portion of said district, must, at any time, not oftener than twice each year, upon the order of the board of directors, settle with said board and pay over to the treasurer of the county where the district was organized, all moneys in their possession belonging to the district. Said last-named treasurer is authorized and required to receive and receipt for the same, and to place the same to the credit of the district. He shall be responsible upon his official bond for the safekeeping and disbursement, in the manner herein provided, of these and all other moneys of the district held by him.

Names of funds.

§ 46. The following funds are hereby created and established, to which the moneys properly belonging shall be apportioned by the treasurer, to wit: Bond fund, construction fund, general fund, funding fund.

Treasurer's reports.

§ 47. The treasurer shall pay out of the same only upon warrants of the board of directors, signed by the president and attested by the secretary. The treasurer shall report in writing at each regular meeting of the board of directors and as often thereafter as requested by the board, the amount of money in the fund, the amount of receipts since his last report, and the amounts paid out; such reports shall be verified and filed with the secretary of the board.

Redemption of bonds.

§ 48. Upon the presentation of the coupons due, to the treasurer, he shall pay the same from the bond fund. Whenever said fund shall amount to the sum of ten thousand dollars in excess of an amount sufficient to meet the interest coupons due, the board of directors may direct the treasurer to pay such an amount of said bonds not due as the money in said fund will redeem, at the lowest value at which they may be offered for liquidation, after advertising in the manner hereinbefore provided for the sale of bonds, for sealed proposals for the redemption of said bonds. Said proposals shall be opened by the board in open meeting, at a time to be named in the notice, and the lowest bid for said bonds must be accepted; provided, that no bond shall be redeemed at a rate above par. In case the bids are equal, the lowest numbered bond shall have the preference. In case none of the holders of said bonds shall desire to have the same redeemed, as herein provided for, said money shall be invested by the treasurer, under the direction of the board, in United States bonds, or the bonds of the state, which shall be kept in said "bond fund" and may be used to redeem said district bonds whenever the holders thereof may desire.

Bids for construction of work.

§ 49. After adopting a plan for such conduits, drains, pumping plants, water-gates and other works as in this act provided for, the board of directors shall give notice by publication thereof not less than twenty days in one newspaper published in each of the counties composing the district (provided, a newspaper is published therein) and in such other newspapers as they may deem advisable, calling for bids for the construction of such work, or of any portion thereof; if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice. Said notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and place for opening said proposals, which, at the time and place appointed shall be opened in public; and as soon as convenient thereafter the board shall let said work, whether in portions or as a whole, to the lowest responsible bidder; or they may reject any or all bids and readvertise for proposals, or may proceed to construct the work under their own superintendence. Contracts for the purchase of material shall be awarded to the lowest responsible bidder. Any person or persons to whom a contract may be awarded shall enter into a bond, with good and sufficient sureties, to be approved by the board, payable to said district for its use for fifty per cent of the amount of the contract price, conditioned for the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer, and be approved by the board.

When claims shall be allowed.

§ 50. No claim shall be paid by the treasurer until allowed by the board, and only upon a warrant signed by the president, and countersigned by the secretary.

Expenses.

§ 51. The cost and expense of purchasing and acquiring property and constructing the works and improvements herein provided for, shall be wholly paid out of the construction fund.

Construction of works across streams, etc. Right of way.

§ 52. The board of directors shall have power to construct the works necessary for drainage purposes across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume which the route of said conduits or drains may intersect or cross, in such manner as to afford security for life and property; but said board shall restore the same, when so crossed or intersected, to its former state as near as may be, or in such manner as not to have impaired unnecessarily its usefulness; and every company whose railroad, and the board of supervisors, where any public highway shall be intersected or crossed by said works, shall unite with said board in forming said intersections and crossings, and grant the privileges aforesaid; and if such railroad company, or said board of supervisors, or the owners and controllers of the said property, thing, or franchise so to be crossed, and the said board can not agree upon the amount to be paid therefor, or the points or the manner of said crossings or intersections, the same shall be ascertained and determined in all respects as is herein provided in respect to the taking of property by condemnation. The right of way is hereby given, dedicated, and set apart, to locate, construct and maintain said works over and through any of the lands which are now or may be the property of this state.

Per diem of directors.

§ 53. Each member of the board of directors shall receive three dollars per day for each day's attendance at the meetings of the board, and actual and necessary expenses while engaged in official business under the order of the board.

Must not be interested in contracts.

§ 54. No director or any other officer named in this act shall in any manner be interested, directly or indirectly in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor, and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

May call special elections.

§ 55. The board of directors may at any time, when in their judgment it may be deemed advisable call a special election and submit to the qualified electors of the district the question, whether or not a special assessment shall be levied for the purpose of raising money to be applied to any of the purposes provided in this act. Said election must be called upon the notice prescribed and the same shall be held and the result thereof determined and declared in all respects in conformity with the provisions of section 27 of this act. The notice must specify the amount of money proposed to be raised and the purpose for which it is intended to be used. At such elections the ballots shall contain the words "Assessment—Yes" or "Assessment—No." If two-thirds or more of the votes cast are "Assessment—Yes," the board shall proceed in the manner hereinbefore prescribed for raising the annual funds by taxation. When collected, the money shall be paid into the district treasury for the purpose specified in the notice of such special election.

Restrictions of powers.

§ 56. The board of directors shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this

act; and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void; except for the purposes of organization, or for any of the purposes of this act, the board of directors may, before the collection of the first assessment, incur an indebtedness not exceeding in the aggregate the sum of two thousand dollars, and may cause warrants of the district to issue therefor, bearing interest at seven per cent per annum.

District property exempt from taxation.

§ 57. The rights of way, ditches, drains, conduits, flumes, pipe-lines, dams, reservoirs, pumping plants, and other property of like character belonging to any drainage district shall not be taxed for state and county or municipal purposes.

Action in re to determine validity of bonds.

§ 58. The board of directors shall within thirty days after the issue of any bonds herein provided for bring an action in the superior court of the county wherein is located the office of such board, to determine the validity of any such bonds. Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication of summons for at least once a week for three weeks in some paper of general circulation published in the county where the action is pending, such paper to be designated by the court having jurisdiction of the proceedings. Jurisdiction shall be complete within thirty days after the full publication of such summons in the manner herein provided. Any one interested may, at any time before the expiration of said thirty days, appear and by proper proceedings contest the validity of such bonds, and may in the same action of proceeding contest the validity of any bonds, coupons, or other evidences of indebtedness referred to in the petition for funding and proposed to be funded, and if any such bonds, coupons, or evidences of indebtedness be shown to be invalid, then the same shall only be funded for the amount of such proportion thereof as equals the fair and reasonable value of whatever the district may have received in consideration therefor, together with unpaid interest thereon, and the amount of such proportion shall be determined and adjudicated by the court in said action or proceeding. Such action shall be speedily tried and judgment rendered declaring such bonds so contested either valid or invalid. Either party shall have the right to appeal at any time within thirty days after the entry of such judgment, which appeal must be heard and determined within three months from the time of taking such appeal.

Assessment payer may bring action.

§ 59. If no such proceeding shall have been taken by the board of directors, then at any time after thirty days and within ninety days after the issue of any bonds under the provisions of this act, any district assessment payer may bring an action in the superior court of the county wherein the office of the board of directors is located, to determine the validity of any such bonds. The board of directors shall be made parties defendant and service of summons shall be made on the members of the board personally, if they can be found within the state; if not, then by publication for three weeks in some newspaper, of general circulation within the county where the office of the board of directors is located, such newspaper to be designated by the court having jurisdiction. Before such publication can be had, an affidavit, in the usual form shall be made, showing such facts. Said board shall have the right to appear and contest such action. Notice of said action shall be given by publication of summons therein in the same manner and for the same time as required in the preceding section hereof in actions brought by the publication of such summons in the manner herein provided. Any district assessment payer or any one interested may appear and defend said action, and thereafter the same proceedings shall be had in such action as are hereinbefore provided for in the preceding section hereof in actions brought by the board of directors,

and the same matters determined and adjudicated by the court therein. Such action shall be speedily tried, with the right of appeal to either party, within the time and manner herein provided for the bringing of actions by the board to determine such matters. Such appeal shall be heard and determined within three months from the time of taking such appeal.

Sufficiency of proceedings, determination of.

§ 60. At the hearing of such proceedings the court shall hear and determine the sufficiency of all proceedings.

Consolidation of actions.

§ 61. If more than one action shall be pending at the same time concerning similar contests in this act provided for, they shall be consolidated and tried together.

Rules of pleading.

§ 62. The court hearing any of the contests herein provided for, in inquiring into the regularity, legality, or correctness of such proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said action or proceeding. The rules of pleading and practice provided by the Code of Civil Procedure, which are not inconsistent with the provisions of this act, are applicable to all actions or proceedings herein provided for. The costs of any hearing or contest herein provided for may be allowed and apportioned between the parties or attached to the losing party, in the discretion of the court.

Contests to be made as provided herein.

§ 63. No contest of any matter or thing herein provided for shall be made other than within the time and manner herein specified.

Boundaries may be changed.

§ 64. The boundaries of any drainage district now organized or hereafter organized under the provisions of this act, may be changed, and tracts of land which were included within the boundaries of such district at or after its organization under the provisions of this act, may be excluded therefrom, in the manner herein prescribed: but neither such change of the boundaries of the districts nor such exclusion of lands from the district shall impair or affect its organization, or its right in or to property, or any of its rights or privileges of whatever kind or nature; nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which said district was or may become liable or chargeable, had said change of its boundaries not been made, or had not such land been excluded from the district.

Petition to exclude tracts from district.

§ 65. The owner or owners in fee of one or more tracts of land which constitute a portion of a drainage district, may, jointly or severally, file with the board of directors of the district a petition, praying that such tract or tracts, and any other tracts contiguous thereto, may be excluded and taken from said district. The petition shall state the grounds and reasons upon which it is claimed that such lands should be excluded, and shall describe the boundaries thereof, and also the lands of such petitioner, or petitioners which are included within such boundaries; but the description of such lands need not be more particular or certain than is required when the lands are entered in the assessment book by the county assessor. Such petition must be acknowledged in the same manner and form as is required in the case of a conveyance of land, and the acknowledgment shall have the same force and effect as evidence as the acknowledgment of such a conveyance.

Publication of notice of petition.

§ 66. The secretary of the board of directors shall cause a notice of the filing of such petition to be published for at least two weeks in some newspaper published in

the county where the office of the board of directors is situated, and if any portion of such territory to be excluded lie within another county or counties, then said notice shall be so published in a newspaper published within each of said counties; or, if no newspaper be published therein, then by posting such notice for the same time in at least three public places in said district, and in case of the posting of said notices, one of said notices must be so posted on the lands proposed to be excluded. The notice shall state the filing of such petition, the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition; and it shall notify all persons interested in, or who may be affected by such change of the boundaries of the district, to appear at the office of said board at a time named in said notice, and show cause, in writing, if any they have, why the change of the boundaries of said district, as proposed in said petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice.

Hearing of petition.

§ 67. The board of directors, at the time and place mentioned in the notice, or at the time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition, and all evidence of proofs that may or shall be introduced by or on behalf of the petitioner or petitioners, and all objections to such petition that may or shall be presented in writing by any person showing cause as aforesaid, and all evidence and proofs that may be introduced in support of such objections. Such evidence shall be taken down, in shorthand, and a record made thereof and filed with the board. The failure of any person interested in said district, other than the holders of bonds thereof outstanding at the time of the filing of said petition with said board, to show cause, in writing, why the tract or tracts of land mentioned in said petition should not be excluded from said district, shall be deemed and taken as an assent by him to the exclusion of such tract or tracts of land, or any part thereof, from said district; and the filing of such petition with said board, as aforesaid, shall be deemed and taken as an assent by each and all of such petitioners to the exclusion from such district of the lands mentioned in the petition, or any part thereof. The expenses of giving said notice and of the aforesaid proceedings shall be paid by the person or persons filing such petition.

Board may deny petition or may grant it.

§ 68. If, upon the hearing of any such petition, no evidence or proofs in support thereof be introduced, or if the evidence fail to sustain said petition, or if the board deem it not for the best interests of the district that the lands, or some portion thereof, mentioned in the petition should be excluded from the district, the board shall order that said petition be denied as to such lands; but if the said board deem it for the best interests of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, and if no person interested in the district show cause in writing, why the said lands, or some portion thereof, should not be excluded from the district, or if, having shown cause, withdraws the same, or upon the hearing fails to establish such objections as he may have made, then it shall be the duty of the board to, and it shall forthwith, make an order that the lands mentioned and described in the petition, or some defined portion thereof, be excluded from said district.

Bondholders may assent to exclusion.

§ 69. If there be outstanding bonds of the district at the time of the filing of said petition, the holders of such outstanding bonds may give their assent, in writing, to the effect that they severally consent that the lands mentioned in the petition, or such portion thereof as may be excluded from said district by order of said board, may be excluded from the district; and if said lands, or any portion thereof, be thereafter

excluded from the district, the lands so excluded shall be released from the lien of such outstanding bonds. The assent must be acknowledged by the several holders of such bonds in the same manner and form as is required in the case of a conveyance of land, and the acknowledgment shall have the same force and effect as evidence as the acknowledgment of such conveyance. The assent shall be filed with the board, and must be recorded in the minutes of the board; and said minutes, or a copy thereof, certified by the secretary of said board, shall be admissible in evidence, with the same effect as the said assent, and such certified copy thereof may be recorded in the office of the county recorder of the county wherein said lands are situated.

Change of boundaries shall be recorded.

§ 70. In the event the said board of directors shall exclude any lands from said district upon petition thereof, it shall be the duty of the board of directors to make an entry in the minutes of the board, describing the boundaries of the district, should the exclusion of said lands from said district change the boundaries of said district, and for that purpose the board may cause a survey to be made of such portions of the district as the board may deem necessary; and a certified copy of the entry in the minutes of the board excluding any land, certified by the president and secretary of the board, shall be filed for record in the recorder's office of each county within which are situated any of the land of the district; but said district, notwithstanding such exclusion, shall be and remain a drainage district as fully to every intent and purpose as it would be had no change been made in the boundaries of the district, or had the lands excluded therefrom never constituted a portion of the district.

When office of director may become vacant.

§ 71. If the lands excluded from any district under this act shall embrace the greater portion of any division or divisions of such district, then the office of director for such division or divisions shall become and be vacant at the expiration of ten days from the final order of the board excluding said lands; and such vacancy or vacancies shall be filled by appointment by the board of supervisors of the county where the office of such board is situated, from the district at large. A director appointed as above provided shall hold his office until the next regular election for said district, and until his successor is elected and qualified.

Order dividing district into divisions.

§ 72. At least thirty days before the next general election of such district, the board of directors thereof shall make an order dividing such district into three or five divisions, as the case may require, as nearly equal in size as may be practicable, which shall be numbered first, second, third and so on, and one director shall be elected by each division. For the purposes of elections in such district, the said board of directors must establish a convenient number of election precincts, and define the boundaries thereof, which said precincts may be changed from time to time, as the board of directors may deem necessary.

Guardians, executors, or administrators may sign.

§ 73. A guardian, an executor, or an administrator of an estate, who is appointed as such under the laws of this state, and who as such guardian, executor, or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may on behalf of his ward, or the estate which he represents, upon being thereto properly authorized by the proper court, sign and acknowledge the petition in section 65 of this act mentioned, and may show cause, as herein provided, why the boundaries of the district should not be changed.

Exclusion shall not operate to release from valid debts of district.

§ 74. Nothing herein provided shall, in any manner, operate to release any of the lands so excluded from the district from any obligation to pay, or any lien thereon, of

any valid outstanding bonds or other indebtedness of said district at the time of the filing of said petition for the exclusion of said lands, but upon the contrary, said lands shall be held subject to said lien, and answerable and chargeable for and with the payment and discharge of all of said outstanding obligations at the time of the filing of the petition for the exclusion of said land, as fully as though said petition for such exclusion were never filed and said order of exclusion never made; and for the purpose of discharging such outstanding indebtedness, said lands so excluded shall be deemed and considered as part of said drainage district the same as though said petition for its exclusion had never been filed or said order of exclusion never made; and all provisions which may have been resorted to to compel the payment by said lands of its quota or portion of said outstanding obligations, had said exclusion never been accomplished, may, notwithstanding said exclusion, be resorted to to compel and enforce the payment on the part of said lands of its quota and portion of said outstanding obligations of said drainage district for which it is liable, as herein provided. But said land so excluded shall not be held answerable or chargeable for any obligation of any nature or kind whatever, incurred after the filing with the board of directors of said district of the petition for the exclusion of said lands from the said district; provided, that the provisions of this section shall not apply to any outstanding bonds, the holders of which have assented to the exclusion of such lands from said district, as hereinbefore provided.

Change of boundaries shall not impair organization.

§ 75. The boundaries of any drainage district now organized or hereafter organized under the provisions of this act may be changed in the manner herein prescribed, but such change of the boundaries of the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature; nor shall it affect, impair, or discharge any contract, obligation, lien or charge for or upon which it was or might become liable or chargeable, had such change of its boundaries not been made.

Petition to include tracts of land.

§ 76. The holder or holders of title, or evidence of title, representing one-half or more of any body of lands adjacent to the boundary of a drainage district, which are contiguous and which taken together, constitute one tract of land, may file with the board of directors of said district a petition, in writing, praying that the boundaries of said district may be so changed as to include therein said lands. The petition shall describe the boundaries of said parcel or tract of land, and shall also describe the boundaries of the several parcels owned by the petitioners, if the petitioners be the owners, respectively, of distinct parcels, but such descriptions need not be more particular than they are required to be when such lands are entered by the county assessor in the assessment-book. Such petition must contain the assent of the petitioners to the inclusion within said district of the parcels or tracts of land described in the petition, and of which said petition alleges they are, respectively, the owners; and it must be acknowledged in the same manner that conveyances of land are required to be acknowledged.

Publication of notice of filing petition.

§ 77. The secretary of the board of directors shall cause a notice of the filing of such petition to be given and published in the same manner and for the same time that notices of special elections for the issue of bonds are required by this act to be published. The notice shall state the filing of such petition and the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition; and it shall notify all persons interested in, or that may be affected by such change of the boundaries of the district, to appear, at the office of said board, at a time named in said notice, and show cause in writing, if any they have, why the change in

the boundaries of said district, as proposed in said petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioners shall advance to the secretary sufficient money to pay the estimated costs of all proceedings arising from such petition.

Hearing.

§ 78. The board of directors, at the time and place mentioned in the said notice, or at such other time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all the objections thereto, presented in writing by any person showing cause as aforesaid why said proposed change of the boundaries of the district should not be made. The failure of any person interested in said district, or in the matter of the proposed change of its boundaries, to show cause, in writing, as aforesaid, shall be deemed and taken as an assent on his part to a change of the boundaries of the district as prayed for in said petition, or to such a change thereof as will include a part of said lands. And the filing of such petition with said board, as aforesaid, shall be deemed and taken as an assent on the part of each and all of such petitioners to such a change of said boundaries that they may include the whole or any portion of the lands described in said petition.

Requirements precedent.

§ 79. The board of directors to whom such petition is presented, may require, as a condition precedent to the granting of the same, that the petitioners shall severally pay to such district such respective sums, as nearly as the same can be estimated (the several amounts to be determined by the board), as said petitioners or their grantors would have been required to pay to such district as assessments, had such lands been included in such district at the time the same was originally formed.

Directors may grant or deny petition.

§ 80. The board of directors, if they deem it not for the best interests of the district that a change of its boundaries be so made as to include therein the lands mentioned in the petition, shall order that the petition be rejected. But if they deem it for the best interests of the district that the boundaries of said district be changed and if no person interested in said district or the proposed change of its boundaries shows cause, in writing, why the proposed change should not be made, or if, having shown cause, withdraws the same, the board may order that the boundaries of the district be so changed as to include therein the lands mentioned in said petition or some part thereof. The order shall describe the boundaries as changed, and shall also describe the entire boundaries of the district as they will be after the change thereof as aforesaid is made; and for that purpose the board may cause a survey to be made of such portions of such boundary as is deemed necessary.

Resolution to include land.

§ 81. If any person interested in said district of the proposed change of its boundaries, shall show cause as aforesaid why such boundaries should not be changed, and shall not withdraw the same, and if the board of directors deem it for the best interests of the district that the boundaries thereof be so changed as to include therein the lands mentioned in the petition, or some part thereof, the board shall adopt a resolution to that effect. The resolution shall describe the exterior boundaries of the lands which the board are of the opinion should be included within the boundaries of the district when changed.

Election to determine if boundaries shall be changed.

§ 82. Upon the adoption of the resolution mentioned in the last preceding section, the board shall order that an election be held within said district, to determine whether

the boundaries of the district shall be changed as mentioned in said resolution; and shall fix the time at which such election shall be held, and cause notice thereof to be given and published. Such notice shall be given and published, and such election shall be held and conducted, the returns thereof shall be made and canvassed, and the result of the election ascertained and declared, and all things pertaining thereto conducted in the manner prescribed by this act in case of a special election to determine whether bonds of a drainage district shall be issued. The ballots cast at said election shall contain the words "For change of boundary" or "Against change of boundary" or words equivalent thereto. The notice of election shall describe the proposed change of the boundaries in such manner and terms that it can readily be traced.

Majority vote to prevail.

§ 83. If at such election a majority of all the votes cast at said election shall be against such change of the boundaries of the district, the board shall order that said petition be denied, and shall proceed no further in that matter. But if a majority of such votes be in favor of such change of the boundaries of the district, the board shall thereupon order that the boundaries be changed in accordance with said resolution adopted by the board. The said order shall describe the entire boundaries of said district, and for that purpose the board may cause a survey of such portions thereof to be made as the board may deem necessary.

Change to be recorded.

§ 84. Upon a change of the boundaries of a district being made, a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board, shall be filed for record in the recorder's office of each county within which are situated any of the lands of the district, and thereupon the district shall be and remain a drainage district, as fully, and to every intent and purpose, as if the lands which are included in the district by the change of the boundaries, as aforesaid, had been included therein at the original organization of the district.

Evidence.

§ 85. Upon the filing of the copies of the order, as in the last preceding section mentioned, the secretary shall record in the minutes of the board the petition aforesaid; and the said minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the petition.

Guardian, executor, or administrator may sign.

§ 86. A guardian, an executor or an administrator of an estate, who is appointed as such under the laws of this state, and who, as such guardian, executor or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward, or the estate which he represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition in section 76 of this act mentioned and may show cause why the boundaries of the district should not be changed.

Order redividing district.

§ 87. In case of the inclusion of any land within any district by proceedings under this act, the board of directors, must, at least thirty days prior to the next succeeding general election, make an order redividing such district, into three or five divisions, as the case may require, as nearly equal in size as may be practicable, which shall be numbered first, second, third and so on, and one elector shall thereafter be elected by each division. For the purpose of elections, the board of directors must establish a convenient number of election precincts in said districts, and define the boundaries thereof, which said precincts may be changed from time to time as the board may deem necessary.

Election to reduce bonded indebtedness.

§ 88. Whenever the board of directors of a drainage district heretofore organized, or hereafter organized under the provisions of this act, shall determine that the authorized bonded indebtedness of such drainage district is greater than such district is liable to need to complete its system as planned, and there be no outstanding bonds, the board of directors may call a special election for the purpose of voting upon a proposition to reduce such bonded indebtedness to such sum as the board may determine to be sufficient for such purpose.

Notice of election. Ballots.

§ 89. Notice of the said election shall be given in the same manner as provided in section 27 of this act, in relation to calling special elections for issuance of bonds. The notice of election must state the amount of the authorized bonded indebtedness of such district, and the amount to which it is proposed to reduce the same; also, the date on which said election will be held and the polling-places, as established by said board of directors. The ballots cast at said election shall contain the words "For reducing bonds—Yes," or "For reducing bonds—No." When the vote is canvassed by the board of directors and entered of record, if a majority of the votes cast shall be "For reducing bonds—Yes," then in that event the board of directors shall only be empowered to issue or sell the amount of bonds as was stipulated in the said notice of such special election; but if a majority of said votes are not "For reducing bonds—Yes," then the authority to issue bonds shall remain the same as before said special election was held.

Bondholders may assent to reduction.

§ 90. In case there be outstanding bonds of any district desiring to take advantage of the provisions of sections 88 and 89 of this act concerning reduction of bonded indebtedness, the assent of such bondholders may be obtained to such reduction of the bonded indebtedness, in the same manner as provided in section 69 of this act. If such assent is obtained in the manner therein provided, then, and in that event, such district shall be empowered to take advantage of all the provisions of said sections of this act, but not otherwise. No reduction of the bonded indebtedness, as in this act provided shall in any manner affect any order of court that may have been made, adjudicating and confirming the validity of said bonds.

Election*to determine destruction of bonds.

§ 91. Whenever there remains in the hands of the board of directors of any drainage district organized under the provisions of this act, after the completion of its drainage system, and the payment of all demands against such district, any bonds voted to be issued by said district, but not sold, and not necessary to be sold for the raising of funds, for the use of such district, said board of directors may call a special election for the purpose of voting upon a proposition to destroy said unsold bonds, or so many of them as may be deemed best, or may submit such proposition at a general election.

Notice of election. Ballots.

§ 92. Such election shall be held in the same manner as other elections held under the provisions of this act. A notice of such election shall be given in the same manner as provided in section 27 of this act in relation to calling special elections for the issuance of bonds. The notice of election must state the amount of the bonded indebtedness of such district authorized by the vote of the district, the amount of the bonds remaining unsold, and the amount proposed to be destroyed, and the date on which such election is proposed to be held, and the polling-places as fixed by the board of directors. The ballots to be cast at such election shall contain the words "For destroying bonds—Yes" and "For destroying bonds—No," and the voter must erase the word "No" in case he favors the destruction of the bonds, otherwise the word "Yes."

Two-thirds vote to prevail.

§ 93. When the vote is canvassed by the board of directors and entered of record, if a two-thirds majority of the votes cast should be found to be in favor of the destruction of said bonds, then the president of the board, in the presence of a majority of the members of the board, must destroy the bonds so voted to be destroyed, and the total amount of bonds so destroyed and canceled shall be deducted from the sum authorized to be issued by the electors of said district, and no part thereof shall thereafter be reprinted or reissued.

Validity of prior districts not affected.

§ 94. Nothing in this act shall be so construed as to affect the validity of any district heretofore organized under the laws of this state, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature; but said districts are hereby made subject to the provisions of this act so far as applicable; nor shall it affect, impair, or discharge any contract, obligation, lien, or charge, for or upon which it was or might become liable or chargeable had not this act been passed.

Acts repealed.

§ 95. Nothing in this act shall be construed as repealing or in anywise modifying the provisions of any other act relating to the subject of drainage except such as may be contained in the act entitled "An act to provide for the organization and government of drainage districts, for the drainage of agricultural lands other than swamp and overflowed lands," approved March thirty-first, eighteen hundred and ninety-seven, and any subsequent acts supplementary thereto, or amendatory thereof, all of which acts, so far as they may be inconsistent herewith, are hereby repealed.

Time of taking effect.

§ 96. This act shall take effect from and after its passage and approval.

1. **Drainage act of 1897**, repealed by the present act did not provide for the payment of drainage district taxes under protest, and did not adopt the provisions of § 3819, Politi-

cal Code (of 1893), as to entry of judgments against counties for the recovery of such taxes.—*Justice v. Robinson*, 142 Cal. 199, 201, 75 Pac. 776.

BELLEVUE-WILFRED DRAINAGE DISTRICT.

ACT 1285—An act to validate bonds of the Bellevue-Wilfred drainage district, and all proceedings relating thereto, and making final and conclusive, except as herein provided, the finding as to the result of the election at which said bonds were authorized.

History: Approved May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 713.

Bellevue-Wilfred drainage district bonds validated.

§ 1. Bonds in the amount of twenty thousand dollars of the Bellevue-Wilfred drainage district, and all the acts and proceedings of said district leading up to and including the authorizing and issuance of said bonds, are hereby legalized, ratified, confirmed, and declared valid to all intents and purposes, which district was organized under an act entitled "An act to provide for the organization and government of drainage districts for the drainage of agricultural lands other than swamp and overflowed lands, and to provide for the acquisition or construction thereby of works for the drainage of lands embraced within such districts," approved March 20, 1913, as amended. Said bonds were authorized by virtue of an election held in said district on September 27, 1916, at which a majority of the votes cast were in favor of incurring such bonded indebtedness, as found and determined by the board of directors of said district upon canvassing such election returns. Said finding and determination of the result of said election shall be and is hereby determined to be final and conclusive

against all persons, except the state of California, upon suit commenced by the attorney general. Any such suit must be commenced within thirty days after this act takes effect and not otherwise.

All said bonds, when issued and sold as in said act provided, shall be and are hereby declared to be legal and valid obligations of said district, and the faith and credit of said Bellevue-Wilfred drainage district is pledged for the prompt payment and redemption of the principal and interest of said bonds, and said bonds by their issuance shall be conclusive evidence of the regularity of all proceedings leading up thereto, and that they were duly authorized at said election.

BUTTE COUNTY DRAINAGE DISTRICT NO. 1.

ACT 1286—An act declaring certain drainage work already done within drainage district number one, Butte county, to have been legally done, validating the same, and making such work a proper subject for the levy of an assessment to pay therefor; authorizing the levy and collection of such assessment in said district to provide for such payment, and interest; the original assessment levied and collected being insufficient to provide for such payment.

History: Approved May 21, 1917. In effect July 27, 1917. Stats. 1917, p. 789.

Work in drainage district No. 1, Butte county, validated.

§ 1. All the work, labor, and services rendered drainage district number one in the county of Butte, state of California, in the construction, maintenance and repair of main and lateral drainage ditches, and drainage works, already done upon lands lying within said district, for the payment for which the original assessment levied and collected under the provisions of the act entitled, "An act to promote drainage," approved March 18, 1885, as amended, was insufficient, is hereby declared to have been legally done, is hereby validated and is hereby made a proper subject for the levy of an assessment for the payment therefor.

Statement to board of supervisors. Order to make assessment.

§ 2. The board of trustees of said drainage district is hereby authorized and empowered to present to the board of supervisors of said county, a statement of all the work, labor and services rendered said district in the construction, maintenance and repair of main and lateral drainage ditches, and drainage works, already done upon lands lying within said district, for the payment for which the original assessment levied and collected under the provisions of said act approved March 18, 1885, as amended, was insufficient. Such statement shall contain a memorandum of the unpaid claims existing by reason of the performance of said work, and the names of the respective claimants; and shall specify those claims included in said memorandum for which warrants have been issued, if there are any such claims, and the date of their registration, and shall also specify those claims included in said memorandum for which no warrants have been issued, if there are any such claims. Said board of supervisors is hereby authorized and empowered to make an order directing that the commissioners who made such original assessment, or other commissioners to be named in such order, assess upon the lands situated within said district a charge proportionate to the whole expense incurred for such work, the total of which shall not exceed the sum of six thousand dollars, and to the benefit which has resulted from such work; which charges must be collected and paid into the county treasury of said county either in cash or in regularly issued warrants of said district as hereinafter provided, and must be placed by the treasurer of said county to the credit of said district, and applied to the payment of said claims, and to the payment of interest on any of said claims for which warrants were issued and registered, at the rate of six per cent per

annum, from the respective dates of registration, upon the warrants of said trustees, approved by said board of supervisors.

Warrants.

§ 3. All such warrants drawn by said trustees must, after they have been approved by said board of supervisors, be presented to said treasurer; and if they are not paid on presentation like endorsement must be made thereon, and they must be registered in like manner as county warrants, and paid in the order of their registration. All of such warrants shall, from the date of their registration, bear interest at the rate of six per cent, per annum; provided, however, that any of such warrants may be used in the payment of the assessment herein provided for without regard to the order of their registration.

BUTTE COUNTY DRAINAGE DISTRICT NO. 100.

ACT 1287—An act to recognize and declare valid all proceedings in drainage district number one hundred of Butte county.

History: Approved April 4, 1919. In effect July 22, 1919. Stats. 1919, p. 32.

Drainage district No. 100, Butte county, validated.

§ 1. Drainage district number one hundred of Butte county, as formed by the board of supervisors of the county of Butte, state of California, and as now existing, is hereby recognized and declared valid and all proceedings on the organization and formation thereof are hereby approved and in all respects declared valid.

KNIGHTS LANDING RIDGE DRAINAGE DISTRICT.

ACT 1288—An act to create a drainage district to be called Knight's Landing ridge drainage district; to promote drainage therein by the making of a cut through Knight's Landing ridge, and the construction of a canal leading therefrom; to provide for the election and appointment of officers of said drainage district; defining the powers, duties and compensation of such officers; and providing for levying and collecting assessments upon the lands within said drainage district; the issuance of bonds by said drainage district and testing the validity of the levy of such assessments and the issuance of such bonds.

History: Approved April 30, 1913. In effect August 10, 1913. Stats. 1913, p. 109. Amended May 18, 1915. In effect August 8, 1915. Stats. 1915, p. 546. May 5, 1917. In effect July 27, 1917. Stats. 1917, p. 277.

See Act 1291a as to boundaries of Knights Landing drainage district.

The amendment of 1917 provided for the allowance of interest on a payment made upon an assessment afterwards adjudged invalid, and a credit for such payment on a valid assessment subsequently made.

The amendment of 1915 made certain changes in the exterior boundaries of the district, and in the administrative features of the original act.

The act of 1919 (Act 1289) corrected a clerical error in the description of the original act.

BOUNDARIES OF KNIGHTS LANDING RIDGE DRAINAGE DISTRICT.

ACT 1289—An act determining and defining the exterior boundaries of Knight's Landing ridge drainage district, created by that certain act approved April 30, 1913, for the purpose of correcting an error in description.

History: Approved May 7, 1919. In effect July 22, 1919. Stats. 1919, p. 365.

The purpose of this act as expressed in the concluding paragraph of section one thereof was to correct a clerical error in

the description contained in of the original act. See, ante, Act 1288.

LOS ANGELES COUNTY DRAINAGE DISTRICT IMPROVEMENT NO. 1.

ACT 1290—An act validating the formation and organization of Los Angeles County Drainage District Improvement No. 1 under the provisions of an act of the legislature of the state of California, approved March 21, 1903, as amended May 7, 1915, and entitled as amended "An act to promote the drainage of wet, swamp and overflowed lands, and to promote the public health in the communities in which they lie, providing for the issuance of bonds and levying of assessments on lands benefited, to pay the costs and expenses thereof."

History: Approved May 4, 1917. In effect July 27, 1917. Stats. 1917, p. 227.

Los Angeles county drainage district improvement No. 1, validated.

§ 1. Los Angeles County Drainage District Improvement No. 1, organized, formed and established under the provisions of an act of the legislature of the state of California, approved March 21, 1903, amended May 7, 1915, and entitled as amended "An act to promote the drainage of wet swamp and overflowed lands, and to promote the public health in the communities in which they lie, providing for the issuance of bonds and levying of assesments on lands benefited, to pay the costs and expenses thereof," and all proceedings leading to such organization, formation or establishment of such district, are hereby affirmed and validated, and such district is hereby declared to be duly organized and incorporated; and all the powers given to such district and the officers thereof by said act are hereby declared to be enjoyed by said district, and all the acts of said district and its officers are hereby ratified and approved.

LOS ANGELES COUNTY DRAINAGE IMPROVEMENT DISTRICT NO. 3.

ACT 1291—An act validating the formation and organization and proceedings of Los Angeles county drainage improvement district number three under the provisions of an act of the legislature of the state of California, approved March 21, 1903, as amended May 7, 1915, and entitled as amended: "An act to promote the drainage of wet, swamp and overflowed lands, and to promote the public health in the communities in which they lie, providing for the issuance of bonds and levying of assessments on lands benefited, to pay the cost and expenses thereof."

History: Approved April 21, 1919. In effect July 22, 1919. Stats. 1919, p. 135.

Los Angeles county drainage improvement district No. 3, validated.

§ 1. Los Angeles county drainage improvement district No. 3, organized, formed and established under the provisions of an act of the legislature of the state of California, approved March 21, 1903, amended May 7, 1915, and entitled as amended, "An act to promote the drainage of wet, swamp and overflowed lands, and to promote the public health in the communities in which they lie, providing for the issuance of bonds and levying of assessments on lands benefited, to pay the cost and expenses thereof," and all proceedings leading to such organization, formation or establishment of such district, and all acts and proceedings leading up to and providing for the issuance of the bonds of said district, are hereby legalized, ratified, confirmed and declared valid, and such bonds are declared to be the legal and binding obligation of and against said district; that all the powers given to such district and the officers thereof by said act are hereby declared to be enjoyed by said district, and all the acts of said district and its officers are hereby ratified and approved.

MERCED COUNTY DRAINAGE IMPROVEMENT DISTRICT NO. 1.

ACT 1292—An act validating the formation and organization, and determining the boundaries of drainage improvement district number one of the county of Merced, state of California.

History: Approved January 29, 1917. In effect immediately. Stats. 1917, p. 3.

Drainage improvement district No. 1, Merced county, validated.

§ 1. Drainage Improvement District number one of the county of Merced, state of California, as formed and organized by the board of supervisors of said Merced county, and as now existing, is hereby recognized and declared valid, and all proceedings on the formation and organization thereof are hereby approved, ratified and declared valid.

Boundaries.

§ 2. The boundaries of said district, as fixed by the board of supervisors of said Merced county are hereby approved and declared to be as follows:

Commencing at the northeast corner of section two, township seven south, range eleven east, Mount Diablo base and meridian; thence, following section lines, south three miles to the southeast corner of section fourteen, of said township and range; thence, following section lines, west two miles, to the southwest corner of section fifteen, said township and range; thence, following section line, north one mile to the northwest corner of said section fifteen; thence east three-eighths mile; thence north one-half mile; thence east three-sixteenths mile; thence north one-quarter mile; thence east seven-sixteenths mile; thence north one-quarter mile to the northeast corner of section ten, said township and range; thence, following section line, north seven-eighths mile to a point on the continuation easterly of the southerly line of lot one of the San Joaquin-Eucalyptus Company's subdivision; thence westerly along lot lines to the southwest corner of lot four of said subdivision; thence northerly along lot line and the continuation thereof to the north line of section three, said township and range; thence following section lines east one and one-eighth miles, more or less, to the point of commencement.

Urgency measure.

§ 3. Inasmuch as there are in said district bodies of stagnant water in close proximity to communities, neighborhoods and a large number of residences; and inasmuch as said bodies of stagnant water are injurious to the health of the said residents, and of the inhabitants of said communities and neighborhoods, and for the preservation of the safety and health of the public, must be drained; and inasmuch as this act is necessary to provide ample power for the drainage of said bodies of stagnant water, it is hereby determined and declared that this act, and each and all of the provisions thereof, constitute and is an urgency measure necessary for the immediate preservation of the public safety and health within the meaning of section one of article IV of the constitution and shall take effect and be in full force immediately from and after its passage.

MERCED COUNTY DRAINAGE IMPROVEMENT DISTRICT NO. 2.

ACT 1293—An act validating the formation and organization, and determining the boundaries of drainage improvement district number two of the county of Merced, state of California.

History: Approved January 29, 1917. In effect immediately. Stats. 1917, p. 4.

Drainage improvement district No. 2, Merced county, validated.

§ 1. Drainage improvement district number two of the county of Merced, state of California, as formed and organized by the board of supervisors of said county of Merced, and as now existing, is hereby recognized and declared valid, and all proceedings on the formation and organization thereof are hereby approved and declared valid.

Boundaries.

§ 2. The boundaries of said district, as fixed by the board of supervisors of said Merced county are hereby approved and declared to be as follows:

Commencing at the northeast corner of section six, township seven south, range thirteen east, Mount Diablo base and meridian; thence south on the east line of sections six and seven to the intersection of the north line of the California state highway; thence northwesterly along said highway to a point that is at right angles northeasterly from the northwest corner of lot five of Buhach colony; thence southwesterly on the lot lines to a point ten chains southwest of the northwest corner of said lot five; thence northwesterly parallel with the right of way of the Central Pacific Railroad to a point on the easterly line of lot two of Buhach colony ten chains southwest of the northeast corner of said lot; thence southwesterly on lot lines to the southeast corner of lot twenty-four; thence southeasterly to the northeast corner of lot thirty-one; thence southwesterly to the southeast corner of lot thirty-one; thence south to the southeast corner of lot fifty-seven; thence west to the southwest corner of lot fifty-seven; thence south on the westerly line of lot fifty-six to the southerly line of canal right of way; thence southeasterly along said canal right of way through lots fifty-six, fifty-five, fifty, fifty-one and fifty-two to the east line of lot fifty-two; thence south to the southeast corner of lot fifty-three, all in Buhach colony; thence west one mile to the northeast corner of section twenty-three; thence south one mile to the southeast corner of section twenty-three; thence west one-half mile; thence north one mile; thence west one-half mile to the southwest corner of section fourteen; thence north one-half mile; thence west one-fourth mile; thence north one-fourth mile; thence west three-eighths mile; thence north one-fourth mile; thence east one and three-eighths miles to the southeast corner of lot thirty, Atwater colony; thence north one mile to the northeast corner of lot three, Atwater colony; thence west to the northwest corner of lot four of said colony; thence north to the north line of the state highway; thence northwesterly along state highway to the west line of section two, township seven south, range twelve east, Mount Diablo base and meridian; thence north to the northwest corner of section two; thence west to the quarter corner on the south line of section thirty-four, township six south, range twelve east, Mount Diablo base and meridian; thence north one and one-half miles to the center of section twenty-seven; thence east about one-half mile to the intersection of the westerly line of the Livingston canal right of way; thence southeasterly along the southerly line of said canal right of way to the south line of section twenty-six; thence east to the northeast corner of section thirty-five; thence south about one-half mile to the south line of said canal right of way; thence southeasterly along the south line of said canal right of way to the intersection of the south boundary of section thirty-one of township six south, range thirteen east, Mount Diablo base and meridian; thence east about three-fourths mile to the place of commencement.

Urgency measure.

§ 3. Inasmuch as there are in said district bodies of stagnant water in close proximity to a large number of residences; and inasmuch as said bodies of stagnant water are injurious to the health of the inhabitants of said community and for the preservation of the safety and health of the public, must be drained; and inasmuch as this act is necessary to provide ample power for the drainage of said bodies of stagnant

water, it is hereby determined and declared that this act, and each and all of the provisions thereof, constitute and is an urgency measure necessary for the immediate preservation of the public safety and health within the meaning of section one, article IV of the constitution and shall take effect and be in full force immediately from and after its passage.

SACRAMENTO RIVER DRAINAGE DISTRICT.

ACT 1294—An act creating Sacramento river drainage district, establishing a board of commissioners therefor and defining their powers and duties.

History: Approved April 1, 1878, Stats. 1877-78, p. 987.

YOLO BASIN DRAINAGE DISTRICT.

ACT 1295—An act to create a drainage district to be called Yolo basin drainage district, to promote drainage therein, and to provide for the management and control of said drainage district.

History: Approved April 21, 1909, Stats. 1909, p. 1024.

YOLO AND COLUSA DRAINAGE DISTRICT.

ACT 1296—An act to provide for the drainage of certain lands in the counties of Colusa and Yolo.

History: Approved April 1, 1878, Stats. 1877-78, p. 1037.

This act created the Colusa and Yolo Drainage District, and provided for its government.

DRAINAGE DISTRICT NO. 100 BUTTE COUNTY—VALIDATION.

ACT 1296a—An act to recognize and declare valid all proceedings in drainage district number one hundred of Butte county.

History: Approved April 4, 1919. In effect July 22, 1919. Stats. 1919, p. 32.

Drainage district No. 100 Butte county validated.

§ 1. Drainage district number one hundred of Butte county, as formed by the board of supervisors of the county of Butte, state of California, and as now existing, is hereby recognized and declared valid and all proceedings on the organization and formation thereof are hereby approved and in all respects declared valid.

DRUGS.

See tits. "Adulteration"; "Pharmacy"; "Poisons."

DUNSMUIR.

See Act 3094, note.

CHAPTER 93.

DWELLING HOUSES.

References: See tits. "Buildings"; "Tenement Houses."

CONTENTS OF CHAPTER.

ACT 1302. "STATE DWELLING HOUSE ACT."

STATE DWELLING HOUSE ACT.

ACT 1302—An act to regulate the construction, reconstruction, moving, alteration, maintenance, use and occupancy of dwellings, and the maintenance, use and occupancy of the premises and land on which dwellings are erected or located, in incorporated towns, incorporated cities, and incorporated cities and counties, and to provide penalties for the violation thereof.

History: Approved May 31, 1917. In effect September 1, 1917. Stats. 1917, p. 1461.

Title.

§ 1. This act shall be known as the "state dwelling-house act," and its provisions shall apply to incorporated towns, incorporated cities, and incorporated cities and counties of this state.

Duty of building department.

§ 2. It shall be the duty of the "building department" of every incorporated town, incorporated city, and incorporated city and county, to enforce all the provisions of this act pertaining to the erection, construction, reconstruction, moving, conversion, alteration and arrangement of dwellings.

Duty of housing departments.

It shall be the duty of the "housing department" of every incorporated town, incorporated city, and incorporated city and county to enforce all the provisions of this act pertaining to the maintenance, sanitation, ventilation, use and occupancy of dwellings after said dwellings have been erected, constructed or altered, as the case may be.

In case no such departments.

In the event that there is no building department or no housing department in an incorporated town, incorporated city, or incorporated city and county, it shall be the duty of the officer or officers who are charged with the enforcement of ordinances and laws regulating the erection, construction or alteration of buildings, or the maintenance, sanitation, ventilation or occupancy of buildings, or of the police, fire or health regulations in said incorporated town, incorporated city, or incorporated city and county to enforce all the provisions of this act.

Every incorporated town, incorporated city, or incorporated city and county in the state of California shall have, and it is hereby empowered and given authority to designate and charge by ordinance any other department or officer than the department or officers mentioned herein, with the enforcement of this act, or any portion thereof.

Powers of commission of immigration and housing.

The commission of immigration and housing of California shall have, and it is hereby empowered and given authority to enforce the provisions of this act, which do not pertain to the actual erection, construction, reconstruction, moving, alteration or arrangement of dwellings in all incorporated towns, incorporated cities, and incorporated cities and counties, in the state of California, whenever said commission finds or discovers a violation or violations of the provisions of this act and notifies the local department or officer, or departments or officers who are charged with the enforcement of the provisions of this act, in writing, of such violation or violations, and the said local department or officer, or departments or officers, fail, neglect or refuse to enforce the provisions of the said act within thirty days thereafter; provided, however, that the said commission of immigration and housing of California shall enforce the provisions of this act only in the instances specified in said written notice.

Unlawful to construct dwelling contrary to act.

§ 3. It shall be unlawful for any person, firm or corporation, whether as owner, agent, contractor, builder, architect, engineer, superintendent, foreman, plumber, tenant, lessee, lessor, occupant, or in any other capacity whatsoever to erect, construct, reconstruct, alter, build upon, move, convert, use, occupy or maintain, or to cause, permit or suffer to be erected, constructed, reconstructed, altered, built upon, moved, converted, used, occupied or maintained any dwelling or any portion thereof contrary to the provisions of this act, or to commit or maintain or cause or permit to be committed or maintained any nuisance in or upon any dwelling or any portion thereof, or any of the premises, which are a part thereof, or which are required by the provisions of this act;

or to do or to cause to be done, or to use or cause to be used, any privy, sewer, cesspool, plumbing or house drainage affecting the sanitary condition of any dwelling or any portion thereof, or of the premises thereof, contrary to any of the provisions of this act.

Alterations.

§ 4. It shall be unlawful for any person to make any alterations or changes of any kind whatsoever, to any dwelling erected prior to the passage of this act, or to any dwelling hereafter erected, in any manner which would be inconsistent with any of the provisions of this act, or in violation of the said provisions of this act; or in any manner to diminish the size of the windows, or to remove any window or windows from the rooms contrary to any of the provisions of this act.

Building converted to use as dwelling. Building moved.

§ 5. A building not erected for, or which is not used as a dwelling at the time of the passage of this act, if hereafter converted to or altered for such use, shall thereupon become subject to all the provisions of this act affecting a dwelling hereafter erected.

A building used as a dwelling at the time of the passage of this act, if moved, shall be made to conform to all of the provisions of this act affecting dwellings hereafter erected, in so far as they pertain to unoccupied area.

Penalty for violation.

§ 6. Any person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment.

Procedure.

Except as herein otherwise specified, the procedure for the prevention of violations of this act, for the vacation of dwellings or premises unlawfully occupied, or for the abatement of a nuisance in connection with a dwelling or the premises thereof, shall be as set forth in the charter and ordinances of the municipality in which the procedure is instituted.

Power to enter building.

§ 7. The department or departments charged with the enforcement of this act in any incorporated town, incorporated city or incorporated city and county, and the authorized officers, agents or employees of such department or departments may, whenever necessary, enter dwellings or portions thereof, or the premises thereof, within the corporate limits of such towns, cities, or cities and counties, for the purpose of inspecting such buildings, in order to secure compliance with the provisions of this act and to prevent violations thereof.

The members of the commission of immigration and housing of California and the agents, officers or employees of said commission may, whenever necessary, enter dwellings or portions thereof, or the premises thereof, for the purpose of inspecting such buildings in order to secure compliance with the provisions of this act and to prevent violations thereof.

The owner or his authorized agent may, whenever necessary, enter dwellings, or portions thereof, or the premises thereof, owned by him, to carry out any instructions or to perform any work required to be done by the provisions of this act; provided, however, that the authority to enter buildings, as in this section given to the persons hereinbefore enumerated, shall not be construed or deemed to apply to the entering of any such building between the hours of six o'clock p. m. of any day and six o'clock

a. m. of the succeeding day, without the consent of the owner or of the occupants of such buildings; but in no event shall the authority in this section given be construed as permitting any of the persons hereinbefore enumerated to enter any such buildings in the absence of the occupants thereof without a proper written order, duly executed by a competent court authorized to issue such orders.

Definitions.

§ 8. For the purpose of this act, certain words and phrases are defined as follows, unless it shall be apparent from their context that they have a different meaning:

Words used in the singular include the plural, and the plural, the singular.

Words used in the present tense include the future.

Words used in the masculine gender include the feminine, and the feminine, the masculine.

Words "building department," "housing department," "department charged with the enforcement of this act," shall be construed as if followed by the words, "of the incorporated town, incorporated city, or incorporated city and county," as the case may be, in which the dwelling is situated.

"Apartment."

"Apartment" is a room or suite of rooms which is occupied, or is intended or designed to be occupied by one family for living and sleeping purposes.

"Basement."

"Basement" is any story or portion thereof partly below the level of the curb or the actual adjoining ground level, the ceiling of which in no part is less than seven feet above the curb level or actual adjoining ground levels. If the adjoining ground is excavated to or below the curb level, such excavated space shall have not less than the minimum width and length required in this act for outer courts.

"Building."

"Building" is a dwelling.

"Building department."

"Building department" means the commissioner of buildings, superintendent of buildings, chief inspector of buildings, or any officer or department charged with the enforcement of ordinances and laws regulating the construction and alteration of buildings or structures.

"Cellar."

"Cellar" is any story or portion thereof, the ceiling of which is less than seven feet above the curb level and actual adjoining ground levels.

"Curb level."

"Curb level" is the curb level opposite the center of the front of lot, and in the event that a curb has not been established shall be deemed to be the average ground level at the front of lot.

"Department."

"Department." Wherever the word "department" is used it means the building department, the housing department or such other department or officer, or departments or officers, who are charged with the enforcement of the provisions of this act.

"Dwelling."

"Dwelling" is as follows:

(a) Any house or building, or any portion thereof, which contains not more than two apartments, or not more than five guest rooms, or,

(b) Any house or building or any portion thereof, not more than one story in height, which contains more than two apartments, or,

(c) Any house or building, or any portion thereof, of more than one story and not more than two stories in height, which is designed, built, rented, leased, let or hired out to be occupied, or is occupied, as the home or residence of not more than four families, (four apartments) and which is so arranged that each of the said families live independently of each other, and which building is constructed and arranged so that a separate section is or may be kept as a home or a residence of a separate family. Each such section having an entirely independent and separate entrance, and if a stairway is required, one separate stairway leading to each section from the street or from an outside vestibule on the level of the first floor of said building, and with no room, hallway, bathroom, water-closet or kitchen used in common by two or more families occupying the said building.

“Family.”

“Family” is one person living alone or a group of two or more persons living together in an apartment, whether related to each other by birth or not.

“Guest.”

“Guest” is any person hiring and occupying a room for sleeping purposes, and shall include both boarders and lodgers.

“Guest room.”

“Guest room” is a room which is occupied, or is intended, arranged or designed to be occupied, for sleeping purposes by one or more guests.

“Housing department.”

“Housing department” is any department or commission charged with the enforcement of ordinances or laws regulating the occupancy and maintenance of dwelling house buildings; and where no such department is maintained, shall be deemed to be the health commissioner, the department of health, health officer, or similar department charged with the enforcement of laws and ordinances regulating the maintenance and occupancy of buildings or structures and of the health and sanitary requirements.

“Lot.”

“Lot” is a parcel or area of land on which is situated a dwelling, together with the land, and unoccupied spaces for such a dwelling, as required by this act; all of which land shall be owned by or be under the absolute lawful control and in the lawful possession of the dwelling.

“Nuisance.”

“Nuisance” embraces public nuisance as known at common law or in equity jurisprudence, and whatever is dangerous to human life or detrimental to health, and shall also embrace the overcrowding with occupants of any room, insufficient ventilation, or inadequate or insanitary sewerage or plumbing facilities, or uncleanness, and whatever renders air, food or drink unwholesome or detrimental to the health of human beings.

“Person.”

“Person” is a natural person, his heirs, executors, administrators or assigns; also includes a firm, partnership or a corporation, its or their successors or assigns.

“Shall.”

“Shall.” Wherever this word is used it shall be mandatory.

"Street."

"Street" is any public street, alley, thoroughfare or park having a minimum width of sixteen feet, measured from the front of lot to the opposite front of lot, and shall have been dedicated or deeded to the public for public use.

Constructed in substantial manner.

§ 9. Every dwelling hereafter erected shall be constructed in a substantial manner; and the building shall be so constructed as to provide shelter to the occupants against the elements, and so as to exclude dampness in inclement weather.

Sleeping in cellar.

§ 10. In no dwelling shall any room in the cellar be constructed, altered, converted or occupied for living or sleeping purposes.

Rooms in basement.

§ 11. In no dwelling shall any room in the basement be constructed, altered, converted or occupied for living purposes unless it conforms to all of the requirements of this act for rooms in other parts of the building, and that the ceiling of each such room be in all parts not less than seven feet above the adjoining ground levels.

All the walls below the ground level and the floors of such a basement shall be dampproofed and waterproofed. Such dampproofing and waterproofing shall run through the walls and up as high as the ground level and continue throughout the floor.

Every basement in such buildings shall be illuminated and ventilated.

Ventilation beneath floor.

§ 12. In every dwelling hereafter erected there shall be provided a clear air space under the lowest floor thereof of at last six inches, except where there is a ventilated basement or cellar underneath such floor, which clear air space shall be enclosed and provided with a sufficient number of openings with removable screens, or similar provisions, of a size to insure ample ventilation. The surface underneath the floor shall be kept dry, drained, clean and free from any accumulation of rubbish, debris or filth.

Floor area.

The provisions of this section shall not be deemed to apply to masonry floors laid directly on the soil, nor to any self-supporting masonry floor.

Width and height.

§ 13. In every dwelling hereafter erected, every room used for living or sleeping purposes shall contain at least ninety-square feet of superficial floor area.

Every such room shall at every point be not less than seven feet in width, nor less than eight feet in height measured from the finished floor to the finished ceiling; except that attic rooms and rooms where sloping ceilings occur need be eight feet in height in but one-half the area of the room.

Every water-closet compartment shall be not less than thirty-six inches in width and every such compartment and bath or shower compartment shall have a height of not less than seven feet six inches measured from the finished floor to the finished ceiling.

Windows.

§ 14. In every dwelling hereafter erected, every room used for living or sleeping purposes and every kitchen, water-closet compartment, shower or bathroom, shall have at least one window, of the area fixed by this act, opening directly upon a street, or upon unoccupied area not less than four in its least dimension and containing an area of not less than thirty-six square feet, and located on the same lot.

Cornice.

A cornice may extend into the unoccupied area two inches for each one foot in width of such unoccupied area.

Opening into vent shaft. Opening through porch.

Windows herein required shall be located so as properly to light all portions of the room, and shall be made so as to open in all parts and so arranged that at least one-half of the window may be opened unobstructed; provided, however, that the windows required by this section in a water-closet compartment or bath or shower room may be opened directly into a vent shaft, such vent shaft to be in no dimension less than eighteen inches; provided, further, that windows required to open onto a street or onto unoccupied area may open through porches, provided that the said porches do not exceed seven feet in depth, measured at right angles to the windows and that at least seventy-five per cent of the entire side of the porch, bounded by the street or unoccupied area is left open, except that the open space may be enclosed with mosquito screens.

Window area.

§ 15. In every dwelling hereafter erected the total window area in each room used for living or sleeping purposes shall be at least one-eighth of the superficial floor area of the room.

All measurements for window area shall be taken to outside of sash.

§ 16. In every dwelling hereafter erected, the window area in a water-closet compartment or bathroom shall be not less than three square feet.

Water-closets.

§ 17. Every dwelling hereafter erected shall be provided with one water-closet for each family living therein.

Plumbing fixtures.

§ 18. In every dwelling hereafter erected every plumbing fixture shall be provided with running water.

Every plumbing fixture affecting the sanitary drainage system in dwellings hereafter erected shall be properly connected with the street sewer, if a street sewer exists in the street abutting the lot on which the building is located and is ready to receive connections. When it is impracticable to connect such plumbing fixtures with a street sewer, then the plumbing fixtures shall be connected and drained into a cesspool constructed satisfactorily to the department charged with the enforcement of this act; or some other means of sewage disposal satisfactory to the department charged with the enforcement of this act may be made until such time as it may become practicable and possible to connect with the street sewer.

Where no running water. Privy.

§ 19. Water-closets, baths, showers, sinks, slop-sinks, faucets and other plumbing fixtures required by this act need not be installed in the event that the dwelling hereafter erected, or an existing dwelling as the case may be, is situated where there is no running water and where there is no practical means of sewage disposal, until such time as it becomes practicable and possible to obtain running water and means of sewage disposal; provided, in every such case the department charged with the enforcement of this act shall decide whether or not it is practicable and possible to provide running water, or proper means of sewage disposal; provided, further, that proper toilet facilities shall be provided for the use of the occupants of such building. Such facilities shall be made sanitary. A privy, or toilet other than a water-closet, erected under the authority of this section shall consist of a pit at least three feet deep, with

suitable shelter over the same to afford privacy and protection from the elements. The openings of the shelter and pit shall be enclosed by fly screening, and the door to the shelter shall be made to close automatically, by means of a spring or other device. No privy pit shall be allowed to become filled with excreta to nearer than one foot from the surface of the ground, and the excreta in the pit shall be covered with earth, ashes, lime or similar substances at regular intervals.

Earthenware bowls and seats.

§ 20. In every dwelling hereafter erected, and in every dwelling now existing, all plumbing fixtures shall be properly trapped and vented and all such plumbing made sanitary in every particular. Water-closets hereafter installed shall have earthenware bowls and shall have earthenware seats, or seats made of some nonabsorbent material integral with the bowls, or wooden seats, enameled or varnished or otherwise made nonabsorbent, attached directly to the bowls. All connections shall be of standard lead, iron, steel or brass.

No plumbing fixtures shall be enclosed with woodwork, but the space under and around the same must be left entirely open.

Cooking in bath compartment.

§ 21. It shall be unlawful for any person to cook or to prepare food, or to permit or suffer any person to cook or to prepare food in any bath, shower, slop-sink or water-closet compartment, or in any other place in the building which, in the judgment of the department charged with the enforcement of this act, is detrimental to the proper sanitation of such building.

Sleeping in cellar, etc.

It shall be unlawful for any person to live or sleep, or to permit or suffer any person to live or sleep, in any cellar, bath, shower or slop-sink room, water-closet compartment, hallway, closet or kitchen, or in any other place which, in the judgment of the department charged with the enforcement of this act, would be dangerous or prejudicial to life or health by reason of want of light, windows, ventilation, drainage, or on account of dampness, offensive, obnoxious or poisonous odors or in any room that shall be so overcrowded as to afford less than the following floor space for each occupant in accordance with the age of the said occupant:

Floor space for each occupant.

<i>Number of persons over 12 years of age.</i>	<i>Number of persons under 12 years of age.</i>	<i>Superficial floor area required.</i>
1.....	2	60 square feet
2.....	4	120 square feet
3.....	6	180 square feet
4.....	8	240 square feet
5.....	10	300 square feet
6.....	12	360 square feet

Additional floor area in the same ratio shall be provided for additional persons.

Repapering.

§ 22. No wall, partition or ceiling of any room in any dwelling shall be repapered, calcimined, or have any other covering placed thereupon unless the old wall paper or other covering shall have first been removed therefrom, and the said wall, partition or ceiling cleaned, disinfected and freed from bugs, insects or vermin.

Repairs.

§ 23. Every dwelling shall be maintained in good repair. The roofs shall be kept waterproof and all storm or casual water properly drained and conveyed therefrom to the street sewer, storm drain or street gutter.

Every water-closet, bathtub, sink, slop-hopper or other similar plumbing fixture shall at all times be kept clean, sanitary and in good working order.

Metal mosquito screening.

§ 24. There shall be provided, whenever it is deemed necessary for the health of the occupants of any dwelling or for the proper sanitation or cleanliness of any such building, metal mosquito screening of at least sixteen mesh, set in tight-fitting removable sash, for each exterior door, window or other opening in the exterior walls of the building.

Garbage cans.

§ 25. There shall be provided by the occupant or tenant for each dwelling a tight metal receptacle, with close-fitting metal cover, for garbage, refuse, ashes and rubbish as may be deemed necessary by the department charged with the enforcement of this act. The receptacles shall be kept in a clean condition by the occupants or tenants.

Room, etc., kept clean.

§ 26. Every room, hallway, passageway, stairway, wall, partition, ceiling, floor, skylight, glass window, door, carpet, rug, matting, window curtain, water-closet, compartment or room, toilet room, bathroom, slop-sink or wash-room, plumbing fixture, drain, roof, closet, cellar, or basement in any dwelling, and the lot, and the premises thereof, shall be kept in every part clean and sanitary and free from all accumulation of debris, filth, rubbish, garbage or other offensive matter.

Swill, etc., not to be deposited in plumbing fixtures.

No person shall deposit, or cause or permit any person to deposit, any swill, garbage, bottles, ashes, cans or other improper substance in any water-closet, sink, slop-hopper, bathtub, shower, catch-basin, or in any plumbing fixture connection or drain therefrom, or otherwise to obstruct the same; or to place or cause or permit to be placed any filth, urine or other foul matter in any place other than the place provided for same; or to keep or cause or permit to be kept any urine or filth or foul matter in any room or apartment in any dwelling or in or about the said building or premises thereof for such length of time as to create a nuisance.

No animals in dwelling.

§ 27. No horse, cow, calf, swine, sheep, goat, rabbit, mule or other animal, chicken, pigeon, goose, duck or other poultry shall be kept in any dwelling house or any part thereof; nor shall any such animal or poultry, nor shall any stable, be kept or maintained within twenty feet of any window or door of such building.

Action to abate nuisance. Authority to execute order.

§ 28. In case any dwelling, or any part thereof, is constructed, altered, converted or maintained in violation of any provisions of this act or of any order or notice of the department charged with its enforcement, or in case a nuisance exists in any such dwelling or building or structure or upon the lot on which it is situated, said department may institute any appropriate action or proceeding to prevent such unlawful construction, alteration, conversion or maintenance, to restrain, correct or abate such violation or nuisance, to prevent the occupation of said dwelling, building or structure, to prevent any illegal act, conduct of business in or about such dwelling or lot. In any such action or proceeding said department may, by affidavit setting forth the facts,

apply to the superior court, or to any judge thereof, for an order granting the relief for which said action or proceeding is brought, or for an order enjoining all persons from doing or permitting to be done any work in or about such dwelling, building, structure or lot, or from occupying or using the same for any purpose, until the entry of final judgment or order. In case any notice or order issued by said department is not complied with, said department may apply to the superior court, or to any judge thereof, for an order authorizing said department to execute and carry out the provisions of said notice or order, to remove any violation specified in said order or notice, or to abate any nuisance in or about such dwelling, building or structure, or the lot upon which it is situated. The court, or any judge thereof, is hereby authorized to make any order specified in this section. In no case shall the said department or any officer thereof or the municipal corporation be liable for costs in any action or proceeding that may be commenced in pursuance of this act.

Fine a lien.

§ 29. Every fine imposed by judgment under section six of this act upon a dwelling owner shall be a lien upon the house in relation to which the fine is imposed, from the time of the filing of a certified copy of said judgment in the office of the recorder of the county in which said dwelling is situated, subject only to taxes and assessments and water rates, and to such mortgage and mechanics' liens as may exist thereon prior to such filing; and it shall be the duty of the department charged with the enforcement of the provisions of this act, upon the entry of such judgment, to file forthwith the copy as aforesaid, and such copy upon filing shall be forthwith indexed by the recorder in the index of mechanics' liens.

Notice of pendency of action.

§ 30. In any action or proceeding instituted by the department charged with the enforcement of this act, the plaintiff or petitioner may file, in the county recorder's office of the county where the property affected by such action or proceeding is situated, a notice of the pendency of such action or proceeding. Said notice may be filed at the time of the commencement of the action or proceeding, or at any time afterwards before final judgment or order, or at any time after the service of any notice or order issued by said department. Such notice shall have the same force and effect as the notice of pendency of action provided for in the Code of Civil Procedure. Each county recorder with whom such notice is filed shall record it and shall index it in the name of each person specified in a direction subscribed by an officer of the department instituting such action or proceeding. Any such notice may be vacated upon the order of a judge of the court in which such action or proceeding was instituted or is pending. The recorder of the county where such notice is filed is hereby directed to mark such notice and any record or docket thereof as canceled of record, upon the presentation and filing of a certified copy of such order.

Time of service.

§ 31. Every notice or order in relation to a dwelling shall be served five days before the time for doing the thing in relation to which it shall have been issued.

Manner of service.

§ 32. In any action brought by any department charged with the enforcement of this act in relation to a dwelling for injunction, vacation of the premises or other abatement of nuisance, or to establish a lien thereon, it shall be sufficient service of summons to serve the same as notices and orders are served under the provisions of the Code of Civil Procedure.

Minimum requirements. Supplementary laws.

§ 33. The provisions of this act shall be held to be the minimum requirements adopted for the protection, the health and the safety of the community, and for the

protection, the health and the safety of the occupants of dwellings. Nothing in this act contained shall be construed as prohibiting the local legislative body of any incorporated town, incorporated city, or incorporated city and county, from enacting from time to time, supplementary ordinances or laws imposing further restrictions, or providing for fees to be charged for permits, certificates or other papers required by this act; but no ordinance, law, regulation or ruling of any municipal department, authority, officer or officers, shall repeal, amend, modify or dispense with any of the provisions of this act.

Repealed.

All statutes of the state and all ordinances of incorporated towns, incorporated cities and incorporated cities and counties, as far as inconsistent with the provisions of this act, are hereby repealed; provided, that nothing in this act contained shall be construed as repealing or abrogating any present ordinance or law of any incorporated town, incorporated city, or incorporated city and county, in the state which further restricts the percentage of the lot to be covered by a dwelling, the occupation thereof, the materials to be used in its construction, or increasing the floor space to each person occupying a room, the requirements as to sanitation, ventilation, light and protection against fire.

Power of cities not abrogated.

Nothing in this act contained shall be construed as abrogating, diminishing, minimizing or denying the power of any incorporated town, incorporated city, or incorporated city and county, by ordinance or law, to further restrict the percentage of the lot to be covered by a dwelling within said municipality, the occupation thereof, the materials to be used in its construction, or increasing the floor space to each person occupying a room, the requirements as to sanitation, ventilation, light and protection against fire.

Constitutionality.

§ 34. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

In effect when.

§ 35. This act shall take effect and be in force from and after September 1, 1917.

EAGLE ROCK.

See Act 3094, note.

EAST SAN DIEGO.

See Act 3094, note.

CHAPTER 94.

EGGS.

References: See tit. "Cold Storage."

CONTENTS OF CHAPTER.

- ACT 1303. SALE OF IMPORTED EGGS.
- 1304. SALE OF FOOD AND DRINK CONTAINING EGGS.
- 1305. REGULATIONS AS TO PACKING OF IMPORTED EGGS.
- 1306. SALE OF EGGS IN TRANSIT MORE THAN THIRTY-ONE DAYS.

SALE OF IMPORTED EGGS.

ACT 1303—An act to regulate the sale of eggs that have been shipped or imported into the state of California from any point or place outside of the United States, requiring the marking thereof by all persons selling, or offering the same for sale, and fixing penalties for the violation of the same or of any of the provisions thereof.

History: Approved June 4, 1915. In effect August 8, 1915. Stats. 1915, p. 1163.

Wholesalers, etc., importing eggs.

§ 1. For the purposes of this act the words "person, firm, company or corporation" shall include wholesalers, retailers, jobbers, and every place where eggs that have been shipped or imported into the state of California, from any point or place outside of the United States, are sold or offered for sale.

Imported eggs to be branded.

§ 2. Every person, firm, company or corporation who sells, offers for sale, or has in his, or their, possession for sale, or consigns, ships or presents to any dealer, commission merchant, consumer, or other person, any egg or eggs that have been shipped or imported into the state of California, from any point or place outside of the United States, shall before so doing, cause to be stamped, marked or branded upon one end thereof in black-faced letters not less than one-eighth of an inch in height, the word "Imported."

Sign displayed in salesroom.

§ 3. Every person, firm, company, or corporation, selling or offering for sale any eggs that have been shipped or imported into the state of California, from any point or place outside of the United States, shall display in a conspicuous place in his or their public salesroom, a sign, which shall be not less than one foot in height and six feet in length, bearing the words "Imported Eggs Sold Here" in blackfaced letters not less than six inches in height and one inch in width upon a white ground.

Report to state board of health.

§ 4. Every person, firm, company or corporation who receives eggs that have been produced in any foreign country and shipped or imported into this state shall immediately thereafter make a report to the state board of health, giving the number of eggs received, the date when received and the place where such eggs were produced.

Penalty.

§ 5. Every person, firm, company or corporation who shall fail to comply with any of the provisions of this act is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for not more than six months; or by a fine of not more than two hundred dollars, or by both such fine and imprisonment, in the discretion of the court. It shall be the duty of the state board of health to enforce the provisions of this act.

1. The act June 4, 1915 regulating the sale of imported eggs is unconstitutional because of unreasonable restrictions.—In re Foley, 172 Cal. 744, Ann. Cas. 1918a, 180, 158 Pac. 1034.

2. Constitutionality—Purpose of act.—If the purpose of the act was to protect the public from the sale of stale and unwholesome eggs, the statute was faultily drawn. Since it contains no provisions adopted to

that purpose, and the provisions it contains, imposing upon the dealer an onerous and expensive duty of advertising elaborately the fact that the eggs were imported, would not protect the public against stale eggs, but would aid the domestic producer by appealing to the public prejudice against eggs produced in foreign lands.—In re Foley, 172 Cal. 744, Ann. Cas. 1918a, 180, 158 Pac. 1034.

SALE OF FOOD AND DRINK CONTAINING EGGS.

ACT 1304—An act to regulate the sale of food and drink, the ingredients of which are in part composed of eggs shipped or imported into the state of California, from any point or place outside of the United States, requiring the marking of all bills of fare or menu cards placed on tables or counters in establishments preparing, serving or offering for sale any such food or drink, and fixing penalties for the violation of the same or of any of the provisions thereof.

History: Approved June 4, 1915. In effect August 8, 1915. Stats. 1915, p. 1164.

“Person,” etc., means hotel, restaurant, etc.

§ 1. For the purposes of this act the words “person, firm, company or corporation” shall include hotels, restaurants, cafeterias, lunch counters, lunch wagons, saloons, soda fountains, bakeries, delicatessens and boarding houses, and every place where food or drink is prepared and offered for sale.

Menu cards to bear “imported eggs used here.”

§ 2. Every person, firm, company or corporation who prepares or serves, sells or offers for sale, any food or drink, the ingredients of which are in part composed of eggs shipped or imported into the state of California, from any point or place outside of the United States, before so doing shall cause to be printed on all bills of fare or menu cards placed on his or their tables or counters, in black-faced letters not less than one-eighth of an inch in height, the words “Imported eggs used here.”

Sign displayed in salesroom.

§ 3. Every person, firm, company or corporation preparing, serving, selling or offering for sale any food or drink, the ingredients of which are in part composed of eggs shipped or imported into the state of California, from any point or place outside of the United States, shall display in a conspicuous place in his or their public salesroom, a sign, which shall be not less than six inches in height and three feet in length, bearing the words “Imported eggs used here” in black-faced letters not less than three inches in height and one-quarter of an inch in width, upon a white ground.

Penalty.

§ 4. Every person, firm, company or corporation who shall fail to comply with any of the provisions of this act is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for not more than six months; or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment, in the discretion of the court. It shall be the duty of the state board of health to enforce the provisions of this act.

Constitutionality.—See Act 1303, notes.

PACKING IMPORTED EGGS.

ACT 1305—An act to regulate the placing of cards in all packages or wrappers enclosing manufacturers’ food products, before being sold or offered for sale, which are composed in part of eggs shipped or imported into the state of California, from any point or place outside of the United States, and fixing penalties for the violation of the same or of any of the provisions thereof.

History: Approved June 4, 1915. In effect August 8, 1915. Stats. 1915, p. 1165.

“Person,” etc., includes bakeries, etc.

§ 1. For the purposes of this act the words “person, firm, company or corporation,” shall include biscuit companies, cracker companies, bakeries, manufacturers of food products, and every person manufacturing and selling food products in packages.

Package food product containing imported eggs to carry card.

§ 2. Every person, firm, company or corporation who sells, or offers for sale, any manufactured food product, the ingredients of which are in part composed of eggs shipped or imported into the state of California, from any point or place outside of the United States, shall, before so doing, cause to be placed in each package or wrapper enclosing such manufactured food product, a white card one and one-half inches in height and three inches in length, on one side of which shall be printed or stamped in legible black-faced letters, the words "Imported eggs used in the manufacture of this article," and no other words, letters or figures shall be printed or stamped on the same side of the card.

Penalty.

§ 3. Every person, firm, company or corporation who shall fail to comply with any of the provisions of this act is guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail for not more than six months; or a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment, in the discretion of the court. It shall be the duty of the state board of health to enforce the provisions of this act.

Constitutionality.—See Act 1303, notes.

SALE OF EGGS IN TRANSIT MORE THAN THIRTY-ONE DAYS.

ACT 1306—An act to regulate the sale of eggs which have been in transit more than thirty-one days, and prescribing penalties for violations thereof.

History: Approved May 5, 1917. In effect July 27, 1917. Stats. 1917, p. 258.

Words defined.

§ 1. For the purpose of this act the words, "person, firm, company or corporation" shall include wholesalers, retailers, jobbers, and every person, firm, company or corporation owning, operating or conducting any place of business where eggs are sold or offered for sale.

Eggs in transit more than thirty-one days to be marked "storage."

§ 2. Every person, firm, company or corporation who sells, offers for sale, or has in his or their possession for sale, or consigns, ships or presents to any dealer, commission merchant, consumer, or other person, any egg or eggs which said egg or eggs is or were produced at any place requiring thirty-one days or more to transport the eggs to the selling point, shall, before so doing, cause to be stamped, marked or branded upon the container thereof in black-faced letters not less than one-half of an inch in height the word "storage."

Display of sign in salesroom.

§ 3. Every person, firm, company or corporation selling or offering for sale any eggs which were produced at any place requiring thirty-one days or more to transport the eggs to the selling point, prior to the date of sale or offering for sale, shall display in a conspicuous place in his or their public salesroom a sign which shall not be less than one foot in height and six feet in length, bearing the words "storage eggs sold here" in black-faced letters not less than six inches in height and one inch in width upon a white ground.

Report to state board of health.

§ 4. Every person, firm, company or corporation who receives eggs that have been produced at any place requiring thirty-one days or more to transport the eggs to the selling point, prior to their sale or offering for sale, shall, immediately thereafter report to the state board of health the number of eggs received, the date when received

and the place where such eggs were produced, and the name of the person, firm, company or corporation to whom sold.

Enforcement.

§ 5. It shall be the duty of the state board of health to enforce the provisions of this act, and to that end the said board may make necessary rules and regulations.

Penalty.

§ 6. Every person, firm, company or corporation who shall fail to comply with any of the provisions of this act is guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than six months; or by a fine of not more than two hundred dollars, or by both such fine and imprisonment in the discretion of the court.

EL CAJON.

See Act 3094, note.

EL CENTRO.

See Act 3094, note.

EL CERRITO.

See Act 3094, note.

CHAPTER 95.

EL DORADO COUNTY.

References: Boundaries and county seat, see Kerr's Cyc. Political Code, § 3927.

County government, see Kerr's Cyc. Political Code, § 4000, et seq.

County officers, compensation and salaries, see Kerr's Cyc. Political Code, § 4217.

Estrays, see tit. "Estrays."

Fences, see tit. "Fences."

Fish and game warden, see Kerr's Cyc. Political Code, § 4149d.

Legal distance of county seat from Sacramento, see Kerr's Cyc. Political Code, § 159.

Registrar, salary, fees, allowances, deputies, and assistants, see Kerr's Cyc. Political Code, § 4149e.

Settlements with controller and state treasurer, see Kerr's Cyc. Political Code, § 3866.

Trespassing animals, see tit. "Trespassing Animals."

CONTENTS OF CHAPTER.

ACT 1307. REFUNDING OF BONDED INDEBTEDNESS.

1308. LAWFUL FENCES.

1309. TRESPASSING ANIMALS ON PRIVATE PROPERTY IN MUD SPRINGS TOWNSHIP.

REFUNDING OF BONDED INDEBTEDNESS.

ACT 1307—An act for the funding of the bonded indebtedness of El Dorado County.

History: Approved April 1, 1878. Stats. 1877-78, p. 1046.

LAWFUL FENCES.

ACT 1308—An act concerning lawful fences in El Dorado county.

History: Approved April 1, 1870. Stats. 1869-70, p. 584. Continued in force by the codes. See Kerr's Cyc. Political Code, § 19.

Lawful fences.—This act provided as to what should constitute lawful fences in El Dorado county; it also defined trespasses by animals and provided for double damages for the second and any subsequent offense.

TRESPASSING ANIMALS IN MUD SPRINGS TOWNSHIP.

ACT 1309—An act to prevent the trespassing of animals upon private property in the county of El Dorado.

History: Approved March 30, 1874, Stats. 1873-74, p. 859.

Code Commissioner's note.—"Modified and probably repealed by estray law, 1897, p. 198; 1901, p. 603." But see editor's note to chapters on "Estrays" and "Trespassing Animals."

CHAPTER 96.

ELECTIONS.

References: Elections and registration, in general, see Kerr's Cyc. Political Code, tit. "Elections," appropriate subject.

Elections, municipal and district, for special purposes, see appropriate and particular title.

Bogus ballots, see Kerr's Cyc. Penal Code, §§ 62, et seq.

Intoxicating liquors, sale of, on election day, see Kerr's Cyc. Penal Code, § 63b.

CONTENTS OF CHAPTER.

- ACT 1327. PURITY OF ELECTIONS ACT OF 1907.
- 1328. STATE COMMISSION ON VOTING OR BALLOTING MACHINES.
- 1329. SUPPLEMENTARY TO ABOVE.
- 1332. SPECIAL ELECTIONS.
- 1337. "DIRECT PRIMARY LAW OF 1913."
- 1338. "PRESIDENTIAL PRIMARY ACT."
- 1339. CONSOLIDATION OF ELECTIONS.
- 1340. LEGALIZING REGISTRATIONS OF ELECTORS.
- 1341. PROHIBITING "PIECE CLUBS."
- 1342. SPECIAL STATE ELECTION CALLED OCTOBER 26, 1915.

PURITY OF ELECTIONS ACT OF 1907.

ACT 1327—An act to regulate the conduct of election campaigns, and repealing an act entitled "An act to promote the purity of elections by regulating the conduct thereof, and to support the privilege of free suffrage by prohibiting certain acts and practices in relation thereto, and providing for the punishment thereof," approved February 23, 1893.

History: Approved March 19, 1907, Stats. 1907, p. 671. Amended June 6, 1913. In effect August 10, 1913. Stats. 1913, p. 396. Former act of February 23, 1893, Stats. 1893, p. 12. Amended March 27, 1895, Stats. 1895, p. 227; March 3, 1905, Stats. 1905, p. 37; March 10, 1905, Stats. 1905, p. 93, was repealed by the present act, after partial codification, §§ 19, 20, 21, 22, 24, 25, 26, 28, 41, and 42 became §§ 54b, 54a, 42, 42a, 46, 57, 57a, 47, 59, and 49, respectively, of the Penal Code. The first sentence of § 27 became § 50, and the second sentence, § 51, of the same code.

Statement of campaign expenses. Names of contributors. Disclaimer of responsibility. Filed with secretary of state. With county clerk. Vouchers.

§ 1. Every candidate who is voted for at any public election held within the state shall, within fifteen days after the day of holding such election, file, as hereinafter provided, an itemized statement, showing in detail all moneys paid, loaned, contributed, or otherwise furnished to him, or for his use, directly or indirectly, in aid of his election, and all money contributed, loaned, or expended by him, directly or indirectly by himself or through any other person, in aid of his election. Such statement shall give the names of the various persons who paid, loaned, contributed, or otherwise furnished such moneys in aid of his election, and the names of the various persons to whom such moneys were contributed, loaned or paid, the specific nature of each item, the service performed, and by whom performed, and the purpose for which the money was expended, contributed or loaned. If the candidate seeks to avoid the responsibility of any illegal payment made by any other person in his behalf, he shall set out such illegal payment and disclaim responsibility therefor. Candidates for office to be filled by the electors of the state or of any political division thereof greater than a county, and for members of the senate and assembly, representative in Congress, or members of the state board of equalization, or state board of railroad commissioners, shall file their statements in the office of the secretary of state. Candidates for all other offices shall file their statements in the office of the clerk of the county wherein the election

is held, and within which the duties of the office for which the candidate is voted for are to be exercised. The statement of a committee or candidate shall be recorded in the office of the county recorder, and shall, after being filed, become a public record, and open at all times to public inspection and no fee or charge whatsoever shall be collected or made by any officer herein specified for filing or recording any statement required to be filed or recorded under the provisions of this act. Vouchers must be filed for all expenditures, except in the case of sums under five dollars. [Amendment approved June 6, 1913. Stats. 1913, p. 396.]

Duty of committee.

§ 2. Every committee organized for the purpose, or charged with the duty of conducting the election campaign of any political party, or of any candidate or candidates, shall appoint a treasurer, who shall receive and disburse all moneys contributed for such campaign purposes, and keep a true account thereof, and shall, in the same manner as herein required of candidates, file an itemized statement of all money received or disbursed by him as such treasurer.

What are legitimate expenses. Amount that can be expended by candidate or in his behalf.

§ 3. No sum of money shall be paid and no expense incurred by or on behalf of any candidate or campaign committee as defined in section two of this act, or any body of superior authority, to which such committee is subject, if any, whether before, during, or after an election, on account of or in respect of the conduct or management of such election, except for the expenses of holding and conducting public meetings for the discussion of public questions, and of printing and circulating specimen ballots, handbills, cards, and other papers previous to such election, and of advertising and of postage, expressage, telegraphing, and telephoning, and of supervising the registration of voters, and watching the polling or counting of votes cast at such election, and of salaries of persons employed in transacting business at office or headquarters and necessary expenses of maintaining the same, and for rent of rooms necessary for the transaction of the business of candidate or committee, or superior authority to which such committee is subject, if any, and for necessary incidental expenses, which shall not exceed the sum of one hundred dollars, if expended by a candidate, or one thousand dollars, if expended by a committee; and no sum shall be paid and no expense shall be incurred, directly or indirectly, by or on behalf of a candidate, whether before, during, or after an election, on account of or in respect of the conduct and management of an election at which he is a candidate, in excess of the maximum amount following, that is to say: if the term of the office for which the person is a candidate be for one year or less, five per centum of the amount of one year's salary of the office; if the term be for more than one year, and not more than two years, ten per centum of the amount of one year's salary of the office; if the term be for more than two years, and not more than three years, fifteen per centum of the amount of one year's salary of the office; if the term be for more than three years, and not more than four years, twenty per centum of the amount of one year's salary of the office; if the term be for more than four years, ten per centum of the amount of one year's salary of the office; if the office be one for which, in lieu of a salary, there is allowed per diem, for a statutory period, or for the number of days actually engaged in the performance of public duties, twenty-five per centum of the amount to accrue for the statutory period; if the office be one for which in lieu of a salary, a yearly sum is allowed the officer for all the expenses of his office, the expenditures of the candidate for such office shall not exceed the amount of ten per centum of the allowance for such office for one year; if the office be one for which no salary or compensation is allowed, except fees, or a salary not exceeding nine hundred dollars per annum and fees, the expenditures of the candidate for such office shall not exceed the amount of one hundred and fifty dollars; if

the office be one for which no salary or compensation is allowed, or for which a per diem is allowed for the days actually employed in the performance of a public duty, the expenditures of the candidate for such office shall not exceed one hundred dollars; if the candidate is also at the same time a candidate for an unexpired term, he shall not pay or expend any sum on account of such unexpired term, but the maximum amount to be expended by such candidate shall be as hereinabove provided.

When claims must be presented.

§ 4. Every claim payable by a committee as defined in section two of this act on account of or in respect of any expense incurred in the conduct and management of an election held within this state, or on behalf of the candidates of the political party, organized assemblage, or body which such committee represents, must be presented to the committee within ten days after the return day of the election, and if not so presented, the same shall not be paid, and no action shall be commenced or maintained thereon, and all expenses incurred as aforesaid shall be paid within fifteen days after the completion of such official canvass, and not otherwise. Every claim in respect of any expenses incurred by or on behalf of a candidate at an election held within this state on account of or in respect of the conduct or management of such election shall be presented to such candidate within ten days after the day of election, and if not so presented, the same shall not be paid, and no action shall be instituted or maintained thereon; and all such expenses incurred as aforesaid must be paid within twelve days after the day of election, and not otherwise. Any person who makes a payment in contravention of this section, except where such payment is allowed, as provided by this act, is guilty of a misdemeanor.

Claims presented after time limit, how may be paid.

§ 5. The superior court of the county in which such statement is filed or is required to be filed, may, on the application of either the committee or candidate, or a creditor of either allow any claim, not in excess of the maximum amount allowed by this act, to be presented and paid after the time limited by this act; and a statement of any sum so paid, with a certificate of its allowance, shall forthwith, after payment, be filed by the committee or candidate in the same office as the original statement of the committee or candidate. If the candidate or committee, upon such application, shall show to the satisfaction of said court that any error or false recital in such statement, or that the failure to make such statement or to present, within the designated time, a claim otherwise just and proper, has been occasioned by the absence or illness of such candidate, or by the absence, illness or death of one or more members of such committee, or by the misconduct of any person other than such applicant, or by inadvertence or excusable neglect, or of any reasonable cause of a like manner, and not by reason of any want of good faith on the part of the applicant, the court may, after such notice of the application as the court shall require, and on the production of such evidence of the facts stated in the application as shall be satisfactory to such court, by order, allow such statement to be filed, or such error or false recital therein to be corrected, or such claims to be paid, as to the court seems just; and such order shall relieve the applicant from any liability or consequences under this act in respect of the matters excused by the order. If the application is made by a creditor, the court may, under like conditions and upon a like showing, order the claim to be paid, and the creditor shall also be entitled to his costs. The claims of one or more creditors may be united in such application, but the amount and specific nature of each claim must be fully stated.

Rooms must not be rented where intoxicating liquors are sold.

§ 6. No payment of any money shall be made by a committee or candidate for the rent of any premises to be used as a committee-room or headquarters, or for holding a

meeting, or for the purpose of promoting the election of a candidate, or on account of, or in respect to the conduct or management of, an election, where intoxicating liquors are sold for consumption on the premises, or where intoxicating liquor is supplied to members of any club, society, or association; provided, that nothing in this section shall apply to any part of such premises which is ordinarily let for the purposes of offices, or for holding public meetings, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

Name of printer.

§ 7. Every bill, placard, poster, pamphlet or other printed matter having reference to an election, or to any candidate, shall bear upon the face thereof the name and address of the printer and publisher thereof, and no payment therefor shall be made or allowed unless such address is so printed.

Act of 1893 repealed.

§ 8. An act entitled "An act to promote the purity of elections by regulating the conduct thereof, and to support the privilege of free suffrage by prohibiting certain acts and practices in relation thereto, and providing for the punishment thereof," approved February twenty-third, eighteen hundred and ninety-three, and all other acts and parts of acts inconsistent with this act are hereby repealed; provided that no provision of this act shall be construed so as to repeal any provision of title four of part one of the Penal Code, entitled "Of Crimes against the Elective Franchise."

Penalty.

§ 9. Any person offending against any of the provisions of this act shall be guilty of a misdemeanor, and be dealt with as provided in the Penal Code.

Who is competent witness. This section to be read to witness.

§ 10. A person offending against any provisions of this act is a competent witness against another person so offending, and may be compelled to attend and testify upon any trial, hearing, proceeding, or lawful investigation or judicial proceeding, in the same manner as any other person. If such person demands that he be excused from testifying on the ground that his testimony may incriminate himself, he shall not be excused, but in that case the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying, except for perjury in giving such testimony, and he shall not thereafter be liable to indictment or presentment by information, nor to prosecution or punishment for the offense with reference to which his testimony was given. No person shall be exempt from indictment, presentment by information, prosecution or punishment for the offense with reference to which he may have testified as aforesaid when such person so testifying does so voluntarily or when such person so testifying fails to ask to be excused from testifying on the ground that his testimony may incriminate himself, but in all such cases the testimony so given may be used in any prosecution or proceeding, civil or criminal, against the person so testifying. Any person shall be deemed to have asked to be excused from testifying under this section unless, before any testimony is given by such a witness, the judge, foreman or other person presiding at such trial, hearing, proceeding or investigation, shall distinctly read this section to such witness, and the form of the objection by the witness shall be immaterial if he in substance makes objection that his testimony may incriminate himself, and he shall not be obliged to object to each question, but one objection shall be sufficient to protect such witness from prosecution for any offense concerning which he may testify upon such trial, hearing, proceeding or investigation.

Act takes effect when.

§ 11. This act shall take effect and be in force from and after its passage.

1. Constitutionality.—The legislature had the power to require, as it did in the act of 1893, an officer elect to file the statement prescribed by section 3, and to provide for a forfeiture of the office to which he was elected upon his failure to do so.—*Bradley v. Clark*, 133 Cal. 196, 65 Pac. 395.

2. Same—Oath of Office.—The provision of section 4 of the act of 193, requiring the giving of the oath therein prescribed, by candidates for office, as a condition to hold the office he is seeking, is unconstitutional as in violation of section 3, Article XX of the constitution, prescribing an oath of office in lieu of all others.—*Bradley v. Clark*, 133 Cal. 196, 65 Pac. 395.

3. Construction of 32 of the act of 1893.—The section is to be construed as intended to secure evidence against offenders against the penal provisions of the act, where two or more persons are required to co-operate, and it is only a witness who testifies at the trial, hearing, prosecution or legal investigation or judicial proceeding, against a person charged with an offense against some provision of the act, against which he has also offended, can claim the immunity given therein.—*Ex parte Cohen*, 104 Cal. 524, 43 Am. St. Rep. 127, 26 L. R. A. 423, 38 Pac. 364.

4. Information — Procuring false registration.—The statute is not directed against official misconduct, and in an information charging a deputy registrar of procuring and allowing the false registration of a voter, the phrase "as such deputy registrar," is held to be surplusage, since the act embraces "every person" without regard to his official character.—*People v. Sternberg*, 111 Cal. 3, 43 Pac. 198.

5. Indictment.—An indictment charging that "while the votes were being counted and canvassed . . . one George Lee wilfully, unlawfully and feloniously interfered with the regular election officers of said precinct" etc., sufficiently charges a violation of section 23 of the purity of elections act of 1893.—*People v. Lee*, 107 Cal. 477, 40 Pac. 754.

6. Same — One completed felony.—The indictment charges one completed felony—a violation of section 29 of the act of 1893—and does not also charge a conspiracy, and is not objectionable on the ground of duplicity.—*People v. Eagan*, 116 Cal. 287, 48 Pac. 120.

7. Evidence of accomplice — Sufficiently corroborated—False registration.—The evidence of the voter, falsely registered and shown to be the accomplice of the defendant under prosecution for procuring such false registration, held to be sufficiently corroborated by other testimony.—*People v. Sternberg*, 111 Cal. 3, 43 Pac. 198.

8. Evidence not sufficient.—It is held that the evidence was not sufficient to justify a conviction of the offense of falsifying the returns.—*People v. Eagan*, 116 Cal. 287, 48 Pac. 120.

9. Instructions — Procuring false regis-

tration—Accomplice.—In a prosecution for procuring false registration, the defendant can not complain of an instruction that the voter alleged to have been falsely registered, was defendant's accomplice, for the reason that such instruction was more favorable to the defendant than otherwise, since if such witness was not an accomplice the jury could not have convicted without corroborating evidence.—*People v. Sternberg*, 111 Cal. 3, 43 Pac. 198.

10. Witness — Claim of constitutional privilege.—A witness called to testify as to the illegal giving of money to him by the defendant in an election contest can not, in view of the provisions of section 32 of the act of 1893, claim his constitutional privilege and refuse to testify on the ground that his answer would incriminate him, even if it should be conceded that he had violated any law, in receiving such money.—*Ex parte Cohen*, 104 Cal. 524, 43 Am. St. Rep. 127, 26 L. R. A. 423, 38 Pac. 364; *Bradley v. Clark*, 133 Cal. 196, 65 Pac. 395. See, also, *Rebstock v. Superior Court*, 146 Cal. 308, 314, 80 Pac. 65.

11. Only offending witnesses can claim immunity under the act of 1893 for testimony given as to offenses thereunder.—*Bradley v. Clark*, 133 Cal. 196, 65 Pac. 395.

12. No duty is imposed upon one who receives money from a candidate for office to inquire whether the money so received is in excess of the amount he is allowed under the purity of elections act to spend.—*Bradley v. Clark*, 133 Cal. 196, 65 Pac. 395.

13. The promisee of the promise of a candidate, illegally made, to give him the patronage of the office, is not guilty of any offense against the purity of elections act, even though he act upon the promise and promote the promisor's election.—*Bradley v. Clark*, 133 Cal. 196, 65 Pac. 395.

14. Illegal promise of candidate not to qualify.—A promise by a candidate for office not to qualify, or enter, or discharge the duties of the office which he seeks, for the purpose of creating a vacancy, and thereby saving the expense of maintaining the office by the taxpayers, is a ground for contest under section 19 of the act of 1893. *Bush v. Head*, 154 Cal. 277, 97 Pac. 512.

15. Declaration of candidate — Negative statements.—The purity of elections act does not contemplate the making of negative statements as moneys received by a candidate, and a declaration by a candidate that he received no money goes beyond the demands of the act.—*Land v. Clark*, 132 Cal. 673, 64 Pac. 1071.

15a.—Same—Technical violation of law.—The statement of expenditures required of defendant contestee by the purity of elections act show a substantial compliance with the act, and his failure to give an itemized statement of expenditures under the head of sundries and incidentals, if such an itemized statement is required under that head, was at most a technical violation of

the law, not warranting forfeiture of the office to which he had been elected.—*Land v. Clark*, 132 Cal. 673, 64 Pac. 1071.

16. Discretion of trial court in election contests.—The trial court is vested with a large discretion in matters relating to election contests under the purity of elections act of 1893, and successful candidates are not to forfeit their offices for merely technical violations of the law.—*Land v. Clark*, 132 Cal. 673, 64 Pac. 1071.

17. Personal interest of contestant.—The fact that the contestant has a personal interest in an election contest under the purity of elections act of 1893, as one claiming the office himself, can not affect the validity of the act itself, in view of the fact that the legislature was empowered to authorize any elector to take proper steps to determine whether a candidate was legally elected or not.—*Maddux v. Walthall*, 141 Cal. 412, 74 Pac. 1026.

18. Materiality of violations of law by the contestant.—If a contestant has himself violated any of the penal provisions of the purity of elections act that is properly a

matter for determination in a separate proceeding, and the trial court did not err in refusing to allow the contestee to allege as a part of his defense a violation of that act on the part of the contestant.—*Maddux v. Walthall*, 141 Cal. 412, 74 Pac. 1026.

19.—Primary elections.—The purity of elections act of 1893 has no application to primary elections.—*People v. Cavanaugh*, 112 Cal. 674, 44 Pac. 1057.

20. Rental of quarters for political organization.—Where there was evidence which would have warranted a finding that a political organization occupied rented premises under the authority and permission of the defendant and that the lease of the defendant was a general lease having no relation to any candidate or election committee, it was error to direct a verdict in favor of the defendant, upon the theory that the premises were rented for a political organization and that plaintiff had not complied with the purity of elections law, in presenting his claim for rental.—*Luckenbach v. Lissner* (Cal. App.), 186 Pac. 629.

COMMISSION ON VOTING OR BALLOTING MACHINES.

ACT 1328—An act creating a state commission on voting or balloting machines, defining their powers, and providing for the use at the option of indicated local authorities of voting or ballot machines for receiving and registering the vote in one or more precincts of any county, or city and county, city or town, at any or all elections held therein, and for ascertaining the result at such elections; and providing for the punishment of all violations of the provisions of this act.

History: Approved March 20, 1903, Stats. 1903, p. 262. Amended March 15, 1907, Stats. 1907, p. 288; March 19, 1907, Stats. 1907, p. 644; January 22, 1912, Stats. 1912 (ex. sess.), p. 244; April 21, 1911, Stats. 1911, p. 980; June 11, 1913, Stats. 1913, p. 691. Supplemented March 19, 1907, Stats. 1907, p. 647. (See Act 1329.)

Creation of commission. What machines may be used. Duty of secretary of state. Approval. Expenses of commission.

§ 1. 1. The governor, secretary of state and attorney-general, and their successors in office are hereby created and constituted the state commission on voting or ballot machines. It shall be the duty of said commissioners to examine all voting or ballot machines which may be offered for their inspection in order to determine whether such machines comply with the requirements of this act, and can safely be used by voters at elections under the provisions of this act; and no machine or machines shall be provided by the board of supervisors, or other board having charge and control of elections in each of the counties, and cities and counties, cities or towns of the state, unless the said machine or machines shall have received the approval of a majority of said commission as herein provided.

2. Any machine or machines which shall have the approval of a majority of said commission may be provided for use at elections by the boards authorized so to do under the provisions of this act. The report of said commission on each and every kind of voting or ballot machine shall be filed with the secretary of state within thirty days after their examination of said machines, and the secretary of state must within five days after the filing of any report approving any machine or machines, transmit to the boards of supervisors or other boards having charge and control of elections in each of the counties and cities and counties, cities or towns of the state, a list of the machines so approved.

3. No machine or machines shall be used unless such machine or machines shall have received the approval of the state commission at least ninety days prior to any election at which such machine or machines are to be used.

4. For carrying out the provisions of this act the members of the state commission under this act shall be allowed their actual necessary expenses.

Supervisors may provide for use of voting machines. Machine not permitting straight party ticket.

§ 2. The board of supervisors, or other board having charge and control of elections in each of the counties, and cities and counties, cities or towns of the state, may, at any regular meeting, or at any special meeting called for the purpose, provide for and require the use of a voting or ballot machine, or machines, for receiving and registering the vote at any or all elections held in such county, city and county, city or town, respectively, or in any one or more precincts thereof, and every such board of supervisors, or other board having charge and control of elections in each of the counties, and cities and counties, cities or towns of the state, may determine upon and require the use of voting or ballot machines at any and all elections to be held within such county, city and county, city or town of the state, or in any one or more precincts thereof, and thereupon the voting or ballot machine or machines so determined upon and required shall be used in voting for all public officers, or candidates for nomination to public office, to be voted for by the voters of such counties, cities and counties, cities or towns of the state, or in the precinct or precincts thereof for which the same shall have been so determined upon and required, and also in voting upon all amendments to the constitution, and upon all laws or propositions or questions which may be lawfully submitted to such voters, and for receiving and registering the votes cast at any and every such election. Any such board so authorized to provide for and require the use of a voting or ballot machine as hereinbefore specified, may, if the machine has been approved as in this act required, at its option resolve to provide and use only such a voting or ballot machine so constructed and arranged that the voting or ballot machine will not permit of voting a straight party ticket, or for any candidate, by any other method than by turning or pushing the keys separately of each voting space for each separate candidate voted for. Party nominations may be designated by usual or reasonable abbreviation of party names. [Amendment approved April 21, 1911. Stats. 1911, p. 980.]

Joint ownership.

§ 3. In purchasing the necessary voting or ballot machines to be used at elections, as herein provided, the boards of supervisors of the several counties, and the legislative bodies of the incorporated cities and towns therein, may, by agreement, entered into by said board of supervisors and the legislative body of any incorporated city or town in such county, provide for the joint purchase and subsequent ownership thereof, and for the care, maintenance and use of the same.

Facilities for voting required in construction before approval. Separate voting device for each candidate. Use of machines having straight ticket mechanism. Arrangement of ballot.

§ 4. No voting or ballot machines shall be approved by the said board unless the same be so constructed as to provide facilities for voting for the candidates of as many different parties or organizations as may make nominations for office, and for and against as many different propositions or amendments as may be submitted, nor shall any such machine be approved unless the same will permit a voter to vote for any person for any office; it must enable the voter to vote and select a ticket all from the nominees of one party, or a ticket selected in part from the nominees of one party, and in part from the nominees of any or all other parties, and in part from independent

nominations, or in part or in whole of the names of persons not nominated by any party or upon any independent ticket; such machines must also secure to the voter, privacy and secrecy in the act of voting; such machines must also be so constructed that a voter can not vote for a candidate or a proposition or amendment for whom or on which he is not lawfully entitled to vote, also to prevent voting for more than one person for the same office, except in cases where the voter is lawfully entitled to vote for more than one person for the same office, in which event they must enable the voter to vote for as many persons for that office as he is by law entitled to vote, and no more; they must also prevent his voting more than once for the same person for the same office; and allow of his reversing his vote in case of mistake or desire to change; and such machines must be so constructed that all votes cast for any person voted for, or for or against any proposition or amendment submitted to the voters, shall be accurately registered or recorded, and any machine to be approved by said board must be of such kind, style or pattern as will permit the exercise by each voter of the full right and privilege of his elective franchise under the constitution and laws of this state. All voting machines approved by the state commission shall have a separate voting device for each candidate appearing on the ballot. Such machines may also have thereon a straight ticket device for each of the parties for voting a straight ticket vote for candidates of such party; but if so equipped with separate straight ticket voting devices, such separate straight ticket voting device must be locked out of operation. Machines which have been approved with such straight ticket mechanism thereon may be used in elections with such mechanism rendered inoperative, and machines with such straight ticket mechanism entirely removed therefrom, or machines which omit a party designation of candidates by column or line which have been approved, may be used in such elections, and the omission, removal, or locking out of operation of such straight voting mechanism from the machine that has otherwise been approved by the commission, need not require a further examination and approval of a machine of that type. The ballot at any election, whether general, primary, municipal, or otherwise, shall be arranged upon the voting machine as to the order of offices, order of candidates' names, and in other respects for such election, as required by the law prescribing the form and order of the ballot for such election; provided, however, that blank spaces for the writing in of the names of candidates or delegates or persons to be voted for, whose names are permitted to be written upon a ballot or pasted thereon by adhesive substance, under the law prescribing the form of the ballot, for the election, need not follow in the same order or place or places, upon a voting machine, as is prescribed in the law prescribing the form of ballot for the election, if the said voting machine be so constructed and capable of operation that all persons who by the law prescribing the form of ballot for the election are entitled to be voted for by writing in the name of such person, or pasting thereon the name of such person by adhesive substance, may be voted for by and upon said voting machines, and such votes counted and returned as fully, correctly and effectually as might have been done by the use of the form of ballot prescribed by law for the election, in case no voting machine had been used. The ballot may be placed upon the machine so the columns will extend either vertically or horizontally, if all in other respects save as to the said blank spaces the ticket is in the form and order which would exist if the election were held by ballot and without a voting machine. [Amendment approved January 22, 1912. Stats. 1911, p. 244, extra session.]

This section was also amended April 21, 1911. Stats. 1911, p. 981.

Supervisors to furnish machines, etc.

§ 5. The board of supervisors or other board having charge and control of elections adopting a voting or ballot machine shall, as soon as practicable thereafter, provide for such polling place or places, as they may determine, one or more voting machines in

complete working order and also such other accessories as may be required for the practical working of the machine, and shall thereafter preserve and keep the machines in repair, and shall have custody of the furniture and equipment. If it shall be impracticable to supply each and every election precinct with voting or ballot machine or machines at any election following such adoption, as many may be supplied as it is practicable to procure, and the same may be used in such election precincts within the county, or city and county, city or town, as the board having control may direct. Where the board having charge and control of elections, is not the board having control of appropriations of money generally for the territory, but receives its appropriation from the board of supervisors, or board having control of appropriations of money generally for the territory; then and in such event the board of supervisors or board having control of appropriations of money generally, for the territory represented by such board so having charge and control of elections, shall have exclusive power to purchase or otherwise provide voting or ballot machines for use in such territory. The board of supervisors or board having control of the finances of any county, city and county, or political subdivision, shall have power to sell, lease, alter, exchange, or otherwise at its discretion dispose of any voting machine or voting machine appliances owned by such county, or city and county. [Amendment adopted April 21, 1911. Stats. 1911, p. 982.]

Election supplies to be furnished not later than twenty-four hours preceding election.

§ 6. The county clerk, registrar of voters, or city or town clerk, as the case may be, shall not later than twenty-four hours next preceding the election, cause to be delivered to one of the inspectors of election, duly appointed, at his residence, all necessary supplies, stationery, blank forms, poll and tally lists, and instructions to voters, necessary and proper to the conduct of the election and to the counting and canvassing of the votes, and the return thereof, which forms, blanks, lists, and other stationery shall have been previously prepared by the said county clerk, registrar of voters, or city or town clerk, as the case may be, in such manner as to be adapted to the conducting and returning of such election by such voting or ballot machines as are used at the election. The supplies previously mentioned to be delivered to such inspector, shall, in addition to all other necessary forms, lists, or blanks, include one card stating the penalty for tampering with or injuring a voting machine; two seals for sealing voting machines; one envelope in which the keys to the voting machine are sealed, said envelope to have printed or written thereon the number and location of the election precinct in which the machine is to be used, the number of the machine, the number shown on the protective counter thereof, after the machine has been prepared for the election, and any designation that may be on such seal as the machine is sealed with. Said envelope to have attached to it a detachable receipt for the delivery of the keys of the voting machine to the inspector of the election at his residence; one envelope in which the keys to the voting machine can be returned by the inspectors after the election; one card stating the name and telephone address of the superintendent for the day of election; two diagrams of the voting face of the machine as appears after the ballot label showing the titles of the offices and the names of the candidates, and statement of propositions, together with the voting indicators for each, shall have been inserted in the voting machine, and also suitable printed instructions for the guidance of the board of election. [Amendment approved April 21, 1911. Stats. 1911, p. 983.]

Designation of voting machine instructors and instruction of election officers. Certificates of competency. Preference to persons holding.

§ 7. At least twenty days before any election, other than a special election, at which voting machines are to be used in any political subdivision, the county clerk, registrar of voters or city or town clerk, as the case may be, shall designate one or more deputies, to be provided by the board having charge and control of elections, who are com-

petent for the purpose, as voting machine instructors, and shall cause one or more voting machines of the type to be used at the election, to be set up in his office, for the purpose of having such voting machine instructors give instructions to persons applying to serve as election officers at the ensuing election, and shall also publish notice in one or more daily or weekly newspapers, in such political subdivision, if any is there published, stating that instructions will be given at such office (stating the location thereof) as to the use of voting machines, to all persons otherwise qualified, who shall apply to serve as election officers, at the ensuing election, and requesting qualified persons to attend at such office and apply to serve, and take such instructions. Such notice may also be sent by mail to all such persons as the said county clerk, registrar of voters or city or town clerk, may deem likely to take the same. Such voting machine instructors shall give such instructions to those who apply (subject to the control of the clerk or registrar of voters, that too great a number from a given precinct need not be instructed) and shall report the result to such clerk or registrar of voters, and such clerk or registrar of voters, if satisfied with the report, may issue a certificate of competency to such person, and shall enter the name of such person in the proper book, by precincts, with the residence of such person and the date of certificate of competency, and mail such certificate to such person at the address shown by his application or registration. In making up a recommendation of names of persons suitable for election officers, the clerk or registrar of voters, shall, where the person is otherwise qualified and able to serve, prefer the persons in each precinct, who have received such a certificate, and the persons thus shown in such recommendation shall be appointed as election officers in the proper precincts, and unless they fail to appear and be sworn or are excused for cause, by the clerk or registrar of voters, shall serve as an election officer at the election. [Amendment approved June 11, 1913. Stats. 1913, p. 691.]

This section was also amended April 21, 1911. Stats. 1911, p. 983.

Duties of precinct boards.

§ 8. The precinct board of election of each precinct shall meet at the polling place therein, at least one hour before the time set for the opening of the polls at each election, and shall proceed to arrange within the guard rail the furniture, stationery, and voting or ballot machine for the conduct of the election. The inspectors of election shall then and there have the voting or ballot machine, instructions to voters, and stationery required to be delivered to them for such election. The inspector shall thereupon cause at least two instruction cards to be posted conspicuously within the polling place. They shall see that the model, if such model is furnished, is placed where each voter can conveniently operate it and receive instructions thereon as to the manner of voting before entering the machine. They shall post one diagram inside the polling-room and one outside, in places where the voters can conveniently examine them. They shall see that the lantern or other means provided for giving light is in such a condition that the voting machine is sufficiently lighted to enable voters to readily read the names on the ballot labels. They shall see that the ballot labels are in their proper places on the machine. They shall open the counting compartment of the voting machine in the presence of the public and the members of the board of election, before the opening of the polls, and inspect the recording dials of such machine, and see that each counter number on each dial for a candidate is set at zero (000) and make a certificate substantially in the form hereinafter provided. If any counter number upon such dial for any candidate is found not to register zero (000), a statement of the actual register of such counter number, together with the designating number of said dial and letter, shall be made and signed by the election board as to every such dial number, so found registered above zero (000). In such event, in each separate case, the number so found above zero (000) upon the dial of any particular candidate must be deducted from the

total vote of such candidate as shown upon that counter number at the close of the polls. The tally sheet shall have plainly printed thereon, so as to occupy an entire page thereof, a statement and certificate substantially in the following form:

Notice to election officers.

The board of election shall before opening the polls, open the counting compartment of the voting machine in the presence of the public and the numbers of the board of election, and inspect the recording dials of such machine, and see that each counter number on each dial for a candidate is set at zero (000) and make a certificate substantially in the form below provided. If any counter number upon such dial for any candidate is found not to register zero (000), a statement of the actual register of such counter number, together with the designating number of such dial and letter, shall be made and signed by the election board as to every such dial number so found registered above zero (000). In such event, in each separate case, the number so found above zero (000) upon the dial of any particular candidate must be deducted from the total vote of such candidate, as shown upon that counter number at the close of the polls.

Certificate.

We, the undersigned members of the election board of election precinct No. —, hereby certify that the following statement is a correct statement of all counter number dials upon the voting machine or machines used at said precinct, which were found to have the counter number upon any dial thereon registered above zero (000), as found by an examination and inspection made by said election board at said precinct before the opening of the polls and in the manner provided by law, and that the name of each candidate affected thereby is hereinbelow respectively and separately stated, together with each such separate dial number and each such separate letter of such respective dial, and the number so registered above zero (000), upon any such respective counter dial, and also the number of votes shown upon any such respective counter dial at the close of the polls, together with the total vote received by any such candidate so affected, after deducting from such total vote the number so found registered above zero (000) upon the counter number dial of such respective candidate or candidates:

<i>Name</i>	<i>Dial number</i>	<i>Letter</i>	<i>Counter register at opening of polls above zero (000)</i>	<i>Counter register at close of polls</i>	<i>Total vote received</i>
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Signed: {

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....., Inspector.

....., Inspector.

....., Judge.

....., Judge.

[Amendment approved April 21, 1911. Stats. 1911, p. 984.]

Machines to be in plain view.

§ 9. The exterior of the voting or ballot machine and every part of the polling-place shall be in plain view of the election officers and public. The voting or ballot machines shall be placed at least three feet from every wall and partition of the polling-place, and at least three feet from the guard-rail. A guard-rail shall be constructed at least three feet from the machine, with openings to admit electors or officers of election to and from the machine.

Instructing voter in operation of machine. Voting secret. Time voter may remain within machine booth.

§ 10. After the opening of the polls, the inspectors shall not allow any voter to pass within the guard-rail until they ascertain that he is duly entitled to vote. Before each voter enters the voting machine, the inspectors of election shall, so far as possible, inform him how to operate the machine, and illustrate same upon the model of the machine, if any be furnished, and call his attention to the diagram. If any voter shall, after entering the voting machine, ask for information regarding its operation, the inspectors of election shall give him such necessary information. The operation of voting by an elector, while voting, shall be secret and obscured from all other persons except as provided in cases of voting by assisted electors. At any election at which the number of officers to be elected plus the number of propositions or amendments to be voted on shall together make a total of fifteen or less, no voter shall remain within the voting or ballot machine booth longer than two minutes, and if he shall refuse to leave it after the lapse of two minutes, he may be removed by the inspectors. At any election at which the number of officers to be elected plus the number of propositions or amendments to be voted on shall together make a total of more than fifteen, no voter shall remain within the voting or ballot machine booth longer than three minutes, and if he shall refuse to leave it after the lapse of three minutes he may be removed by the inspectors. The inspectors of election shall occasionally examine the face of the machine and the ballot labels to determine if same have been injured or tampered with. No vote cast in the irregular or blank column shall be counted for a person whose name is printed upon the ballot or face of the machine as a candidate for the same office for which he is voted in the irregular or blank column. All voters in the polling place or standing in line entitled to vote, at the hour for closing the polls, must be permitted to vote. [Amendment approved April 21, 1911. Stats. 1911, p. 986.]

This section was also amended in 1907. Stats. 1907, p. 288.

Canvass of votes.

§ 11. As soon as the polls of the election are closed the inspectors of election thereat shall immediately lock the voting or ballot machine against voting, and in the presence and full view of the public who may be lawfully within the polling place, proceed to demonstrate and declare the result of such election as registered or recorded or received by the machine, (subject to any legal deductions made under the provisions of section 8 of this act) in the following manner: One of the inspectors shall, under the scrutiny of the other inspector, of a different political party, in the order of the offices as their titles are arranged on the machine, commencing with the first party or top column, or commencement of the ticket as arranged, announce in distinct tones to the clerks of election, the designating number and letter of each counter, and the vote registered thereon, and the clerks of election shall correctly record each announcement so made upon separate respective tally sheets provided for that purpose, before another announcement is made by the inspector. The said inspector shall then in like manner announce the vote recorded for each office on the irregular ballot, and the election clerks shall in like manner record the same. The inspector shall then also in like manner announce the vote on each question or proposition submitted at the election, and the clerk shall in like manner record the same. The canvass of each office shall be completed before proceeding to the next, and the vote as announced shall be written by the clerks in ink on the two tally lists provided therefor in the same order. After completing and writing down the canvass, in the manner aforesaid, the inspectors of election shall verify the same by comparing the figures on the tally lists with the figures on the counters in the machine, and the names recorded on or in the device for voting for persons not nominated, and also with the result registered on the machine as to the vote upon questions or propositions, and in making such comparison and verification,

one of the inspectors shall again distinctly announce and recall aloud the vote registered upon each counter. The board of election shall then certify in the appropriate place on the tally list, as to the number of voters that voted at the election, as shown by the poll lists, and by the number registered on the public counter, and the number registered on the protective counter, and the number or other designating mark on the seal with which the machine has been sealed, together with other information regarding the machine as provided on the tally list. The counter compartment of the voting machine shall remain open until the tally list and all other reports have been fully completed and signed, after which they shall lock the counter compartment and deliver the keys thereof in a sealed envelope to the county clerk, registrar of voters, or city or town clerk, as the case may be. [Amendment approved April 21, 1911. Stats. 1911, p. 987.]

Duties of inspectors. Opening machine. Records. Contest.

§ 12. The inspectors of election shall, as soon as the result is fully ascertained and declared, as in the preceding section required, lock the machine so that the record of each election shall be preserved for the period of six months following such election, except in cases where the machine is required for use in a subsequent election during such period, in which case the board of supervisors or other board having charge and control of elections shall inspect the registering or recording and receiving device of the machines and file a report of said inspection with the county clerk or registrar of voters. Said report of said board when so certified and filed shall be prima facie evidence of the vote at such election. Any supplementary or duplicate record of an election, which may be furnished by a machine, shall be preserved by the county clerk or registrar of voters for one year following such election. Whenever either house of the legislature shall by resolution, adopted and entered upon its journal, direct that any standing or special committee of such house, shall be empowered to open and examine any voting machine or voting machines which were used at any election held within six months before the passage of such resolution, the committee of such house so empowered and authorized shall have the power and authority by its resolution in writing to order any such machine or machines to be opened, inspected or examined in any manner which such committee shall prescribe. If the opening of such a machine or machines be for the purpose only of counting or recounting the votes cast or registered at said election in a contest pending before such house, then and in such event the opening thereof and such count or recount must be made in the presence of said committee, or its sub-committee duly designated by its resolution in writing for such purpose. If the opening of such machine or machines be for any other purpose or for the investigating of the mechanism and manner of operation of a machine or machines, or for determining or reporting upon the mode of its operation, or its nature as a safe mechanical appliance for the receiving and registration of the votes of electors, then the committee must by its resolution in writing specify the person or persons who are to make such mechanical or expert inspection, and the place where and the time when such inspection is to commence, and may, if it deem proper, limit the duration of such inspection, and fix the place where the same is to be made, and state whether the same is to be made in the presence of the said committee, or of its duly appointed sub-committee, or of any other person or persons to be named by said committee. Every person employed or permitted to take part in any such inspection of such a machine or machines, or in whose presence said inspection occurred, may be required to attend and testify as a witness before such committee if required, and be subject to the subpoena of such committee. If such machine or machines be opened under the provisions of this section by order of such committee, the said committee, or its sub-committee duly appointed, shall immediately upon opening the doors, or the opening to the dial or place where the votes thereon are registered, which were cast at the last election, take off in writing the complete record of votes for all candidates which are recorded or regis-

tered upon or by said machine, and certify the same to be true and correct, with the date of such certificate, and place the same in an envelope, and seal the same in the manner required for sealing election returns, and make an indorsement upon the outside of such envelope stating the number of the machine whose record is inclosed, and forthwith file the same with the county clerk, or registrar of voters, of the county, or city and county, where such election was held, who shall receive and keep the same with the other returns of the said election in his office for a period of twelve months from the date of said election, and such record shall in any court having jurisdiction of an election contest be prima facie evidence of its contents in any case where the vote upon such a machine or machines might have been recounted by the court if such machine or machines had not been previously opened or the result thereof in any manner affected. Immediately upon the conclusion of such investigation, examination and inspection of such machine or machines, the same shall be again securely locked by the clerk, or registrar of voters, or the said committee or its sub-committee, and the keys thereof returned to the officer entitled to possession of the same under the provisions of this act, and shall not be again opened except in accordance with the provisions of this act. One voting machine of each kind or pattern may be taken by such committee or upon its order, and upon its receipt therefor, to the city of Sacramento, or the state capital, and there kept under the directions of such committee, but no such machine shall be so taken or transported without the consent of the owner thereof, unless the same be the property of a city, county, or city and county, or other political subdivision of the state. If such committee shall permit such a machine or machines to be taken apart, then and in such event the said committee shall cause the same to be restored and properly put together again, before or at the termination of its investigation, and to be returned by order of such committee, and at the expense of the state, to the place from which it was taken. If any such machine or machines be taken to Sacramento, or the state capital, under the provisions of this section, and the legislature shall adjourn sine die, without such machine or machines having been so restored and returned by such committee, then and in such event the secretary of state shall forthwith, upon such adjournment, take charge of such machine or machines, and cause the same to be properly restored and returned to the place or places respectively from which the same were taken, and the expense thereof shall be a charge against the state, and a written demand therefor, verified by the secretary of state, must be allowed by the controller by his indorsement of allowance thereon, and thereupon, upon presentation, the same shall be paid to the secretary of state by the state treasurer out of any funds of the state not otherwise appropriated. Any voting machine used at an election may, within six months from the date of such election, in any election contest, or action in the nature of quo warranto in any court of this state having jurisdiction thereof, be opened by order of such court and in its presence, for the purpose of recounting the vote involved in such election contest, under the same rules and conditions that apply to the opening of packages of sealed ballots and the recounting of the same, and must be forthwith locked again as soon as the result upon each machine is tallied, and in the presence of the said court. [Amendment approved March 19, 1907. Stats. 1907, p. 644.]

Misconduct at elections.

§ 13. The provisions of the law relating to misconduct at elections shall apply to elections with voting or ballot machines.

Precincts where voting machines are used.

§ 14. Where voting machines are used the precincts shall be established or created in the manner provided by sections 1127, 1128, 1129, and 1130 of the Political Code of the state of California. [Amendment approved June 11, 1913. Stats. 1913, p. 692.]

This section was also amended April 21, 1911. Stats. 1911, p. 983.

Official ballot.

§ 15. The list of candidates used or to be used on the voting or ballot machine shall be deemed an official ballot under this act for an election precinct in which a voting or ballot machine is used, pursuant to law. The word "ballot" as used in this act (except when reference is made to independent ballots) means that portion of the cardboard, or paper, or other material within the ballot-frames, containing the name of the candidate for office, or a statement of a proposed constitutional amendment, or other question or proposition with the word "For" or the word "Against," or "Yes" or "No."

Election officers. Superintendent of machines. Salary. Oath. Bond. Duties.

§ 16. The provisions of section 1142 of the Political Code shall apply where voting or ballot machines are used pursuant to this act, provided, however, that at any precinct or polling place where two voting machines are used, two additional clerks of election shall be appointed for service at such polling place, for the election. In any city, or city and county, or county, where voting machines are to be used at any election, or where voting machines are owned, the board having charge and control of elections may, by a majority of such board adopt a resolution to be entered in its minutes, provide for a superintendent as herein provided, and may thereupon select and appoint a superintendent for the care, repair, adjustment, arrangement, testing, and preparation of voting or ballot machines. Such person must be a skilled machinist familiar with the arrangement, adjustment, and mechanism of voting machines, and shall, before his appointment, be examined by the board having control of elections as to his competency in these respects. His appointment must also, where made for a territory wholly included within any city, or city and county, be approved by the mayor of any such city, or city and county, who shall also have the right to examine such person as to his competency. Said superintendent shall be considered a public officer, and shall hold office under such appointment until removed by the board having charge and control of elections, for cause, and by an order in writing entered in its minutes, after giving such superintendent an opportunity to be heard, which order of removal shall be final and conclusive, and not subject to review. In any city, county, or city and county, which at the last general election therein had a registration of voters exceeding seventy thousand, the said board having control of elections may fix the compensation of such superintendent at a sum not to exceed the rate of fifteen hundred dollars per year, payable monthly, and may, by the resolution of appointment, provided such appointment is made by the year, provide that the services of such superintendent shall be given exclusively to said board while he remains in its employ, or under such appointment. Unless such appointment is made by the year and in the manner last mentioned in such a city, county, or city and county, and in any event in all other cases, and places, such superintendent so appointed pursuant to this act shall receive a compensation at the rate of ten dollars per day, for every day he shall be actually employed; provided, however, that in any such place where his compensation is fixed by the day under this act, the board having control of elections may fix his compensation at a lesser sum when he is employed merely as caretaker of such voting machines. Such superintendent must file his acceptance of the appointment with the board having charge and control of elections within five days after notice of his appointment, and before entering upon his duties shall take the oath of office prescribed by the constitution of this state for public officers, which oath may be taken by and filed with the county clerk, or registrar of voters, and file a bond in a sum to be fixed by the board having charge and control of elections, and not less than ten thousand (10,000) dollars, in a city and county, conditioned for the faithful performance of the duties of his office, with surety and to be approved and recorded as may be required for other officers of such city, county, or city and county; and it shall be his duty to care for, keep in repair, arrange, adjust, test, and prepare all voting machines for

complete and correct operation at any election in the political subdivision for which he is appointed. All such voting or ballot machines shall be by him or under his direction, arranged, adjusted, and prepared for correct operation at any election in accordance with the provisions of the law of this state, and in accordance with the mechanism and rules for the adjustment and correct operation of such voting machines. The county clerk, registrar of voters, or city or town clerk, as the case may be, shall deliver to such superintendent for his guidance, a copy of any written or printed instructions which may be furnished by the person or corporation which manufacture the voting machines in use in such political subdivisions. The board having charge and control of elections may also select and employ any additional persons, as assistants, to such superintendent, in the performance of his duties, and may fix and allow the compensation to be paid to said assistants. The said superintendent of voting machines shall, not later than the day previous to the day of election, file with the clerk, or registrar of voters, his affidavit specifying the voting machines by number, that have been adjusted for use at such election, and stating that every one of such machines that have been so adjusted, that each and every of its counters, which register the votes cast for candidates, are adjusted at zero (000), and that, in every other respect, each and every voting machine is adjusted in accordance with the requirements of the law of the state, and according to the mechanism and rules for the adjustment and correct operation of such voting machines. Where any court, or justice, or judge, of any court, shall make an order or judgment, or otherwise direct any change, alteration or modification, to be made in the ballot labels to be used upon any voting or ballot machine, after the sample ballots have been printed, it shall not be necessary to print or distribute new sample ballots. [Amendment approved April 21, 1911. Stats. 1911, p. 988.]

Machines to be examined, tested, and sealed before elections.

§ 16a. Within not more than thirty-five, nor less than twenty-five days, before the holding of any election in any county, city and county, city or town, at which is to be used voting or ballot machines, under the provisions of this act, the county clerk, registrar of voters, or city or town clerk, as the case may be, shall fix a day, which shall not be more than twenty days, nor less than five days, before the date of such election, upon which the voting or ballot machines to be used at such election shall be examined, tested and sealed as hereinafter provided. At least twenty days before an election in any political subdivision where voting machines are to be used in one or more precincts of such subdivision, under and pursuant to the law of this state, it shall be the duty of the county clerk, registrar of voters, or city or town clerk, as the case may be, to notify in writing, by mail, with postage prepaid, the chairman or secretary of the executive or central committee of any political party or organization for the territory, the membership of which may have made nominations of candidates to be voted for at such election, or of any political party whose party name is lawfully used as a designation by a candidate, that it may appoint representative of such political party who shall be authorized to attend and observe the final adjustment, testing and sealing of such ballot machines, and thereupon it shall be the right of such committee to appoint as many representatives, not to exceed three for each political party or organization, as it may see fit to select for such purpose, and to issue certificates of such appointment to such representatives, by the secretaries of such committees or organizations, respectively. Such notice shall also name and specify the date and place where such examination, testing and sealing of such machines will commence, and that the same will continue, if necessary, at said place from day to day until completed. The committee or organization empowered to appoint such representatives, shall immediately, upon making such appointment, notify the said representative or representatives so appointed, respectively, of such appointment and of the time and place where such examination, testing and sealing of such voting or ballot machines will commence, and shall also

forthwith, send to the said county clerk, registrar of voters, or city or town clerk, as the case may be, the name and full address of each such representative appointed. Thereafter, at the time specified in such notice, and until the completion thereof, the said representative or representatives shall be entitled to attend and observe the final adjustment, testing and sealing of such voting machines, under the directions of the board of election commissioners, or of the superintendent provided for by this act, and such adjustment, testing and sealing shall proceed in the presence of as many of said representatives as shall assemble to observe and view the same, and a full and complete opportunity shall then and there be given by such superintendent and his assistants, to such representatives to observe the processes by which such adjustment, testing and sealing is performed, and to see that the said voting machines are so adjusted that each counter is set at zero (000), and without any vote registered thereon for the advantage of any party or candidate or otherwise. When the said machines are so sealed they shall not be unsealed again except by the precinct election boards on the day of election, to the extent necessary for the proper and lawful conduct of the election. Any candidate may attend in person or appoint in writing signed by such person, a representative to attend, with all the rights and privileges provided by this section. [New section approved April 21, 1911. Stats. 1911, p. 990.]

General election laws to govern.

§ 17. All laws and parts of laws of this state relating to elections and prescribing the powers and duties of election officers, shall, so far as applicable to the use of voting or ballot machines, remain in full force and effect; and all laws and parts of laws inconsistent herewith, shall not be applicable in each county, city and county, city or town election precinct wherein such voting or ballot machines are used, pursuant to this act, so long as such voting or ballot machine or machines shall be used therein, and nothing in this act contained shall be construed as repealing any existing law or authorizing any deviation or omission therefrom, except as provided for or set forth herein.

Violation of act, a felony.

§ 18. Any wilful violation of any provision of this act or any wilful injury to any voting or ballot machine tending to injure its effectiveness or to change the true expression given by the voters at any election shall be a felony and punishable as such, in accordance with the provisions of the Penal Code of the state.

Act takes effect when.

§ 19. This act shall take effect immediately.

As to constitutionality of voting by voting machine, see Opinions of the Justices (In Matter McTammany Voting Machine), 19 R. I. 729, 36 L. R. A. 547, 36 Atl. 716; Opinion to the Governor (In re Voting Machines), 23 R. I. 630, 50 Atl. 265.

SUPPLEMENTARY TO PREVIOUS ACT.

ACT 1329—An act supplementary to an act entitled "An act creating a state commission on voting or balloting machines, defining their powers and providing for the use at the option of indicated local authorities of voting or ballot machines for receiving and registering the vote in one or more precincts in any county or city and county, city or town, at any or all elections held therein, and for ascertaining the result of such election; providing for the punishment of all violations of the provisions of this act," approved March 20, 1903, and providing for the testing and inspection of such machines.

History: Approved March 19, 1907, Stats. 1907, p. 647.

Voting machine to be tested before election: duty of county clerk.

§ 1. Within not more than thirty nor less than twenty days before the holding of any election in any county, city and county, city or town, at which is to be used voting

or ballot machines adopted under the provisions of the act referred to in the title of this act, the county clerk or other officer having control of such election in such county, city and county, city or town, shall fix a day, which shall not be more than fifteen days nor less than five days before the date of such election, upon which the voting or ballot machines to be used at such election shall be examined, tested and sealed as hereinafter provided.

Committee of political party to be notified of test. Right of independent candidates.

§ 2. At least twenty days before an election in any political subdivision where voting machines are to be used in one or more precincts, of such subdivision, under and pursuant to the law of this state, it shall be the duty of the board of election commissioners or other body having charge and control of such election, to notify in writing by mail with postage prepaid the chairman or secretary of the executive or central committee of any political party or organizations for the territory, which may have made nominations of candidates to be voted for at such election, that it may appoint representatives of such political party who shall be authorized to attend and observe the final adjustment, testing and sealing of such ballot machines, and thereupon it shall be the right of such committee to appoint as many representatives as it may see fit to select for such purpose, and to issue certificates of such appointment to such representatives by the secretary of such committees, respectively, which shall forthwith send a list of such representatives with the name of the political party or organization for which they are selected, and the name of each representative with his full address, adding street and number, to the said board of election commissioners or other body having charge and control of such election. If any political party or organization which has made nominations shall not have any chairman or secretary of such committee, or the name and address of such chairman or secretary shall not appear in its nomination papers, then the said election commissioners may send the notice above required to any person named in its nomination papers as the person to whom the certificate of nomination may be returned. Such board of election commissioners shall thereafter, and at least five days before the time therefor, send written notice with postage prepaid to each such representative of a political party or organization which has so been filed in its office, with the address of such representative; which notice shall state the time and place before such election where such representatives are invited to attend, to observe the final adjustment, testing and sealing of such voting machines, and thereafter at such time and place the final adjustment, testing and sealing of such voting machines under the directions of such board of election commissioners, shall proceed in the presence of as many of said representatives as shall assemble to observe and view the same, a full and complete opportunity shall then and there be given to such representatives to observe the processes by which such adjustment, testing and sealing is performed, and to see that the said machines are set at zero, and without any vote registered thereon for the advantage of any party or candidate or otherwise. When the said machines are so sealed they shall not be unsealed again, except by the precinct election board on the day of election and except for trial as to their correctness after transportation to the various booths or polling-places, at which places such trial may be made as the board of election commissioners or body having control of the elections shall direct, to see if any machine has become in any way disarranged during transportation to the polling-place, and a seal necessary to such investigation may be broken or any work performed that may be necessary to put any machine in any such polling-place in complete working order for such election, and the representatives aforesaid shall have the right to attend at any and all polling-places for the purpose of viewing and observing any such unsealing arrangement and resealing, which final work shall take place not later than the day before the election, nor earlier than the third day before the election. If independent candidates are nominated, and no

chairman or secretary is named in the certificate of nomination, then such candidate, or candidates, shall be notified as herein specified, and may attend, or appoint representatives to attend, with all the rights and privileges provided for by this act.

It shall be the duty of the board of election commissioners, or other body having charge and control of such election, to notify in writing by mail with postage prepaid, the chairman or secretary of any of the executive or central committee of any political party or organization hereinbefore referred to, and any independent candidate or candidates hereinbefore referred to, of the time when the final inspection, adjustment, testing and sealing of such voting or ballot machines will commence at the polling-places, and of the place or places from which the inspectors will start in the performance of such duty, and that the representatives appointed pursuant to this act or such independent candidate or candidates, may attend as provided by this act. Such notices shall be so mailed not less than three days before the time named for commencing such final inspection.

Penalty.

§ 3. Any person violating any provision of this act shall be guilty of a misdemeanor and punishable by a fine of not more than five hundred dollars or imprisonment of not more than six months, or both.

Act takes effect when.

§ 4. This act shall take effect immediately.

SPECIAL ELECTIONS.

ACT 1332—An act concerning special elections.

History: Approved February 9, 1878, Stats. 1877-78, p. 73.

Code Commissioners' Note: "Not repealed, but not applicable to existing laws, because there is now no great register. As to cities, see 1899, 63."

"**Special Elections,**" as defined by section 1043, Kerr's Cyc. Pol. Code, are such as are held to supply vacancies in any office, and

are held at such times as may be designated by the proper board or officer.

Sections 1113-1116, Kerr's Cyc. Pol. Code, designate certain books of affidavits as the "register" to be used at elections. See, also, § 1204, Kerr's Cyc. Pol. Code, and note, §§ 1094-1097, Kerr's Cyc. Pol. Code, may be consulted, also.

"DIRECT PRIMARY LAW OF 1913."

ACT 1337—An act to provide for and regulate primary elections, and providing a method for choosing the delegates for political parties to state conventions and for nominating electors of president and vice president of the United States, and providing for the election of party county central committees, and to repeal the act approved April 7, 1911, known as the direct primary law, and also to repeal the act approved December 24, 1911, amending sections 1, 3, 5, 7, 10, 12, 13, 22, 23, and 24 of the said direct primary law, and also to repeal all other acts or parts of acts inconsistent with or in conflict with the provisions of this act.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 1379. Amended May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1341; April 8, 1919. In effect July 22, 1919. Stats. 1919, p. 39; May 7, 1919. In effect July 22, 1919. Stats. 1919, p. 381. Former acts: Act approved March 27, 1895, Stats. 1895, p. 207. Act approved March 13, 1897, Stats. 1897, p. 115. Act approved March 24, 1909, Stats. 1909, p. 691; repealed by the Act of April 7, 1911, Stats. 1911, p. 769, which was amended December 24, 1911, Stats. 1911 (ex. sess.) p. 66, and repealed by the present act. The act of 1895 applied to counties of the first and second classes only. The acts of 1895 and 1897 were declared unconstitutional. See annotations. The legislature repealed the present act by the "direct primary law," approved April 28, 1915, Stats. 1915, p. 239; but the repealing act was submitted to the people by referendum petition at the special election held

October 26, 1915, and not approved. It was thereafter amended January 11, 1916, Stats. 1916 (ex. sess.), p. 5; but the amending act, also submitted to the people by referendum petition, was not approved at the general election held November 7, 1916. The original act, with the amendments of 1917 and 1919, constitutes the law in force.

Definitions.

§ 1. Words and phrases where used in this act shall, unless such construction be inconsistent with the context, be construed as follows:

1. The words "primary election," any and every primary nominating election provided for by this act.

2. The words "August primary election," the primary election held in August to nominate candidates to be voted for at the ensuing November election or to elect members of a party central committee or delegates to a party convention.

3. The words "May presidential primary election," any such primary election, held in May of each year of the general November election at which electors of president and vice president of the United States are to be chosen, as shall provide for the indication of preference in the several political parties for party candidates for president of the United States through the election of delegates to national party conventions.

4. The word "election," a general state, county, city or city and county election as distinguished from the primary election, recall election, or special election.

5. The words "November election," either the presidential election, or the general state, county, or city and county election held in November of each even numbered year.

6. The words "judicial officer," any justice of the supreme court, justice of a district court of appeal, judge of the superior court, justice of the peace, or justice of such inferior court as the legislature may establish in any county, township, incorporated city or town, or city and county; and the words "judicial office," the office filled by any of the above judicial officers.

7. The words "school officer," the superintendent of public instruction and the superintendent of schools of a county or city and county; and the words "school office," the office filled by any of the above school officers.

8. The words "county officer," any officer elected within the boundaries of any county or city and county except a member of the state board of equalization, judge of the superior court, justice of the peace, member of the state senate or assembly or a member of the house of representatives of the congress of the United States or a member of any party county central committee or delegate to a state convention from a hold-over senatorial district; and the words "county office," the office filled by any county officer. The words "township officer," any such county officer as is elected within the boundaries of any judicial township that is now or may be hereafter provided by law; and the words "township office," the office filled by any township officer.

9. The word or words "political party," "party," "political organization," or "organization," a political party or organization of electors which has qualified, as hereinafter provided, for participation in any primary election; and such party or organization shall be deemed to have so qualified when one or both of the following conditions have been complied with:

Qualification as political party.

(a) If at the last preceding November election there was polled for any one of its candidates who was the candidate of such party only for any office voted on throughout the state, at least three per cent of the entire vote of the state, or for any one of its candidates who was the joint candidate of such party and any other party for any office voted on throughout the state, at least six per cent of the entire vote of the state; or

(b) If on or before a date which shall be the seventy-fifth day before any primary election, there shall be filed with the secretary of state a petition signed by registered

qualified electors of the state, equal in number to at least three per cent of the entire vote of the state at the last preceding November election, declaring that they represent a political party or organization the name of which shall be stated therein, which party said electors desire to have participate in such primary election; such petition to be circulated, signed, and the signatures thereon of the registered electors certified to and transmitted to the secretary of state by the county clerks substantially as provided in section five of this act, for the circulation, signing, certification, and transmission of nomination papers for state officers; providing, however, that no electors or organization of electors shall assume a party name or designation which shall be so similar to the name of an existing party or organization as to mislead voters.

Construction.

This statute shall be liberally construed, so that the real will of the electors shall not be defeated by any informality or failure to comply with all the provisions of this law.

In counties having registrar.

In each county and city and county in this state, having a registrar of voters or registrar of voters and a board of election commissioners, the powers conferred and the duties imposed in this statute upon a county clerk and his deputies, and other officers, in relation to matters of election and polling places, shall be exercised and performed by such registrar of voters or his deputies, or registrar of voters or his deputies and board of election commissioners; and all nominating papers, list of candidates, expenses, and oaths of office, required by this statute to be made to or filed with county clerks, shall be made to or filed with the registrar of voters. [Amendment of May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1342.]

Nomination of candidates.

§ 2. All candidates nominated at a primary election for elective public offices shall be nominated by direct vote at such election held in accordance with the provisions of this act; provided, that electors of president and vice president of the United States shall be nominated as provided in subdivision two of section twenty-four of this act. This act shall not apply to recall elections or to special elections to fill vacancies, nor to the nomination of officers of municipalities, counties, or cities and counties whose charters provide a system for nominating candidates for such officers; nor the nomination of officers for any district not formed for municipal purposes; nor to the nomination of freeholders to be elected for the purpose of framing a charter; nor to the nomination of officers for cities of the fifth and sixth classes, nor to the nomination of school district officers. [Amendment of May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1343.]

August primary. Legal holidays.

§ 3. The August primary election shall be held at the legally designated polling places in each precinct on the last Tuesday in August, for the nomination of all candidates to be voted for at the ensuing November election. The day of the August primary election and the day of the May presidential primary election are hereby declared to be holidays within the meaning of section 10 of the Political Code. Any person entitled to vote at such August or May primary elections shall, on the day of such election, be entitled to absent himself from any service or employment in which he is then engaged or employed, for the period of two consecutive hours, between the time of opening and the time of closing the polls; and such voter shall not, because of so absenting himself, be liable to any penalty, nor shall any deduction be made, on account of such absence, from his usual salary or wages. Any primary election other than the August primary election, or May presidential primary election shall be held on Tuesday, three weeks next preceding the election for which such primary election is held.

Statement of electors registered. Notice of offices for which candidates are to be nominated.

§ 4. On the twenty-fifth day before the first Tuesday in May, on the twenty-fifth day before the last Tuesday in August, and on the twenty-fifth day before the date of the November election, in each even numbered year, the county clerk or registrar of voters of each county or city and county shall transmit a statement to the secretary of state of the total number of electors registered in his county between the first day of January next preceding and a date in each instance five days preceding the date of transmission of such statement as herein provided for, together with the number so registered under each of the several political affiliations, and also the number declining or failing to declare such affiliation. At least seventy days before the time of holding the August primary election in 1918 and biennially thereafter the secretary of state shall prepare and transmit to each county clerk and to the registrar of voters in any city and county a notice in writing designating all the offices, except township offices, for which candidates are to be nominated at such primary election, together with the names of the political parties qualified to participate in such election.

Publication of notice.

2. Within ten days after receipt of such notice such county clerk or registrar of voters in any city and county shall publish once in each week for two successive weeks in not more than two newspapers published in such county or city and county so much thereof as may be applicable to his county, including a statement of the township offices in the county for which candidates are to be nominated, and a statement of the number of members of the county central committee to be elected by each political party in each supervisorial or assembly district, as the case may be, according to the provisions of subdivision four of section twenty-four of this act.

Publication of notice of other primaries.

3. In the case of primary elections other than the August primary elections the city clerk or secretary of the legislative body of the political subdivision for which such primary election shall be held shall cause one publication of such notice to be given, such publication to be not more than forty and not less than fourteen days before such primary election. [Amendment of May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1344.]

Method of getting name on ballot.

§ 5. 1. The name of no candidate shall be printed on an official ballot to be used at any primary election unless at least forty days prior to the primary election, if the candidate is to be voted for at the August primary election or the May presidential primary election, and at least twenty-five days prior to the primary election, if the candidate is to be voted for at a primary election other than the August or May primary election, a nomination paper nominating such candidate shall have been prepared, circulated, signed, verified and left with the county clerk for examination, or for examination and filing, in the manner provided by this act.

Verification deputies.

2. (a) The candidate may appoint verification deputies to serve within the county or city and county in which such deputies reside in securing signatures to his nomination paper for nomination to the office for which he is a candidate, and the verification deputies thus appointed shall be recognized as the duly authorized verification deputies to secure signatures to the nomination paper of such candidate in such county or city and county. The document in which such verification deputies are appointed as herein provided shall be filed with the county clerk of the county or city and county in which such verification deputies reside, at or before the time the nomination paper

of the candidate is left with the county clerk for filing or for examination as provided in subdivision four of this section. Said document shall be in substantially the following form:

Form of document.

I, the undersigned, a candidate for the party nomination for the office of, which nomination is to be made by direct vote at a primary election to be held on the day of August, 19.., do hereby appoint the following registered qualified electors of the county of, as verification deputies to obtain signatures in said county to a nomination paper placing me in nomination as a candidate of said party for said office of

VERIFICATION DEPUTIES.

Name.	Residence.
.....
.....
.....
.....
.....
.....
(Signature	
(Residence)	

Filed in the office of the county clerk of county this day of, 19...

....., County Clerk.
By Deputy.

Additional deputies.

In case it is desired to appoint additional verification deputies to secure signatures to the nomination paper of such candidate, one or more similar documents may be filed to supplement the first document. When the office for which the candidate is proposed is a judicial, school, county, township or municipal office, the words "..... party," and the words "of said party," shall be omitted from said document. Or, as an alternative to the foregoing portion of this section and subdivision, verification deputies may be appointed in behalf of a candidate as follows:

Five electors may propose candidate. Consent of candidate.

2. (b) Any five qualified electors of any county or city and county who are registered as intending to affiliate with the same political party may join in proposing a candidate for nomination to any office to be voted on in such county or city and county at the next ensuing primary election, and in appointing verification deputies to serve within such county or city and county in securing signatures to the nomination paper of such candidate for such office. If the office is an office the candidate for which is to be voted on in more than one county, he may be proposed for nomination as herein provided by five of the registered qualified electors in each of the counties in which such electors may desire to circulate a nomination paper in his behalf. The signatures of the said five qualified electors shall be verified free of charge before any officer authorized to administer an oath, and the document containing such signatures shall be filed with the county clerk of the county or city and county in which said five qualified electors reside, at or before the time the nomination paper of the candidate

is left with the county clerk or registrar of voters for filing or for examination as provided in subdivision four of this section. In said document the five signers shall make affidavit that the candidate therein named for the office therein specified has given his consent to be thus proposed for nomination to such office; and shall also state that the verification deputies therein appointed are duly registered qualified electors of said county or city and county; and the verification deputies therein appointed shall be recognized as the duly authorized verification deputies to secure signatures to the nomination paper of such candidate in such county or city and county. Said document shall be substantially in the following form:

Form of nomination paper.

State of California, }
County of } ss.

We, the undersigned, do solemnly swear (or affirm) that we are each qualified electors of the county of, state of California, and that we are each registered as intending to affiliate with the party and we do hereby propose, who resides at No., street in the city of (or in the town of), county of, as a candidate for the nomination of such party for the office of, to be voted for at the primary election to be held on the day of August, 19...; and we do solemnly swear (or affirm) that said has consented to this proposal of his name as candidate for the nomination for said office. We hereby appoint the following registered qualified electors of this county as verification deputies to obtain signatures in this county to the nomination paper of said to said office of

VERIFICATION DEPUTIES.

Name.	Residence.
.....
.....
.....
.....
.....
.....
.....
etc.	etc.

(Signed)

Name.	Residence.
.....
.....
.....
.....
.....

Subscribed and sworn to before me this day of, 19...
(Seal)
Notary public (or other official).

Additional deputies.

In case it is desired to appoint additional verification deputies to secure signatures to the nomination paper of said candidate, one or more similar documents may be filed, to supplement the first document. When the office for which the candidate is proposed is a judicial, school, county, township, or municipal office, the

provisions of this subdivision shall apply, except that the five qualified electors shall make no statement of their party affiliation and may be affiliated with different parties or with no party; and the candidate proposed for nomination shall not be so proposed as the candidate of any party.

Obtaining signatures to nomination papers. Presentation in sections. Affidavit of deputies. Sections returned to five electors.

3. Verification deputies appointed as provided in subdivision two of this section to obtain signatures to the nomination paper of any candidate for any office to be voted for at any primary election, may, at any time not more than sixty-five days nor less than forty days prior to such election, obtain signatures to such nomination paper of such candidate for such office; each signer of a nomination paper shall sign but one such paper for the same office, except that in case two or more persons are to be elected to the same office at the same election, an elector may sign the nomination papers of as many persons as there are persons to be elected to such office, and such act on the part of such elector shall not be deemed in conflict with the signer's statement hereinafter provided. In the case of primary elections other than August primary elections or May presidential primary elections, signatures may be obtained not more than forty days nor less than twenty-five days prior to such election.

He shall also declare his intention to support such candidate for nomination, and shall add his place of residence, giving his street and number if any. His election precinct shall also appear on the paper just preceding his name, and he shall write the date of his signature at the end of the line just after his residence. Any nomination paper may be presented in sections, but each section shall contain the name of the candidate and the name of the office for which he is proposed for nomination. Each section shall bear the name of the city or town, if any, and also the name of the county or city and county, in which it is circulated, and only qualified electors of such county or city and county, registered as intending to affiliate with the political party by which the nomination is to be made shall be competent to sign such section. Any section circulated within any incorporated city or town shall be signed only by registered qualified electors of such city or town. Each section shall be prepared with the lines for signatures numbered, and shall have attached thereto the affidavit of the verification deputy who has obtained signatures to the same, stating that all the signatures to the attached section were made in his presence, and that to the best of his knowledge and belief, each signature to the section is the genuine signature of the person whose name it purports to be; and no other affidavit thereto shall be required. The affidavit of any verification deputy obtaining signatures hereunder shall be verified free of charge by any officer authorized to administer an oath. Such nomination paper so verified shall be prima facie evidence that the signatures thereto appended are genuine and that the persons signing the same are registered qualified electors, unless and until it is otherwise proven by comparison of such signatures with the affidavits of registration in the office of the county clerk or registrar of voters. Each section of the nomination paper, after being verified, shall be returned by the verification deputy who circulated it to one of the five electors by whom the said verification deputy was appointed; and in this manner all the sections circulated in any county shall be collected by said five electors of that county and shall be by them arranged for filing or for examination, as provided in subdivision four of this section, and shall then be by some one of them filed or left for examination and filing. In case said verification deputy was appointed directly by the candidate according to the provisions of subdivision two (a) of this section, the collecting, arranging, and filing, or leaving for examination and filing, of the sections of the nomination paper shall be done

by the candidate, or on his behalf, instead of by the “five electors” as hereinbefore provided. Each section of the nomination paper shall be in substance as follows:

Form of each section.

County of, city (or town) of (if any).
Nomination paper of, candidate for party nomination
for the office of
State of California, }
County of } ss.

SIGNER’S STATEMENT.

I, undersigned, am a qualified elector of the city (or town) of, county, of, state of California, and am registered as intending to affiliate with the party; and I hereby nominate who resides at No. street, city of, county of, state of California, as a candidate for the nomination of the party for the office of to be voted for at the primary election to be held on the day of August, 19... I have not signed the nomination paper of any other candidate for the same office, and I further declare that I intend to support for such nomination the candidate named herein.

I furthermore declare that I have not signed the nomination paper of this candidate or any other candidate for office, as candidate of any other party at such primary election.

No.	Precinct	Signature	Residence	Date
1
2
3
4
5
etc.

VERIFICATION DEPUTY’S AFFIDAVIT.

Deputy’s affidavit.

I,, solemnly swear (or affirm) that I have been appointed according to the provisions of subdivision two, section five of the direct primary law, as a verification deputy to secure signatures in the county of to the nomination paper of as candidate for the nomination of the party for the office of; that all the signatures on this section of said nomination paper, numbered from one to inclusive, were made in my presence, and that, to the best of my knowledge and belief, each of said signatures is the genuine signature of the person whose name it purports to be.

(Signed)
Verification deputy.

Subscribed and sworn to before me this day of, 19...
(Seal)
Notary public (or other official).

In case of judicial office, etc.

In the case of a nomination paper for any candidate for a judicial, school, county, township or municipal office, the provisions of this subdivision shall apply, except that no such nomination paper nor any section thereof shall contain the name of any political party and any nomination paper for any candidate for a judicial office, school office, county office, township office, or municipal office may be signed by any registered

qualified elector of the county or city and county, whether registered as being affiliated with any, or with no, political party.

Arrangement prior to filing. Form of index.

4. Prior to the filing of a nomination paper for any candidate, the sections thereof must be numbered in order and fastened together by cities or towns or portions of the county not included in such cities or towns, substantially in the manner required for the binding of affidavits of registration by the provisions of section one thousand one hundred thirteen of the Political Code; provided, that the sections of the nomination paper may be preceded by an index of precincts, arranged by cities, towns or outside territory in the numerical or alphabetical order of such precincts for each such city, town or outside territory and showing after the name or number of such precinct the numbers of the sections on which the names of the electors registered in such precinct are to be found, and after the number of each section, the number (in parenthesis) of times such names are to be so found on such section. Such index shall be in substantially the following form:

CITY OF.....				
No. of precinct	Numbers of sections containing voters of precinct			
1.....	1 (3 times)	2 (5 times)	3 (7 times)	etc.
2.....	1 (4 times)	2 (0 times)	3 (6 times)	etc.
etc.....		etc.		
TOWN OF.....				
etc.				
OUTSIDE TERRITORY.				
etc.				

Candidates voted for in more than one county. Examination by clerk. Time for filing.
Persons who may not verify signatures. Statement of candidate.

And provided, further, that for all nominations of candidates to be voted for in more than one county, or throughout the entire state, the nomination papers, properly assembled, may be consolidated and fastened or bound together by counties; but in no case shall nomination papers signed by electors of different counties be fastened or bound together. The county clerk or registrar of voters of any county or city and county shall examine all nomination papers herein provided for which purport to have been signed by electors of his county or city and county, and shall disregard and mark "not sufficient" any name appearing on such paper or papers which does not appear in the same handwriting on an affidavit of registration in his office made on or before the date when such name was signed, or which, except in the case of nomination papers of candidates for judicial, school, county, township or municipal offices, the signers of which may be registered as of any or of no party, does not appear on said affidavit as intending to affiliate with the party named in such nomination papers. Such officer shall, within five days after any nomination papers are filed with him or left for examination, examine the same as herein provided, and affix thereto a certificate reciting that he has examined the same and stating the number of names signed thereto which have not been marked "not sufficient" as hereinabove provided. All nomination papers which by this act are required to be filed in the office of the secretary of the state, shall be left with the county clerk or registrar of voters for examination, as above provided, at least forty days prior to the August primary election or the May presidential primary election, and shall, with such certificate of examination attached, within five days after being so left, be forwarded by such county clerk or registrar of voters to the secretary of state, who shall receive and file the same. All nomination papers which by this act are required to be filed in the office of the city clerk or secretary of the legislative body of

any city or municipality shall be left with the county clerk or registrar of voters for examination, as above provided, at least twenty-five days prior to the primary election at which such nominations are to be made, and shall, with such certificate of examination attached, within five days after being so left be forwarded by such county clerk or registrar of voters to the city clerk or secretary of the legislative body of such city or municipality who shall receive and file the same. The verification of signatures to nomination papers shall not be made by the candidate, nor by any county clerk, registrar of voters, nor by any of the deputies in the office of such county clerk or registrar of voters, nor within one hundred feet of any election booth, polling place, or any place where registration of electors is being conducted. Each candidate on or before the thirty-fifth day prior to the August primary election or the May presidential primary election, or on or before the twenty-fifth day prior to any other primary election, shall file in the place where his nomination paper is required to be filed, as provided in section six of this act, his affidavit, stating his residence, with street and number, if any; his election precinct; that he is a qualified elector in the election precinct in which he resides; the name of the office for which he is a candidate; that he will not before said primary election withdraw as a candidate for nomination and that if nominated he will accept such nomination and not withdraw, and that he will qualify as such officer if nominated and elected; and he shall also make the statement required in subdivision five of section six of this act. Nothing in this act contained shall be construed to limit the rights of any person to become the candidate of more than one political party for the same office upon complying with the requirements of this act, but no person shall be entitled to become a candidate for more than one office at the same election. No more than one affidavit need be filed by any candidate, even though he is the candidate for nomination by more than one political party. In no case shall the secretary of state, county clerk, or city clerk, place the name of any candidate on this ballot or certify any such name to be placed thereon unless the requisite affidavit has first been filed as herein provided.

Number of signatures required.

5. Except in the case of a candidate for nomination to a judicial office, school office, county office, or township office, nomination papers shall be signed as follows: If the candidate is the candidate for an office to be voted on throughout the state, by not less than one-half of one per centum and not more than two per centum of the vote constituting the basis of percentage as defined in subdivision six of this section, of the party of the candidate seeking nomination, within the state; if the candidate is the candidate for an office to be voted on in some political subdivision of the state, but not throughout the state, by not less than one per centum nor more than two per centum of the vote constituting the basis of percentage, as defined in subdivision six of this section, of the party of the candidate seeking nomination within said political subdivision in which such candidate seeks nomination.

Basis of percentage.

6. Except in case of a candidate for nomination to a judicial, school, county, township or municipal office, the basis of percentage in each political party shall be the vote polled for such party's candidate for governor, at the last preceding November election at which a governor was elected, in the state or in that political subdivision for which the candidate is proposed for nomination; provided, that such candidate for governor was the candidate of such political party alone. If such party's candidate for governor was not the candidate of such party alone, the basis of percentage shall be the vote polled at said election by that one of such party's candidates voted on throughout the state who received the greatest number of votes of all of such party's candidates who were the candidates of such party alone. But if no candidate voted on

throughout the state was the candidate of such party alone, then the basis of percentage shall be the vote polled at said election by that one of such party's candidates voted on throughout the state who received the greatest number of votes of all of such party's candidates who were the candidates of such party in conjunction with one or more other parties.

In case of change of political subdivision.

7. Whenever by rearrangement of political subdivisions of the state by any legislature, board of supervisors or other legislative body, the boundaries of such political subdivisions are changed, the vote polled for governor at the last preceding gubernatorial election by each party in each of the new political subdivisions shall be determined as follows: If the change occurs wholly within any county or city and county, the county clerk or registrar of voters of such county or city and county shall determine as nearly as possible such vote of each party in the new political subdivision by adding together for each party the vote for such party's candidate for governor in each of the former precincts which now are combined to make up such new political subdivision. If the change occurs outside the limits of any county or city and county, the secretary of state shall determine such vote of each party in such new political subdivision by adding together for each party the vote for such party's candidate for governor in the counties which now are combined to make up such new political subdivision. In the same way that the highest vote for each party in each new political subdivision is ascertained, shall also be ascertained the total vote at such election as is required to be determined by the provisions of subdivision eight of this section. Every political party qualified to participate in the primary election by the provisions of subdivision nine of section one of this act, for nomination by which party there shall have been filed nomination papers for one or more candidates containing a sufficient number of signatures, shall be entitled to a separate party ticket at the primary election; but all such party tickets must be alike in the designation of candidates for judicial, school, county, and township offices.

In case of judicial office, etc.

8. In the case of a candidate for nomination to a judicial, school, county, township or municipal office, nomination papers shall be signed by not less than one-half of one per centum, nor more than two per centum of the total vote cast at the last general election in the state or political subdivision thereof in which such candidate for judicial or school, county, or township office seeks nomination.

Independent candidates.

9. Nothing herein shall be construed as prohibiting the independent nomination of candidates as provided by section one thousand one hundred eighty-eight of the Political Code, as said section reads at the time of said nomination; except that a candidate for whom a nomination paper has been filed as one of the candidates for nomination to any office on the ballots of any political party at a primary election held under the provisions of this act, and who is defeated for such party nomination at such primary election, shall be ineligible for nomination as an independent candidate, or as a candidate named by a party central committee to fill a vacancy as provided in section twenty-five of this act, for the same office at the ensuing general election; and no person shall be permitted to file nomination papers for a party nomination and an independent nomination for the same office, or for more than one office at the same election. Nor shall any person whose name has been written in upon any ballot or ballots for any office at any primary election, have his name placed upon the ballot as a candidate for such office at the ensuing general election, except under the provisions of said section one thousand one hundred eighty-eight of the Political Code or of section twenty-five of this act providing for the filing of vacancies

by party central committees, unless at such primary election he shall have received for such office votes equal in number to the minimum number of signatures to the nomination paper which would have been required to be filed to have placed his name on the primary ballot as a candidate for nomination to such office.

Record of papers filed.

10. The officer with whom nomination papers are filed shall keep a record in which he shall enter the names of every person presenting the same for filing, the name of the candidate, the title of the office, the party, if any, and the time of filing. [Amendment of April 8, 1919. In effect July 22, 1919. Stats. 1919, p. 39.]

This section was also amended May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1345.

Office in which papers must be filed.

§ 6. All nomination papers provided for by this act shall be filed as follows:

1. For state officers, United States senators, representatives in congress, members of the state senate and assembly, delegates to state conventions from "hold-over senatorial districts" and all officers voted for in districts comprising more than one county, in the office of the secretary of state.

2. For officers to be voted for wholly within one county or city and county, except representatives in congress, delegates to state conventions from "hold-over senatorial districts" and members of the state senate and assembly, in the office of the county clerk of such county or in the office of the registrar of voters in such city and county.

3. For city officers, in the office of the city clerk or secretary of the legislative body of such city or municipality.

4. When a nomination paper or sections thereof shall have been received which contain a number of signatures equal to two per centum of the vote constituting the basis of percentage as provided in subdivisions five, six and eight of section five of this act, the officer with whom such papers are required to be filed shall not receive or file further sections of the nomination paper for the candidate named therein.

5. No more signatures shall be secured for any candidate than a number equal to three per centum of the vote constituting the basis of percentage as provided in subdivisions five, six and eight of section five of this act; provided, that if through miscalculation or otherwise, more signatures are secured than the said three per centum, all sections of the nomination paper containing signatures in excess of said three per centum must be sent to the candidate; and before any nomination paper is filed as provided in this section, the candidate must notify each signer of such excess sections that his name has not been used; and in the affidavit required to be filed in subdivision four of section five of this act, affiant must state whether he has complied with the provisions contained in subdivision five of section six of this act. [Amendment of April 8, 1919. In effect July 22, 1919. Stats. 1919, p. 49.]

Filing fees.

§ 7. 1. A filing fee of fifty dollars shall be paid to the secretary of state by each candidate for state office or for the United States senate, except as otherwise provided in this section.

2. A filing fee of twenty-five dollars shall be paid to the secretary of state by each candidate for representative in congress or for any office, except member of state senate and assembly, to be voted for in any district comprising more than one county.

3. A filing fee of ten dollars shall be paid to the secretary of state by each candidate for the state senate or assembly.

4. A filing fee of ten dollars shall be paid to the county clerk or registrar of voters in any city and county when the nomination paper or papers and affidavit of any candidate to be voted for wholly within one county or city and county are filed with such county clerk or registrar of voters.

5. A filing fee of ten dollars shall be paid to the city clerk or secretary of the legislative body of any municipality when the nomination paper or papers and affidavit of any candidate for a city office are filed with such clerk or secretary of such legislative body.

6. No filing fee shall be required from any person to be voted for at the May presidential primary election, or from any candidate for an office to the holder of which no fixed compensation is required to be paid, or for township or municipal offices the compensation to the holder of which does not exceed the sum of six hundred dollars per annum.

7. In no case shall the secretary of state, county clerk, registrar of voters, or city clerk, receive any nomination papers for filing until the requisite fee for such filing, as prescribed in this section, has first been paid to him.

8. When a person for whom a nomination paper has not been filed is nominated for an office by having his name written on a primary election ballot, he must pay the same filing fee that would have been required if his nomination paper had been filed; otherwise his name must not be printed on the ballot at the ensuing general election.

9. When a candidate for nomination to office is proposed for nomination by more than one political party, he must pay a separate filing fee for each party in which he is proposed for nomination; or if, having filed a nomination paper for one party, he is nominated by another party by having his name written on a primary election ballot, he must pay the same filing fee for such other party nomination that would have been required if his nomination paper for such other party had been filed; otherwise his name shall not be printed on the general election ballot as the nominee of such other party. [Amendment of May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1354.]

Clerk to pay fees to treasurer.

§ 8. The county clerk shall immediately pay to the county treasurer and the registrar of voters in any city and county shall immediately pay to the city and county treasurer all fees received from candidates. The city clerk or secretary of the legislative body of any municipality shall immediately pay to the city treasurer all fees received from candidates. Within ten days after the primary election the secretary of state shall pay to the state treasurer all fees received from candidates and shall apportion the fees paid to him by each candidate equally among the counties within which such candidate is to be voted for, and certify such apportionment to the state controller, who shall issue warrants on the state treasurer for the amount due each county and the state treasurer shall pay the same.

Expense of primary.

§ 9. The expense of providing all ballots, blanks and other supplies to be used at any primary election provided for by this act and all expenses necessarily incurred in the preparation for or the conduct of such primary election shall be paid out of the treasury of the city, city and county, county or state, as the case may be, in the same manner, with like effect and by the same officers as in the case of general elections.

Secretary of state to transmit list of nominees. Publication by clerk.

§ 10. At least thirty days before any August primary election preceding a November election or before any May presidential primary election the secretary of state shall transmit to each county clerk or registrar of voters in any city and county a certified list containing the name and post office address of each person for whom nomination papers have been filed in the office of such secretary of state, including the candidate for delegate to a state convention, if any, from a "hold-over senatorial district" and who is entitled to be voted for in such county at such primary election, together with

a designation of the office for which such person is a candidate and except in the case of a judicial office, or a school office of the party or principle he represents. Such county clerk or registrar of votes shall forthwith, upon receipt thereof, publish under the proper party designation the title of each office (except a judicial office or a school office), which appears upon the certified list transmitted by the secretary of state as hereinbefore provided, together with the names and addresses of all persons for whom nomination papers have been filed for each of said offices in the office of the secretary of state, and also the names of all candidates for the county central committee, filed in the office of the county clerk or registrar of voters. He shall also publish the title of each judicial office, school office, county office, and township office, together with the names and addresses of all persons for whom nomination papers have been filed for each of said offices, either in the office of the secretary of state or in the office of the county clerk or registrar of voters, and shall state that candidates for said judicial, school, county, and township offices may be voted for at the primary election, by any registered, qualified elector of the county, whether registered as intending to affiliate with any political party or not. He shall also publish the date of the primary election, the hours during which the polls will be open, and that the primary election will be held at the legally designated polling places in each precinct, which shall be particularly designated. It shall be the duty of the county clerk or registrar of voters in any city and county to cause such publication to be made once each week for two successive weeks prior to said primary election.

Newspapers in which publication shall be made.

§ 11. Every publication required by this act shall be made in not more than two newspapers of general circulation published in such county or city and county, and one of such newspapers shall represent the political party that cast at the last preceding general election the highest number of votes in such county or city and county, and one of such newspapers, if any, shall represent the party which cast the next highest number of votes at such election. In any case where the publication of the notices provided for by this act can not be made as hereinbefore provided it shall be made in any newspaper having a general circulation in the city or county in which the notice is required to be published.

Ballots. Non-partisan ballot. Clerk to provide ballot. Ballot paper.

§ 12. 1. All voting at primary elections within the meaning of this act shall be by ballot. A separate official ballot for each political party shall be printed and provided for use at each voting precinct; but all such party ballots must be alike in the designation of candidates for judicial, school, county, and township offices. The ballots must have a different tint or color for each of the political parties participating in the primary election. There shall also be printed and provided a non-partisan ballot of a different tint and color from all the others (or white, if all the others are colored), which shall contain only, but in like manner, all the candidates for judicial, school, county, and township offices to be voted for at the primary election; and one of the nonpartisan ballots shall, at the primary election, be furnished to each registered qualified elector who is not registered as intending to affiliate with any one of the political parties participating in said primary election; but to any elector registered as intending to affiliate with any political party participating in the primary there shall be furnished, not a nonpartisan ballot, but a ballot of the political party with which said elector is registered as intending to affiliate.

It shall be the duty of the county clerk of each county or of the registrar of voters in any city and county to provide such printed official ballots to be used at any August primary election for the nomination of candidates to be voted for in such county or city and county at the ensuing November election and at any May presi-

dential primary election. It shall be the duty of the city clerk or secretary of the legislative body of any municipality to provide such printed official ballots for any primary election other than the August primary election or the May presidential primary election. Such official ballots to be used at any primary election shall be printed on official paper, furnished by the secretary of state, in the manner provided by section one thousand one hundred ninety-six of the Political Code, and in the form hereinafter provided. The names of all candidates for the respective offices for whom the prescribed nomination papers have been duly filed shall be printed thereon.

Size.

2. Official primary election ballots used at any primary election for the nomination of candidates to be voted for at any presidential or general state election, except as provided in subdivision five of this section, shall be as long as the herein prescribed captions, headings, party designations, directions to voters and lists of names of candidates, properly subdivided according to the several offices to be nominated for, may require; and no official primary election ballot shall be less than six and one-half inches wide.

How printed.

3. Across the top of the ballot shall be printed in heavy-faced gothic capital type, not smaller than forty-eight point, the words: "Official Primary Election Ballot"; providing, that on a nonpartisan ballot said words may be printed in gothic capital type not smaller than twenty-four point. Beneath this heading shall be printed in heavy-faced gothic capital type, not smaller than twenty-four point, the party designation if it be a party ballot; or, in the case of a ballot containing the names of no candidates except candidates for a judicial school, county, or township office, the words "Nonpartisan Ballot." Beneath the party designation or the words "Nonpartisan ballot," as the case may be, insert the respective number of the congressional, senatorial, or assembly district in which the ballot is to be voted, in black-face type, as large as the width of the ballot shall make possible. In the case of official primary election ballots to be used at any primary election held for the nomination of candidates other than those to be voted for at a presidential or a general state election, and on which, in accordance with the provisions of this act, the names of candidates may be printed in a single column or in two parallel columns, as the case may be, the words "Official Primary Election Ballot" shall be printed thereon in heavy-faced gothic capital type, not smaller than twenty-four point. The party or nonpartisan designation shall be printed in heavy-faced gothic capital type, not smaller than eighteen point. The instructions to voters shall be printed in ten point gothic type.

Instructions to voters.

4. At least three-eighths of an inch below the district designation shall be printed in ten point gothic type, double leaded, the following instructions to voters: "To vote for a person whose name appears on the ballot, stamp a cross (X) in the square at the right of the name of the person for whom you desire to vote. To vote for a person whose name is not printed on the ballot, write his name in the blank space provided for that purpose."

Candidates' names in parallel columns. Order of precedence. Manner of printing names. Tally sheets.

5. The instructions to voters shall be separated from the lists of candidates and the designations of the several offices to be nominated for by one light and one heavy line or rule. The names of the candidates and the respective offices shall, except as may be hereinafter otherwise provided, be printed on the ballot in four or more parallel columns, each two and one-half inches wide. The number of such parallel

columns shall be exactly divisible by two, and such parallel columns shall be equally divided on the ballot for party and nonpartisan tickets by a solid black line, extending down from the printed lines separating the instructions to voters from the list of names of candidates to the bottom margin of the ballot. In the case of a primary election for the nomination of candidates to be voted for at a presidential or general state election, the order of precedence shall be as follows, that is to say: In the column to the left, under the heading "state" shall be printed the groups of names of candidates for state offices, except judicial and school offices, and for members of the state board of equalization. In the second column, under the heading "congressional" shall be printed the groups of names for United States senator in congress, if any, and for representative in congress. Next, under the heading "legislative" shall be printed the groups of names for state senator, if any, for member of assembly, and for election as delegate to the state convention from a "hold-over senatorial district," if any. Finally under the heading "county committee" shall be printed the names of the candidates for election to membership in the county central committee of the party. In the case of primary elections where state officers are not to be nominated, at the left of the solid black dividing line there may be only one column. In the parallel columns to the right of the solid black dividing line shall be printed the groups of names of candidates for nomination to judicial, school, county, and township offices in the following order: Under the heading "judicial" shall be printed all the names of candidates for judicial offices, in the order of chief justice supreme court, associate justices supreme court, judge of district court of appeals, judge of superior court and justice of the peace. Next, under the heading "school" shall be printed all the names of candidates for school offices in the order of state superintendent of instruction, superintendent of schools, and school district officers, if any. Next, under the heading "county and township" shall be printed the groups of candidates for all county and township offices except judicial or school offices. In the case of primary elections where county officers are not to be nominated, at the right of the solid black dividing line there may be only one column. The nonpartisan ballot provided for in subdivision one of this section shall be identical as to offices and names of candidates with that portion of the party ballot which is printed to the right of the solid black dividing line hereinabove described. The tally sheets furnished to election officers shall have the names of offices and candidates arranged in the order in which said names of officers and candidates are printed on the ballots according to the provisions of this section and subdivision. In the case of primary elections for the nomination of candidates for city, city and county or municipal offices only, the groups of names of candidates may be printed in two parallel columns and the order of precedence shall be determined by the legislative body of such city or municipality or by the board of election commissioners of any such city and county.

Candidates for judicial offices, etc.

6. The group of names of candidates for nomination to any judicial office, school office, county office, or township office shall include all the names receiving the requisite number of signatures on a nomination paper for such office, and shall be identical for each such office on the primary election ballots of each political party participating at the primary election; but the groups of names of candidates for all other offices on the ballots of each political party shall comprise only the names of the candidates for nomination by such party.

Order of list of candidates.

7. The order in which the list of candidates for any office shall appear upon the primary election ballot shall be determined as follows:

(a) If the office is an office the candidates for which are to be voted on throughout

the entire state, including United States senator in congress, the secretary of state shall arrange the names of all candidates for such office in alphabetical order for the first assembly district; and thereafter for each succeeding assembly district, the name appearing first for each office in the last preceding district shall be placed last, the order of the other names remaining unchanged. If the office is that of representative in congress, or is an office the candidates for nomination to which are to be voted on in more than one county or city and county, but not throughout the entire state, except the office of state senator or assemblyman, the secretary of state shall arrange the names of all candidates for such office in alphabetical order for that assembly district which is lowest in numerical order of any assembly district in which such candidates are to be voted on; and thereafter for such succeeding assembly district in which such candidates are to be voted on, the name appearing first for such office in the last preceding district shall be placed last, the order of the other names remaining unchanged. In transmitting to each county clerk or registrar of voters the certified list of names as required in section ten of this act, the secretary of state shall certify and transmit the list of candidates for nomination to each office according to assembly districts, in the order of arrangement as determined by the above provisions; and in the case of each county or city and county containing more than one assembly district he shall transmit separate lists for each assembly district. Except for the office of state senator or assemblyman, the order in which the names filed with the secretary of state shall appear upon the ballot, shall be for each assembly district the order as determined by the secretary of state in accordance with the above provisions, and as certified and transmitted by him to each county clerk or registrar of voters.

(b) If the office is an office to be voted on throughout, but wholly within, one county or city and county, except the office of representative in congress or state senator or assemblyman, the county clerk of such county or the registrar of voters of such city and county, shall arrange the names of all candidates for such office in alphabetical order for the first supervisorial district; and thereafter for each supervisorial district, the name appearing first for each such office in the last preceding supervisorial district shall be placed last, the order of the other names remaining unchanged; provided, there are no more than five assembly districts in such county, or city and county. If there are more than five assembly districts in such county, or city and county, the county clerk or registrar of voters shall so arrange on the ballot the order of names of all candidates for such office that they shall appear in alphabetical order for that assembly district in such county, or city and county, which is lowest in numerical order, and thereafter for each succeeding assembly district in such county, or city and county, the name appearing first for each office in the last preceding assembly district shall be placed last, the order of the other names remaining unchanged.

(c) If the office is that of state senator or assemblyman, or delegate to the state convention from a "hold-over senatorial district," or member of a county central committee, or any office except the office of representative in congress to be voted on wholly within any county or city and county but not throughout such county or city or county, the names of all candidates for such office shall be placed upon the ballot in alphabetical order.

(d) If the office is a municipal office in any city or town whose charter does not provide for the order in which names shall appear on the ballot, the names of candidates for such office shall be placed upon the ballot in alphabetical order.

Order of publication of names and addresses.

8. In publishing the names and addresses of all candidates for whom nomination papers have been filed, as required in section ten of this act, the county clerk or registrar of voters shall publish the names in the order in which they will appear upon the ballot; provided, that in counties or cities and counties containing more than one

assembly district the order of names of candidates shall be that of the assembly district in such county or city and county which is lowest in numerical order.

Designation of office.

9. Each group of candidates to be voted on shall be preceded by the designation of the office for which the candidates seek nomination, and the words "Vote for One" or "Vote for Two" or more according to the number to be elected to such office at the ensuing election. Such designation of the office to be nominated for and of the number of candidates to be nominated shall be printed in heavy-faced gothic type, not smaller than ten point. The word or words designating the office shall be printed flush with the left-hand margin and the words "Vote for One" or "Vote for Two" or more, as the case may be, shall extend to the extreme right of the column and over the voting square. The designation of the office and the direction for voting shall be separated from the names of the candidates by a light line.

Printing names of candidates. Headings. Borders and perforations. Number of ballots. Form of ballot.

10. The names of the candidates shall be printed on the ballot without indentation, in roman capital type not smaller than eight point, between light lines or rules, three-eighths of an inch apart. Under each group of names of candidates shall be printed as many blank spaces, defined by light lines or rules, three-eighths of an inch apart, as there are to be candidates nominated for such office. To the right of the names of the candidates shall be printed a light line or rule so as to form a voting square three-eighths of an inch square. Each group of names of candidates shall be separated from the succeeding group by one light and one heavy line or rule. Each series of groups shall be headed by the word "State," "Congressional," "Legislative," "County and Township" or "Municipal" or other proper general classification, as the case may be, printed in heavy-faced gothic capital type, not smaller than twelve point. The left-hand side of the first column of names on the ballot, and also the right-hand side of the last column of voting squares on the ballot shall be bordered by a broad printed line one-twelfth of an inch wide. The binding or stitching of each package of ballots shall be on the left side thereof. The ballots shall be printed on the same leaf with a stub not over one and one-half inches in width, and separated therefrom by a perforated line from top to bottom, one-half inch to the left of the broad printed line along the left border of the ballot. Upon this stub shall be printed the number of the ballot only. On each ballot a perforated line shall extend across the top of the ballot one inch from the top thereof. The same number as appears on the stub shall be printed above such perforated line within two inches of the perforated line on the left side of the ballot, and above this number shall be printed in parenthesis in small type as follows: "(This number to be torn off by inspector)"; and one-half inch to the right of this ballot number there shall be a short perforated line extending from the perforated line along the top of the ballot to the top edge of the ballot. Immediately above said perforated line shall be printed in black-face lower case type, at least twelve point in size, and enclosed in a parenthesis, the following: "(Fold Ballot to this Perforated Line, Leaving Top Margin Exposed)." Above this printed direction, and midway between it and the top edge of the ballot, shall be printed in black-face capital type, at least twelve point in size, if possible, and with the four middle words underlined or otherwise made prominent, the following: "Mark crosses (X) on ballot ONLY WITH RUBBER STAMP; never with pen or pencil." The number on each ballot shall be the same as that on the corresponding stub, and the ballots and stubs shall be numbered consecutively in each county; provided, that the sequence of numbers on such official ballots and stubs for each party shall begin with the number one. The official ballots of each political party shall be made up in stub books, each book to contain ten, or some multiple of ten,

ballots, in the manner provided by law for official election ballots, and except as to the order of the names of candidates shall be printed in substantially the following form: [Form of ballot on inserts.] [Amendment of May 7, 1919. In effect July 22, 1919. Stats. 1919, p. 381.]

Sample ballots. Mailed to voters. Printing of official ballot. In cities.

§ 13. At least twenty days before the August primary election or before the May presidential primary election each county clerk or registrar of voters in any city and county shall prepare separate sample ballots for each political party, and a separate sample non-partisan ballot, placing thereon in each case in the order provided in subdivision 7 of section 12 of this act, and under the appropriate title of each office, the names of all candidates for whom nomination papers have been duly filed with him, or have been certified to him by the secretary of state, to be voted for at the primary election in his county or city and county. Such sample ballots shall be printed on paper of a different texture from the paper to be used on the official ballot, and one sample ballot of the party to which the voter belongs as evidenced by his registration shall be mailed to each such voter entitled to vote at such August primary election or May presidential primary election, as the case may be, not more than ten nor less than five days before the election. Not more than ten nor less than five days before the August primary election a non-partisan sample ballot printed on paper of a different texture from the paper to be used on the official ballot shall be mailed to each registered qualified elector, who is not registered as intending to affiliate with any of the parties participating in said primary election. Such clerk or registrar of voters shall forthwith submit the ticket of each political party to the chairman of the county committee of such party and shall mail a copy to each candidate for whom nomination papers have been filed with him or whose name has been certified to him by the secretary of state, to the postoffice address as given in such nomination paper or certification, and he shall post a copy of each sample ballot in a conspicuous place in his office. Before such primary election the county clerk or registrar of voters in any city and county shall cause the official ballot to be printed as provided by section 12 of this act, and distributed in the same manner and in the same quantities as provided in sections 1198, 1199 and 1201 of the Political Code for the distribution of ballots for elections; provided, that the number of party ballots to be furnished to any precinct shall be computed from the number of voters registered in such precinct as intending to affiliate with such party, and the number of non-partisan ballots to be furnished to any precinct shall be computed from the number of voters registered in such precinct without statement of intention to affiliate with any of the parties participating in the primary election. In the case of primary elections for the nomination of candidates for city offices it shall be the duty of the city clerk, secretary of the legislative body of such city or municipality, or such other officer charged by law with the duty of preparing and distributing the official ballots used at elections in such city or municipality, to prepare and mail the sample ballot and to prepare and distribute the official primary election ballots, and so far as applicable and not otherwise provided herein the provisions of this act shall apply to the nomination of all candidates for city offices.

Polls open 6 a. m. to 7 p. m.

§ 14. The polls must be open at six o'clock of the morning of the day of primary election and must be kept open until seven o'clock in the afternoon of the same day when the polls shall be closed; provided, however, that if at the hour of closing there are any voters in the polling place, or in line at the door, who are qualified to vote and have not been able to do so since appearing, the polls shall be kept open a sufficient time to enable them to vote. But no one who shall arrive at the polling place after seven o'clock in the afternoon shall be entitled to vote, although the polls may be open

when he arrives. No adjournment of intermission shall be taken except as provided in the case of general elections.

Election officers.

§ 15. The officers for primary elections shall be the same and shall be appointed in the same manner, as provided by law for general elections, and such officers shall receive the same compensation for their services at primary elections as provided by law for general elections.

It shall be the duty of the proper officers to furnish the original affidavits of registration and indexes for use at primary elections, which shall show the names of all voters entitled to vote at such primary elections, and shall be numbered, for purposes of the primary election, in like manner as provided in section 1113 of the Political Code. And all the provisions of section 1096 of the Political Code, so far as they are consistent with the provisions of this act, are hereby made applicable to primary elections within the meaning of this act.

Challenge of voter.

§ 16. Any elector offering to vote at a primary election may be challenged by any elector of the city, city and county, or county upon either or all of the grounds specified in section 1230 of the Political Code, but his right to vote the primary election ticket of the political party designated in his affidavit of registration, as provided in section 1096 of the Political Code, or his right to vote the non-partisan primary ticket providing no such party is so designated, shall not be challenged on any ground or subjected to any tests other than those provided by the constitution and section 1230 of the Political Code of this state.

Qualified electors may vote.

§ 17. Any elector qualified to take part in any primary election, who has, at least thirty days before the day of such primary election, qualified by registration, as provided by section 1096 of the Political Code, shall be entitled to vote at such primary election, such right to vote being subject to challenge only as hereinbefore provided; and shall, on writing his name or having it written for him on the roster, as provided by law for general elections in this state, receive the official primary election ballot of the political party designated in his affidavit of registration; (or the non-partisan ballot, providing no such party was so designated), and no other; provided, however, that no one shall be entitled to vote at any primary election who has not been a resident of the state one year, and of the county ninety days, preceding the day upon which such primary election is held. He shall be instructed by a member of the board as to the proper method of marking and folding his ballot, and he shall then retire to an unoccupied booth and without undue delay stamp the same with the rubber stamp there found. If he shall spoil or deface the ballot he shall at once return the same to the ballot clerk and receive another.

Designating choice.

§ 18. The voter shall designate his choice on the ballot by stamping a cross (X) in the small square opposite the name of each candidate for whom he wishes to vote. If he shall stamp more names than there are candidates to be nominated for any office, or if for any reason it be impossible to determine his choice for any office, his ballot shall not be counted for such office, but the rest of his ballot, if properly stamped, shall be counted. No ballot shall be rejected for any technical error which does not render it impossible to determine the voter's choice, nor even though such ballot be somewhat soiled or defaced.

Folding ballot.

§ 19. When a voter has stamped his ballot he shall fold it so that its face shall be concealed and only the printed designation on the back thereof shall be visible, and hand the same to the member of the board in charge of the ballot box. Such folded ballot shall be voted as ballots are voted at general elections, and the name of the voter checked upon the affidavit of registration as having voted as is required at such general elections. [Amendment of May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1355.]

No intermission between closing of polls and counting of votes.

§ 20. No adjournment or intermission whatever shall take place until the polls shall be closed and until all the votes cast at such polls shall be counted and the result publicly announced, but this shall not be deemed to prevent any temporary recess while taking meals or for the purpose of other necessary delay; provided, that no more than one member of the board shall at any time be absent from the polling place.

Canvass of votes.

§ 21. As soon as the polls are finally closed the judges must immediately proceed to canvass the votes cast at such primary election. The canvass must be public, in the presence of bystanders, and must be continued without adjournment until completed and the result thereof declared. Except as hereinafter provided, the canvass shall be conducted, completed and returned as provided by sections one thousand two hundred fifty-three, one thousand two hundred fifty-four, one thousand two hundred fifty-five, one thousand two hundred fifty-six, one thousand two hundred fifty-seven, one thousand two hundred fifty-eight, one thousand two hundred fifty-nine, one thousand two hundred sixty, one thousand two hundred sixty-one, one thousand two hundred sixty-two, one thousand two hundred sixty-three, one thousand two hundred sixty-four, one thousand two hundred sixty-four a, one thousand two hundred sixty-five, one thousand two hundred sixty-six, one thousand two hundred sixty-seven, and one thousand two hundred sixty-eight of the Political Code of this state; provided, however, that the ballots of each party must be sealed and returned in separate envelopes, and the non-partisan ballots must be sealed and returned in another separate envelope. The number of ballots agreeing or being made to agree with the number of names on the lists, as provided by section one thousand two hundred fifty-five of the Political Code, the board must take the ballots from the box, count those cast by each party, and string them separately; count all the votes cast for each party candidate for the several offices and record the same on the tally lists; and count all the votes on all the ballots, both party and non-partisan, for the candidates for judicial, school, county, township, and municipal offices, and record the same on the tally lists. [Amendment of May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1355.]

Canvass of returns. Declaration of result. Returns to secretary of state. Secretary of state to compile returns.

§ 22. The board of supervisors of each county, the board of election commissioners in any city and county, or, in the case of a city or municipal primary election, the officers charged by law with the duty of canvassing the vote at any city or municipal election in such political subdivision, shall meet at the usual place of such meeting, or at any other place permitted by law, at one o'clock in the afternoon of the first Thursday after each primary election to canvass the returns, or as soon thereafter as all the returns are in. When begun the canvass shall be continued until completed, which shall not be later than six o'clock in the afternoon of the sixteenth day following such primary election. The clerk of the board must, as soon as the result is declared, enter upon the records of such board a statement of such result, which statement shall contain the whole number of votes cast for each candidate of each political party, for

each candidate for each judicial, school, county, township, or municipal office, for each candidate for delegate, if any, to a state convention from a hold-over senatorial district, and for each candidate for membership in the county central committee; provided, however, that in entering the statement of such result, the provisions of subdivision six of section one thousand two hundred eighty-two of the Political Code shall apply, and a duplicate as to each political party shall be delivered to the county, city and county or city chairman of such political party, as the case may be. The clerk shall also make an additional duplicate statement in the same form showing the votes cast for each candidate not voted for wholly within the limits of such county or city and county. The county clerk or registrar of voters in any city and county shall forthwith send to the secretary of state by registered mail or by express one complete copy of all returns as to such candidates, and as to all candidates voted for wholly within one county for the following offices: State assembly, state senate, representatives in congress, members of the state board of equalization, judicial officers, except justices of the peace, and delegate, if any, to a state convention from a hold-over senatorial district; and as to all persons voted for at the May presidential primary election. The secretary of state shall, not later than the twenty-fifth day after any primary election, compile the returns for all candidates voted for in more than one county, and for all candidates for the assembly, state senate, representatives in congress, member of the state board of equalization, and judicial offices (except justices of the peace), delegate, if any, to a state convention from a hold-over senatorial district, and for all persons voted for at the May presidential primary election, and shall make out and file in his office a statement thereof. He shall compile the returns for the May presidential primary election not later than the twenty-first day after such election, and shall compile said returns in such a manner as to show, for each candidate, both the total of the votes received and the votes received in each congressional district of the state. [Amendment of May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1355.]

Names which go on ballot for final election.

§ 23. Except in the case of a candidate for nomination to a judicial, school, county, township, or municipal office, the person receiving the highest number of votes, at a primary election as the candidate for the nomination of a political party for an office shall be the candidate of that party for such office, and his name as such candidate shall be placed on the official ballot voted at the ensuing election; provided, he has paid the filing fee as required by section seven of this act; and provided, further, that no candidate for a nomination for other than a judicial, school, county, township or municipal office who fails to receive the highest number of votes for the nomination of the political party with which he was affiliated thirty-five days before the date of the primary election, as ascertained by the secretary of state from the affidavit of registration of such candidate in the office of the county clerk of the county in which such candidate resides, shall be entitled to be the candidate of any other political party.

In case of judicial office, etc. Certificates of nomination.

In the case of a judicial, school, county, township, or municipal office, the candidates equal in number to twice the number to be elected to such office, or less, if the total number of candidates is less than twice the number of offices to be filled, who receive the highest number of the votes cast on all the ballots of all the voters participating in the primary election for nomination to such office, shall be the candidates for such office at the ensuing election, and their names as such candidates shall be placed on the official ballot voted at the ensuing election; provided, however, that in case there is but one person to be elected at the November election to any judicial, school, county, or township office, and candidate who receives at the August primary election a majority of the total number of votes cast for all the candidates for such office shall be the only

candidate for such office whose name shall be printed on the ballot at the ensuing election; and provided, further, that in case there are two or more persons to be elected at the November election to any judicial, school, county, or township office, and in case any candidate for such office receive at the August primary election the votes of a majority of all the voters participating in the primary election in the state or political subdivision in which said office is voted upon, such candidates being herein designated as "majority candidates," said "majority candidates" shall, if their number is not less than the number of persons to be elected to such office, be the only candidates for such office whose names shall be printed on the ballot at the ensuing November election; and if the number of such "majority candidates" fall short of the number of persons to be elected to such office, the names of said "majority candidates" shall be printed on the ballot at the ensuing November election, together with such number of additional names only of such other candidates receiving the next highest number of votes for nomination to such office as may make the number of such additional names equal to twice the difference between the number of such "majority candidates" and the number to be elected, or a smaller number, if the list of said other candidates is exhausted. Of the candidates for election to membership in the county central committee, the candidates equal in number to the number to be elected receiving the highest number of votes in their supervisorial district or assembly district, as the case may be in accordance with the provisions of subdivision four of section twenty-four of this act, shall be declared elected as the representatives of their district to membership in such committee. It shall be the duty of the officers charged with the canvass of the returns of any primary election in any county, city and county or municipality to cause to be issued official certificates of nomination to such party candidates (other than congressional and legislative candidates, candidates for the state board of equalization, and delegates to the state convention from a hold-over senatorial district), as have received the highest number of votes as the candidates for the nomination of such party for any offices to be voted for wholly within such county, city and county, or municipality, and cause to be issued to each member of a county central committee a certificate of his election; and to cause to be issued official certificates of nomination to such candidates for judicial, school, county, township or municipal offices voted for wholly within one county as may be entitled to nomination under the provisions of this section. It shall be the duty of the secretary of state to issue official certificates of nomination to candidates nominated under the provisions of this act for representatives in congress, members of the state senate and assembly, members of the state board of equalization, and officers voted for in more than one county; and to issue a certificate of election to each delegate elected to the state convention from a hold-over senatorial district; and to issue certificates of election to all persons elected at the May presidential primary election as delegates to their respective national party conventions.

List of persons entitled to receive votes.

Not less than thirty days before the November election the secretary of state shall certify to the county clerks or registrars of voters of each county and city and county within the state, the name of every person entitled to receive votes within such county or city and county at said November election who has received the nomination as a candidate for public office under and pursuant to the provisions of this act, and whose nomination is evidenced by the compilation and statement required to be made by said secretary of state and filed in his office, as provided in section twenty-two of this act. Such certificates shall in addition to the names of such nominees respectively, also show separately and respectively for each nominee the name of the political party or organization which has nominated such person if any and the designation of the public office for which he is so nominated. [Amendment of May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1356.]

Party conventions.

§ 24. 1. Party conventions of delegates chosen as hereinafter provided may be held in this state, for the purpose of promulgating platforms and transacting such other business of the party as is not inconsistent with the provisions of the act.

State conventions. Platforms. State central committee. Presidential electors.

2. The candidates of each political party for congressional offices and for state offices, if any, except judicial and school offices, and such candidates for senate and assembly as have been nominated by such political party at the primary election, and in whose behalf nomination papers have been filed, together with the hold-over senators affiliated with and nominated by such political party at the election at which said hold-over senators were elected and one delegate chosen by such political party from each senatorial district not represented by a hold-over senator affiliated with and nominated by such political party at the election at which the hold-over senator was elected, shall meet in a state convention at the state capitol at two o'clock in the afternoon of the third Tuesday in September after the date on which any primary election is held preliminary to the general November election. They shall forthwith formulate the state platforms of their party, which said state platform of each political party shall be framed at such time that it shall be made public not later than six o'clock in the afternoon of the following day. They shall also proceed to elect a state central committee to consist of at least three members from each congressional district, who shall hold office until a new state central committee shall have been selected. In each year of the general November election at which electors of president and vice president of the United States are to be chosen, they shall also nominate as the candidates of their party as many electors of president and vice president of the United States as the state is then entitled to, and it shall be the duty of the secretary of state to issue certificates of nomination to the electors so nominated, and to cause the names of such candidates for elector to be placed upon the ballots at the ensuing November election.

Membership qualifications. Certificate stating affiliation.

Membership in the state convention shall not be granted to a party nominee for a congressional office, state office, or office of senator or assemblyman who has become such by reason of his name having been written on a ballot, and who has not had his name printed on the primary ballot by having had a nomination paper filed in his behalf, as provided in section five of this act; nor shall membership in such convention be granted to the nominee of any party if such nominee has not stated his affiliation with such party in his affidavit of registration used at such primary election; and, in every such case, a vacancy in the membership of such convention shall be deemed to exist; and any such vacancy thereby existing, or existing because no nomination for such office has been made, or for any other cause, shall be filled as hereinafter provided. Each candidate who has received the nomination of more than one party for a congressional, state, or legislative office shall procure from the county clerk of the county in which he resides, a certificate stating the party with which such candidate was affiliated thirty-five days before the date of the primary election, as shown by the affidavit of registration of such candidate in the office of such county clerk; and this certificate shall be the credentials of such candidate to membership in the convention of his party.

In district represented by hold-over senator.

In any senatorial district represented by a hold-over senator there shall be chosen at such primary election by the electors of each political party, other than the party which the hold-over senator was affiliated with and nominated by, one delegate to the state convention, who shall have nomination papers circulated in his behalf, shall have his

name placed upon the ballot, and shall be chosen in the same manner as a state senator is nominated from any senatorial district; but no such delegate shall be disqualified by reason of holding any office, nor shall any filing fee be required in order to have his name placed upon the ballot. The term "hold-over senator" as herein used shall apply to a state senator whose term of office extends beyond the first Monday in January of the year next ensuing after the primary election, and the term "hold-over senatorial district" shall apply to the district represented by such hold-over senator.

Filling vacancies.

In the event that there shall not have been filed any nomination paper for a candidate for any congressional or state office or office of senator or assemblyman or delegate from a hold-over senatorial district by the electors of any political party, or in the event that the nominee of any party for such office has not declared his affiliation with such party, as herein provided, or in the event of the death of the candidate prior to the convention, the vacancy thus created in the state convention of such party shall be filled as follows:

(a) If the vacancy occurs in a senatorial or assembly district situated wholly within the limits of a single county or city and county, by appointment by the newly elected county central committee of such party in such county or city and county.

(b) If the vacancy occurs in a senatorial or assembly district comprising two or more counties, by appointment by the newly selected chairman of the several newly elected county central committees of such party in such counties.

(c) If the vacancy occurs in a congressional or state office, by appointment by the state central committee of such party.

Such delegate so appointed shall present to the convention credentials signed by the chairman and the secretary of the appointing committee, or by the appointing chairman of the several committees, as the case may be.

Executive committee.

3. Each state central committee may select an executive committee, to which executive committee it may grant all or any portion of its powers and duties. It shall choose its officers by ballot and each committee and its officers shall have the power usually exercised by such committees and the officers thereof in so far as may be consistent with this act. The various officers and committees now in existence shall exercise the powers and perform the duties herein prescribed until their successors are chosen in accordance with the provisions of this act.

District congressional committee.

4. The executive committee of the state central committee of each political party shall, in conjunction with each nominee for congress affiliated with such party, select a congressional committee for the district in which such nominee is a candidate. Such committee shall consist of not less than fifteen nor more than thirty-five members, and shall have charge and conduct of the campaign of such nominee, subject to the supervision of the state central committee of such party.

County central committee.

5. At each August primary election there shall be elected in each county or city and county a county central committee for each political party, which shall have charge of the party campaign under general direction of the state central committee or of the executive committee selected by such state central committee. In any city and county containing more than ten assembly districts the county central committee of such party shall be elected by each assembly district and shall consist of five members from each assembly district in such city and county. In all counties containing five or more assembly districts the county central committee of such party shall be elected by

assembly districts and shall consist of one member for each seven hundred votes or fraction thereof in each such assembly district cast for such party's candidate for governor at the last general election at which a governor was elected. In all counties containing less than five assembly districts the county central committee shall be elected by supervisor districts, and the number to be elected from any supervisor district shall be determined as follows: The number of votes cast in such supervisor district for such party's candidate for governor at the last general election at which such governor was elected shall be divided by one-twentieth of the number of votes cast for such governor in such county; and the integer next larger than the quotient obtained by such division shall constitute the number of members of the county central committee to be elected by such party in said supervisor district. The county clerk or registrar of voters in each county or city and county shall, between the first Monday and the second Monday of June next preceding the primary election, compute the number of members of the county central committee allotted to each assembly district or supervisor district, as the case may be, by the provisions of this subdivision. Each candidate for member of a county central committee shall appear upon the ballot upon the filing of a nomination paper according to the provisions of section five of this act, signed in his behalf by the electors of the political subdivision in which he is a candidate, as above provided; and the number of candidates to which each party is entitled, as hereinbefore provided, in each political subdivision, receiving the highest number of votes shall be declared elected; but no candidate for county committeeman shall be declared elected unless he shall have received votes equal in number to the minimum of signatures to the nomination paper which would have been required to place his name on the primary ballot as a candidate for member of the county committee. Each county central committee shall meet in the courthouse at its county seat on the second Tuesday in September following the August primary election, and shall organize by selecting a chairman, a secretary and such other officers and committees as it shall deem necessary for carrying on the campaign of the party.

Persons ineligible. Filling vacancies.

6. No person shall be eligible for appointment or election to the state, county or district committee of any party who is not registered as affiliated with such party at the time of such appointment or election. In the event of the appointment or election to any party committee of an ineligible person, or whenever any member of any such committee dies, resigns or becomes incapacitated to act, or removes from the jurisdiction of the committee, or ceases to be a member of such committee's party, a vacancy shall exist, which shall be filled by appointment by the chairman of the committee in which such ineligibility or vacancy occurs. [Amendment of April 8, 1919. In effect July 22, 1919. Stats. 1919, p. 49.]

This section was also amended May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1358.

Withdrawing as candidate. Filling vacancies.

§ 25. No candidate whose nomination papers have been filed for any primary election can withdraw as a candidate at such primary election. No candidate nominated at any primary election can withdraw as a candidate at the ensuing general election except such as are permitted to withdraw by this section. In case as a result of any primary election a person has received a nomination to any office without first having nomination papers filed, and having his name printed on the primary election ballot, he may at least thirty-one days before the day of election cause his name to be withdrawn from nomination by filing in the office where he would have filed his nomination papers had he been a candidate for nomination, his request therefor in writing, signed by him and acknowledged before the county clerk of the county in which he resides; and no name so withdrawn shall be printed on the election ballot for the ensuing general election. The

vacancy created by the withdrawal of such person as aforesaid, or on account of the ineligibility of such person to qualify as a candidate because of the inhibitions of subdivision nine of section five of this act, or by reason of the failure of a party to nominate any candidate for the office at the primary election, or for any other cause shall not be filled except in the following cases:

1. By reason of the death of a candidate occurring at least twenty-five days before the date of the next ensuing November election.
2. By reason of the disqualification of a candidate occurring on account of the failure of such candidate to secure the nomination in his own party as required by section twenty-three of this act.

Power of committees.

Vacancies occurring by reason of such death of any candidate, or because of such disqualification imposed by section twenty-three of this act, may in the case of legislative offices, be filled by the newly elected county central committee or committees of the party in which such vacancy occurs in the county or counties comprising the legislative district of such deceased or disqualified candidate; and in the case of all other district or state offices requiring party nomination, by the newly selected state central committee of such party.

If such vacancy occurs among candidates chosen at the primary election to go on the ballot for the succeeding general election for a judicial, school, county, township, or municipal office according to the provisions of section twenty-three of this act, in which case that candidate receiving at said primary election the highest vote among all the candidates for said office who have failed to receive a sufficient number of votes to get upon said ballot according to the provisions of said section twenty-three, shall go upon said ballot to fill said vacancy; provided, however, that if the vacancy occurs in a case where, by reason of having received a majority vote at the primary election, only one person is entitled to have his name printed upon the ballot at the ensuing November election, the names of the two candidates receiving the next highest vote at the primary election, if there were such number, shall be placed upon the ballot for the November election; and provided, further, that a vacancy authorized to be filled by the provisions of this section shall be filled and certified to the officer charged with the duty of printing the ballots twenty-five days before the day of election.

Name printed on ballot.

Whenever a nomination paper containing a sufficient number of signatures has been filed for any person as a candidate to be voted for at a primary election, the name of such person must be printed upon the ballot or ballots of such primary election as hereinbefore provided in section twelve of this act, unless such person has died and such fact has been ascertained, by the officer charged with the duty of printing the ballot, at least twenty-five days before the day of election.

Whenever a candidate has been nominated at any primary election after having nomination papers filed, the name of such candidate must be printed upon the ballot at the ensuing general election unless such candidate has died and such fact has been ascertained, by the officer charged with the duty of printing the ballots, at least twenty-five days before the day of election.

Whenever, upon the death or disqualification of any candidate, the vacancy thereby created is filled by a party committee, a certificate to that effect shall be filed with the officer with whom a nomination paper for such office may be filed, and shall be accepted and acted upon by him as in the case of such nomination paper. [Amendment of April 8, 1919. In effect July 22, 1919. Stats. 1919, p. 53.]

This section was also amended May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1361.

Tie vote.

§ 26. In case of a tie vote, if for an office to be voted for wholly within one county or city and county, the county, city and county or city board, as the case may be, shall forthwith summon the candidates who have received such tie votes to appear before such board, at a time and place to be designated by said board, and such board shall at said time and place determine the tie by lot. In the case of a tie vote for an office to be voted on in more than one county, the secretary of state shall forthwith summon the candidates who have received such tie votes to appear before him at his office at the state capitol at a time to be designated by him and said secretary of state shall at said time and place determine the tie by lot. Such summons must in every case be mailed to the address of the candidate as it appears upon his affidavit of registration, at least five days before the date fixed for the determination of such tie vote. [Amendment of April 8, 1919. In effect July 22, 1919. Stats. 1919, p. 55.]

Correction of errors or omission.

§ 27. Whenever it shall be made to appear by affidavit to the supreme court or district courts of appeal or superior court of the proper county that an error or omission has occurred or is about to occur in the placing of any name on an official primary election ballot, that any error has been or is about to be committed in printing such ballot, or that any wrongful act has been or is about to be done by any judge or clerk of a primary election, county clerk, registrar of voters in any city and county, canvassing board or any member thereof, or other person charged with any duty concerning the primary election, or that any neglect of duty has occurred or is about to occur, such court shall order the officer or person charged with such error, wrong or neglect to forthwith correct the error, desist from the wrongful act or perform the duty, or forthwith show cause why he should not do so. Any person who shall fail to obey the order of such court shall be cited forthwith to show cause why he shall not be adjudged in contempt of court.

Contest of nomination. Copy of affidavit mailed to contestee. Precincts considered in recount. Time and place for hearing. No demurrer.

§ 28. Any candidate at a primary election, desiring to contest a nomination of another candidate for the same office, may, within five days after the completion of the official canvass, file an affidavit in the office of the clerk of the superior court of the county in which he desires to contest the vote returned from any precinct or precincts in such county, and thereupon have a recount of the ballots cast in any such precinct or precincts, in accordance with the provisions of this section. Such affidavit must specify separately each precinct in which a recount is demanded, and the nature of the mistake, error, misconduct, or other cause why it is claimed that the returns from such precinct do not correctly state the vote as cast in such precinct, for the contestant and the contestee. The contestee must be made a party respondent, and so named in the affidavit. No personal service or other service than as herein provided need be made upon the contestee. Upon the filing of such affidavit the county clerk shall forthwith post in a conspicuous place in his office a copy of the affidavit. Upon the filing of such affidavit and the posting of the same, the superior court of the county shall have jurisdiction of the subject matter and of the parties to such contest, and all candidates at any such primary election are permitted to be candidates under this act, only upon the condition that such jurisdiction for the purposes of the proceeding authorized by this section shall exist in the manner and under the conditions provided for by this section. The contestant on the date of filing such affidavit, must send by registered mail a copy thereof to the contestee in a sealed envelope, with postage prepaid, addressed to the contestee at the place of residence named in the affidavit of

registration of such contestee, and shall make an affidavit of such mailing and file the same with the county clerk to become a part of the records of the contest. At any time within three days after the filing of the affidavit of the contestant to the effect that he has sent by registered mail a copy of the affidavit to the contestee, such contestee may file with the county clerk an affidavit in his own behalf, setting up his desire to have the votes counted in any precincts, designating them, in addition to the precincts designated in the affidavit of the contestant, and setting up his grounds therefor. On the trial of the contest all of the precincts named in the affidavits of the contestant and the contestee shall be considered, and a recount had with reference to all of said precincts; and the contestant shall have the same right to answer the affidavit of the contestee as is given to the contestee herein with reference to the affidavit of the contestant except that such answer must be filed not later than the first day of the trial of said contest. On the eighth day after the completion of the official canvass the county clerk shall present the affidavits of the contestant and the contestee and proof of posting, as aforesaid, to the judge of the superior court of the county, or any judge acting in his place, or the presiding judge of the superior court of a county or city and county, or anyone acting in his stead, which judge shall, upon such presentation, forthwith designate the time and place where such contest shall proceed, and in counties or cities and counties where there are more than one superior judge, assign all the cases to one department by the order of such court. Such order must so assign such case or cases, and fix such time and place for hearing, which time must not be less than one nor more than three days from the presentation of the matter to the court by the county clerk as herein provided. It shall be the duty of the contestee to appear either in person or by attorney, at the time and place so fixed, and to take notice of the order fixing such time and place from the records of the court, without service. No special appearance of the contestee for any purpose except as herein provided shall be permitted, and any appearance whatever of the contestee or any request of the court by the contestee or his attorney, shall be entered as a general appearance in the contest. No demurrer or objection can be taken by the parties in any other manner than by answer, and all the objections must be contained in the answer. The court if the contestee shall appear, must require the answer to be made within three days from the time and place as above provided, and if the contestee shall not appear shall note his default, and shall proceed to hear and determine the contest with all convenient speed. If the number of votes which are sought to be recounted, or the number of contests are such that the judge shall be of opinion that it will require additional judges to enable the contest or contests to be determined in time to print the ballots for the election, if there be only one judge for such county, he may obtain the service of any other superior judge, and the proceedings shall be the same as herein provided in counties where there is more than one superior court judge. If the proceeding is in a county or city and county where there is more than one superior court judge, the judge to whom the case or cases shall be assigned, shall notify the presiding judge forthwith, of the number of judges which he deems necessary to participate, in order to finish the contest or contests in time to print the ballots for the final election, and the said presiding judge shall forthwith designate as many judges as are necessary to such completion of such contest, by order in writing, and thereupon all of the judges so designated shall participate in the recount of such ballots and the giving of judgment in such contest or contests in the manner herein specified. The said judges so designated by said last mentioned order, including the judge to whom said contests were originally assigned, shall convene upon notice from the judge to whom such contest or contests were originally assigned, and agree upon the precincts which each one of such judges will recount, sitting separately, and thereupon such recount shall proceed before each such judge sitting separately, as to the precincts so arranged, in such manner that the recount shall be made in such

precincts before each such judge as to all the contests pending, so that the ballots opened before one judge need not be opened before another judge or department, and the proceedings before such judge in making such recount as to the appointment of the clerk and persons necessary to be assistants of the court in making the same, shall be the same as in contested elections, and the judge shall fix the pay or compensation for such persons, and require the payment each day in advance of the amount thereof, by the person who is proceeding with and requiring the recount of the precinct being recounted. When the recount shall have been completed in the manner herein required, if more than one judge has taken part therein, all the judges who took part shall assemble and make the decision of court, and if there be any differences of opinion, a majority of such judges shall finally determine all such questions, and give the decision or judgment of the court in such contest or contests, separately. Such decision or judgment of the court shall be final in every respect, and no appeal can be had therefrom. The judgment shall be served upon the county clerk or registrar of voters by delivery of a certified copy thereof, and may be enforced summarily in the manner provided in section twenty-seven of this act, and if the contest proceeds in more than one county, and the nominee is to be certified by the secretary of state from the compilation of election returns in his office, then the judgment in each county in which a contest may be had shall show what, if any changes in the returns in the office of the secretary of state relating to such county or city and county, ought to be made, and all such judgments shall be served upon the secretary of state, by the delivery of a certified copy, and he shall make such changes in the record in his office as such judgment or judgments require, and conform his compilation and his certificate of nomination in accordance therewith. If the office contested is one to be voted upon in more than one county, the time within which such contest may be brought in any county involved shall begin to run at the time of the declaration of the official canvass by the board of supervisors of the county last making such declaration. [Amendment of May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1363.]

Campaign expenses.

§ 29. No candidate for nomination to any elective office, including that of United States senator in congress, shall directly or indirectly pay, expend or contribute any money or other valuable thing, or promise so to do, except for lawful expenses. Lawful expenses as used in this section are limited to expenses for the following purposes only:

1. For the candidate's official filing fee.
2. For the preparing, printing, circulating, and verifying of nomination papers.
3. For the candidate's personal traveling expenses.
4. For rent and necessary furnishing of halls or rooms, during such candidacy, for public meetings or for committee headquarters.
5. For payment of speakers and musicians at public meetings and their necessary traveling expenses.
6. For printing and distribution of pamphlets, circulars, newspapers, cards, handbills, posters and announcements relative to candidates or political issues or principles.
7. For his share of the reasonable compensation of challengers at the polls.
8. For making canvassers of voters.
9. For clerk hire.
10. For conveying infirm or disabled voters to and from the polls.
11. For postage, expressage, telegraphing, and telephoning, relative to candidacy.

Verified statement of campaign expenses.

§ 30. Every person who shall be a candidate for nomination to any elective office shall make in duplicate, within fifteen days after the primary election, a verified statement, setting forth each and every sum of money contributed, disbursed, expended

or promised by him, and, to the best of his knowledge and belief, by any and every other person or association of persons in his behalf wholly or partly in endeavoring to secure his nomination. This statement must show in detail all moneys paid, loaned, contributed, or otherwise furnished to him directly or indirectly in aid of his nomination, together with the name of the person or persons from whom such moneys were received; and must also show in detail, under each of the subdivisions of section twenty-nine of this act, all moneys contributed, loaned, or expended by him directly or indirectly by himself or through any other person, in aid of his nomination, together with the name of the person or persons to whom such moneys were paid, or disbursed. Such statement must set forth that the affiant has used all reasonable diligence in its preparation, and that the same is true and is as full and explicit as he is able to make it. Within the time aforesaid the candidate shall file one copy of said statement with the officer with whom his nomination papers were filed, and the other with the recorder of the county or city and county in which he resides, who shall record the same in a book to be kept for that purpose, and to be open to public inspection. No officer shall issue any certificate of nomination to any person until such statement as herein provided has been filed and no other statement of expenses shall be required except that provided herein, and no fee or charge whatsoever shall be made or collected by any officer for the verifying, filing, or recording of such statements or a copy thereof. [Amendment of May 29, 1917. In effect July 28, 1917. Stats."1917, p. 1365.]

Penalty.

§ 31. Any person violating any of the provisions of section 29 or section 30 of this act shall be guilty of a misdemeanor, and upon trial and conviction thereof, in addition to the sentence imposed by the court, he shall forfeit all right to the office for which he was a candidate at the time of violating the provisions aforesaid.

Bribes. Penalty.

§ 32. 1. Any person who shall offer, or with knowledge of the same permit any person to offer for his benefit, any bribe to a voter to induce such voter to sign any nomination paper, and any person who shall accept such bribe or any promise of gain of any kind in the nature of a bribe as consideration for signing any nomination paper, whether such bribe or promise of gain in the nature of a bribe be offered or accepted before or after signing, shall be guilty of a misdemeanor and upon trial and conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than three hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than one hundred and twenty days, or by both such fine and imprisonment.

Failure to file nomination papers.

2. Any person who, being in possession of any nomination paper or papers and affidavits entitled to be filed under the provisions of this act, shall wrongfully either suppress, neglect or fail to cause the same to be filed at the proper time and in the proper place shall be guilty of a misdemeanor, and upon trial and conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment.

Other offenses.

3. Any act or omission declared to be an offense by the general laws of this state concerning primaries and elections shall also in like case be an offense concerning primary elections as provided for by this act, and shall be punished in the same manner and form as therein provided, and all the penalties and provisions of the law governing elections, except as herein otherwise provided, shall apply in equal force to primary elections as provided for by this act.

Preparation of forms.

§ 33. It shall be the duty of the secretary of state and the attorney general to prepare on or before September 1, 1917, all forms necessary to carry out the provisions of this act, which forms shall be substantially followed in all primary elections held in pursuance hereof. [Amendment of May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1366.]

Title of act.

§ 34. This act shall be known as the direct primary law.

Constitutionality of act.

§ 35. If any section, subdivision, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. The legislature hereby declares that it would have passed this act, and each section, subdivision, sentence, clause, and phrase thereof, irrespective of the fact that any one or more other sections, subdivisions, sentences, clauses, or phrases be declared unconstitutional.

Repealed.

§ 36. The act approved April 7, 1911, known as the direct primary law, and also the act approved December 24, 1911, amending sections 1, 3, 5, 7, 10, 12, 13, 22, 23, and 24 of the said direct primary law, are hereby repealed; and all other acts or parts of acts, inconsistent with or in conflict with the provisions of this act, are also hereby repealed.

The code commissioners say of the act of 1895: "Unconstitutional. (*Marsh v. Hanly*, 111 Cal. 368, [43 Pac. 975]; *Gett v. Supervisors*, 111 Cal. 366, [43 Pac. 1122]. Superseceded by Political Code, §§ 1357-1375, added 1901, p. 606."

1. **Constitutionality.—A compulsory primary law**, such as is embodied in the additions to the Political Code made by the act of March 3, 1899 (§§ 1366, et seq.), forms a part of the general election laws of the state, and that act is void as an invasion of the bill of rights (Article I of the Constitution), and of the fundamental reserved rights of citizens of a free government.—*Britton v. Board of Election Commissioners*, 129 Cal. 337, 51 L. R. A. 115, 61 Pac. 1115.

2. **Same.—Special legislation.**—The act of 1897 is held to be special legislation and void, even if the primary elections therein provided for were not elections "authorized by law" within the meaning of section 1, Article II of the Constitution.—*Spier v. Baker*, 120 Cal. 370, 41 L. R. A. 196, 52 Pac. 659.

3. **Same.—Right of Suffrage.**—Section 11, Article XX, of the constitution gives the legislature power to pass laws properly and reasonable regulating the exercise of the right of suffrage, but not to determine who are entitled to the right itself, a subject which section 1, Article II, itself determines.—*Spier v. Baker*, 120 Cal. 370, 41 L. R. A. 196, 52 Pac. 659.

4. **Same.—The primary election provided for by the act of 1897 is an election "authorized by law,"** within the meaning of section 1, Article II of the constitution, and in so far as it attempts to prescribe the

qualifications of those entitled to vote at such election is unconstitutional as obnoxious to the provisions of that section.—*Spier v. Baker*, 120 Cal. 370, 41 L. R. A. 196, 52 Pac. 659.

5. **Same.—Title.—Not germane to subject of act.**—Certain provisions of the act of 1897 held not to be germane to the subject expressed in the title, and therefore obnoxious to the requirements of section 24, Article IV of the constitution.—*Spier v. Baker*, 120 Cal. 370, 41 L. R. A. 196, 52 Pac. 659.

6. **Same.—The insertion of the words "for other purposes" in the title of the act of 1897 does not validate the act as to those provisions not germane to the subject expressed in the title.**—*Spier v. Baker*, 120 Cal. 370, 41 L. R. A. 196, 52 Pac. 659.

7. **Same.—Test oath.**—The provision of the act of 1909 requiring an oath amounting to a party test is reasonable and valid, not in contravention of section 3, Article XX, of the constitution, declaring that no other oath, declaration or test shall be required as a qualification for any office or public trust, than the one there provided.—*Socialist Party v. Uhl*, 155 Cal. 776, 103 Pac. 181.

8. **Same.—Fees of candidate.**—The provisions of the act of 1909 for the payment of fees by candidates to filing officers are not provisions for property qualifications prohibited by section 24, Article I of the constitution, and even if they were they would not invalidate the act.—*Socialist Party v. Uhl*, 155 Cal. 776, 103 Pac. 181.

9. **Same.—Special and local legislation.**—The fact that the act of 1909 does not apply to municipal officers of municipalities whose charters provided a system of their own,

does not render special or local.—*Socialist Party v. Uhl*, 155 Cal. 776, 103 Pac. 181.

10. Same—Reasonable tests for “electors,” “political parties” and “organizations of electors.”—The legislature was empowered under section 2½, Article II of the constitution, to fix reasonable tests for “electors,” “political parties,” and “organizations of electors,” and the provisions of the act of 1909, are reasonable, and therefore valid.—*Socialist Party v. Uhl*, 155 Cal. 776, 103 Pac. 181.

10a. Same.—The test provided by the act of 1909 under which “electors” and “organizations of electors” may acquire the status of a political party and go into future primaries as a political party is reasonable, not arbitrary, and valid.—*Socialist Party v. Uhl*, 155 Cal. 776, 103 Pac. 181.

11.—Same—Choice for United States Senator.—The act of 1909 is not invalid because of the provision for expressing a choice for United States senator.—*Socialist Party v. Uhl*, 155 Cal. 776, 103 Pac. 181.

12. Same—Same—Germane to subject of act.—The subject of an advisory vote for United States Senators is germane to the subject of primary elections.—*Socialist Party v. Uhl*, 155 Cal. 776, 103 Pac. 181.

13. Same—Supersedes prior act.—The act of 1909 held valid, and to operate to supersede the act of 1905 as amended in 1907.—*Socialist Party v. Uhl*, 155 Cal. 776, 103 Pac. 181.

14. Same—Void in part.—The court can not hold section 26 void, and declare the act otherwise valid, for to do so would be imposing upon the whole state a law which, it is clear, the legislature intended to apply in only two counties, and which would not have passed otherwise, and that would be nothing short of judicial legislation.—*Marsh v. Supervisors*, 111 Cal. 366, 372, 43 Pac. 1122.

15. Same—Unauthorized classification of counties—Local and special legislation.—The act of 1895 is unconstitutional, as, not being a regulation of the compensation of county officials, for which purpose alone counties may be classified, local and special, since it applies only to counties of the first and second classes.—*Marsh v. Supervisors*, 111 Cal. 366, 43 Pac. 1122.

16. Same—Question can not be raised by uninterested party.—The question of the constitutionality of the primary law of 1895 can not be decided in an application for a writ of mandate by a taxpayer of Sacramento county, a person not interested in the operation of said law, by reason of the fact that it is made applicable only to San Francisco and Los Angeles counties.—*Gett v. Board of Supervisors*, 111 Cal. 366, 43 Pac. 1122.

17.—Same—Declaration of party affiliation.—Under the provisions of section 2½, Article II of the constitution the legislature was authorized to prescribe the test and condition for affiliation in the primary election, of the declaration of party affiliation prescribed by the act of 1913.—*Don v. Pfister*, 172 Cal. 25, 155 Pac. 60.

18. Construction—Object of act of 1909.—The whole object of the primary law of 1909 was to confine the control of a party to the electors of that party, and to prevent the electors of another party from interfering with such control.—*Fickert v. Zemansky*, 157 Cal. 398, 108 Pac. 269.

19. Same—Proviso of act of 1909.—The proviso of the act of 1909 allowing the voters on the registration list of the previous year to vote, where the new registration list had not been completed, was intended to apply to municipal elections early in the year.—*Grieb v. Zemansky*, 157 Cal. 316, 107 Pac. 605.

20. Same—Act of 1897.—Municipal elections.—The act of 1897 did not apply to the municipal elections of that year, since the machinery for such elections was not set in motion under the act until January, 1898.—*McKinnon v. Leonard*, 118 Cal. 302, 50 Pac. 536.

21. Same—Act of 1913 superseded act of 1909.—Primary election law of 1909 (691) superseded by act of 1913 (1379); and, as to San Francisco, by charter amendments of February 23, 1911 (1661).—*Sullivan v. Gildea*, 166 Cal. 198, 200, 135 Pac. 952.

21a. Same—Not a general election.—The fact that the act of 1911 fixed regular times for holding January elections does not make the elections held at such times and such said law general elections.—*Bigelow v. Supervisors*, 18 Cal. App. 715, 124 Pac. 554.

21b. Same.—The primary election of May 14, 1912, pursuant to the act of 1911, was not a general election within the meaning of the “local option” law of that year.—*Bigelow v. Supervisors*, 18 Cal. App. 715, 124 Pac. 554.

22. Same—Registration—Statement of party affiliation.—An elector is entitled to state in his affidavit of registration the name of the political party with which he intends to affiliate at the ensuing primary election, notwithstanding the amendment of section 1096, Political Code (1915, p. 289), striking from said section the provision that an elector may state this, in view of the present state of the law and without regard to acts adopted at the 1916 extra session of the legislature, said acts not having become effective because subjected to referendum.—*Don v. Pfister*, 172 Cal. 25, 26, 155 Pac. 60.

23. Same—Same—Effect of incorporation of requirement of 1096, Political Code.—The legal effect of the incorporation of the partisan registration requirement of section 1096, Political Code in the primary act of 1913, by reference, was the same as though that portion of the section, at least, had been inserted in the act in extenso, and the act could be subsequently affected by amending the section.—*Don v. Pfister*, 172 Cal. 25, 28, 155 Pac. 60.

24. Same—Same—It was the intention of the legislature to make section 1096, Political Code, as it then stood, a part of the primary act of 1913 (1379), by reference, in so far at least as partisan registration, provided for in that section, and so vital to

the maintenance of the act, was concerned, so long as partisan registration was required by the primary law.—*Don v. Pfister*, 172 Cal. 25, 27, 155 Pac. 60.

25. Same — Same — Effect of amending § 1096, Political Code.—The amendment of section 1096, Political Code, by the act of 1915, by striking out the provision therein that the elector may state in his affidavit of registration the name of the political party with which he intends to affiliate at the ensuing primary election, did not work a change in the provisions of the act of 1913, which entitled him to make such a statement.—*Don v. Pfister*, 172 Cal. 25, 155 Pac. 60.

26. Same—Same.—The legislature could not affect the act of 1913, as to statements of party affiliation by merely amending section 1096 of the Political Code, which had been incorporated as a part of such act by reference.—*Don v. Pfister*, 172 Cal. 25, 155 Pac. 60.

27. Same — Registration of 1910.—The new registration of 1910 shall alone determine the right to vote at the August primary of that year, and incidentally the right to sign nominating petitions.—*Grieb v. Zemansky*, 157 Cal. 316, 107 Pac. 605.

28. Same—Refusal to allow non-registered elector to vote.—The refusal of the election officers at a primary election to receive the votes of electors whose names are not on the register, upon the presentation of their affidavits that they registered according to law, is not a proper ground of contest, and the superior court is without right or jurisdiction to receive such offered evidence, and since the decision of the court is final in every respect, and no appeal can be taken therefrom, the admission of such evidence is not an appealable error, and prohibition will issue to restrain the same.—*Miller v. Superior Court*, 25 Cal. App. 607, 612, 144 Pac. 978.

28a. Convention — Participation.—No qualified member of a convention composed as prescribed by the act of 1911 (extra session, p. 83) lost his right to participate thereby by any attitude he might assume as to party platform or candidates, whatever might be his motive with reference thereto.—*Sbarboro v. Jordan*, 164 Cal. 51, 55.

28b. Same — Official character not changed by withdrawals of one-third of the membership.—A republican convention assembled for the purpose of nominating candidates of that party for electors of president and vice president, composed of members selected according to the act of 1911 (extra session, p. 83), does not lose its regular official character by the withdrawal of one-third its membership, and the repudiation by the remaining members of the national party platform and candidates, and their indorsement of the candidates and platform of another party.—*Sbarboro v. Jordan*, 164 Cal. 51, 53.

28c. Same — Nominees for presidential electors.—A convention composed as provided by the act of 1911 (extra session, p. 83), of the so-called hold-over republican

state senators, and the republican nominees for state senator and assemblyman throughout the state, selected at the regular primary election of the year, is the regular republican convention authorized by law to nominate candidates of that party for presidential electors, and its nominees have the right to have their names printed on the regular ballot as such nominees, notwithstanding such convention had repudiated the national republican party platform and candidates, and had indorsed the party platform and candidates of another party, and such nominees for electors had declared their intention to vote for the presidential candidates of such other party.—*Sbarboro v. Jordan*, 164 Cal. 51, 55.

29. Nomination of candidates.—Wide authority is conferred by the constitution (Act II, § 2½) upon the legislature in providing regulations for nominations at primary elections and fixing the eligibility of candidates for such nomination.—*Miller v. Childs*, 28 Cal. App. 478, 483, 152 Pac. 972.

30. Same—Party affiliation.—The selection of candidates for nomination by a party is, under the primary election law of 1913, committed to the members of that party, and it is the privilege of such members to select as their candidate a member of another party, or of no party at all.—*Hart v. Jordan*, 168 Cal. 321, 322, 143 Pac. 537.

31. Same—Offices included in election notice.—Candidates may be nominated under the direct primary law for such offices only as may be properly included in the notices provided for.—*Fitzgerald v. Smith*, 178 Cal. 679, 680, 174 Pac. 660.

32. Same—Membership in political party.—The provisions of subdivision 4, of section 5, of the primary election law of 1913, expressly authorizing a member of one political party, seeking its nomination for office, to become a candidate at the same election, for the same office, either by his own initiation or the action of five electors, for the nomination of another political party, are not violative of any constitutional restrictions.—*Hart v. Jordan*, 168 Cal. 321, 322, 143 Pac. 537.

33. The legislature is not bound, in the exercise of its power under section 2½, Article II of the constitution, to make membership in a party a condition of a right to seek its nomination.—*Hart v. Jordan*, 168 Cal. 321, 322, 143 Pac. 537; *Williams v. Jordan*, 168 Cal. 793.

34. Under the primary election law of 1913, a person who filed nomination papers as a candidate for a particular nomination for a specified office, and was defeated for such nomination at the primary election, but elected as the nominee for such office by another party, is not ineligible to run as the nominee of such other party, and is entitled to have his name inserted as such nominee on the ballot for the general election.—*Narver v. Jordan*, 173 Cal. 424, 425, 160 Pac. 245.

34a. The provision of section 23, as amended in 1917, "that no candidate for a nomination for other than a judicial, school,

county, township or municipal office who fails to receive the highest number of votes for the nomination of the political party with which he was affiliated thirty-five days before the date of the primary election, as ascertained by the secretary of state from the affidavit of such candidate," etc., is constitutional, since it is a test which the legislature is authorized under section 2½, Article II of the constitution, to require.—*Heney v. Jordan*, 56 Cal. Dec. 295.

35. Same—Name of defeated candidate written in.—The provisions of subdivision 8 of section 5 of the primary election law with reference to nominations of candidates under section 1188 of the Political Code, simply means that a candidate for a party nomination who has been defeated at the primary for such nomination is ineligible for nomination as an independent candidate, after the primary, under that section, and has no reference to a candidate nominated at the primary by having his name written in, though defeated for the nomination as candidate for another party.—*Narver v. Jordan*, 173 Cal. 424, 426, 160 Pac. 245.

36. Section 23 of the direct primary act should be construed with reference to the placing of candidates for judicial, school, county and township offices on the official ballot, so as to read: "In case there is but one person to be elected at the November election to a judicial office, school office, county office or township office, any candidate who receives at the August primary election a majority of the total number of votes cast for all the candidates for such office shall be the only candidate for such office placed on the official ballot at the ensuing election," and should not be construed to prevent the electors from writing the name of their own candidate for such office.—*Miller v. Childs*, 28 Cal. App. 478, 489, 152 Pac. 972.

37. Same—The case of Socialist Party v. Uhl, 155 Cal. 776, 103 Pac. 181, is not authority for the denial of the right of an elector to vote at his party primary for any candidate he pleases, by writing in the name of such candidate on his party ballot; nor does that case declare that a candidate so selected is not entitled to have his name printed on the November ballot as the party candidate, although may be registered with another party and may actually be the candidate of another party for the same office.—*Fickert v. Zemansky*, 157 Cal. 398, 108 Pac. 269.

37a. Same—Ineligibility of successful candidate.—There is no good reason why the rule, that where the person receiving the highest number of votes for an office is ineligible, the person who receives the next highest is not elected, in the absence of statutory provisions to the contrary, does not apply to primary elections.—*Heney v. Jordan*, 56 Cal. Dec. 295.

38. Same—Act of 1909 construed and applied.—Subdivision 5d, section 5, of the primary election law of 1909, relative to the number of signers required by a party candidate for nomination, construed and ap-

plied.—*Sullivan v. Gildea*, 166 Cal. 198, 135 Pac. 952.

39. Same—Signers of nomination papers.—Only those electors whose names appear upon the register of 1910 can join in the nomination paper of a candidate to be voted for at the August primary.—*Grieb v. Zemansky*, 157 Cal. 316, 107 Pac. 605.

40. Same—Duty of clerk to purge nominating papers.—The county clerk is not required to purge a nominating petition of the names of signers who sign other petitions contrary to the act, but only to compare the signatures with the registration lists.—*McDonald v. Curry*, 158 Cal. 160, 110 Pac. 480.

41. Same—Placing name of candidate on ballot.—Prohibition will not issue to restrain either the secretary of state or the county clerk from placing the name of a person as a candidate on the primary ballot whose filed petitions are signed by the requisite per cent of voters under the act of 1909, even though a showing is made that a sufficient number of such signers had previously signed the petition of another candidate for the same office to reduce the percentage of signers below the requisite per cent.—*McDonald v. Curry*, 158 Cal. 160, 110 Pac. 480.

41a. Same—Filling vacancies by party committee.—Under section 25, as amended in 1917, the party committee is prohibited from filling a vacancy on the party ticket except in the single case of the death of the candidate occurring after the primary election.—*Heney v. Jordan*, 56 Cal. Dec. 295.

42. Same—Party affiliation—Reasonable tests.—Under the act of 1909 a person can have his name printed on the ballot as a candidate of the party with which he affiliated at the last general election, and an elector can vote only for candidates of the party with which he has registered, and it is held that both tests are reasonable and valid.—*Socialist Party v. Uhl*, 155 Cal. 776, 103 Pac. 181.

43. Same—Withdrawal of candidate.—Under the direct primary law of 1913 a candidate for office may withdraw his candidacy after nomination and qualification as such, and under section 27 of the act mandamus will lie to compel the election officials to omit his name from the ballots when prepared.—*Bordwell v. Williams*, 173 Cal. 283, 285, Ann. Cas. 1918E, 358, L. R. A. 1917A, 996, 159 Pac. 869.

44. Same—Affidavit of candidate after nomination.—The affidavit contemplated by section 5, subd. 4 of the direct primary law relates to the state of affairs after a nomination has been made, and has no application to the right of a candidate to withdraw prior to the primary election.—*Bordwell v. Williams*, 173 Cal. 283, 285, Ann. Cas. 1918E, 358, L. R. A. 1917A, 996, 159 Pac. 869.

45. Certificate of nomination—Mandate to compel issue.—A writ of mandate will not lie to compel the issuance of a certificate of nomination to a judicial office, by reason of votes received at a primary election to a person, who is not alleged to have received a majority of all the votes cast at such pri-

mary, and that there were not four such "majority candidates" nominated at such primary.—*People ex rel. Jones v. Zemansky*, 178 Cal. 803, 804, 175 Pac. 408.

46. A writ of mandate will not lie to compel the issuance of a certificate of nomination as a candidate for superior judge, by reason of votes cast at a primary election to a person whose name was not printed on the primary ballot, and who did not receive a sufficient number of votes by writing in to equal the number required by subdivision 9 of section 5.—*People, ex rel. Jones v. Zemansky*, 178 Cal. 803, 804, 175 Pac. 408.

47. Duty of supervisors.—The law contemplates prompt action by the supervisors in order that the names of the successful candidates may be placed on the ballot for the November election, and a careful compliance with the law as to the times when the several acts should be done is necessary, and if not complied with by reason of neg-

lect or misconduct, any elector may institute appropriate proceedings to compel action.—*Miller v. Superior Court*, 25 Cal. App. 607, 611, 144 Pac. 978.

48. Contest — Original jurisdiction of supreme court.—The supreme court refused to entertain an original proceeding to determine a primary election contest, under section 27 of the act of 1909.—*In re Snyder*, 158 Cal. 218, 110 Pac. 820.

49. Same — Affidavit of candidate.—The affidavit of the candidate referred to in section 28 is the basis of the contest in which the ballots may be recounted before the superior court.—*Miller v. Superior Court*, 25 Cal. App. 607, 610, 144 Pac. 978.

50. Same — Time to file.—The five days time provided for filing contests does not begin to run until the supervisors have canvassed the returns and declared the vote.—*Miller v. Superior Court*, 25 Cal. App. 607, 610, 144 Pac. 978.

"PRESIDENTIAL PRIMARY ACT."

ACT 1338—An act to provide for the indication by the registered qualified electors of their choice for nomination by their respective political parties for president of the United States through the election of the delegates of said political parties to their respective national conventions, and to repeal an act approved December 24, 1911, known as the presidential primary act, and also to repeal all other acts or parts inconsistent with or in conflict with the provisions of this act.

History: Approved April 28, 1915. In effect August 8, 1915. Stats. 1915, p. 279. Amended January 11, 1916. In effect immediately. Stats. 1916 (ex. sess.), p. 36. Prior act approved December 24, 1911, Stats. 1911 (ex. sess.), p. 85, was repealed by the present act. The primary law of 1911 provided for the election of delegates to the national conventions, but the act of 1911 superseded the provisions of that act.

Presidential primary election.

§ 1. On the first Tuesday in May of each year of the general November election at which electors of president and vice president of the United States are to be chosen, there shall be held a primary nominating election, to be known as the May presidential primary election, at which the registered qualified electors shall have opportunity, on separate party ballots provided for that purpose, to elect the delegates of their respective political parties to their respective national conventions for the nomination of their party candidates for president and vice president of the United States, thereby indicating the preference of said electors for their presidential nominee.

Secretary of state to be notified of number of delegates. Elected at large. Parties qualified to participate.

§ 2. The chairman of the state central committee, or, after the year 1916, the chairman of the congressional party committee, of each of the political parties qualified to participate in the election provided for in this act shall notify the secretary of state on or before the first day of March of each year of the general November election at which electors of president and vice president of the United States are to be chosen, as to the number of delegates to represent the state in the next national convention of his said party. If said chairmen, or any of them, fail to file such notice, it shall be the duty of the secretary of state to ascertain the said number of delegates from the call for said national convention issued by the national committee of each party whose chairman has failed to notify him as aforesaid. The delegates who shall represent each political party at its national convention shall all be elected by the voters of the state at large. The secretary of state shall, on or before the tenth day of March of the year of the May presidential primary election, certify to the county

clerk or registrar of voters of each county, or city and county, the number of delegates to be so elected by each of the political parties qualified to participate in the said election. Any political party shall be qualified to participate in the May presidential primary election which is qualified to participate in the August primary election according to the provisions of the "direct primary law."

Delegates to national convention. Party test. Number of signers required. When delegates prefer same candidates.

§ 3. The names of persons to be voted upon as delegates to the respective national conventions of the several political parties shall be printed upon the ballots of their respective parties upon the filing of nomination papers substantially as provided in the direct primary law; provided, however, that the only party test that shall be required of each of the five qualified electors provided for in subdivision two (b) of section five of said direct primary law shall be a declaration on his part in the document by which verification deputies are appointed that it is his intention to affiliate at the ensuing primary election with that political party for nomination by which he is proposing a candidate or group of candidates for delegates; and provided, also, that the only party test that shall be required of each of the signers of the nomination paper of any candidate or group of candidates for delegate shall be a declaration by him made in such nomination paper that it is his intention to affiliate at the ensuing primary election with that political party for nomination by which he is signing such nomination paper, and that he has not signed the nomination paper of said candidate or group of candidates, or any other candidate or group of candidates, as candidate or group of candidates of any other party at said primary election; provided, that, in the case of each party, nomination papers for candidates for delegates must be signed by the same number of electors as is required on the nomination paper of a candidate for United States senator; and provided, also, that whenever a candidate for delegate files a statement with the secretary of state, as hereinafter provided in this section, wherein as a delegate he enrolls himself with other delegates in expressing his preference for the same person as candidate for presidential nominee, there may be nominated by the same nomination paper the names of all such candidates for delegates who are included in such statement as have individually filed similar statements with the secretary of state. The form of nomination paper as set forth in section five of said direct primary law shall be changed for this purpose by substituting, in the appropriate place, for the name of a single candidate, as follows: "hereby nominate the following:

<i>Names.</i>	<i>Residence City or Town</i>	<i>County.</i>	<i>Number Congressional District.</i>
1.....
2.....
3.....

(to 26 names, or such other number as may be required) as candidates for delegate to the national party convention, to be voted for at the primary election to be held on the day of May, 19..," and by making such other changes in said form as may be necessary. The verification deputies to obtain signatures on the nomination paper for such group of candidates for delegate may be appointed, either according to the provisions of subdivision two (a) of section five of said direct primary law, by said candidates for delegate joining together in the appointment of said deputies; or according to the provisions of subdivision two (b) of said section five, by the "five registered qualified electors" appointing said deputies to obtain signatures for the nomination of all of said candidates whose names are grouped together on the same nomination papers; provided, however, that the number of such candidates for delegate shall not be greater than the total number of dele-

gates to be elected by said party; and provided, further, that the names of such candidates thus grouped together shall be so selected that the smallest number of such candidates who shall reside in any one congressional district shall be no less than the integer of the quotient obtained by dividing the number of the names of such candidates appearing upon the same nomination paper by the total number of congressional districts of the state, and that the largest number of such candidates who shall reside in any one congressional district shall be no greater than twice said integer; and if not so selected said names shall not be grouped together on the ballot, but shall appear as individuals.

Names grouped on ballot. Endorsement by candidate. Delegates statement of preference. Additional statement.

Candidates for delegate grouped together on the same nomination paper and selected as aforesaid shall be similarly grouped, in the same order of names, upon the ballots of their party; provided, that such group of candidates for delegate has the endorsement of that candidate for presidential nominee for whom the members of said group have filed a preference, or the endorsement of such a state political organization created in support of the candidacy of said presidential nominee as shall not be repudiated by him as lacking authority to make such endorsement; said endorsement, either of the candidate or of the organization supporting him, to be filed with the secretary of state. No candidates for delegate not thus endorsed shall have their names printed upon the ballot in a group, but such candidates must appear as individuals; and further provided, that the name of no candidate shall appear more than once on the ballot, and that any candidate whose nomination paper is filed in more than one group, or in the same group differently arranged, shall have his name printed on the ballot as a part of that group which has had first filed the endorsement as herein recited; provided, that one of the groups in which his name occurs has received such endorsement. Each candidate for election as delegate to his national party convention must file with the secretary of state not later than the time of filing of the nomination papers containing his name, an affidavit substantially as provided in section five of the "direct primary law," and may also include with his affidavit the following statement:

DELEGATE'S STATEMENT.

"I personally prefer as nominee of my political party for president of the United States, and hereby declare to the voters of my party in the state of California that if elected as delegate to their national party convention, I shall, to the best of my judgment and ability, support said as nominee of my party for president of the United States" (filling in the blanks by inserting his choice for such nominee). But the neglect or failure of any candidate to conclude any statement of preference for presidential nominee shall not be a valid ground on the part of the secretary of state for refusal to receive and file the nomination paper containing his name.

However, each candidate for delegate whose name is filed upon a nomination paper together with the names of other candidates, as hereinbefore in this section provided, in order to have his name printed upon the ballot in a group with such other names, must file such statement of preference, and shall add to it the following:

"And I hereby enroll myself in the expression of preference for said for presidential nominee, as one of the following named candidates for delegate:

.....
.....
.....

Etc.

(the blanks immediately following the word 'delegate' being filled in by the printed

or typewritten names of all the candidates for delegate, including the signer, whose names appear upon the same nomination paper in accordance with the provisions of this section).

(Signed)’’

[Amendment of January 11, 1916. In effect immediately. Stats. 1915, (extra session), p. 37.]

Names of candidates in parallel columns. Headings.

§ 4. The names of the candidates for delegate of any political party shall be arranged upon the ballot of such party in parallel columns, the various candidates for delegate appearing in these columns under their preference for president according to the provisions of section 3 of this act. That group of candidates which shall first file its nomination paper with the secretary of state shall be entitled to the first or left hand column; the group which next files its nomination paper shall be entitled to the second column; and similarly for all other groups. The left hand column shall be headed in heavy face, ten point, gothic type, the following:

“Candidates preferring’’

(The blank being filled in by the name of that candidate for presidential nominee for whom the members of the group in said left hand column have expressed a preference.) The second column shall be similarly headed except that the name of the candidate shall be that preferred by the members of the group in said second column; and so on for as many columns as may have groups who have expressed a preference for presidential nominee.

To the right of the last column headed by the name of a candidate for presidential nominee shall be a column headed by the words “No preference,” in heavy face, ten point, gothic type, in which column shall appear the names of all candidates for delegate who have expressed no preference for presidential nominee, or who have expressed a preference for a presidential nominee who has not endorsed said candidates, either personally, or through the state political organization created in support of his candidacy, as such endorsement is provided for in section 3 of this act. To the right of the last column shall be a column headed by the words “Blank column” in heavy face, ten point, gothic type, which column shall contain as many blank spaces as there are delegates to be elected by the political party concerned. In case that there are no names of candidates for delegate to be placed in a “No preference column,” such “No preference column” shall be omitted from the ballot, and the “Blank column” as herein provided for shall be placed to the right of and contiguous to the last column headed by the surname of a candidate for presidential nominee.

Style of printing names. Arrangement for voting.

The names of the various candidates for delegates shall be printed in eight point, roman capital type, under their respective preferences for presidential nominee or in the no preference column, as heretofore provided in this act. The names of each group on the ballot shall be numbered in heavy face, eight point type. The order of names for each column upon the ballot shall be the same as the order in which such names were filed with the secretary of state; provided, that above the individual names in each column, if any, shall appear the group of names, if any, which has received the endorsement referred to in section 3 of this act.

A blank column one-half inch wide shall be left upon the ballot opposite each group of names and to the right of the column of voting squares for the individual names and separated from it by a light dotted line, which blank column shall contain a square in which may be stamped a cross (X) which shall be counted as a vote for each and every name in the group opposite. Lengthwise along this blank column shall be printed “A cross (X) stamped in this square shall be counted for each name

of the group to the left." The line separating any name from any other name not in a group or from any group of names shall be heavier than any line separating the individual names in such group and shall extend across the blank column provided for in this paragraph. Below the top line of this extension shall be printed in small heavy face type the words "top of group," and above the bottom line of the extension, the words "end of group."

Alternate delegates.

§ 5. The delegates to each national party convention elected at the May presidential primary election, shall, before leaving the state to attend the convention, meet together and select alternates to the convention. The number of alternates to be selected shall be no greater than one for each delegate, and each alternate must be selected from the congressional district of the delegate for whom he is an alternate; and the method of selection shall be as determined upon by the majority of the whole number of delegates who have been elected to the convention. The duties of an alternate shall be those usually appertaining to that position, and as prescribed by each party in the call for its national convention. The alternate of any such delegate as may be unable to attend the convention, shall attend the convention in his place, and shall otherwise discharge the duties of said delegate, but shall not vote in place of said delegate when said delegate is occupying his seat at the convention.

Registration used. Declaration of political affiliation.

§ 6. For purposes of the May presidential primary election only the new registration, beginning on January 1st of the year in which such May presidential primary election is held, shall be used. Any person registered in accordance with the provisions of this section and of section one thousand ninety-six of the Political Code and who, on asking for his party ballot at the polls, writes, or has written, and declares his political affiliation as in this section provided shall be qualified to vote at such election. On writing his name or having it written for him on the roster, as provided by law for general elections in this state, he shall likewise write or have written upon the roster the name of the political party with which he intends to affiliate in voting for candidates for office at the next ensuing November election. He shall then, in an audible tone of voice, declare to the election officer from whom he receives his ballot the name of such political party with which he intends to affiliate, and the clerk whose duty it is, according to law, to write the name of the elector on the poll list, shall also write opposite such name the name of said political party with which the elector declares it his intention to affiliate. Thereupon said elector shall be given the ticket of that political party only with which he thus declares himself affiliated, and he shall be permitted to vote only such ticket. Any person qualified by the provisions of this section to vote at any May presidential primary election shall also be qualified to sign the nomination papers of any person to be voted upon at such primary election. [Amendment of January 11, 1916. In effect immediately. Stats. 1915, (extra session), p. 39.]

Ballot. Instructions to voters.

§ 7. The ballot to be used at the May presidential primary election shall be prepared according to the provisions of sections 3 and 4 of this act, and also according to such provisions of the "direct primary law" as are applicable to this act and not in conflict with its provisions; provided, that the words at the top of the ballot shall be "Official presidential primary election ballot," and that the instructions to voters shall be as follows: "To vote for a person whose name appears on the ballot, stamp a cross (X) in the square at the right of the name of the person for whom you desire to vote; or if you wish to vote for all of a group of persons, stamp a cross (X) in

the square opposite such group which cross shall be counted for each name of the group. A group consists of candidates for delegates nominated on the same nomination paper. To vote for a person whose name is not printed on the ballot, write his name in the blank space provided for that purpose; and it is optional, but not necessary, to stamp a cross after such name."

Printing.

There shall be printed in heavy face, twelve point, gothic type, across the page above the columns of candidates for delegates, the words, "For delegates to national convention vote for, either as individuals or by group, but do not vote for more than" (the blanks being filled in by the number of delegates to be elected by the political party concerned).

The ballot shall be printed substantially in the following form:

Form.

[Face of ballot on insert.]

County clerk to provide ballots. Sample ballots. Size, etc.

§ 8. The county clerk of each county, or registrar of voters in any city or county, shall distribute to each precinct, as near as may be, twice as many official ballots for each party as were cast in the precinct for the candidate of that party for United States senator at the last election in this state at which a United States senator was elected; and if the number of ballots so furnished proves insufficient, additional ballots must be furnished by the county clerk on demand by the board of election officials of the precinct. One sample ballot of each party shall be mailed to every elector entitled to vote at the May presidential primary election, not more than ten days nor less than five days before the election. This sample ballot for each party shall be one half the dimensions, as near as may be, of the official ballot for such party, and shall otherwise be of the same form, and contain the same names and heading, as the official ballot; and above the first line of said heading shall appear the words "Sample ballot (reduced to one-quarter size) of the."

Direct primary law to govern.

§ 9. The provisions of the direct primary law shall govern the May presidential primary election in so far as said provisions are applicable to said election and are not inconsistent with or in conflict with the provisions of this act. [Amendment of January 11, 1916. In effect immediately. Stats. 1916 (extra session), p. 40.]

Secretary of state and attorney general to prepare forms.

§ 10. It shall be the duty of the secretary of state and the attorney general to prepare, on or before the first day of January, 1916, all forms necessary to carry out the provisions of this act, which forms shall be substantially followed in all presidential primary elections held in pursuance hereof.

Title of act.

§ 11. This act shall be known as the presidential primary act.

Repealed.

§ 12. The act approved December 24, 1911, known as the presidential primary act, is hereby repealed, and all other acts and parts of acts inconsistent with or in conflict with the provisions of this act are also hereby repealed.

Election called.

§ 13. The first May presidential primary election to be held under the provisions of this act shall be held on the second day of May, 1916, and a presidential primary

election to be held on the said second day of May, 1916, is hereby called and provided for. [New section added January 11, 1916. In effect immediately. Stats. 1916 (extra session), p. 40.]

The amending act of 1916 contained the following:

In effect immediately.

§ 5. This act, inasmuch as it calls an election and provides the procedure therefor, shall, under the provisions of article IV, section one of the constitution, take effect immediately.

CONSOLIDATION OF ELECTIONS.

ACT 1339—An act to permit the consolidation of elections and to provide a procedure therefor.

History: Approved June 11, 1913. In effect August 10, 1913. Stats. 1913, p. 698. Amended June 4, 1915. In effect August 8, 1915. Stats. 1915, p. 1163.

Consolidation of elections on same day.

§ 1. Whenever two or more elections are called to be held on the same day, in the same territory, or in territory that is in part the same, such elections may be consolidated in the manner provided by this act.

Elections under charters or state laws.

§ 2. Any such two or more elections, whether held under a freeholders' charter or under any state law, or both, may be so consolidated and different elections called by the same governing body may be so consolidated.

Authority to consolidate.

§ 3. Such elections may be consolidated as to territory which is the same by order of the governing body or bodies calling the elections; and where one of the elections to be consolidated in a state election, the board of supervisors of the county wherein said consolidation may be had shall have authority to order such consolidation, as respects such state election.

Precincts, etc., the same for consolidated elections. Supervisors may canvass returns for cities.

§ 4. Within the territory affected by such order of consolidation, the election precincts, polling places and voting booths shall, in every case, be the same and there shall be only one set of election officers in each of such precincts. When the returns of elections consolidated under this act are required to be canvassed by different canvassing bodies, such elections shall be conducted separately in the same manner as if they had not been consolidated, except as in this section provided; and provided, further, that in case of the consolidation of an election called by the legislative body of a city with an election called by the board of supervisors of the county in which such city is situated, the governing body of such city, in the ordinance or notice calling such election, may authorize such board of supervisors to canvass the returns of such election, and such election shall be held in all respects as if there were only one election, and only one ticket or ballot shall be used thereat; and the returns of such election need not be canvassed by the legislative body of such city. When the returns of any two or more elections consolidated under this act are required to be canvassed by the same body, such elections shall be held in all respects as if there were only one election, and only one ticket or ballot shall be used thereat. [Amendment of June 4, 1915. In effect August 8, 1916. Stats. 1915, p. 1163.]

Appointment of officers, etc.

§ 5. When elections are consolidated under the provisions of this act, the governing body or bodies ordering such consolidation may, in the territory affected thereby, provide for the appointment of officers of election, for the formation of precincts for such elections and the expenses of said election.

Act of 1911 not repealed.

§ 6. Nothing in this act shall be so construed as to repeal an act of the legislature of the state of California, entitled, "An act to provide for the regulation of the traffic in alcoholic liquors by establishing local option; authorizing the filing of petitions praying for elections to vote upon the question whether the sale of alcoholic liquors shall be licensed within the territory described in such petitions; providing for the calling and holding of such elections; making it the duty of the proper governing body to declare such territory to be no-license territory unless a majority of votes is cast in favor of license; providing that no licenses, permits or other authority to sell or distribute alcoholic liquors in no-license territory shall be granted; forfeiting and declaring void all such licenses or permits theretofore issued and in force; making it a penal offense to sell, give away or distribute alcoholic liquors within such territory, with certain exceptions; and providing penalties for such offenses," approved April 4, 1911.

LEGALIZING REGISTRATIONS.**ACT 1340—An act to legalize registration of electors.**

History: Approved December 4, 1911, Stats. 1911 (ex. sess.), p. 1.

Registrations declared legal and valid. Registrations of married women.

§ 1. All registrations of electors of this state, heretofore made or attempted to be made, which are defective or illegal by reason of any defect, irregularity, or illegality in the appointment, qualification, or authority of the deputy clerks or other officials or persons before whom such registrations may have been made, or who took the affidavits of the persons so registering, and all registrations of married women, who have registered under the given names, or the initials of the given names of their respective husbands, are hereby declared to be valid and legal, and are hereby validated in every case where the elector, who has made such illegal or defective registration, was, at the time of such registration, in all respects eligible to register as an elector of this state, and possessed all of the qualifications required therefor by the constitution and laws of this state.

Declaration of urgency. Facts constituting necessity for legislative action.

§ 2. This act is hereby declared to be an urgency measure within the meaning of section 1, article IV of the constitution, and is deemed necessary for the immediate preservation of the public peace and safety. The following is a statement of the facts constituting such necessity: That elections are about to be held in certain municipalities in this state prior to the first day of January, 1912, and defects and irregularities have occurred in the registration of a large number of electors in such municipalities, which defects, owing to defects and irregularities in the appointment, qualification or authority of the deputy clerks or other officials or persons before whom such registration were made, and to the registration of married women under the given names, or initials of the given names of their respective husbands, and by reason whereof a question has arisen regarding the right of many persons, so registered, to vote at said elections, who were, at the time of such registration, in all respects eligible to register as electors of this state, and who possessed all of the qualifications required therefor by the constitution and laws of this state; that there is now existing a feeling of public unrest and apprehension regarding such registra-

tion and such elections; that, unless the right of such persons to vote at such elections is legally established prior to the holding thereof, public disorder and breaches of the public peace at such elections are liable to ensue, and the public safety and the orderly conduct of such elections are liable to be endangered.

“PIECE CLUBS.”

ACT 1341—An act to prohibit “piece clubs,” and to prevent extortion from candidates for office.

History: Approved March 14, 1878, Stats. 1877-78, p. 236.

Election expenses; how raised.

§ 1. All payments and contributions of money for election expenses, made by candidates for office in this state, shall hereafter be assessed and made by such candidates by voluntary assessment among themselves, and not otherwise, and at meetings to be called for such purpose, at which meetings none but candidates for office at the next ensuing election shall be present or participate.

Misdemeanor.

§ 2. Any person being a candidate for office in this state, who shall directly or indirectly pay, or knowingly cause to be paid, any money or other valuable thing to any person, as an assessment or contribution for the expenses of the election at which such person or candidate is to be voted for, except the contribution or assessment so agreed upon by such meeting of candidates, shall be deemed guilty of a misdemeanor, and, upon conviction, punished accordingly.

Certain acts declared unlawful.

§ 3. It shall not be lawful for any committee, convention, or other association, formed for the purpose of nominating a candidate or candidates for office in this state, to levy, assess, collect, demand, or receive, directly or indirectly, any money or other valuable thing from any candidate or candidates nominated for office by such committee, convention, or other association, either for the expenses of printing or distributing tickets, or for any of the expenses of the election of such candidate or candidates, or as or for the expenses of such nominating convention, committee, or other association, or under or upon any pretense whatsoever.

Misdemeanor.

§ 4. Any officer or member of any such committee, convention, or association, or other person, who shall vote for, aid, authorize, assist, or consent to any such levy, assessment, or collection from any candidate or candidates, shall be deemed guilty of a misdemeanor, and, on conviction, punished accordingly.

Same.

§ 5. Any person who shall demand, ask for, collect, or receive, either directly or indirectly, any money or other valuable thing from any candidate or candidates for office in this state, on the ground that such money or other valuable thing has been assessed to such candidate or candidates, or asked for, demanded, or required by any person, nominating convention, committee, or other political association, as or for the costs of printing or distributing tickets, or for the payment of election expenses of any kind or nature whatsoever, or as or for the expenses of such nominating committee, convention, or association, shall, for each offense, be deemed guilty of a misdemeanor, and, on conviction, shall be punished accordingly; but nothing herein contained shall prevent the candidates at any election from assembling together and voluntarily assessing themselves for any expenses authorized by law for the common good of the ticket, and to collect and disburse the same by agents appointed for such purpose.

Same.

§ 6. Any person who shall voluntarily and unsolicited offer to work for and assist, or in any manner whatsoever contribute to the nomination or election of any candidate or other person to any office in this state, for the purpose and with the intent to have such candidate or person pay for, or in any manner compensate such person so offering for such work or services, shall be deemed guilty of a misdemeanor, and, on conviction, punished accordingly.

Applies only to San Francisco.

§ 7. This act shall apply only to the city and county of San Francisco.

Act takes effect when.

§ 8. This act shall take effect and be in force from and after its passage.

Code commissioner's note: "Modified, if not repealed, by the purity of elections act, 1893: 12."

SPECIAL STATE ELECTION CALLED.

ACT 1342—An act calling and authorizing and directing the governor of the state to call a special election to be held on Tuesday October twenty-sixth, 1915, and providing for the submission thereat to the qualified electors of the state of all amendments to the constitution of the state of California proposed by the legislature of said state at its forty-first session, and of all laws passed by the said legislature at its forty-first session which may be delayed from going into effect by referendum petition.

History: Approved June 12, 1915. In effect August 11, 1915. Stats. 1915, p. 1500.

Special state election called October 26, 1915.

§ 1. A special election is hereby called and the governor of the state is hereby authorized and directed to call a special election to be held throughout the state of California on Tuesday, the twenty-sixth day of October, 1915, and at such special election there shall be submitted to the qualified electors of said state for adoption or rejection, in accordance with the provisions of section 1 of article XVIII of the constitution of said state, all amendments to said constitution proposed by the legislature of said state at its forty-first regular session commencing on the fourth day of January, 1915, and all laws passed by the said legislature at said session which may have been delayed from going into effect by referendum petition filed in accordance with the provisions of section 1 of article IV of the constitution of said state.

§ 2. Said special election shall be proclaimed, held, conducted and the ballots shall be prepared, marked, voted, counted, canvassed, and the results shall be ascertained and the returns thereof made in all respects in accordance with the provisions of the constitution applicable thereto and the law governing general elections in so far as the provisions thereof are applicable to the election provided for by this act.

CHAPTER 97.

ELECTRICITY.

References: Acquisition and maintenance of electrical power plants by cities, see Act 3040.

Appropriation of water for development of electricity, see Kerr's Cyc. Civil Code, §§ 1410, et seq.

Franchise tax of electrical corporations, see Kerr's Cyc. Political Code, §§ 3664, et seq.

Larceny of, see Kerr's Cyc. Penal Code, § 499a.

Malicious injury to electrical plant, see Kerr's Cyc. Penal Code, § 499a.

Public utility, see tit. "Public Utility."

Ratifying ordinance authorizing use of electricity by railroads in cities, see Act 3826.

Regulating appropriation of water for the purpose of generating, see Act 5534.

Taxation in general, see tit. "Taxation."

CONTENTS OF CHAPTER.

ACT 1350. REGULATING ELECTRIC POLES, WIRES, ETC.

1351. REGULATING SUBWAYS, MANHOLES, ETC.

1352. JOINT MUNICIPAL PUBLIC UTILITIES.

REGULATING ELECTRIC POLES, ETC.

ACT 1350—An act regulating the placing, erection, use and maintenance of electric poles, wires, cables and appliances, and providing the punishment for the violation thereof.

History: Approved April 22, 1911, Stats. 1911, p. 1037. Amended June 5, 1915. In effect August 8, 1915. Stats. 1915, p. 1058.

§ 1. No commission, officer, agent or employee of the state of California, or of any city and county or city or county or other political subdivision thereof, and no other person, firm, or corporation shall—

No wire within 13 inches of pole. Not applicable to telephone. Toll lines may be exempt. Not applicable to "lead" wires, etc.

(a) Run, place, erect or maintain any wire or cable used to carry or conduct electricity, on any pole, or any crossarm, bracket or other appliance attached to such pole, within a distance of thirteen inches from the center line of said pole; provided, that the foregoing provisions of this paragraph (a) shall be held not to apply to telephone, telegraph or other "signal" wires or cables which are attached to a pole to which is attached no wire or cable other than telephone, telegraph or other "signal" wire or cable, except within the corporate limits of any city or town which shall have been incorporated as a municipality, nor shall the foregoing provisions be held to apply to such wires or cables in cases where the same are placed vertically on poles, nor to "bridle" or "jumper" wires on any pole which are attached to telephone, telegraph or other "signal" wires on the same pole, nor to any "aerial" cable, as between such cable and any pole on which it originates or terminates; and further provided, that telephone toll lines may be exempt from the provisions of this paragraph (a) provided proper evidence introduced before the railroad commission of the state of California proves to the satisfaction of said railroad commission, that compliance with the provisions of this paragraph (a) would seriously interfere with long distance telephone transmission; and further provided, that the provisions of this paragraph (a) shall not be held to apply to wires run from "lead" wires to arc or incandescent lamps nor to transformers placed upon poles, nor to any wire or cable where the same is attached to the top of a pole, as between it and said pole, nor to any "aerial" cable containing telephone, telegraph or other "signal" wires where the same is attached to a pole on which no other wires or cables than wires continuing from said cable are maintained; provided, that electric light or power wires or cables are in no case maintained on the same side of the street or highway on which said "aerial" cable is placed.

No wire within 13 inches of pole though unattached thereto.

(b) Run, place, erect or maintain in the vicinity of any pole (and unattached thereto) within the distance of thirteen inches from the center line of said pole, any wire or cable used to conduct or carry electricity, or place, erect or maintain any pole (to which is attached any wire or cable used to conduct or carry electricity) within the distance of thirteen inches (measured from the center of such pole) from any wire or cable used to conduct or carry electricity; provided, that as between any wire or cable and any pole, as in the paragraph (b) named, only the wire, cable or pole last in point of time run, placed or erected, shall be held to be run, placed, erected or maintained in violation of the provisions of this paragraph; and provided, further, that the provisions of this paragraph (b) shall not be held to apply to telephone, telegraph or other "signal" wires or cables on poles to which are attached no other wires, as between

such wires and poles to which are attached no other wires or cables than telephone, telegraph or other "signal wires; provided, such wires, cables and poles are not within the corporate limits of any town or city which shall have been incorporated as a municipality; and further provided, that telephone toll lines may be exempt from this paragraph (b) provided proper evidence introduced before the railroad commission of the state of California, proves to the satisfaction of the said railroad commission, that compliance with the provisions of this paragraph (b) would seriously interfere with long distance telephone transmission.

Wires carrying more than 600 volts. Last wire run violates. Railroad commission may permit deviations.

(c) Run, place, erect or maintain, above ground, within the distance of four feet from any wire or cable conducting or carrying less than six hundred volts of electricity, any wire or cable which shall conduct or carry at any one time more than six hundred volts of electricity, or run, place, erect or maintain within the distance of four feet from any wire or cable which shall conduct or carry at any one time more than six hundred volts of electricity any wire or cable conducting or carrying less than six hundred volts of electricity; provided, that the foregoing provisions of this paragraph (c) shall be held not to apply to any wires or cables attached to a transformer, arc or incandescent lamp within a distance of four feet (measured along the line of said wire or cable), from the point where such wire or cable is attached to such transformer, arc or incandescent lamp, nor to wires or cables within buildings or other structures, nor to wires or cables where the same are placed vertically on poles, or to any "lead" wires or cables between the points where the same are made to leave any pole for the purpose of entering any building or other structure and the point at which they are made to enter such building or structure; and provided, further, that as between any two wires or cables, or any wire or any cable, run, placed, erected or maintained in violation of the provisions of this paragraph (c), only the wire or cable last in point of time run, placed or erected shall be held to be run, placed, erected or maintained thus in violation of said provisions; and further provided, that where no more than one crossarm is maintained on a pole, all the wires or cables conducting or carrying at any one time more than six hundred volts of electricity shall be placed on the crossarm on one side of the pole, and all the wires or cables conducting or carrying less than six hundred volts of electricity shall be placed on the crossarm on the other side of the pole; and further provided, that the space between any wire or cable conducting or carrying at any one time more than six hundred volts of electricity and any wire or cable carrying less than said voltage shall be at least thirty-six inches clear measurement in a horizontal line. Where the foregoing provisions of this paragraph (c) can not be complied with, the railroad commission of the state of California may grant permission for the following form of construction; where two or more systems for the distribution of electric light or power occupy the same poles with wires or cables, all wires or cables conducting or carrying at any one time more than six hundred volts of electricity may be placed on the crossarms on one side of the pole, and all wires or cables conducting or carrying less than said voltage, shall in such case, be placed on the crossarms on the other side of the pole; and further provided, that the space between any wire or cable conducting or carrying at any one time more than six hundred volts of electricity and any wire or cable conducting or carrying less than said voltage shall be at least thirty-six inches in measurement in a horizontal line; and further provided, that in such construction all crossarms shall be at least thirty-six inches apart in a vertical line.

Crossarms to be painted yellow.

(d) Run, place, erect or maintain any wire or cable which shall conduct or carry at any one time more than six hundred volts of electricity, without causing each crossarm,

or such other appliance as may be used in lieu thereof, to which such wire or cable is attached to be kept at all times painted a bright yellow color, or, on such crossarm, or other appliance used in lieu thereof, shall be placed signs, providing, in white letters on a green background, not less than three (3) inches in height the words "high voltage" on the face and back of each crossarm. The provisions of this paragraph (d) shall not be held to apply to crossarms to which are attached wires or cables carrying or conducting more than ten thousand volts of electricity, and which are situated outside the corporate limits of any town or city which shall have been incorporated as a municipality.

Guy wires to be insulated.

(e) Run, place, erect or maintain any "guy" wire or "guy" cable attached to any pole or appliance to which is attached any wire or cable used to conduct or carry electricity, without causing said "guy" wire or "guy" cable to be effectively insulated at all times at a distance of not less than four (4) feet nor more than eight (8) feet (measured along the line of said wire or cable) from the upper end thereof, and at a point not less than eight (8) feet vertically above the ground from the lower end thereof; and further provided, that wherever two or more "guy" wires or "guy" cables are attached to the same pole and same anchorage pole there shall be at least one foot, vertical space, between the points of attachment; and further provided, that no insulation shall be required at the lower end of a "guy" wire or "guy" cable where same is attached to a grounded anchor; and further provided, that where "guy" wires or "guy" cables are attached to a pole or structure of steel or other conducting material supporting wires or cables carrying in excess of fifteen thousand volts where pole or structure is thoroughly grounded no insulation shall be required at any point in said "guy" wire or "guy" cable; none of the provisions of this paragraph (e) shall be held to apply to "guy" wires or "guy" cables attached to poles carrying no wire or cable other than telephone, telegraph or other "signal" wire or cable, and which are situated outside the corporate limits of any town or city which shall have been incorporated as a municipality.

Wires to be insulated.

(f) Run, place, erect or maintain vertically on any pole any wire or cable used to conduct or carry electricity, without causing such wire or cable to be at all times wholly incased in a casing equal in durability and insulating efficiency to a wooden casing not less than one and one-half inches thick. The provisions of this paragraph (f) shall not be held to apply to vertical telephone, telegraph or other "signal" wires or cables on poles where no other such wires or cables are maintained, and which are outside the corporate limits of any town or city which shall have been incorporated as a municipality; nor to wires or cables run vertically on iron poles or structures where both pole or structure and conduit are securely grounded.

Transformers and arc lamps not to be carried on one pole.

(g) Place, erect or maintain on any pole, or any crossarm or other appliance on said pole, which carries or upon which is placed an electric arc lamp, any transformer for transforming electric currents; provided, however, that this section (g) shall not apply if any arc lamp that shall be suspended so that it can be trimmed from the ground or from a stand located on the pole not less than seven feet below the transformer; and further provided, that in so suspending an arc lamp (where transformer is located on same pole) no wire or cable in connection therewith shall be run vertically on the pole unless said wire or cable be protected as provided for in paragraph (f) of this section 1.

Crossing of high voltage wires.

(h) Run, place, erect or maintain any wire or cable carrying more than fifteen thousand volts of electricity across any wire or cable carrying less than said voltage

or across any public highway, except on pole of such height and so placed at each crossing that under no circumstances can said wire or cable of said voltage higher than fifteen thousand volts in case of breakage thereof or otherwise, come in contact with any wire or cable of less than said voltage, or fall within a distance of ten (10) feet from the surface of any public highway; or in lieu thereof double strength construction may be installed, in which case the wires carrying a voltage higher than fifteen thousand volts shall, between the points of crossing, be of a cross-section area equal to at least twice that used in the line outside of such crossing, except where the conductor used is equal to number four (4) stranded Brown and Sharpe gauge or greater, in which case the wires or cables will be considered as complying with the law.

Attachment of suspension wires.

(i) Run, place, erect or maintain any suspension wire to which is attached any "aerial" cable of "75 pair number nineteen Brown and Sharpe gauge" or over, or of "100 pair number twenty-two Brown and Sharpe gauge" or over suspended from a crossarm (or from any other structure or appliance from which said suspension wire is hung), by a single bolt and clamp without at the same time attaching said suspension wire to said crossarms, structure or appliance by an additional "safety" bolt and clamp (or other "safety" appliance for thus attaching said suspension wire) of tensile strength equal to the first herein said bolt and clamp. [Amendment of June 5, 1915. In effect August 8, 1915. Stats. 1915, p. 1058.]

Preceding not applicable to direct current wires, etc.

§ 2. None of the provisions of the preceding section shall be held to apply to "direct current" electric wires or cables having the same polarity, nor to "signal" wires when no more than two (2) of such "signal" wires are attached to any one pole, provided, that none of such "direct current" or "signal" wires shall in any case be run, placed, erected or maintained within the distance or [of] thirteen (13) inches from the center line of any pole (other than the pole or poles on which said wires or cables are carried) carrying electric wires or cables; and provided, further, that as between any two wires, or cables, or any wire or cable run, placed, erected or maintained in violation of the provisions of this section 2 only the wire or cable last in point of time run, placed, erected or maintained shall be held to be run, placed, erected or maintained thus in violation of said provisions.

Insulation of span wires.

§ 3. No commission, officer, agent or employee of the state of California, or of any city and county or city or county or other political subdivision thereof, and no other person, firm or corporation shall run, place, erect or maintain any "span" wire attached to any wire or cable used to conduct or carry electricity, without causing said "span" wire to be at all times effectively insulated between the outer point at which it is in any case fastened to the pole or other structure by which it is hung or supported, and at the point at which it is in any case thus attached; provided, that such insulation shall not in any case be placed less than two (2) feet or more than four (4) feet from said point at which said "span" wire is so attached, and that when in any case such "span" wire is attached along its length to any two (2) such wires or cables, conducting or carrying electricity and extending parallel to each other, not more than eighteen (18) feet apart, such insulation shall not be required therein at any point between such parallel wires or cables; none of the provisions of this section three (3) shall be held to apply where "feeder" wires are used in place of "span" wires. [Amendment of June 5, 1915. In effect August 8, 1915. Stats. 1915, p. 1062.]

Penalty for violation.

§ 4. Any violation of any provision of this act shall be deemed to be a misdemeanor, and shall be punishable upon conviction by a fine of not exceeding five hundred dollars (\$500) or by imprisonment in a county jail not exceeding six (6) months or by both such fine and imprisonment.

§ 5. All acts or parts of acts which are in conflict with the, or with any of the provisions of this, act are hereby repealed.

§ 6. This act shall take effect six months from the date of its passage in so far as it relates to new work, and a period of five years shall be allowed in which to reconstruct all existing work and construction to comply with the provisions of this act.

Extension of time.

§ 7. Any commission, officer, agent or employee of the state of California or any city and county, or city or county, or other political subdivision thereof, or any other person, firm or corporation may upon proper application to the railroad commission of the state of California be granted by said railroad commission an extension of time beyond that provided for in section 6 of this act; provided, it is shown to the satisfaction of said commission that the provisions of this act can not be complied with by said applicant within said time, or that the applicant for good and sufficient reasons has not been able to comply with the provisions of this act, and that such applicant has heretofore used due diligence so to do within the time specified in said section 6. [New section added June 5, 1915. In effect August 8, 1915. Stats. 1915, p. 1062.]

Power to grant additional time.

§ 8. The railroad commission of the state of California is hereby vested with authority and power, at its discretion to grant such additional time and is hereby instructed to inspect all work which is included in the provisions of this act, and to make such further additions or changes as said commission may deem necessary for the purpose of safety to employees and the general public, and the said railroad commission is hereby charged with the duty of seeing that all the provisions of this act are properly enforced. [New section added June 5, 1915. In effect August 8, 1915. Stats. 1915, p. 1063.]

Jurisdiction of industrial accident commission over the safety of employees of electric interurban or street railroads, under Act 2101a does not repeal or modify this act. See § 4, Act 2101a.

1. Constitutionality.—The act is not unconstitutional as class legislation.—*Bloxham v. Tehama, etc.*, Tel. Co., 29 Cal. App. 326, 155 Pac. 654.

2. Purpose of act.—It was not the intention of the legislature that the act should apply only to future construction, nor that reconstruction to comply with the act should be deferred until reconstruction should become necessary through depreciation, obsolescence, commercial needs or other reasons.—*In re Los Angeles G. & E.*

Corporation, et al., 11 California R. C. D. 291.

3. Act a safety measure.—The act should be enforced as a safety measure, and public utilities affected will be required to exercise all reasonable diligence in complying with the act.—*In re Los Angeles G. & E. Corporation, et al.*, 11 California R. C. D. 291.

4. Extensions of time to comply with act.—Under sections 7 and 8, the railroad extended the time to comply with the provisions of the act in a large number of instances.—See 9 California R. C. D. 542, 628; 10 Id. 59; 11 Id. 266-363, 409-443, 553, 718, 735, 802; 12 Id. 68, 108, 347, 627; 13 Id. 341, 347, 369-371; 14 Id. 76, 374, 455.

REGULATING SUBWAYS, MANHOLES, ETC.

ACT 1351—An act to regulate the construction and maintenance of subways, manholes, and underground rooms, chambers, and excavations, used to contain, encase, cover, or conduct wires, cables, or appliances to conduct, carry, or handle electricity, and providing the punishment for the violation thereof.

History: Approved April 22, 1911, Stats. 1911, p. 1042. Amended May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 801.

Dimensions of electric wire subways.

§ 1. No commission, officer, agent, or employee of the state of California or of any city and county or city or county or other political subdivision thereof, and no other person, firm or corporation, shall build or rebuild or cause to be built or rebuilt within the state of California:

(a) Any subway, manhole, chamber, or underground room used or to be used to contain, encase, cover or conduct any wire, cable, or appliance, to conduct, carry or handle electricity, unless such subway, manhole, chamber or underground room shall have an inside measurement of not less than four feet of the maximum points between the side walls thereof, and between the end walls thereof, and not less than five feet at all points between the floor thereof, and the top or ceiling thereof, or if circular in shape, at least four feet diameter inside measurement, and not less than five feet at all points between the floor and ceiling thereof; provided, however, that this paragraph shall not be held to apply to any such subway, manhole, chamber or underground room, within which it is not intended or required that any human being perform work or labor or be employed; further provided, that the provisions of this paragraph (a) shall not be held to apply where satisfactory proof shall be submitted to the railroad commission of the state of California, that it is impracticable or physically impossible to comply with this law within the space or location so designated by the proper municipal authorities.

Openings to outer air.

(b) In any subway, manhole, chamber or underground room, used or to be used to contain, encase, cover or conduct any wire, cable or appliance to conduct, carry or handle electricity, any opening to outer air which is less than twenty-six inches if circular in shape, or less than twenty-four inches by twenty-six inches clear measurement if rectangular in shape.

Openings to be not less than three feet from street car track.

(c) In any subway, manhole, chamber or underground room, used or to be used to contain, encase, cover or conduct any wire, cable or appliance to conduct, carry or handle electricity, any opening which is at the surface of the ground, within the distance of three feet at any point from the rail of any railway or street car track; provided, that the provisions of this paragraph (c) shall not be held to apply where satisfactory proof shall be submitted to the railroad commission of the state of California, that it is impracticable or physically impossible to comply with this law in the space or location so designated by the proper municipal authorities.

Floor of subway to be of concrete, etc.

(d) Any subway, manhole, chamber or underground room, used or to be used to contain, encase, cover or conduct any wire, cable, or appliance to conduct, carry, or handle electricity, unless the floor of such subway, manhole, chamber or underground room is made of stone, concrete, brick or other similar material not subject to decomposition; provided, that this paragraph (d) shall not be held to apply to any such subway, manhole, chamber or underground room within which it is not intended or required that any human being perform work or labor or be employed.

Subways to be kept free from seepage.

(e) Or maintain any subway, manhole, chamber or underground room used, or to be used, to contain, encase, cover or conduct any wire, cable or appliance to conduct, carry or handle electricity, unless such subway, manhole, chamber or underground room is kept at all times in a sanitary condition, and free from stagnant water, or seepage, or other drainage, or any offensive matter dangerous to health, either by sewer connection or otherwise; provided, that this paragraph (e) shall not be held to apply to any such

subway, manhole, chamber or underground room, within which it is not intended or required that any human being perform work or labor, or be employed. [Amendment of May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 801.]

Penalty for violation.

§ 2. Any violation of any provision of this act shall be deemed a misdemeanor, and shall be punishable upon conviction by a fine not exceeding five hundred dollars, or by imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment. [Amendment of May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 802.]

§ 3. None of the provisions of subdivisions a, b, c, and d, of section 1 of this act shall be so construed as to be retroactive or apply to works already constructed, and all acts or parts of acts which are in conflict with this act, are hereby repealed.

§ 4. This act shall take effect and be in force from and after the date of passage.

Power of railroad commission.

§ 5. The railroad commission of the state of California is hereby vested with authority and power to inspect all work which is included in the provisions of this act, and to make such further additions or changes as said commission may deem necessary for the purpose of safety to employees and the general public, and the said railroad commission is hereby charged with the duty of seeing that all the provisions of this act are properly enforced. [New section added May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 802.]

JOINT MUNICIPAL PUBLIC UTILITIES.

ACT 1352—An act authorizing municipal corporations to permit other municipal corporations and counties to construct and maintain sewers, water mains and other conduits, and pole lines for the transmission of electricity and electric energy in, through, over, along and across its streets and public places, and to construct and maintain sewers, water mains and other conduits and pole lines for the transmission of electricity and electric energy for their joint benefit and at their joint expense, through, over, along and across such streets and public places, and to make and enter into contracts for such purposes, prescribing a method for compelling such use of such streets and public places.

History: Approved June 5, 1915. In effect August 8, 1915. Stats. 1915, p. 1195.

One city may permit another to construct sewers, etc.

§ 1. Any municipal corporation, under such terms and conditions as may be prescribed by the city council or other legislative body thereof is hereby authorized and empowered to permit any other municipal corporation or county to construct and maintain sewers, water mains or other conduits and pole lines for the transmission of electricity and electric energy in, through, over, along or across the streets and other public places of such municipal corporation, and to use the same for such purpose under the provisions of this act, and not otherwise.

Resolution submitted. Description of sewers, etc. Request for permission. Right to connect sewers.

§ 2. Whenever a city council, board of trustees or other legislative body of any municipal corporation or board of supervisors of any county shall find, and by resolution shall declare, that the location of such municipal corporation or county or any portion of the territory included therein is such that the same can not be adequately or conveniently provided with sewers, water mains or other conduits or with electricity or electric energy, without the construction and maintenance by such municipal

corporation or county, of certain sewers, water mains or other conduits or with pole lines for the transmission of electricity and electric energy, connecting therewith, in, over, across or along said streets or other public places of any other municipal corporation or corporations, such city council, board of trustees, board of supervisors or other legislative body may cause a copy of such resolution, certified by the clerk thereof to be submitted to the city council, board of trustees or other legislative body of such other municipal corporation or corporations in which such streets or other public places are situated. Said resolutions shall contain a description of the sewers, water mains or other conduits or pole lines for the transmission of electricity or electric energy proposed to be constructed and maintained in such other municipal corporation or corporations, and shall designate the streets or other public places by name or other proper designation, in, through, over, along or across which such sewers, water mains or other conduits or pole lines for the transmission of electricity or electric energy are so proposed to be constructed and maintained. Said resolution shall contain a description of the sewers, water mains or other conduits, or pole lines for the transmission of electricity or electric energy proposed to be constructed, and maintained in such other municipal corporation or corporations and shall designate the streets or other public places by name or other proper designation, in, through, over, along or across which such sewers, water mains, conduits or pole lines are proposed to be constructed and maintained. Said resolution shall be accompanied by a request in writing, that the municipal corporation or sanitary district, on behalf of which the same was made, signed by the clerk thereof, be granted permission to construct and maintain the sewers, water mains or other conduits or pole lines for the transmission of electricity or electric energy, described in said resolution. The city council or board of trustees or other legislative body of any municipal corporation receiving such request and a certified copy of such resolution, may by ordinance, grant such permission and under such terms and conditions as it shall therein prescribe. If the permission granted under the provisions of this section shall be for the construction and maintenance of sewers, the city council, board of trustees or other legislative body of any municipal corporation granting the same, may, as a condition to the exercise of such permission, require that said municipal corporation shall have the right to connect its sewers and those of its inhabitants with the sewers to be constructed under such permission, and to use the same in connection with its sewer system upon the payment by it of such proportionate part of the cost of construction and maintenance of such sewers to the municipal corporation or county by which the same shall be constructed as may be determined by resolution of its city council, board of trustees or other governing body, or board of supervisors, or both such municipal corporations or such corporation and county as the case may be, such payments to be made at such times and in such amounts as may be determined.

Letting of contracts. Contractor's bonds. Cities may construct.

§ 3. All contracts for the construction or completion of any sewers, water mains or other conduits or for such pole lines for the transmission of electricity or electric energy or for furnishing labor or materials therefor, to be constructed by any municipal corporation or county, in, across or along the streets or other public places of any other municipal corporation or corporations as herein provided, shall be let to the lowest responsible bidder. The city council, board of trustees, or board of supervisors or other legislative body of the municipal corporation or county constructing such sewers, water mains or other conduits or such pole lines for the transmission of electricity or electric energy under permission granted as in this act provided, shall advertise for at least ten days in one or more newspapers published in such municipal corporation or county (or in one or more newspapers published in the county in which said municipal corporation is situated, if there be no newspaper published in such

municipal corporation) inviting sealed proposals for furnishing the labor and materials for the proposed work, before any contract shall be made therefor. The said city council, board of trustees or board of supervisors or other legislative body of such city or county shall require such bonds as it may deem best from the successful bidder to insure the faithful performance of the contract work, and shall also have the right to reject any and all bids; provided, however, that nothing herein contained shall be construed as prohibiting such municipal corporation or county from itself constructing or completing such works and employing the labor necessary therefor without such advertisement for proposals or letting of a contract; and provided, further, that in any municipal corporation operating under a freeholder's charter heretofore or hereafter framed under section 8 of article eleven of the constitution, and providing for a board of public works, all the matters and things required in this section to be done and performed by the city council, board of trustees or other legislative body of such municipal corporation, shall be done and performed by the board of public works thereof; and provided, further, that in case such charter or general law under which such municipal corporation is operating or existing, prescribing the manner of letting and entering into contracts for the furnishing of labor, materials and supplies for the construction or completion of such works or improvements, the contracts for such sewers, water mains or other conduits or such pole lines for the transmission of electricity or electric energy shall be let and entered into in conformity with such charter or general law.

Joint agreement to construct sewers, etc. One city to contract for all.

§ 4. Whenever the councils, boards of trustees or other legislative bodies or two or more municipal corporations or one or more municipal corporations, or the board of supervisors of any county and the city council, board of trustees or other legislative body of any such municipal corporation, shall find and, by resolution adopted by them, shall declare that it will be for the interests or advantage of such municipal corporations or counties so to do, such municipal corporations or counties by their respective city councils, boards of supervisors or other legislative bodies, may enter into a joint agreement, authorizing the construction and maintenance of sewers, water mains or other conduits or pole lines for the transmission of electricity or electric energy, in, through, over or along the streets or other public places of either or any of such municipal corporation or counties or in part outside of the limits thereof, at the joint cost and expense and for the joint use and benefit of such municipal corporations or counties upon such terms and conditions and under such regulations as may be approved by the city councils, boards of supervisors or other legislative bodies of all such municipal corporations or counties; and the city council, board of supervisors or other legislative body of each such municipal corporation or county may bind or obligate such municipal corporation or county to pay such proportionate part of the cost of the construction and maintenance of such sewers, water mains or other conduits or for such pole lines for the transmission of electricity or electric energy at such times and in such installments as may be so approved. All contracts for the construction of sewers, water mains or other conduits, or pole lines for the transmission of electricity or electric energy under the provisions of this section shall be made and entered into by the one of such municipal corporations or counties designated by the city council, boards of supervisors or other legislative bodies of all such municipal corporations or counties, and in the manner provided by section 3 of this act. Two or more municipal corporations, one or more municipal corporations and one or more counties may also, by their city councils, boards of supervisors, or other legislative bodies, enter into an agreement or agreements with each other, for the joint use by such municipal corporations or counties of any sewers, water mains, or other conduits, or pole lines for the transmission of electricity or electric energy theretofore, in whole, or in part, constructed in the streets or other public places of either or any

such municipal corporations or counties, upon such terms and conditions as they may by mutual agreement make by their respective city councils, boards of supervisors or other legislative bodies declare to be proper.

Complaint to railroad commission upon refusal. Hearing of application.

§ 5. Whenever any municipal corporation shall refuse to grant to another municipal corporation or county, the right to construct and maintain such sewers, water mains, or other conduits, or pole lines for the transmission of electricity or electric energy, in, through, over, along or across its streets or other public places, after such request for such use has been made to the city council or other governing body thereof, and other proceedings had as prescribed by section 2 of this act, or in case the terms and conditions prescribed by such municipal corporation wherein such streets or other public places are situated shall, by resolution, be rejected by the city council or other legislative body of the municipal corporation or county which has caused such request to have been made, the city council, or board of supervisors or other governing body of such municipal corporation or county, may adopt a resolution stating that such terms and conditions are rejected by such municipal corporation or county and the municipal corporation or county which has made such application and request may thereupon and within one year thereafter, make a complaint to the railroad commission of the state of California, setting forth copies of the resolutions of the several city councils, boards of supervisors or other governing bodies of said several municipal corporations or counties, relative to such application and its refusal, a copy of the resolution adopted by its city council, board of supervisors or other legislative body, rejecting such terms and conditions, a copy of such request, the name of the municipal corporation or county which has made such application; the name of the municipal corporation where such streets or public places are situated, the names or other proper designation of the streets or public places which are proposed to be used for the purposes herein prescribed, the purpose for which, and the manner in which the same are proposed to be used, and the facts showing the necessity or expediency for such use. Thereupon said railroad commission shall hear such application and if it appear to such railroad commission that the public interest or convenience require that such streets and public places should be used for the purposes set forth in said application and complaint, the said railroad commission shall enter its judgment, granting to said municipal corporation or county which has made such request as in this act provided, the right to use such streets or other public places for the purposes herein set forth and may in such judgment, prescribe the terms and conditions upon which such municipal corporation or county making such application may use such streets and public places for the purposes herein set forth; and for the purposes of this act, all such sewers, water mains and other conduits and pole lines for the transmission of electricity or electric energy are declared to be public utilities. The failure or refusal of the city council, or other governing body of such municipal corporation, to which such request shall have been made, to refuse to grant such permission or to prescribe the terms and conditions upon which the same may be granted, for the period of three months from and after the date of the filing of such request, shall be deemed a refusal to grant such request within the meaning of this act. Except as otherwise provided in this act, such proceedings before such railroad commission shall be had and conducted in accordance with the provisions of act of the legislature of the state of California known and designated as the public utilities act approved December 23, 1911, and amendments or continuations thereof.

Sanitary districts.

§ 6. Sanitary districts organized under and by virtue of the laws of the state of California and sanitary districts to be hereafter organized shall be deemed municipal

corporations for the purposes of this act; provided, that the sanitary board of any such sanitary district shall be, and the same are, for the purpose of carrying out the provisions of this act, hereby vested with the same powers in relation to said sanitary districts as are herein conferred upon city councils, boards of trustees and other governing bodies of such municipal corporations; provided, further, that wherever, by the provisions of this act, the adoption of an ordinance is prescribed by any municipal corporation, the adoption of a resolution by said sanitary board shall have the same force and effect as an ordinance adopted by any such city council, board of trustees, or other legislative body of a municipal corporation.

Determination of controversies.

§ 7. Should any controversy arise between any two or more municipal corporations, or between any county or counties and municipal corporation or corporations, after such permission shall have been granted by any such municipal corporation, or by the railroad commission of the state of California, respecting the construction, operation, maintenance or control of any such sewers, water mains or other conduits or pole lines for the transmission of electricity or electric energy, through, over, along or across any such street or public place, either such municipal corporation or said county may file a petition with the railroad commission of the state of California setting forth the nature of such grievance and such railroad commission shall hear and determine such complaint in the manner and form prescribed by said public utilities act and amendments or continuations thereof.

Judgment of railroad commission conclusive.

§ 8. All powers and duties conferred upon the railroad commission of the state of California by the provisions of this act are hereby declared to be exclusive, and the judgment of said railroad commission shall be binding and conclusive upon all parties to any such proceedings.

Act not repealed.

§ 9. This act shall not repeal an act entitled: "An act authorizing municipal corporations to permit other municipal corporations to construct and maintain sewers, water mains, and other conduits therein, also to construct and maintain sewers, water mains, and other conduits for their joint benefit, and at their joint expense, and to make and enter into contracts for said purposes," approved March 22, 1909, and acts amendatory thereto.

CHAPTER 98.

ELEVATORS.

CONTENTS OF CHAPTER.

- ACT 1356. ELEVATOR CONSTRUCTION, OPERATION AND MAINTENANCE.
1357. ELEVATOR INSPECTION ACT.

ELEVATOR CONSTRUCTION, MAINTENANCE AND OPERATION.

ACT 1356—An act to regulate the construction, operation, and maintenance of elevators in buildings during course of construction; providing for inspection of the same by the bureau of labor statistics; and providing for a penalty for violation thereof.

History: Approved June 7, 1913. In effect August 10, 1913. Stats. 1913, p. 507.

Definitions.

§ 1. The words and phrases used in this act shall for the purposes of this act, unless the same be contrary to or inconsistent with the context, be construed as follows:

1. "Elevator" shall mean any means used to hoist persons or material of any kind

on a building under course of construction, when operated by any power other than muscular power.

2. "Building" shall include structures of all kinds, regardless of the purposes for which they may be intended to be used, and whether such construction be below or above the level of the ground.

Signals and persons to give them.

§ 2. Every hoist hereafter used in buildings during the course of construction shall have a system of signals for the purpose of signaling the person operating or controlling the machinery which may operate the hoist. And it shall be the duty of the person in charge of said building to appoint one or more persons to give such signals, such person to be selected from those most familiar with the work for which said hoist is being used. In the event that a building shall be over fifty feet in height, then two persons shall be appointed to give such signals, one at the bottom of said hoist and the other at the top of said hoist, and the person at the bottom of said hoist shall signal the person at the top, who shall then signal the engineer or the person in charge of the machinery operating said hoist. In the event that the engineer or person in charge of the machinery operating said hoist is so situated that he has a clear and unobstructed view of the base of the elevator, then, and in that event, regardless of the height of the building, no person shall be required to give signals at the bottom of said hoist.

Inspection of hoists.

§ 3. It shall be the duty of the commissioner of the bureau of labor statistics to inspect all hoists coming within the definition in section one of this act. And if any part of the construction or system of signals used on a hoist is defective or may endanger the lives of men working in the immediate vicinity of said hoist, he shall direct the person in charge thereof to remedy such defect, and such hoist shall not be used again until the order of the commissioner shall have been complied with.

Penalty.

§ 4. Any person, firm, copartnership or corporation or any agent, superintendent or manager of a corporation who shall violate any of the provisions of this act, shall upon conviction thereof be guilty of a misdemeanor and punished by a fine not less than fifty dollars and not more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days and not more than six months, or by both such fine and imprisonment.

~~Superseded.—This act was superseded, apparently, as to inspection by the act of 1917. —See Act 1357.~~

ELEVATOR INSPECTION ACT.

ACT 1357—An act to provide for the periodical inspection of elevators operated in places of employment in this state; to require a permit for such operation; to make it a misdemeanor to operate such elevator without such permit; and to provide for an injunction against such operation if dangerous to the life or safety of employees; to vest in the industrial accident commission the power to make such inspections and determine the competency of inspectors and require reports of inspections and to issue such permits and prescribe maximum fees therefor.

History: Approved April 6, 1917. In effect July 27, 1917. Stats. 1917, p. 84.

Permit to operate elevator. Injunction to restrain operation without permit.

§ 1. No power elevator or hand-power elevator, unless exempted in the following section, shall be operated in any place of employment in this state unless a permit, as hereinafter provided, for the operation thereof, shall have been issued by the industrial

accident commission, and unless such permit shall remain in full force and effect. The operation of such elevator by any person owning or having the custody, management or operation of such elevator without such permit shall constitute a misdemeanor, and each day of operation of such elevator without such permit shall constitute a separate offense; provided, that no prosecution shall be maintained where the issuance or renewal of such permit shall have been requested and shall remain unacted upon. Whenever any elevator in any place of employment is being operated without the permit herein required, and is in such condition that its use is dangerous to the life or safety of any employee, the industrial accident commission, a commissioner or any safety inspector thereof, or any person affected thereby may apply to the superior court of the county in which such elevator is located for an injunction restraining the operation of such elevator until such condition shall be corrected. Proof by certification of the said commission that such permit has not been issued, together with the affidavit of any safety inspector of the commission that the operation of such elevator is dangerous to the life or safety of any employee, shall be sufficient ground for the immediate granting of a temporary restraining order.

Exemptions.

§ 2. Elevators under the jurisdiction of the United States government, and all elevators operated by employers not subject to the safety provisions of the workmen's compensation, insurance and safety act of 1917 and acts amendatory thereof, are exempted from the provisions of this act.

Inspection of elevators. Order for repairs. Temporary permit to operate.

§ 3. The industrial accident commission shall cause power elevators to be inspected, not less frequently than twice each year and hand-power elevators not less frequently than once each year. If such elevators shall be found upon such inspection to be in a safe condition for operation, a permit shall be issued by said commission for their operation for not longer than six months for a power elevator or longer than one year for a hand-power elevator, which shall be the permit referred to in section one. If such inspection shall show such elevator to be in an unsafe condition, the commission, or a commissioner, may issue a preliminary order requiring such repairs or alterations to be made to such elevator as may be necessary to render it safe, and may order the use of such elevator discontinued until such repairs or alterations are made or such unsafe conditions are removed. Unless such preliminary order be complied with, a hearing before the commission, a commissioner or referee of such commission shall be allowed, upon request, at which the owner, operator or other person in charge of such elevator shall have opportunity to appear and show cause why he should not comply with said order. If it shall thereafter appear to the commission that such elevator is unsafe and that the requirements contained in said preliminary order should be complied with, or that other things should be done to make such elevator safe, the commission may order or confirm the withholding of the permit to operate such elevator and may make such requirements as it deems proper for its repair or alteration or for the correction of such unsafe condition. Such order may thereafter be reheard by the commission or reviewed by the courts in the manner specified by the workmen's compensation, insurance and safety act of 1917 for safety orders, and not otherwise. If the operation of such elevator during the making of repairs or alterations is not immediately dangerous to the safety of employees, the commission may, in its discretion, issue a temporary permit for the operation of such elevator for not to exceed thirty days during the making of such repairs or alterations. Nothing contained in this act shall be construed as a limitation upon the authority of the commission to prescribe or enforce general or special safety orders.

Inspectors. Certificate of competency.

§ 4. The commission may, in its discretion, cause the inspection herein provided for to be made either by its safety inspectors or by any qualified elevator inspector employed by an insurance company, or may issue its permit, based upon a certificate of inspection issued by qualified elevator inspectors of any municipality, upon proof to its satisfaction that the safety requirements of such municipality are equal to the minimum safety requirements for elevators adopted by the commission provided, that such persons making inspections shall first secure from the commission a certificate of competency to make such inspections. The commission is hereby vested with full power and authority to determine the competency of any applicant for such certificate, either by examination or by other satisfactory proof of qualifications. The commission may rescind at any time, upon good cause being shown therefor, any certificate of competency issued by it to an elevator inspector, or may at any time, upon good cause being shown therefor, and after notice and an opportunity to be heard, revoke any permit to operate such elevator. Nothing contained in this act shall be construed to limit the authority of the commission to prescribe or enforce general or special safety orders.

Fees for inspection.

§ 5. The commission may fix and collect such fees for the inspection of elevators as it may deem necessary, not to exceed two dollars for each inspection or four dollars per year for each elevator. Such fees must be paid before the issuance of any permit to operate such elevator. No fee shall be charged by the commission where an inspection has been made by an inspector of any insurance company or municipality, if such inspector holds a certificate of competency from said commission. All fees collected by the commission under this act shall be paid into the accident prevention fund.

Report for inspections.

§ 6. Every inspector so certified shall forward to the commission, on the forms provided by it, within twenty-one days after such inspection is made, a report of such inspection, in default of which his certificate of competency may be canceled.

ELISORS.

See Kerr's Cyc. Political Code, § 4173; Kerr's Cyc. Code Civil Procedure, §§ 226-228, 726.

EL MONTE.

See Act 3094, note.

EL SEGUNDO.

See Act 3094, note.

ELSINORE.

See Act 3094, note.

CHAPTER 99.**EMBALMERS.**

Reference: See tits. "Cemeteries"; "Public Health"; "Vital Statistics."

CONTENTS OF CHAPTER.

ACT 1363. PRACTICE OF EMBALMING ACT.

PRACTICE OF EMBALMING ACT.

ACT 1363—An act to establish a state board of embalmers, defining the duties thereof, providing for the better protection of life and health, preventing the spread of contagious disease, regulating the practice of embalming in connection with the care and disposition of the dead and providing penalties for the violation thereof.

History: Approved April 16, 1915. In effect August 8, 1915. Stats. 1915, p. 80. Amended May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1334.

Board of embalmers created.

§ 1. There is hereby created and established a board to be known as the state board of embalmers of the State of California. The board shall consist of five members, to be appointed by the governor of the state, and all vacancies occurring on the board shall be filled by the governor. Three of the persons so appointed shall hold office for two years and two for four years unless sooner removed. All of the appointments made at the expiration of the above terms shall be for four years. Appointments to fill vacancies caused by death, resignation or removal before expiration of the term shall be made by the governor, in the same manner, for the residue of the term.

Qualifications. Compensation.

§ 2. The members of said board shall be residents of California, all of whom shall have had at least five years of experience in the practice of embalming, and the preparation and disposition of the dead. The governor shall have power to remove from office any appointive member of said board for incompetency or improper conduct. The members of said board shall receive no compensation for their services except actual mileage and expenses, with the additional salary of the secretary, which shall not exceed nine hundred dollars per year. All moneys provided in excess of the fees herein shall be paid into the general funds of the state.

Officers.

§ 3. The board at their annual meeting shall elect a president, secretary and treasurer from the members of said board, and the treasurer and secretary shall furnish such bond as shall be required of them by the board. All officers shall serve for one year or until their successors shall be elected and qualified.

Oath.

§ 4. The governor shall furnish to each person appointed to serve on the board a certificate of appointment. The appointee shall qualify by taking the usual oath of office before any person authorized to administer oaths of the county in which said person may reside, within ten days after said appointment has been made, and this fact shall be noted on the certificate of appointment, and shall be filed with the secretary of state.

Seal. Meetings. Publication of notice. Expenses.

§ 5. The board shall adopt a common seal. The president of said board is hereby authorized to administer oaths to witnesses testifying before said board. Said board shall hold at least three meetings annually for the purpose of examining applicants for licenses, one of which meetings shall be held in the city of San Francisco, one in the city of Los Angeles and the other in the city of Sacramento, with power to adjourn from time to time until its business is concluded; provided, however, that examination for applicants for licenses may in the discretion of the board be conducted in any part of the state designated by the board. Notice of each meeting shall be given twice a week for two weeks next preceding each meeting in one daily paper published in the city of San Francisco, one published in the city of Los Angeles, and one pub-

lished in the city of Sacramento, which notice shall also specify the time and place of holding the examination of applicants. Three members of the board shall constitute a quorum. At no time shall the board contract expense in excess of the amount of funds in the hands of its treasurer.

Application for license. Fee.

§ 6. From and after the first day of August, 1915, to January 1, 1916, every person at the time engaged in the practice of embalming or preparing for transportation of human dead of contagious or infectious diseases or embalming human bodies dead from any cause whatever within the state of California, shall make a written application to the said board of embalmers for a license, such application to be signed by the applicant with the statement that he or she is possessed of skill and knowledge of said science of embalming and the care and disposition of the dead, and has reasonable knowledge of sanitation and the disinfection of bodies of deceased persons, and the apartments, clothing and bedding, in case of infectious or contagious diseases, and the statements therein contained to be duly certified before an officer authorized to take acknowledgments, and upon payment of five dollars, the board shall issue to said applicant a license to practice said science of embalming and the care and disposition of the dead, and shall register applicant as a duly licensed embalmer. Such license shall be signed by the president and secretary of the board and attested by its seal.

Register of licentiates.

§ 7. All persons receiving license under provisions of this act shall register the fact at the office of the board of health of the city or county in the jurisdiction of which it is proposed to carry on such practice, and shall display said license in a conspicuous place in the office of the licentiate.

License after January 1, 1916. Fee.

§ 8. From and after January 1, 1916, every person who has failed to make application for a license, and desires to engage in the practice of embalming dead human bodies in the state of California, and not licensed under this act, shall make application to the board for examination for qualification to engage in the practice of embalming dead human bodies. Such application shall be in writing, addressed to the secretary of the board, accompanied by a fee of ten dollars which shall be paid to the treasurer by the secretary. If for any reason the applicant does not qualify, the sum of five dollars shall be returned upon application.

Examination.

§ 9. Said state board of embalmers shall be authorized and empowered at the time and place specified in the notice heretofore provided for, to examine all applicants for license to practice embalming, to select all questions to be used for examination of applicants for a license, and to determine whether or not such applicants possess the necessary qualifications to properly embalm dead human bodies; and if upon such examination said board shall determine that such applicant is properly qualified to embalm human bodies, it shall grant a license to such person to embalm dead human bodies.

Licenses recorded.

§ 10. All licenses when issued, shall be recorded by the board, a copy of which record shall be furnished to all those holding a license, and to the various transportation companies in the state of California. Such record shall be open to public inspection, and such license shall be admitted in evidence in any of the courts of the state, and shall be presumptive of the facts contained therein.

§ 11. The state board of embalmers is directed to recognize licenses issued to embalmers by authorities of other states.

Regulations.

§ 12. The state board of embalmers shall from time to time adopt rules and regulations not inconsistent with the laws of this state, whereby the performance of the duties of the officers of said board and the practice of embalming dead human bodies and transportation of same shall be regulated.

Affidavits to corrections in death certificates. When embalmer's license lapses.

§ 13. Whenever it may be alleged that the facts are not correctly stated in any certificate of death theretofore registered, the local registrar shall require an affidavit under oath to be made by the person asserting the fact, to be supported by the affidavit of one other credible person having knowledge of the facts, setting forth the changes necessary to make the record correct. Having received such affidavits, the local registrar shall file them and shall then draw a line through the incorrect statement or statements in the certificate, without erasing them, and make the necessary corrections, noting on the margin of the certificate his authority for so doing, and transmit the affidavits, attached to the original certificate, when making his regularly monthly returns to the state registrar. If the correction relates to a certificate previously returned to the state registrar, the local registrar shall transmit the affidavit forthwith to the state registrar. If the correction is first made upon the original certificate on file in the state bureau of vital statistics, the state registrar shall transmit a certified copy of the original certificate, corrected as above, to the local registrar, who shall thereupon substitute such certified copy for the copy of the certificate in his records. All such corrections and marginal notes referring to them shall be legibly written in ink, typewritten or printed. When an embalmer has allowed his license to lapse, for any reason whatever, his license and number may be reinstated by the proper application of such embalmer, said application to be accompanied by a fee of two dollars and all back dues to date, whereupon the board may reinstate such applicant, provided such lapse shall not have been over two years. [Amendment of May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1334.]

License not assignable.

§ 14. No license granted under the provisions of this act shall be assignable, and every such license shall specify by name the person to whom it is issued, and not more than one person shall carry on the practice of embalming dead human bodies under one license.

Institutions not affected.

§ 15. Nothing in this act shall apply to, or in any way interfere with the duties of any officer of any local or public institution or of any duly accredited medical college, nor shall this act apply to any one engaged simply in the furnishing of burial receptacles for the dead but shall apply only to persons engaged in the practice of embalming in connection with the care and disposition of the dead.

Carriers.

§ 16. It shall be unlawful for any person, railroad, express company, or common carrier, to receive for transportation any dead human body, unless said body has been prepared by a regularly licensed embalmer, in accordance with the rules prescribed by the state board of embalmers.

Schools for embalming.

§ 17. The state board of embalmers and schools for teaching embalming shall have extended to them the same privileges as to the use of bodies for dissecting, demonstrating or teaching, as those granted in this state to medical colleges.

Revocation of licenses.

§ 18. The state board of embalmers shall have power to revoke any license granted under this act, upon conviction of violation of any of the provisions of this act, or any of the rules and regulations, or upon conviction of continued improper conduct, said conviction being subject to approval by the courts of the state.

Penalty for noncompliance.

§ 19. Any person who shall advertise, practice, or hold himself or herself as practicing the science of embalming without having complied with the provisions of this act shall be guilty of a misdemeanor and, upon conviction thereof, before the court, shall be sentenced to pay a fine of not less than fifty dollars nor more than one hundred dollars for each and every offense; or any person, railroad, express company, or common carrier who shall violate the provisions of this act shall be guilty of a misdemeanor, and shall pay a fine of not less than one hundred dollars, nor more than five hundred dollars for each and every offense. All fines assessed for the violation of any of the provisions of this act shall be paid into the funds of the state.

Yellow pasters.

§ 20. All licensed embalmers shall use yellow pasters to be furnished by the state board of embalmers; said pasters to be approved by the state board of health. No railroad, express company or other common carrier shall accept for transportation any dead human body unless said body is accompanied with said yellow shipping paster.

Permission of coroner.

§ 21. It shall be unlawful to embalm a dead human body when a fact within the knowledge, or brought to the knowledge of the embalmer is sufficient to arouse suspicion of crime in connection with the cause of death of the deceased, until permission of the coroner, or justice of the peace (if there be no coroner) has first been obtained. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be fined not less than twenty-five dollars, nor more than one hundred dollars.

Special license for nonresidents.

§ 22. Nonresidents living along the border of the state of California, doing business within this state, may make application for a special license, provided they can comply with the rules and regulations governing applicants for license, and furnish a certificate from their state certifying that the applicant holds a valid license, and upon the payment of a fee of twenty dollars, with a yearly renewal fee of five dollars. [New section added May 27, 1919. In effect July 27, 1919, p. 1335.]

School of embalming.

§ 23. The state board of embalmers is authorized to enter into an agreement with the proper authorities for the purpose of establishing a school of embalming in connection with any state educational institution of university grade or school of secondary grade maintained by a city, city and county, or school district in this state for the purpose of instructing students in the art of embalming and the sanitary care of the dead. The board shall be empowered to employ instructors; secure paraphernalia; lay out a course of instruction and requirements for a graduation; to require fees for same; which said fees shall be deposited in the state treasury in a fund which is hereby created and which shall be known as the embalmers school fund; this school to be in no way an expense to the state. Upon graduation a diploma thereupon shall entitle the holder to be admitted to practice within the state. [New section added May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1335.]

Manufacture and distribution of embalming fluid.

§ 24. It is prohibited to manufacture, sell or distribute embalming fluids within the state containing mineral poison. All fluid containers to have printed on the label "no mineral poison." All manufacturers and distributors of embalming fluids are hereby required to state the per cent formaldehyde contained therein, upon the label. [New section added May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1335.]

CHAPTER 100.**EMERYVILLE.**

References: Incorporation, see Act 3094, note.

CONTENTS OF CHAPTER.**ACT 1365. TIDE AND SUBMERGED LAND GRANT.****TIDELAND GRANT.**

ACT 1365—An act granting certain tidelands and submerged lands of the state of California to the city of Emeryville, and regulating the management, use and control thereof.

History: Approved May 23, 1919. In effect July 23, 1919. Stats. 1919, p. 1087.

Tidelands granted to Emeryville.

§ 1. There is hereby granted to the city of Emeryville, a municipal corporation of the state of California, and to its successors, all the right, title and interest of the state of California, held by said state by virtue of its sovereignty in and to all tidelands and submerged lands, whether filled or unfilled, which are included within the present boundaries of the city of Emeryville, to be forever held by said city and by its successors in trust for the use and purposes, and upon the express conditions following, to wit:

Use of lands.

(a) That said lands shall be used by said city and its successors, only for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said city or its successors shall not, at any time, grant, convey, give or alien said lands or any part thereof to any individual, firm or corporation, for any purposes whatever; provided, that said city or its successors may grant franchises thereon, for limited periods, but in no event exceeding fifty years, for wharves and other public uses and purposes, and may lease said lands or any part thereof for limited periods, but in no event exceeding fifty years, for the purposes consistent with the trusts upon which said lands are held by the state of California, and with the requirements of commerce or navigation at said harbor.

Improvement of harbor.

(b) That said harbor shall be improved by said city without expense to the state, and shall always remain a public harbor for all purposes of commerce and navigation, and the state of California shall have at all times the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands, or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the state of California.

Rates, tolls, etc.

(c) That in the management, conduct or operation of said harbor, or of any of the utilities, structures or appliances mentioned in paragraph (a), no discrimination in rates, tolls, or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or its successors.

Right to fish reserved to people.

(d) There is hereby reserved, however, in the people of the state of California the absolute right to fish in all the waters of said harbor, with the right of convenient access to said waters over said land for said purpose.

CHAPTER 101.**EMIGRATION.**

References: See tit. "Immigration."

CONTENTS OF CHAPTER.

ACT 1366. PROMOTION OF EMIGRATION.

PROMOTION OF EMIGRATION.

ACT 1366—An act to promote emigration from the state of California.

History: Approved March 26, 1880, Stats. 1880, p. 15 (Ban. ed. 50).

§ 1. It shall be unlawful for the owners, officers, agents, or employees of any steamship company, sailing vessel, or railroad company, or firm or corporation, that may be engaged in this state in the transportation of passengers to and from any foreign port, to withhold or refuse any person or persons the right to purchase a passage ticket or tickets to any foreign country for the reason that he or they have not presented a certificate, card, or other document whatsoever showing that such person has paid in full, or in part, any or all dues, debts, or demands, or otherwise, or any sum whatsoever, to any society, company, corporation, association, or individual, or firm; and any person or corporation who shall violate the provisions of this section, or in pursuance of any agreement, oral or written, refuse to sell a passage ticket to any person to any foreign country, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than one hundred nor more than five hundred dollars; provided, that nothing in this section shall be construed in any manner to apply to any passport or other document required by law to be presented, having the signature or seal of any foreign consul resident within this state.

§ 2. This act shall take effect on and after its passage.

CHAPTER 102.**EMPLOYMENT AGENTS.**

References: Employment, see tit. "Master and Servant."

Re-employment of soldiers and sailors, see tit. "Soldiers and Sailors."

Trade schools are employment agencies, see "Schools," subtitle "Trade Schools."

CONTENTS OF CHAPTER.

ACT 1373. REGULATING PRIVATE EMPLOYMENT AGENCIES.

1374. FREE EMPLOYMENT BUREAUS.

REGULATING PRIVATE EMPLOYMENT AGENCIES.

ACT 1373—An act regulating private employment agencies, providing for a license for the operation thereof and a fee therefor, providing forms of receipts and registers to be used and kept, prohibiting any charge for registering or filing application for help or employment, prohibiting the dividing of fees, providing for the refunding of fees and expenses in the event of failure to procure employment, and granting the commissioner of the bureau of labor statistics the power to prescribe rules and regulations to carry out the purpose and intent of this act.

History: Approved June 3, 1913. In effect August 10, 1913. Stats. 1913, p. 515. Amended May 27, 1915. In effect August 8, 1915. Stats. 1915, p. 929.

Prior acts: Act defining duties and liabilities of employment agents, approved February 12, 1903, Stats. 1903, p. 14. Amended March 18, 1905, Stats. 1905, p. 143; March 3, 1909, Stats. 1909, p. 137; March 6, 1909, Stats. 1909, p. 149. Act to regulate and license employment agents, approved March 6, 1909, Stats. 1909, p. 191. The first of these was declared unconstitutional in *Ex Parte Dickey*, 144 Cal. 234; but the objectionable feature of the act was repealed in 1905 (see annotations). Both acts were probably superseded by the present act.

Definitions.

§ 1. 1. When used in this act the following terms are defined as herein specified: The term "person" means and includes any individual, company, society, association, corporation, manager, contractor, subcontractor or their agents or employees.

2. The term "employment agency" means and includes the business of conducting, as owner, agent, manager, contractor, subcontractor, or in any other capacity an intelligence office, domestic and commercial employment agency, theatrical employment agency, teachers' employment agency, general employment bureau, shipping agency, nurses' registry, or any other agency or office for the purpose of procuring or attempting to procure help or employment or engagements for persons seeking employment or engagements, or for the registration of persons seeking such help, employment or engagement, or for giving information as to where and of whom such help, employment or engagement may be procured, where a fee or other valuable consideration is exacted, or attempted to be collected, directly or indirectly, for such services, whether such business is conducted in a building or on the street or elsewhere.

3. The term "theatrical employment agency" means and includes the business of conducting an agency, bureau, office or any other place for the purpose of procuring or offering, promising or attempting to provide engagements for circus, vaudeville, theatrical and other entertainments or exhibitions or performances, or of giving information as to where such engagements may be procured or provided, whether such business is conducted in a building, or on the street or elsewhere.

4. The term "theatrical engagement" means and includes any engagement or employment of a person as an actor, performer or entertainer in a circus, vaudeville, theatrical and other entertainment, exhibition or performance.

5. The term "emergency engagement" means and includes an engagement which has to be performed within twenty-four hours from the time when the contract for such engagement is made.

6. The term "fee" means and includes any money or other valuable consideration paid or promised to be paid for services rendered or to be rendered by any person conducting an employment agency of any kind under the provisions of this article. Such term includes any excess of money received by any such person over what has been paid out by him for the transportation, transfer of baggage, or board and lodging for any applicant for employment; such term also includes the difference between the amount of money received by any such person who furnishes employees, performers or entertainers for circus, vaudeville, theatrical and other entertainments, exhibitions

or performances, and the amount paid by him to the said employees, performers or entertainers whom he hires or provides for such entertainments, exhibitions or performances.

7. The term "privilege" means and includes the furnishing of food, supplies, tools or shelter to contract laborers, commonly known as commissary privileges.

8. The term "commissioner of labor" means commissioner of the bureau of labor statistics.

License necessary. Penalty.

§ 2. A person shall not open, keep, maintain or carry on any employment agency, as defined in the preceding section, unless he shall have first procured a license therefor as provided in this article from the commissioner of labor. Such license shall be posted in a conspicuous place in said agency. Any person who shall open or conduct such an employment agency without first procuring said license shall be guilty of a misdemeanor and shall be punished as hereinafter provided.

Application for license.

§ 3. An application for such license shall be made to the commissioner of labor. Such application shall be written and in the form prescribed by the commissioner of labor, and shall state the name and address of the applicant; the street and number of the building or place where the business is to be conducted; whether the applicant proposes to conduct a lodging-house for the unemployed separate from the agency which he proposes to conduct; the business or occupation engaged in by the applicant for at least two years immediately preceding the date of the application. Such application shall be accompanied by the affidavits of at least two reputable residents of the city to the effect that the applicant is a person of good moral character.

Application for license. Limitations on grants. Power to revoke licenses.

§ 4. Upon receipt of an application for a license the commissioner of labor may cause an investigation to be made as to the character and responsibility of the applicant and of the premises designated in such application as the place in which it is proposed to conduct such agency. The commissioner of labor may administer oaths, subpoena witnesses and take testimony in respect to matters contained in such application and in complaints of any character against the applicants for such license, and upon proper hearing may refuse to grant a license. Each application shall be granted or refused within thirty days from date of filing. No license shall be granted to a person to conduct the business of an employment agency in rooms used for living purposes, or where boarders or lodgers are kept, or where meals are served, or where persons sleep, or in connection with a building or premises where intoxicating liquors are sold to be consumed on the premises, excepting cafes and restaurants in office buildings. No license shall be granted to a person whose license has been revoked within three years from the date of application. Each license shall run to the thirty-first day of March next following the date thereof and no longer, unless sooner revoked by the commissioner of labor. The commissioner of labor shall have the power and authority to revoke any license after a hearing, when it is shown that the licensee or his agent has violated or failed to comply with any of the provisions of this act, or when such licensee has ceased to be of good moral character, or when the conditions under which the license was issued have changed or no longer exist. At any hearing the commissioner of labor shall not be bound by the technical rules of evidence, and his rulings shall be presumed to be prima facie reasonable, and his findings of fact shall, in the absence of fraud, be conclusive and shall be set aside by the superior court only on the following grounds:

Grounds for setting aside findings.

1. That the commissioner of labor acted without or in excess of his powers.
2. That the determination was procured by fraud.

[Amendment of May 27, 1915. In effect August 8, 1915. Stats. 1915, p. 929.]

License to contain name, etc.

§ 5. Every license shall contain the name of the person licensed, a designation of the city, street and number of the house in which the person licensed is authorized to carry on the said employment agency, and the number and date of such license. Such license shall not be valid to protect any other than the person to whom it is issued or any place other than that designated in the license and shall not be transferred or assigned to any other person unless consent is obtained from the commissioner of labor, as hereinafter provided. If such licensed person shall conduct a lodging-house for the unemployed separate and apart from such agency, it shall be so designated in the license.

Transfer of license.

§ 6. A license granted as provided in this article shall not be assigned or transferred without the written consent of the commissioner of labor. No license fee shall be required upon such assignment or transfer. The location of an employment agency shall not be changed without the written consent of the commissioner of labor.

License fee. Bond.

§ 7. Every person licensed under the provisions of this act to carry on the business of an employment agency shall pay to the commissioner of labor a license fee of one hundred dollars in cities of the first, first and one-half and second classes, and a license fee of fifty dollars in cities of the third and fourth classes and a license fee of ten dollars in all other cities and towns. Such persons shall also deposit before such license is issued, with the commissioner of labor, a surety bond in the penal sum of two thousand dollars in cities of the first, first and one-half and second classes, or a surety bond in the penal sum of one thousand dollars in cities of the third and fourth classes, or a surety bond in the penal sum of five hundred dollars in all other cities and towns. Such surety bonds to be approved by the commissioner of labor and such bonds shall be payable to the people of the state of California, and shall be conditioned that the person applying for the license will comply with the provisions of this act and will pay all damages occasioned to any person by reason of misstatement, misrepresentation, fraud or deceit or any unlawful acts or omissions of any licensed person, his agents or employees, while acting within the scope of their employment, made, committed or omitted in the business conducted under such license or caused by any other violation of this article in carrying on the business for which such license is granted. All moneys collected for licenses as provided herein and all fines collected for violations of the provisions hereof shall be paid into the state treasury and credited to the contingent fund of the bureau of labor statistics. [Amendment of May 27, 1915. In effect August 8, 1915. Stats. 1915, p. 930.]

Suits against licensed person.

§ 8. All claims or suits brought in any court against any licensed person may be brought in the name of the person damaged upon the bond deposited with the people of the state of California by such licensed person as provided in section seven, and may be transferred and assigned as other claims for damages in civil suits. The amount of damages claimed by plaintiff, and not the penalty named in the bond, shall determine the jurisdiction of the court in which the action is brought. Where such licensed person has departed from the state with intent to defraud his creditors or to avoid the

service of a summons in an action brought under this section, service shall be made upon the surety as prescribed in the Code of Civil Procedure. A copy of such summons shall be mailed to the last known postoffice address of the residence of the licensed person and the place where he conducted such employment agency, as shown by the records of the commissioner of labor. Such service thereof shall be deemed to be made when not less than the number of days shall have intervened between the dates of service and the return of the same as provided by the Code of Civil Procedure for the particular court in which suit has been brought.

Register of applicants for employment.

§ 9. It shall be the duty of every licensed person to keep a register, approved by the commissioner of labor, in which shall be entered, in the English language, the date of the application for employment; the name and address of the applicant to whom employment is promised or offered, or to whom information or assistance is given in respect to such employment; the amount of fee received, and such other information as the commissioner of labor shall require. Such licensed person shall also enter in the same or in a separate register, approved by the commissioner of labor, in the English language, the name and address of every applicant accepted for help, the date of such application, kind of help requested, the names of the persons sent, with the designation of the one employed, the amount of the fee received and the rate of wages agreed upon, and such other information as the commissioner of labor may require. No such licensed person, his agent or employees, shall make any false entry in such registers.

Registers open to inspection.

§ 10. All registers, books, records and other papers kept pursuant to this act in any employment agency shall be open at all reasonable hours to the inspection of the commissioner of labor and to any of his duly authorized agents or inspectors and every licensed person shall furnish to the commissioner upon request a true copy of such registers, books, records and papers or any portion thereof, and shall make such reports as the commissioner may prescribe.

Receipt given applicant.

§ 11. It shall be the duty of every licensed person conducting an employment agency to give to every applicant for employment from whom a fee shall be received a receipt in which shall be stated the name and address of such employment agency, the name and address of the person to whom the applicant is sent for employment, the name of the applicant, the date, the amount of fee, the kind of work or service to be performed, the general conditions of employment—including among other things the rate of wages or compensation, whether or not board and lodging is to be furnished, the hours of employment, the cost of transportation and whether or not it is to be paid by the employer, the time of such service, if definite, and if indefinite to be so stated, and the name of the person authorizing the hiring of such applicant. There shall be printed on the face of the receipt in prominent type the following: "This agency is licensed by the commissioner of labor of the state of California." All receipts shall be made and numbered in original and duplicate. The original shall be given to the applicant paying the fee and the duplicate shall be kept on file at the employment agency. The receipts used by such licensed agencies shall be approved by the commissioner of labor.

Applicant's fee.

§ 12. No such licensed person shall accept a fee from any applicant for employment, or send out any applicant for employment without having obtained, either orally or in writing, a bona fide order therefor, and in no case shall such licensed person

accept, directly or indirectly, a registration fee of any kind. In case the applicant paying a fee fails to obtain employment such licensed agency shall repay the amount of said fee to such applicant upon demand being made therefor; provided, that in cases where the applicant paying such fee is sent beyond the limits of the city in which the employment agency is located, such licensed agency shall repay in addition to the said fee any actual expenses incurred in going to and returning from any place where such applicant has been sent; provided, however, where the applicant is employed and the employment lasts less than seven days by reason of the discharge of the applicant, the employment agency shall return to said applicant the fee paid by such applicant to the employment agency, or such portion of said fee as in the judgment of the commissioner of labor may be adequate. [Amendment of May 27, 1915. In effect August 8, 1915. Stats. 1915, p. 930.]

False advertising prohibited.

§ 13. No licensed person conducting an employment agency shall publish or cause to be published any false or fraudulent or misleading information, representation, notice or advertisement; all advertisements of such employment agency by means of cards, circulars, or signs and in newspapers and other publications, and all letter-heads, receipts, and blanks shall be printed and contain the licensed name and address of such employment agent and the word agency, and no licensed person shall give any false information, or make any false promise or false representation concerning an engagement or employment to any applicant who shall register or apply for an engagement or employment or help.

Agencies shall not send applicants to certain places. Fees not to be divided with employers.

§ 14. No licensed person conducting an employment agency shall send or cause to be sent, any woman or minor under the age of twenty-one years, as an employee to any house of ill fame or to any house or place of amusement for immoral purposes, or to places resorted to for the purpose of prostitution, or gambling houses, the character of which such licensed person could have ascertained upon reasonable inquiry. No licensed person shall send any minor under the age of eighteen years to any saloon or place where intoxicating liquors are sold to be consumed on the premises. No licensed person shall knowingly permit any person of bad character, prostitutes, gamblers, intoxicated persons or procurers to frequent such agencies. No licensed person shall accept any application for employment made by or on behalf of any child, or shall place or assist in placing any such child in any employment whatever in violation of the child labor law. No licensed person shall send an applicant to any place where a strike, lockout or other labor trouble exists without notifying the applicant of such conditions and shall in addition thereto enter a statement of such facts upon the receipt given to such applicant. No licensed person shall divide fees with an employer, or an agent of an employer, or with any superintendent, manager, foreman, or other employee of any person, firm or corporation to which help is furnished. [Amendment of May 27, 1915. In effect August 8, 1915. Stats. 1915, p. 931.]

Theatrical employment agency.

§ 15. Every licensed person conducting a theatrical employment agency, before making a theatrical engagement, except an emergency engagement, for any person with any applicant for services in any such engagement shall prepare and file in such agency a written statement signed and verified by such licensed person setting forth how long the applicant has been engaged in the theatrical business. Such statement shall set forth whether or not such applicant has failed to pay salaries or left stranded any companies, in which such applicant and, if a corporation, any of its officers or directors,

have been financially interested during the five years preceding the date of application and, further, shall set forth the names of at least two persons as references. If such applicant is a corporation, such statement shall set forth the names of the officers and directors thereof and the length of time such corporation or any of its officers have been engaged in the theatrical business and the amount of its paid-up capital stock. If any allegation in such written, verified statement is made upon information and belief, the person verifying the statement shall set forth the sources of his information and the grounds of his belief. Such statement so on file shall be kept for the benefit of any person whose services are sought by any such applicant as employer.

Theatrical contracts.

§ 16. Every licensed person who shall procure for or offer to an applicant a theatrical engagement shall have executed in duplicate a contract containing the name and address of the applicant; the name and address of the employer of the applicant and of the person acting for such employer in employing such applicant; the time and duration of such engagement; the amount to be paid to such applicant; the character of entertainment to be given or services to be rendered; the number of performances per day or per week that are to be given by said applicant; if a vaudeville engagement, the name of the person by whom the transportation is to be paid, and if by the applicant, either the cost of the transportation between the places where said entertainment or services are to be given or rendered, or the average cost of transportation between the places where such services are to be given or rendered; and if a dramatic engagement the cost of transportation to the place where the services begin if paid by the applicant; and the gross commission or fees to be paid by said applicant and to whom. Such contracts shall contain no other conditions and provisions except such as are equitable between the parties thereto and do not constitute an unreasonable restriction of business. The form of such contract shall be first approved by the commissioner of labor and his determination shall be reviewable by certiorari. One of such duplicate contracts shall be delivered to the person engaging the applicant and the other shall be retained by the applicant. The licensed person procuring such engagement for such applicant shall keep on file or enter in a book provided for that purpose a copy of such contract.

Act to be posted.

§ 17. Every licensed person shall post in a conspicuous place in each room of such agency a copy of this act. Such printed law to also contain the name and address of the officer charged with the enforcement of this act. The commissioner of labor shall furnish printed copies of this act to the employment agencies.

Penalty.

§ 18. Any person, firm, corporation or their agents or representatives violating or omitting to comply with any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars or more than two hundred and fifty dollars or by imprisonment for a period of not more than sixty days or by both such fine and imprisonment.

Power of labor commissioner.

§ 19. The commissioner of labor, his deputies and agents shall have the power and authority of sheriffs and other peace officers to make arrests for violations of the provisions of this act and to serve any process or notice throughout the state.

Repeal of acts.

§ 20. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

1. **Constitutionality**—Act of 1903.—The provision of section 4 fixing a maximum charge for employment agents is an unreasonable limitation upon the right to engage in a legitimate business and make lawful contracts therein, and is not a proper

exercise of the police power, and violates the due process of law clauses of the federal and state constitution.—Ex parte Dickey, 144 Cal. 234, 103 Am. St. Rep. 82, 1 Ann. Cas. 428, 66 L. R. A. 928, 77 Pac. 924.

FREE EMPLOYMENT BUREAUS.

ACT 1374—An act to establish free employment bureaus under the control and management of the commissioner of the bureau of labor statistics, and making an appropriation therefor.

History: Approved May 17, 1915. In effect August 8, 1915. Stats. 1915, p. 486.

Free employment bureaus established.

§ 1. The commissioner of the bureau of labor statistics, hereinafter called "commissioner," shall establish free employment bureaus in the cities of San Francisco, Los Angeles, Oakland and Sacramento, and thereafter, whenever he deems it necessary, in other cities and towns.

Offices, etc.

§ 2. The commissioner shall procure, by lease or otherwise, suitable offices; incur the necessary expenses in the conduct thereof; appoint the necessary officers, assistants and clerks, and fix the compensation therefor; and promulgate rules and regulations for the conduct of free employment bureaus in order to carry out the purposes of this act.

Appropriation.

§ 3. There is hereby appropriated out of the moneys of the state treasury, not otherwise appropriated, the sum of fifty thousand dollars, to be used by the commissioner in carrying out the provisions of this act, and the controller is hereby directed from time to time to draw his warrants on the general fund in favor of the commissioner, for the amounts expended under his direction, and the treasurer is hereby authorized and directed to pay the same.

ENGINEER.

See tits. "County Engineer"; "State Engineering."

ESCAPE.

See Kerr's Cyc. Penal Code, §§ 105-111; and tit. "Insane Asylums."

CHAPTER 103.

ESCHEAT.

References: Alien claim to escheated estates, see tit. "Aliens."

Escheated estates, see Kerr's Cyc. Code Civil Procedure, §§ 1269, et seq.

CONTENTS OF CHAPTER.

ACT 1385. PAYMENT OF JUDGMENTS AGAINST THE STATE FOR ESTATES UNDER § 1272, C. C. P.

PAYMENT OF JUDGMENTS UNDER § 1272, C. C. P.

ACT 1385—An act to provide for the payment of awards of court, or judgments, rendered in conformity with the provisions of section twelve hundred and seventy-two of the Code of Civil Procedure, and making an appropriation therefor.

History: Approved May 17, 1915. In effect August 8, 1915. Stats. 1915, p. 470.

Appropriation: from estates of deceased persons fund to pay claims to escheated estates.

§ 1. From the moneys in the state treasury to the credit of the estates of deceased persons fund there is hereby appropriated the sum of fifteen thousand dollars, to be used exclusively for the purpose of paying to the persons entitled thereto the amounts to them, respectively, awarded by any final order, award, or judgment, made, given or rendered by the court having jurisdiction of any proceeding, or action, instituted in conformity with the provisions of section twelve hundred seventy-two of the Code of Civil Procedure.

Controller's warrant.

§ 2. When any such order, award, or judgment has become final, a certified copy thereof shall be filed in the office of the state controller, who shall thereupon draw his warrant upon the said estates of deceased persons fund in favor of the person, or persons, entitled thereto, for the sum awarded to each, respectively, and the state treasurer shall pay the same; provided, however, that the aggregate sum of all warrants so drawn and paid shall not exceed the amount by this act appropriated.

Unexpended balance reverts to estates of deceased persons fund.

§ 3. Any balance of said appropriation remaining unexpended on the first day of September, A. D. 1917, shall, without further action, revert to and become a part of said estates of deceased persons fund.

ESCONDIDO.

See Act 3094, note.

CHAPTER 104.

ESTATES OF DECEASED PERSONS.

References: Collection of savings and other bank deposits, see Kerr's Cyc. Code Civil Procedure, § 1454; also, ante, Act 409, § 16.

Corporations as executor and trustee, see tit. "Corporations," Act. 1034.

Settlement in general, see Kerr's Cyc. Code Civil Procedure, tits. "Estates of Deceaseds"; "Executors and Administrators"; "Public Administrators"; "Wills."

Summary sales of mines and mining interests, see Kerr's Cyc. Code Civil Procedure, §§ 1529, et seq.

CONTENTS OF CHAPTER.

ACT 1393. INVESTMENT OF MONEYS IN ESTATES OF DECEASED PERSONS FUND.

INVESTMENT OF MONEYS IN ESTATES OF DECEASED PERSONS FUND.

ACT 1393—An act to provide for the investment of the moneys in the estates of deceased persons fund and also to provide for payment of interest received into the state school fund.

History: Approved February 22, 1909, Stats. 1909, p. 37.

Investment of funds. Restriction.

§ 1. Whenever and as often as there is in the state treasury to the credit of the estates of deceased persons fund (in excess of the retention hereinafter provided for) the sum of ten thousand dollars or more, the state board of examiners must invest the same in the bonds of this state, or in the bonds of the United States, or in the bonds of the several counties, city and county, cities or towns, or school districts of this state; the investments to be made in such manner and on such terms as the board shall deem best for the fund; provided, that no investment shall be made which with the amounts previously invested shall reduce the uninvested portion of the fund below the amount of ten thousand dollars.

Bonds, interest on, how apportioned.

§ 2. Bonds purchased by the state board of examiners under the provisions of this act must be delivered to the state treasurer, who shall keep them as a portion of said estates of deceased persons fund, and the interest upon such bonds shall be paid into the state school fund and apportioned like other moneys employed for the support of common schools.

Fund, minimum amount in.

§ 3. It is the intent of this act that there shall at all times be retained in said estates of deceased persons fund, in the form of cash available for meeting the demands of persons holding legal claims against such fund, the sum of at least ten thousand dollars, and whenever by reason of payments made out of the fund the amount of cash therein shall be reduced below the specified amount of ten thousand dollars, it shall be the duty of the state board of examiners to sell such bonds belonging to said fund as they may deem proper, for the purpose of making good the cash retention of ten thousand dollars.

§ 4. This act shall take effect from and after its passage.

CHAPTER 105.**ESTRAYS.**

References: Animals In general, see tit. "Animals."

Finder of lost property, including animals, see Kerr's Cyc. Civil Code, §§ 1864, et seq.

Trespassing animals, see tit. "Trespassing Animals."

Trespassing animals in particular counties, see particular title.

See, generally, tits. "Goats"; "Hogs"; "Live Stock"; "Sheep"; "Stallions."

Editor's Note.—In dealing with the large number of local and special statutes, relating to estrays, trespassing animals, and animals running at large, the code commissioners have adopted the broad and comprehensive view that all such statutes were repealed by the general repealing act of 1897 (Act 1401, history). While conceding that this is absolutely true as to stray laws, the editor feels some doubt as to laws which are clearly trespass laws, and laws designed to prohibit the use of the private unenclosed lands of another, or public lands, for grazing or pasture purposes, by the animals of a known or unknown owner, entitled acts to prevent certain classes of animals running at large in certain localities. If any of these acts are really stray laws, or have the effect of stray laws, or while providing for trespasses by animals, either upon enclosed or unenclosed lands, provided for taking them up and dealing with them as stray animals, they are perhaps repealed, or repealed so far as they deal with estrays, but it is at least doubtful that they are affected as trespass laws or laws prohibiting animals from running at large. This doubt is sufficient to warrant the adoption of the strictest policy of neutrality in dealing with them. Those acts, therefore, entitled as relating to estrays are treated as having been repealed by the general repealing act of 1897, and all laws entitled as relating to trespassing animals or animals running at large are treated as still in force, so far, at least, as that and other general laws on the subject are concerned. The question as to whether they are in force or not will have to be determined judicially, as is proper.

The code continued all these classes of acts in force. Kerr's Cyc. Political Code, § 19.

CONTENTS OF CHAPTER.

ACT 1401. ESTRAY LAW OF 1901.

1402. LOCAL OPTION ESTRAY LAW OF 1919.

ESTRAY LAW OF 1901.

ACT 1401—An act relating to estrays, providing for taking them up and giving a lien on them for all damages, costs, and expenses incurred by reason of taking them up, and repealing all other acts and parts of acts now in force relating to estrays.

History: Approved March 23, 1901, Stats. 1901, p. 603. Amended March 20, 1905, Stats. 1905, p. 395; March 6, 1907, Stats. 1907, p. 132; April 22, 1909, Stats. 1909, pp. 1060, 1079; May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 636.

Prior acts: Act of April 19, 1856, Stats. 1856, p. 186. Amended March 28, 1859, Stats. 1859, p. 147; January 24, 1860, Stats. 1860, p. 9; April 4, 1864, Stats. 1863-64, p. 386. Repealed March 27, 1897, Stats. 1897, p. 198, which was in turn repealed by the present act. The amending act of 1859 was also supplementary.

Estray animals.

§ 1. Any person finding at any time any estray domestic animal or animals upon his premises, or upon premises to which he has the right of possession, or upon highways adjacent thereto, may take up the same and have a lien thereon for all expenses incurred and costs in keeping and caring for said animal or animals, as hereinafter provided; and no person shall remove them from the possession of the taker-up, or from the possession of the officer to whom they may have been delivered, except as hereinafter provided; provided, however, in the counties of Trinity, Shasta, Del Norte, Siskiyou, Lassen and Modoc, any person finding at any time any estray domestic animal or animals upon his premises, or upon premises to which he has the right of possession, shall not have the right to take up said domestic animal or animals, nor shall he have a lien thereon for all or any of the expenses incurred and costs in keeping and caring for said animal or animals, unless said premises are entirely enclosed with a good and substantial fence. [Amendment of May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 636.]

Notice filed with recorder. Publication of notice.

§ 2. Any person taking up an estray animal or animals shall confine the same in a secure place, and within five (5) days file with the county recorder or county pound-keeper of the county in which such estray is found, a notice containing a description of the animal or animals taken up, with the marks and brands, if they have any, together with the probable value of each animal, and a statement of the place where the taker-up found, and where he has confined the same. The county recorder or county pound-keeper shall receive for filing said notice the sum of fifty cents. If the value of said animal or animals together exceed ten dollars, said notice must also be published in a paper of general circulation within the county at least once a week for three successive weeks, stating the time on which the animal or animals will be delivered to the constable, as provided in section five of this act, or if the finder knows the owner of said animal or the person having charge thereof, then, within five days after said animal is taken up, he shall notify the owner of said animal, or the person having charge thereof, which notice shall contain the same information as the notice to be recorded, and hereinbefore provided, describing said animal so taken up, the date when it was taken up, the place where found, and the place where kept, and no charge shall be made for preparing and serving this notice. This notice shall be in lieu of recording a notice for which notice he shall be entitled to the sum of fifty cents. [Amendment of May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 637.]

This section was also amended March 20, 1905, Stats. 1905, p. 395; March 6, 1907, Stats. 1907, p. 132; April 22, 1909, Stats. 1909, p. 1079.

This section was made a part of the local option estray law of 1919 by reference. See Act 1402, § 3.

Person claiming animal to pay. Damages.

§ 3. At any time within thirty days from the date of the filing of the notice specified in section two of this act, any person claiming such estray animal or animals shall appear and demand from the taker-up the possession thereof, and shall, at the same time, pay the taker-up all damages, expenses and costs incurred by reason of taking up such animal or animals, and upon receiving such damages, expenses and costs, the taker-up shall immediately deliver to the party claiming such animal or animals the possession thereof. Such damages, expenses and costs shall be estimated as follows, to wit:

1. The total amount paid by the taker-up to the county recorder, or county pound-keeper. A reasonable cost for publishing said notice, and a reasonable attorney's fee for preparing the said notice not to exceed two dollars and fifty cents.

2. The sum of not to exceed fifty cents per day for the keeping and care of each horse, mule, jenny, ass, cow, bull, ox, steer, or calf;

3. The sum of not to exceed fifteen cents per day for the keeping and care of each sheep, goat, hog, or other animal not hereinbefore specified; provided, that the taker-up of said animal or animals must properly feed and water the same while under his care; and if he fail so to do, shall forfeit all right of lien thereon. [Amendment of May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 637.]

This section was also amended April 22, 1909, Stats. 1909, p. 1080.

This section was made a part of the local option estray law of 1919, by reference. See Act 1402, § 3.

Action over damages.

§ 4. If the party claiming such estray animal or animals is dissatisfied with the amount charged by the taker-up for costs and expenses, he shall tender to the taker-up the proper amount therefor, and if the said tender be refused, the party claiming such estray animal or animals shall within ten days thereafter commence, in the proper court, suit against the taker-up for the recovery of the possession of such estray animal or animals, in which said action the taker-up may set forth his expenses and costs, and said matter together with accruing expenses and costs to the time of the entry of the judgment, shall be determined by the court in accordance with the provisions of this act, and the amount of all such expenses and costs, and the costs of said action shall be included in any judgment awarded by said court, and such costs in said action shall be in favor of the plaintiff in said action and against said defendant, if the court shall find that the amount tendered by the plaintiff to the defendant was not less than the proper amount; otherwise said costs shall be in favor of the defendant and against the plaintiff. Without the consent of defendant in any such action, no return of such animal or animals shall be adjudged until the plaintiff shall pay to the defendant or deposit in court payable to him, the amount of all such expenses and costs in said action; and in case such payment or deposit be not made within ten days after the same shall have been determined by the court, or said action be not prosecuted with diligence, then the said action may be dismissed on motion of defendant without notice; in case of such dismissal, the defendant shall have judgment for his costs. In any such action for plaintiff to recover, it shall be incumbent on him to establish an existing right in himself to the possession of such animal or animals. [Amendment of May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 638.]

This section was made a part of the local option estray law of 1919, by reference. See Act 1402, § 3.

Sale of animals not claimed.

§ 5. If no person appears and claims the animal or animals taken up within thirty days after the filing of the notice hereinbefore mentioned in section three of this act; or if a person does appear and claims the animal or animals taken up within thirty days after the filing of the notice above referred to, but shall fail to pay to the taker-up the expenses and costs as provided in section three of this act, and shall fail to commence and prosecute with diligence an action for the recovery of the possession of such estray animal or animals within the time required by section four of this act; or if said action shall be dismissed; then the taker-up shall, in writing, notify a constable or other officer of the township or county in which said animal or animals are held, which notice shall specify that he has complied with all the provisions of this act, and that a claimant of said animal or animals has failed to appear and claim the same as herein provided, or if he has appeared that he has failed to pay the expenses and costs and has failed to commence or prosecute with diligence an action for the recovery of the possession of such animal or animals within the time and in the manner provided for in this act, or that said action has been dismissed, and that such animal or animals are held by him

subject to sale. Said constable, or officer, shall immediately proceed to sell such animal or animals at public sale, in conformity with the law concerning sales on execution, and shall be entitled to the same fees as are provided by law for sales under execution. [Amendment of May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 638.]

This section was made a part of the local option estray law of 1919, by reference. Act 1402, § 3.

Disposition of money realized.

§ 6. Out of the money realized from the sale of estrays, the constable or other officer shall first retain his fees; he shall then pay to the taker-up his expenses and costs estimated as provided in section 3 of this act, or so much thereof as the funds in his hands will permit, and the surplus, if any, he shall pay to the county treasurer to be held by him for the owner of the estray or estrays for which it was received in payment. If any person or persons shall, within one year thereafter, prove to the satisfaction of the board of supervisors of the county in which the estray or estrays were sold, that he or they are entitled to the sum so held by the county treasurer, or any part thereof, the said board of supervisors shall order such sum to be paid over to the person or persons; and if not so proven within one year, then the same shall become a part of the common school fund of said county. [Amendment of May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 639.]

This section was made a part of the local option estray law of 1919, by reference. See Act 1402, § 3.

Title to animals sold.

§ 7. All sales made by any constable, or other officer, under the provisions of this act, shall convey a good and valid title to the purchaser, and the owner of the estray or estrays so sold shall thereafter be barred from all right to recover the same, except as provided in section six. [Amendment of May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 639.]

This section was made a part of the local option estray law of 1919, by reference. See Act 1402, § 3.

Liability of taker-up.

§ 8. The taker-up of an estray animal or animals shall use reasonable care to preserve the same from injury, but if an estray animal or animals die or escape from the possession of the taker-up at any time while he is holding the same under the provisions of this act, the taker-up shall not be held liable in any manner on account of such animal or animals. [Amendment of May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 639.]

No change was made in this section although included in the amending act of 1915.

This section was made a part of the local option estray law of 1919, by reference. See Act 1402, § 3.

Cities not affected.

§ 9. Nothing in this act shall affect the laws or regulations in force or which may be in force regarding estrays, the poundkeeper, or other pound officer within the limits of any city or town where laws regarding estrays are in force. [Amendment of May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 639.]

No change was made in this section, although included by the amending act of 1915.

This section was made a part of the local option estray law of 1919, by reference. See Act 1402, § 3.

Act not repealed.

§ 10. Nothing herein contained shall be held, deemed or construed to repeal an act, entitled "An act concerning lawful fences, and animals trespassing upon premises lawfully enclosed," passed March 30, 1850, nor to repeal an act, entitled "An act concerning lawful fences in the counties of San Bernardino, Colusa, Shasta, Tehama and Placer,"

approved April 18, 1859, in so far as the provisions of said acts, and each thereof, apply to or affect the counties of Trinity, Shasta, Del Norte, Siskiyou, Modoc and Lassen, but as to said counties, and each thereof, said acts are hereby expressly continued in force, it being hereby determined that the present conditions prevailing in said counties last named are such as to justify and demand the continued application of said statutes to said counties. [Amendment of May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 639.]

See tit. "Fences," acts 1492, 1494.

The amending act of 1915 purports to amend the entire act, and omits entirely section 9a, and contains no reference to the subject-matter thereof. It is therefore omitted here.—See Stats. 1909, p. 1060.

1. Strict construction of estray statutes.—The act of 1863 (Stats. 1863, p. 697), and all other statutes prescribing modes by which a party may be divested of his property without his consent must be strictly construed.—*Trumpler v. Bemerly*, 39 Cal. 490.

2. Rule of common law not abrogated.—This act did not abrogate the rule of the common law as to trespassing animals adopted as to certain counties by the act of 1878 (Act 5246c).—*Blevins v. Mullally*, 22 Cal. App. 519, 135 Pac. 307.

3. Rule of common law in force.—It is now settled law in California that the common law rule applies in those counties which have been excepted from the operation of the so-called "Fence Law" of 1850 (131), the "Estray Act" of 1851 (299) and the successors of those statutes notwithstanding the new "Trespassing Act" of 1907 (999), which declares it unlawful for any person in possession of any animal to permit it to enter upon the lands of another "in all cases where such land is planted to growing crops," and is at the time entirely enclosed by a substantial fence or other enclosure.—*Montezuma, etc., Co. v. Simmerly*, 58 Cal. Dec. 563.

4. Repeal of prior estray laws.—The estray act of 1915 repeals all "fence laws" in all the counties of this state except the

six counties specified.—*Montezuma, etc., Co. v. Simmerly*, 58 Cal. Dec. 563.

5. Complaint for damages for trespass of animals.—Allegations of the complaint in this case held to state a cause of action for damages for trespass on unenclosed lands.—*Montezuma, etc., Co. v. Simmerly*, 58 Cal. Dec. 563.

6. Lien of taker up.—Where stock is properly taken up, the taker up is entitled to a lien under the estray act for the amount of his costs and expenses, until tendered the amount of such costs and expenses by the owners in satisfaction of the lien.—*Blanchard v. Vandamme*, 30 Cal. App. Dec. 768.

7. Same—Tender of costs and expenses to taker up.—The owners of stock properly taken up under the "Estray Act" are not entitled to the possession of the same so as to entitle them to maintain an action for claim and delivery unless they have paid or tendered the costs and expenses of the taker up, or the latter has waived his lien.—*Blanchard v. Vandamme*, 30 Cal. App. Dec. 768.

8. Where the taker up of stock under the "Estray Act" claimed more than he was entitled to under the law, the owner must nevertheless tender an amount to which the taker up is entitled to claim, before he can maintain an action in claim and delivery.—*Blanchard v. Vandamme*, 30 Cal. App. Dec. 768.

Constitutionality of statutes relating to estrays.—See 8 Am. St. Rep. 271, note.

LOCAL OPTION ESTRAY LAW OF 1919.

ACT 1402—An act relating to estrays, providing for taking them up and giving a lien on them for damages, costs, and expenses incurred by reason of taking them up.

History: Approved May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1150.

Estray domestic animals may be taken up.

§ 1. Any person finding at any time any estray domestic animal or animals upon his premises, or upon premises to which he has the right of possession, may take up the same and have a lien thereon for all expenses incurred and costs in keeping and caring for said animal or animals, as hereinafter provided; and no person shall remove them from the possession of the taker-up, or from the possession of the officer to whom they may have been delivered, except as hereinafter provided.

"Premises." Substantial fence defined.

§ 2. Whenever the term "premises" is used in this act, it shall be construed to mean land entirely enclosed with a good and substantial fence, and none of the provisions of this act shall apply to any unfenced lands. No wire fence shall be deemed a good and substantial fence within the meaning of this act unless the same has three

tightly stretched barbed wires securely fastened to posts of reasonable strength, firmly set in the ground not more than one rod apart, one of which wires shall be at least four feet above the surface of the ground; provided, however, that any kind of wire or other fence of height, strength and capacity, equal to or greater than the wire fence herein described shall also be deemed a good and substantial fence within the meaning of this act.

Enforcement of lien.

§ 3. Any such lien shall be enforced in the manner prescribed by the provisions of sections two to nine inclusive of the act entitled "An act relating to estrays, providing for taking them up and giving a lien on them for all damages, costs, and expenses incurred by reason of taking them up, and repealing all other acts and parts of acts now in force relating to estrays," approved March 23, 1901, as amended, which sections are incorporated herein and made a part hereof.

Election in supervisorial district to make act operative.

§ 4. The provisions of this act shall not become operative or effective in any supervisorial district until, at a general election or at a special election called for that purpose by the board of supervisors, the electors of the district shall have declared by a majority vote in favor thereof. The form of the ballot shall be substantially as follows:

Shall the provisions of this act become effective?	YES	
	NO	

To vote for making effective the provisions of this act, electors shall stamp a cross in the square opposite the word "Yes" on the ballot. To vote against making effective the provisions of this act, electors shall stamp a cross in the square opposite the word "No." Such an election shall be conducted and the ballots cast thereat, counted, canvassed and returned as in the case of the election of a member of the county board of supervisors.

Exceptions.

§ 5. Except in such districts as shall hereafter elect to accept the provisions of this act by the method set forth in section four hereof, none of the provisions of any act of this state relative to or affecting estrays shall be repealed, modified or effected hereby.

Counties excepted.

§ 6. None of the provisions of the act shall apply to the counties of Del Norte, Lassen, Modoc, Shasta, Siskiyou or Trinity.

Constitutionality.

§ 7. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Constitutionality of statutes relating to estrays.—See 8 Am. St. Rep. 271, note.
Re-enacted by reference.—Sections 2 to 9 inclusive of the act of 1901 (Act 1401) were re-enacted as a part of this act by reference.—See § 3.

ETNA.

See Act 3094, note.

CHAPTER 106.

EUREKA.

CONTENTS OF CHAPTER.

- ACT 1425. FREEHOLDERS' CHARTER OF EUREKA.
 1426. LEGALIZING THE MURRAY SURVEY OF CLARK'S ADDITION.
 1427. CEDING THE WATER FRONT TO EUREKA.
 1429. CREATING A POLICE COURT.
 1430. TIDE AND SUBMERGED LAND GRANT.

FREEHOLDERS' CHARTER.

ACT 1425—Charter of the city of Eureka.

History: Voted for and ratified at a special election held January 26, 1895. Approved February 8, 1895. Amended February 25, 1907, Stats. 1907, p. 1172; March 24, 1911, Stats. 1911, p. 2036; March 31, 1913, Stats. 1913, p. 1544; January 25, 1917, Stats. 1917, p. 1742. Eureka was originally incorporated April 18, 1856, Stats. 1856, p. 103. Amended February 14, 1857, Stats. 1857, p. 22. Repealed by the act of April 9, 1859, Stats. 1859, p. 192, reincorporating the town. This last act was amended March 13, 1862, Stats. 1862, p. 55; March 12, 1864, Stats. 1863-64, p. 165; March 1, 1872, Stats. 1871-72, p. 186, and repealed by the act of reincorporation of February 10, 1874, Stats. 1873-74, p. 91. This last act was amended March 18, 1876, by a supplementary act of that date, Stats. 1875-76, pp. 333-334, and was superseded by the present charter. The act of March 8, 1878, Stats. 1877-78, p. 184, empowering the common council to set as a board of equalization, was superseded by the charter.

1. Harbor commissioners — Provisions of code not superseded.—The charter does not have the effect of superseding the sections of the Political Code relating to the harbor commissioners and the harbor master.—*Quigg v. Evans*, 121 Cal. 546, 53 Pac. 1093.

2. Dedication of A street.—The act of the legislature in incorporating the town of Eureka did not operate as a dedication of A street in said town, named therein as a part of the boundary of the town.—*City of Eureka v. McKay & Co.*, 123 Cal. 666, 56 Pac. 439.

3. City council as board of equalization.—Where the charter makes the general law of taxation and revenue applicable to the city, the city council have the same power as the county supervisors as to equalization in cases of undervaluation, and may make a special contract for an abstract of the assessment roll, with comparisons with the county assessment roll and maps and other data relative to undervaluation to facilitate the performance of their work, and to order payment of compensation—therefore out of the city treasury.—*Maurer v. Weatherby*, 1 Cal. App. 243, 81 Pac. 1083.

4. Journal of city council — Record of Ayes and Noes.—The provision of the charter that a journal of the proceedings of the city council be kept by the city clerk, and that the ayes and noes be taken and en-

tered therein in the final action upon the making of contracts is complied with, where the journal record as kept that a regular adjourned meeting of the council was held on the date specified, that certain members of the council were present comprising a quorum thereof, that the Mayor and a councilman were absent, and that all present voted in favor of the measure specified.—*Goodyear, etc., Co. v. Eureka*, 135 Cal. 613, 67 Pac. 1043.

5. Contracts—Provisions of charter as to making, to be read together.—The several sections of the charter relating to the making of a contract must be read together, and so read, the countersigning by the finance committee, and the numbering and registering of the contract is not one of the essentials to the validity of a contract.—*Goodyear, etc., Co. v. Eureka*, 135 Cal. 613, 67 Pac. 1043.

6. Contracts—To be in writing.—Where the charter contains a valid, stringent, and prohibitive provision requiring city contracts to be in writing, or under the authority of a special ordinance, a contract for city printing, not made as required, though made to the lowest bidder and under sealed proposals, is invalid, and not binding upon the city.—*Times Publishing Co. v. Weatherby*, 139 Cal. 618, 73 Pac. 465.

LEGALIZING THE MURRAY SURVEY.

ACT 1426—An act to legalize the survey of Clark's addition to.

History: Approved March 26, 1870, Stats. 1869-70, p. 395.

This act legalized the so-called Murray survey of Clark's addition to the town of Eureka.

CESSION OF WATER FRONT TO EUREKA.

ACT 1427—An act to cede certain property to the town of Eureka.

History: Approved March 13, 1857, Stats. 1857, p. 76.

This act ceded to Eureka the entire waterfront of the town.

1. The act of 1857 ceding the water front and adjacent marsh lands to Eureka left

to the city the entire matter of dedication of streets over and across the lands so ceded.—City of Eureka v. McKay & Co., 123 Cal. 666, 56 Pac. 439.

CREATING A POLICE COURT.

ACT 1429—An act to establish a police court in and for the city of Eureka.

History: Approved March 26, 1895, Stats. 1895, p. 91.

Eureka police court.

§ 1. A police court is hereby established within and for the city of Eureka in said state of California, which shall be presided over by the police judge. The police court shall have and exercise the jurisdiction, powers, and duties as prescribed in the Code of Civil Procedure and the Political Code of the state of California, and the charter and ordinances of the said city of Eureka; and all proceedings therein shall be had in conformity with the provisions of the various codes of this state.

§ 2. This act shall take effect immediately.

1. Charter provision creating police court.—If the charter provision creating a police court had been made pursuant to the authorization of section 8½, article XI of the constitution, it would not only have been valid, but the legislature would have had no power to pass this act; or, if the act had already become a law upon the adoption of the charter provision, the latter would have superseded the act.—Fleming v. Hauce, 153 Cal. 162, 94 Pac. 620. See, also, Graham v. Mayor, etc., of Fresno, 151 Cal. 465, 91 Pac. 147.

2. Police court.—The charter of Eureka made provision for a police court; but section 8½, article XI, of the constitution had not then been adopted, and the charter provisions were inoperative, and the subsequent adoption of that section, authorizing the establishment of such courts by freeholder charters, did not revive or validate the charter provision which was void from its inception.—Fleming v. Hauce, 153 Cal. 162, 94 ac. 620. See, also, Ex parte Sparks, 120 Cal. 395, 52 Pac. 715.

TIDE AND SUBMERGED LAND GRANT.

ACT 1430—An act granting to the city of Eureka tide and submerged lands of the state of California, including the right to wharf out therefrom to the city of Eureka, and regulating the management, use and control thereof.

History: Approved May 15, 1915. In effect August 8, 1915. Stats. 1915, p. 724.

Tide lands granted Eureka.

§ 1. There is hereby granted to the city of Eureka, a municipal corporation of the state of California, and to its successors, all the right, title and interest of the state of California, held by said state by virtue of its sovereignty, in and to all tide and submerged lands, whether filled or unfilled, situate in the county of Humboldt, state of California, and described as follows, to wit:

Boundaries.

Beginning at the corner common to sections 14, 15, 22 and 23, T. 5 N., R. 1 W., H. M.; thence north between sections 14 and 15, T. 5 N., R. 1 W., H. M., 1,167.24 feet to the United States bulkhead line (established by the United States government for the harbor lines of Humboldt bay) said bulkhead line being the south line of Arcata channel; thence along said United States bulkhead line N. 68° 37' 20" E. 251.37 feet; N. 62° 49' 05" E. 563.05 feet; N. 54° 30' 36" E. 1,559.20 feet to the end of said bulkhead line as established at present; thence continuing along the low water line of Humboldt

bay or the south margin of the Arcata channel N. 57° 54' 36" E. 2,146.31 feet; thence leaving said south margin of Arcata channel and run S. 27° 49' 46" E. 2,090.27 feet; thence S. 67° 16' W. 2,580.85 feet to the end of the present bulkhead line as established along the north margin of Eureka channel by the United States government; thence along said United States government bulkhead line above mentioned S. 65° 02' 57" W. 2,669.85 feet to the section line running between sections 22 and 23, T. 5 N., R. 1 W., II. M.; thence north along said section line 411.35 feet to the point of beginning, containing 189.10 acres; provided, that all that portion of land within the above described property conforming to the following description, to wit: All that portion of Woodley island lying east of the section line between sections 14 and 15 and 22 and 23, T. 5 N., R. 1 W., II. M., and claimed by Carson, Ohman and Elsemore, consisting of 14.8 acres, and all that portion of Daby island within the above-mentioned description claimed by Thomas Bair, consisting of 18.1 acres, shall be excluded from this conveyance, leaving thereby subject to this grant a net acreage of 156.2 acres.

Said lands shall be forever held by said city, and by its successors, in trust for the uses and purposes, and upon the express conditions following, to wit:

Purposes for which held. Maximum term of lease. Persons now in possession.

That said lands shall be used by said city and its successors, solely for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said city, or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purpose whatever; provided, that said city, or its successors, may grant franchises thereon, for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, for purposes consistent with the trusts upon which said lands are held by the state of California and with the requirements of commerce or navigation at said harbor, for a term not exceeding twenty-five years, and on such other terms and conditions as said city may determine, including a right to renew such lease or leases for a further term not exceeding twenty-five years or to terminate the same on such terms, reservations and conditions as may be stipulated in such lease or leases, and said lease or leases may be for any and all purposes which shall not interfere with navigation or commerce, with reversion to said city on the termination of such lease or leases of any and all improvements thereon, and on such other terms and conditions as the said city may determine, but for no purpose which will interfere with navigation or commerce; subject also to a reservation in all such leases or such wharfing out privileges of a street, or of such other reservation as the said city may determine for sewer outlets, and for gas and oil mains, and for hydrants, and for electric cables and wires, and for such other conduits for municipal purposes, and for such public and municipal purposes and uses as may be deemed necessary by the said city; provided, however, that each person, firm or corporation or their heirs, successors or assigns now in possession of land or lands abutting on said lands within the boundaries of the city of Eureka, shall have a right to obtain a lease for a term of twenty-five years from said city of said land and wharfing out privileges therefrom with a right of renewal for a further term of twenty-five years pursuant to the provisions of this act and on such terms and conditions as said city may determine and specify, subject to the right of said city to terminate said lease at the end of the first twenty-five years or refuse to renew the same, or to terminate the lease so renewed during the term of such renewed lease on such just and reasonable terms for compensation for improvements at the then value of said improvements as said city may determine and specify.

Quitclaim to city.

Upon obtaining such lease and wharfing out privileges such person, firm or corporation, their heirs or assigns, shall quitclaim to said city any right they or any of them may claim or have to the said lands hereby granted.

This grant shall carry the right to such city of the rents, issues and profits in any manner hereafter arising from the lands or wharfing out privileges hereby granted.

State's right to use docks.

The state of California shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the state of California.

No discrimination in rates.

No discrimination in rates, tolls or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or its successors in the management, conduct or operation of any of the utilities, structures or appliances mentioned in this section.

Right to fish.

There is hereby reserved in the people of the state of California the right to fish in the waters on which said lands may front with the right of convenient access to said waters over said lands for said purpose.

EXETER.

See Act 3094, note.

CHAPTER 107.

EXPLOSIVES.

References: Bringing explosives into jails and other institutions, see *Kerr's Cyc. Penal Code*, § 171a.

Burglary with explosives, see *Kerr's Cyc. Penal Code*, § 464.

Fishing, use of, for, see *Kerr's Cyc. Penal Code*, § 635.

Keeping, carrying, etc., in cities, see *Kerr's Cyc. Penal Code*, § 375.

Malicious use of, etc., see *Kerr's Cyc. Penal Code*, § 601.

Railroad track, placing on, see *Kerr's Cyc. Penal Code*, § 218.

Record of sales of, see *Kerr's Cyc. Penal Code*, § 375a.

CONTENTS OF CHAPTER.

ACT 1434. PROTECTION OF LIFE AND PROPERTY AGAINST CARELESS AND MALICIOUS USE.

1435. TRANSPORTATION, STORAGE AND SALE OF EXPLOSIVES.

PROTECTION OF LIFE AND PROPERTY AGAINST USE OF EXPLOSIVES.

ACT 1434—An act to protect life and property against the careless and malicious use or handling of dynamite and other explosives.

History: Approved March 12, 1887, Stats. 1887, p. 110. §§ 1, 2, 3, 4 were codified by § 375a, Penal Code, § 8 by § 601, Penal Code.

Keep record of sales.

§ 1. It is the duty of each and every person, contractor, firm, association, joint stock company, and corporation, manufacturing, storing, selling, transferring, disposing of, or in any manner dealing in or with or using or giving out, nitro-glycerine, dynamite, vigorite, hereules powder, giant powder, or other high explosive, by whatever name known, to keep at all times an accurate journal, or book of record, in which must be entered, from time to time, as they are made, each and every sale, delivery, transfer, gift, or other disposition made by such person, firm, association, joint stock company, or corporation, in the course of business or otherwise, of any quantity of such explosive substance.

This section was codified by § 375a, Penal Code.

What record must show.

§ 2. Such journal or record book must show, in a legible handwriting to be entered therein at the time, a complete history of each transaction, stating the name and quantity of the explosive sold, delivered, given away, transferred, or otherwise disposed of; the name, place of residence, or business of the purchaser or transferee; the name of the individual to whom delivered, with his or her address, with a description of such individual sufficient to provide for identification.

This section was codified by § 375a, Penal Code.

Records subject to examination of peace officer.

§ 3. Such journal or record book must be kept, by the person, firm, association, joint stock company, or corporation so selling, delivering, or otherwise disposing of such explosive substance or substances, in his or their principal office or place of business, at all times subject to the inspection and examination of the peace officers or other police authorities of the state, county, city and county, or municipality where the same is situated, on proper demand made therefor, any failure or neglect to keep such book, or to make the proper entries therein at the time of the transaction, as herein provided, or to exhibit the same to the peace officers or other police authorities on demand, shall be deemed a misdemeanor, and punished accordingly.

This section was codified by § 375a, Penal Code.

Forfeiture in addition to punishment.

§ 4. In addition to such punishment, and as a cumulative penalty, such person, firm, association, joint stock company, or corporation so offending, shall forfeit, for each offense, the sum of two hundred and fifty dollars, to be recovered in any court of competent jurisdiction, by action at law. The party so instituting such actions shall not be entitled to dismiss the same without consent of the court before which the suit has been instituted. Nor shall any judgment recovered be settled, satisfied, or discharged, save by order of such court, after full payment into court, and all moneys so collected shall be paid to the party bringing the suit.

This section was codified by § 375a, Penal Code.

Prohibiting reckless possession of explosives.

§ 5. Any person who, in the public street or any highway of any county, city and county, city, or town or city, or at, in, or near to any theater, hall, public or private school, or college, church, hotel, or other public building, or at, in, or near to any private habitation or in, on board of, or near any railway passenger train, or car or train, or cable road, or car of the same, or steam or other vessel, engaged in carrying passengers, or ferryboat, or other public place where human beings ordinarily pass and repass, shall recklessly or maliciously have in his or her possession any dynamite, nitro-glycerine, vigorite, hercules powder, giant powder, or other high explosives; or who shall recklessly or maliciously by use of such means intimidate, terrify, or endanger any human being, is guilty of a felony, and on conviction shall be punished accordingly.

Defining reckless possession.

§ 6. Any person not regularly engaged in the manufacture, sale, transportation, or legitimate use in blasting operations, or in the arts, of such substances as are named in this act, shall be presumed (*prima facie*) to be guilty of a reckless and malicious possession thereof, within the meaning of the foregoing section, if any such substance is found upon him, or in his possession, in any of the places, or under any of the circumstances specified in the preceding section.

Punishment for unlawful possession.

§ 7. No person may knowingly keep or have in his or her possession any dynamite, vigorite, nitro-glycerine, giant powder, hercules powder, or other high explosives, except in the regular course of business carried on by such person, either as a manufacturer thereof or merchant dealing in the same, or for use in legitimate blasting operations, or in the arts, or while engaged in transporting the same for others, or as the agent or employee of others engaged in the course of such business or operations. Any other possession of any such explosive substances as are named in this act is unlawful; and the person so unlawfully possessing it shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Malicious deposit.

§ 8. Any person who maliciously deposits or explodes, or who attempts to explode, at, in, under, or near any building, vessel, or boat, railroad, tramroad, or cable road, or any train or car, or any depot, stable, car-house, theater, schoolhouse, church, dwelling-house, or other place where human beings usually inhabit, assemble, frequent, or pass and repass, any dynamite, nitro-glycerine, vigorite, giant or hercules powder, gunpowder, or other chemical compound, or other explosive, with the intent to injure or destroy such building, vessel, boat, or other structure, or with the intent to injure, intimidate, or terrify any human being or by means of which any human being is

injured or endangered, is guilty of a felony, and on conviction thereof shall be punished by imprisonment in the state prison not less than one year.

This section was codified by § 601, Penal Code, as amended in 1913.

Transportation of high explosives.

§ 9. Any person, firm, or corporation, who shall take, carry or transport, or cause to be taken, carried, or transported, any dynamite, vigorite, nitro-glycerine, hercules or giant powder, or other high explosive, into the limits of, or through, or across any incorporated city or town of this state, or into, through, or across any harbor for shipping, in any manner, condition, or quantity, or otherwise, in violation of the laws or ordinances of such city or town, or of the laws or regulations governing such harbor, shall, in addition to the penalties provided or imposed by such laws, ordinances, or regulations, forfeit to the state of California all such explosive substances, as well as the cases inclosing the same. Such forfeiture may be sued for by any citizen of the state, for himself and the state; and the goods or property, when so forfeited and recovered by judgment of the court, shall be sold, and the proceeds divided, the citizen, so suing taking one-half to himself for his own benefit, and paying the other half into the state treasury. Such action may be maintained in any court of competent jurisdiction; provided, that the state shall never be liable to any cost or expense for any such suit or proceeding.

Police officer may sue for forfeitures.

§ 10. Any of the forfeitures provided for in this act may be taken advantage of, and sued for and recovered, by any peace officer or policeman, member of the police force of any city, city and county, or town where the same arises, for his own benefit, notwithstanding any law, ordinance, or rule to the contrary.

§ 11. This act shall take effect and be in force from and after its passage.

Code commissioners' notes.—The code commissioners say of § 375a, Penal Code: "This is a codification of §§ 1, 2, 3, and 4 of the statute of 1887, p. 10."

Of § 601, Penal Code they say: "The section is amended to conform it to § 8 of the statute of 1887, p. 110, to protect life and property against the careless and malicious use or handling of dynamite and other explosives."

While this is probably true now, since the amendment of 1913 to the section, it was probably not true before.—See *In re Mitchell*, 1 Cal. App. 396, 82 Pac. 347.

1. Rule of construction of penal statutes.—The rule of construction adopted in section 4 of the Penal Code, applies to all penal statutes whether in or out of the code, including this act.—*In re Mitchell*, 1 Cal. App. 396, 82 Pac. 347.

2. Construction—"Place where human beings usually pass or repass."—A working mine, constructed with shafts, tunnels, levels, stopes, excavated chambers, and stulls to hold up the rock and dirt overhead, is a structure, and a "place where human beings usually . . . pass or repass," within the meaning of section 8 of the act.—*In re Mitchell*, 1 Cal. App. 396, 82 Pac. 347.

3. Purpose of act.—The act seeks to remedy the malicious explosion of dynamite and other enumerated explosives, with intent to injure property and other human beings, and it is applicable to a working mine, although it does not mention the word, "mine."—*In re Mitchell*, 1 Cal. App. 396, 82 Pac. 347.

TRANSPORTATION, STORAGE AND SALE OF EXPLOSIVES.

ACT 1435—An act relating to explosives and prescribing regulations for the transportation, storage and selling of explosives, and providing penalties for the violation of this act.

History: Became a law under constitutional provision without governor's approval March 21, 1911, Stats. 1911, p. 391. Amended May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 695; May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 148.

Definitions.

§ 1. The term "explosive" or "explosives" whenever used in this act shall include gunpowder, blasting powder, dynamite, guncotton, nitro-glycerine or any compound

thereof, fulminate, and every explosive substance having an explosive power equal to or greater than black blasting powder, and any substance intended to be used by exploding or igniting the same to produce a force to propel missiles, or rend apart substances, but does not include said substances, or any of them, in the form of fixed ammunition for small arms. The term "person" whenever used herein shall be held to include corporations as well as natural persons; words used in the singular number to include the plural and the plural the singular. The words "explosive manufacturing plant" shall be understood to include all the land used in connection with the manufacture and storage of explosives thereat.

Inclosure and storage.

§ 2. Except only at an explosive manufacturing plant, no person shall have, keep or store, at any place within this state, any explosives, unless such explosives are completely inclosed and incased in tight metal, wooden or fiber containers, and, except while being transported, or within the custody of a common carrier pending delivery to consignee, shall be kept and stored in a magazine constructed and operated as hereinafter described, and no person having in his possession or control, any explosives, shall under any circumstances permit or allow any grains or particles thereof to be or remain on the outside or about the containers, in which such explosives are contained.

Magazine.

§ 3. Magazines in which explosives may lawfully be stored or kept shall be two classes, as follows:

First class.

(a) Magazines of the first class shall consist of those containing explosives exceeding one hundred pounds, and shall be constructed wholly of brick, wood covered with iron, or other fireproof material, and must be fireproof, and, except magazines where gunpowder or black blasting powder only is stored must be bullet proof, and shall have no openings except for ventilation and entrance. The doors of such magazines must be fireproof and bullet proof, and at all times kept closed and locked, except when necessarily opened for the purpose of storing or removing explosives therein or therefrom, by persons lawfully entitled to enter the same. Every such magazine shall have sufficient openings for ventilation thereof, which must be screened in such manner as to prevent the entrance of sparks or fire through the same. Upon each side of such magazine there shall at all times be kept conspicuously posted a sign, with the words, "magazine," "explosives," "dangerous," legibly printed thereon in letters not less than six inches high. No matches, fire or lighting device of any kind except electric light shall at any time be permitted in any such magazines. No package of explosives shall at any time be opened in any magazine. No blasting caps, or other detonating or fulminating caps, or detonators, or electric fuzes, shall be kept or stored in any magazine in which explosives are kept or stored, but such caps, detonators or fuzes may be kept or stored in a magazine constructed as above provided which must be located at least one hundred feet from any magazine in which explosives are kept or stored. Magazines in which explosives are kept or stored must be detached and must be located at least one hundred feet from any other structure.

Quantity depends on distance from buildings, etc.

(b) On and after January 1, 1919, the quantity of explosives that may be lawfully had, kept or stored in any magazine shall depend upon the distance that such magazine is situated from buildings, highways, or railroads, and upon the protection afforded by natural or efficient artificial barricades to such buildings, highways or railroads. Whenever any of the quantities given in column one of the quantity and distance table hereinafter set forth is had, kept or stored in any magazine in this state, the distance

that any quantity given in column one of said table may be lawfully had, kept or stored from buildings is the distance set opposite said quantity in column two of said table, and the distance that any quantity in column one of said table, may be lawfully had, kept or stored from railroads is the distance set opposite said quantity in column three of said table, and the distance that any quantity given in column one of said table may be lawfully had, kept or stored from highways is the distance set opposite said quantity in column four of said table. The quantity and distance table governing the keeping or storing of explosives is as follows:

Quantity and distance table.

Column 1 Quantity that may be lawfully kept or stored from nearest building, highway or railroad				Column 2 Distance from nearest building, feet	Column 3 Distance from nearest railroad, feet	Column 4 Distance from nearest highway, feet
Blasting caps		Other explosives				
Number over	Number not over	Pounds over	Pounds not over			
1,000	5,000	.....	.....	30	20	10
5,000	10,000	.....	.....	60	40	20
10,000	20,000	.....	.....	120	70	35
20,000	25,000	.....	50	145	90	45
25,000	50,000	50	100	240	140	70
50,000	100,000	100	200	360	220	110
100,000	150,000	200	300	520	310	150
150,000	200,000	300	400	640	380	190
200,000	250,000	400	500	720	430	220
250,000	300,000	500	600	800	480	240
300,000	350,000	600	700	860	520	260
350,000	400,000	700	800	920	550	280
400,000	450,000	800	900	980	590	300
450,000	500,000	900	1,000	1,020	610	310
500,000	750,000	1,000	1,500	1,060	640	320
750,000	1,000,000	1,500	2,000	1,200	720	360
1,000,000	1,500,000	2,000	3,000	1,300	780	390
1,500,000	2,000,000	3,000	4,000	1,420	850	420
2,000,000	2,500,000	4,000	5,000	1,500	900	450
		5,000	6,000	1,560	940	470
		6,000	7,000	1,610	970	490
		7,000	8,000	1,660	1,000	500
		8,000	9,000	1,700	1,020	510
		9,000	10,000	1,740	1,040	520
		10,000	20,000	1,780	1,070	530
		20,000	30,000	2,110	1,270	630
		30,000	40,000	2,410	1,450	720
		40,000	50,000	2,680	1,610	800
		50,000	60,000	2,920	1,750	880
		60,000	70,000	3,130	1,880	940
		70,000	80,000	3,310	1,990	1,000
		80,000	90,000	3,460	2,080	1,040
		90,000	100,000	3,580	2,150	1,080
		100,000	200,000	3,800	2,280	1,140
		200,000	300,000	4,310	2,590	1,300

Distances reduced one-half when.

Whenever the building, railroad or highway to be protected is effectually screened from the magazine, where explosives are had, kept or stored, either by natural features of the ground or by an efficient artificial barricade of such height that any straight line drawn from the top of any side wall of the magazine to any part of the building to be protected, will pass through such intervening natural or efficient artificial barricade, and any straight line drawn from the top of any side wall of the magazine to any point twelve feet above the center of the railroad or highway to be protected will pass through such intervening natural or efficient artificial barricade, the applicable distances given in column two, three and four of the quantity and distance table may be reduced one-half.

Table not applicable, when.

Whenever the building, railroad or highway to be protected is effectually screened from the magazine, where explosives are had, kept or stored by a natural barrier which, at any one point thereon, is forty feet or more in height above a straight line drawn from the top of any side wall of the magazine to any part of the building to be protected or to any point twelve feet above the center of the railroad or highway to be protected, which natural barrier has a natural thickness of not less than two hundred feet where the same is intersected by the straight line drawn as aforesaid then, the quantity and distance table shall not be applicable to such magazine.

Quantity reduced, when.

If at any time the distances from a magazine to a building, highway or railroad be decreased through the construction of a new building, highway or railroad or by any other means, then the amounts of explosives which may be lawfully had, kept or stored in said magazine must be reduced to correspond with the quantity and distance table; provided, in the case of a new building, that the same is constructed in good faith for any of the purposes specified in the following paragraph, and not with intent to annoy, harass, oppress or hinder the owner of said magazine.

"Building."

The term "building" when used in the foregoing table shall be held to mean and include only any building regularly occupied in whole or in part as a habitation for human beings, and any store, church, schoolhouse, railway station or other public place of assembly.

"Highway."

The term "highway" when used in the foregoing table shall be held to mean public streets or public roads, and shall not include roads constructed and maintained by private persons.

"Railroad."

The term "railroad" when used in the foregoing table shall be held to mean and include any steam, electric or other railroad that carries passengers or articles of commerce for hire.

"Efficient artificial barricade."

The term "efficient artificial barricade" when used in the foregoing shall be held to mean an artificial mound or properly revetted wall of earth of a thickness of not less than three feet. The provisions of this subsection (b) shall not apply to mining or quarrying operations. Nothing contained in this subsection (b) shall be held to prohibit the keeping or storing of explosives at any explosive manufacturing plant which was actually used in manufacturing explosives prior to the fifteenth day of April, 1917.

Magazines of second class.

(c) Magazines of the second class shall consist of a stout box, and not more than one hundred pounds of explosives shall at any time be kept or stored therein, and, except when necessarily opened for use by authorized persons, shall at all times be kept securely locked. Upon each such magazine there shall at all times be kept conspicuously posted a sign with the words, "magazine," "explosives," "dangerous," legibly printed thereon.

Storage in tunnels.

Nothing in this section contained shall be held to prohibit the keeping or storing of explosives in any tunnel, where no person or persons are employed; provided,

always, that any tunnel so used for the storage of explosives shall have fireproof doors, which must at all times be kept closed and locked, except when necessarily opened for the purpose of storing or removing explosives therein or therefrom, by persons lawfully entitled to enter the same. The door of such tunnel magazine shall at all times have legibly printed thereon the words, "magazine," "explosives," "dangerous." [Amendment of May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 148.]

This section was also amended May 18, 1917, Stats. 1917, p. 695.

Penalty for violating.

§ 4. Any person violating or failing to comply with any of the provisions of sections 2 and 3 of this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars, and not more than one thousand dollars, or by imprisonment not exceeding six months, or by both such fine and imprisonment.

Transporting.

§ 5. It shall be unlawful to transport, carry or convey, any explosives between any places within this state, on any vessel, car or other vehicle of any description, operated by common carrier, which vessel, car or vehicle is carrying passengers for hire; provided, that it shall be lawful to transport on any such vessel, car or vehicle, small arms ammunition in any quantity, and such fuses, torpedoes, rockets or other signal devices as may be essential to promote safety in operation, and properly packed and marked samples for laboratory examination, not exceeding a net weight of one-half pound each, and not exceeding twenty samples at one time, in a single vessel, car or vehicle, but such samples shall not be carried in that part of the vessel, car or vehicle, which is intended for the transportation of passengers for hire; provided, further, that nothing in this section shall be construed to prevent the transportation of military or naval forces with their accompanying munitions of war on passenger equipment vessels, cars or vehicles; provided, further, that the transportation of explosives on any freight train in this state that carries passengers for hire in a car or caboose attached to the rear of such train, shall not be held or construed to violate the provisions of this act.

Regulations of railroad commission.

§ 6. The railroad commission of this state is hereby empowered to make, publish and promulgate such regulations as are not in conflict with this act and as in the judgment of said commission may tend to the safe packing, loading, storage and transportation of the explosives defined by section one of this act.

Nitro-glycerine.

§ 7. It shall be unlawful to transport, carry or convey liquid nitro-glycerine, fulminate in bulk, in dry condition, or other like explosive, between any places within this state, on any vessel, car or vehicle of any description, operated by common carrier in the transportation of passengers or articles of commerce by land or water.

Packages to be marked.

§ 8. Every package containing explosives or other dangerous articles when presented to a common carrier for shipment shall have plainly marked on the outside thereof, the contents thereon, and it shall be unlawful for any person to deliver for transportation to any common carrier engaged in commerce by land or water, or to cause to be delivered or to carry any explosive or other dangerous article, under any false or deceptive marking, description, invoice, shipping order or other declaration, or without informing the agent of such carrier of the true character thereof, at, or before the time of such delivery or carriage is made.

Penalty for violating.

§ 9. Any person who willfully violates or causes to be violated any of the foregoing provisions of sections 5, 6, 7 and 8 of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished for each offense by fine not exceeding two thousand dollars, or by imprisonment not exceeding eighteen months, or by both such fine and imprisonment in the discretion of the court.

Record of sales. Statement from purchaser. Not applicable to carrier. Penalty.

§ 10. Every person selling, giving away, or delivering explosives within this state, shall keep at all times an accurate journal or book of record, in which must be entered from time to time, as it is made, each and every sale, delivery, gift, or other disposition made by such person in the course of business, or otherwise, of any quantity of such explosive substance. Such journal or record book must show in a legible handwriting, to be entered therein at the time, a complete history of each transaction, stating name and quantity of explosives sold, delivered, given away, or otherwise disposed of; name, place of residence, and business of the purchaser or transferee, name of individual to whom delivered, with his or her address. Such journal or record book must be kept by the person so selling, delivering or otherwise disposing of such explosives, in his or their principal office or place of business, at all times subject to the inspection and examination of the police authorities of the state, county or municipality where same is situated, on proper demand therefor. In addition to keeping the record above provided, it shall be unlawful for any person to sell, give away or deliver any explosives within this state, without taking from the person to whom such explosives are sold, given away or delivered within this state, a statement in writing, showing the name and the address of the person to whom such explosives are sold, given away or delivered, and the place where and the purpose for which such explosives are intended for use, which statement shall be signed by the person to whom such explosives are sold, given away or delivered, or his agent, and be witnessed by two witnesses, known to the person selling, giving away or delivering such explosives, to be residents of the county where such explosives, as shown by such statement, are intended for use, who shall certify that the person to whom such explosives are to be sold, given away or delivered is personally known to each of said witnesses, and that to the best of his knowledge and belief, the explosives are required by such person for the uses and purposes set forth in the statement, which said statement shall at all times be kept on file in the principal office or place of business of the person so selling, giving away or delivering such explosives, subject to the inspection of the police authorities of the state, county or municipality where the same is situated, on proper demand made therefor; provided, that nothing in this section shall be held to apply to the delivery of explosives to any person or carrier for the purpose of being transported from a place within this state to any other place within this state, and, provided further, that nothing in this section contained shall apply to interstate commerce.

Every person selling, giving away or delivering any explosives without complying with all the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars, and not more than two thousand dollars, or by imprisonment of not less than six months, or by both such fine and imprisonment in the discretion of the court.

In addition to such imprisonment and as cumulative penalty such person so offending shall forfeit for each offense, the sum of two hundred and fifty dollars, to be recovered in any court of competent jurisdiction, and the party instituting the action for such forfeiture shall not be entitled to dismiss same, without the consent of the court before which the suit has been instituted; nor shall any judgment recovered be set aside, satisfied or discharged save by order of such court, after full payment into court, and all moneys so collected must be paid to the party bringing suit.

Explosives in mines.

§ 11. [Repealed May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 698.]

Entering explosives factory.

§ 12. No person, except a peace officer or a person authorized so to do by the owner thereof, or his agent, shall enter any explosive manufacturing plant, magazine or car containing explosives in this state, and any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in an amount not exceeding one thousand dollars or by imprisonment not exceeding three months, or by both such fine and imprisonment.

Discharging firearms near magazine.

§ 13. No person shall discharge any firearms within five hundred feet of any magazine or of any explosive manufacturing plant, and any person willfully violating any of the provisions of this section shall be deemed guilty of a misdemeanor and fined not exceeding one thousand dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment.

Carrying explosives on person.

§ 14. No person shall willfully carry any explosive on his person within this state in any car, vessel or vehicle that carries passengers for hire, or place or carry any explosive while on board any such car, vessel or vehicle, in any hand baggage, roll or container, or place any explosive in any baggage thereafter checked with any common carrier, and any person violating any of the provisions of this section shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the penitentiary not exceeding two years.

Municipal ordinance.

§ 15. Nothing in this act contained shall prevent the operation of, or modify, alter, set aside or supersede the provisions of any municipal ordinance respecting the delivery, storing and handling of explosives.

Interstate shipment.

§ 16. Nothing in this act contained shall regulate or apply to any shipment of explosives from a point within this state, consigned to a point without this state, over a line or lines of one or more common carriers.

The amending act of 1919 contained the following:

"§ 2. All acts or parts of acts in conflict herewith are hereby repealed."

CHAPTER 108.**EXPOSITIONS.**

References: Authority to counties to levy tax for exhibits at Expositions, see Act 5098.

CONTENTS OF CHAPTER.

- ACT 1440. PANAMA-CALIFORNIA INTERNATIONAL EXPOSITION—USE OF BALBOA PARK.
- 1441. PANAMA-CALIFORNIA INTERNATIONAL EXPOSITION—STATE EXHIBIT AND BUILDING.
- 1442. PANAMA-CALIFORNIA INTERNATIONAL EXPOSITION—APPROPRIATION TO COMPLETE EXPOSITION BUILDING.
- 1443. PANAMA-CALIFORNIA INTERNATIONAL EXPOSITION — MAINTENANCE OF STATE BUILDING.
- 1444. PANAMA-PACIFIC INTERNATIONAL EXPOSITION—POWERS AND DUTIES OF COMMISSION.
- 1445. PANAMA-PACIFIC INTERNATIONAL EXPOSITION—DISPOSITION OF SURPLUS FUNDS.
- 1446. EXPOSITION BUILDING AT LOS ANGELES.
- 1447. EXPOSITION AT LOS ANGELES—FURNISHING AND EQUIPPING BUILDING.
- 1448. EXPOSITION AT LOS ANGELES—REVOLVING FUND FOR SPECIAL EXPOSITIONS.
- 1449. ITALIAN INTERNATIONAL EXPOSITION—CALIFORNIA EXHIBIT.
- 1449a. GHENT UNIVERSAL AND INTERNATIONAL EXPOSITION—CALIFORNIA EXHIBIT.

PANAMA-CALIFORNIA INTERNATIONAL EXPOSITION. USE OF
BALBOA PARK.

ACT 1440—An act giving and granting to the board of park commissioners of the city of San Diego the right to use and the right to authorize the use of Balboa Park in said city for exposition purposes.

History: Approved March 24, 1911, Stats. 1911, p. 478. Amended January 11, 1916, Stats. 1916 (ex. sess.), p. 43; January 19, 1917. In effect immediately. Stats. 1917, p. 1.

Use of San Diego park for exposition.

§ 1. The board of park commissioners of the city of San Diego, California, is hereby authorized and empowered to use, or authorize any exposition company to use, any part or portion of the lands set aside as a public park by resolution of the board of trustees of the city of San Diego and approved and ratified by an act of the legislature of the state of California, approved February 4, 1870, for the purpose of giving an exposition in the year 1917 to celebrate the completion of the Panama canal. [Amendment of January 19, 1917. In effect immediately. Stats. 1917, p. 1.]

This section was also amended January 11, 1916, Stats. 1916 (ex. sess.), p. 44.

Powers of park commissioners.

§ 2. The board of park commissioners of the city of San Diego is hereby authorized and empowered to inclose any part or portion of said park which may be set aside for the use herein set forth and charge an entrance or admission fee to said exposition, and may sell, give, or grant, to any person or persons, association or associations, corporation or corporations, such rights, privileges and concessions as are usually granted by expositions, or such rights, privileges, and concessions as may be expedient or necessary to the success of said exposition, and said city may charge and collect compensation therefor. The power and authority conferred by this act on the said board of park commissioners of the city of San Diego may be by said city delegated to any exposition company or corporation now or hereafter organized for the purpose of promoting, financing, or giving said exposition.

Applies only to Balboa Park.

§ 3. This act shall not apply to any park lands owned by the city of San Diego other than pueblo lots 1129, 1130, 1131, 1135, 1136, 1137, 1142, and a portion of pueblo lot 1144, according to the official survey of the city of San Diego by Charles H. Poole, made in 1856, which pueblo lots are now and shall hereafter be known and designated as Balboa Park.

The amending act of 1917 contained the following:

Emergency measure.

§ 2. This act is hereby declared to be an emergency measure within the meaning of section one, article IV, of the constitution of the state of California, and shall take effect immediately.

The facts constituting such emergency are as follows: The directors of the Panama-California International Exposition and the members of the board of park commissioners of the city of San Diego are desirous of continuing the Panama-California International Exposition, situated in the city park of San Diego, for a further period of time, not to exceed one year. A large amount of money has been expended in the permanent improvement of the exposition site in the park, and many of the buildings

contain exhibits that can not be removed for some time. Therefore, it is necessary for legislative action immediately, in order to authorize the maintenance of such an exposition for the further period of time—the authorization of the state of California for the maintenance of said exposition having expired on the first day of January, 1917.

**PANAMA-CALIFORNIA INTERNATIONAL EXPOSITION. STATE EXHIBIT
AND BUILDING.**

ACT 1441—An act to provide for a state exhibit at the Panama-California Exposition, to be held in San Diego, California, in 1915, to celebrate the completion of the Panama canal and providing for the erection of necessary buildings therefor; creating a commission to have the charge and control of said exhibition and making an appropriation therefor.

History: Approved April 1, 1911, Stats. 1911, p. 559.

Panama-California exposition commissioners. Bond.

§ 1. It is made the duty of the governor of the state of California, within thirty days after the passage of this act, to appoint three commissioners who shall be removable at the pleasure of the governor, and who shall constitute the Panama-California exposition commissioners. Said Panama-California exposition commissioners shall have the exclusive charge and control of the expenditure of all moneys appropriated by the state of California for the construction of buildings and maintaining an exhibit of the products of the state of California at said exhibition and for the purpose of properly representing the state of California at said exposition, to be held in the city of San Diego, state of California, in 1915. Each of said commissioners shall execute and file with the secretary of state, within thirty days after his appointment by the governor, good and sufficient bond in the sum of ten thousand dollars made to the people of the state of California, which bond shall be approved by the governor and shall be conditioned for the faithful performance of said commissioners of all their duties as such commissioners.

No compensation.

§ 2. Said commissioners shall receive no compensation for their services but they shall be allowed their actual expenses not exceeding one thousand dollars.

Appropriation.

§ 3. The sum of fifty thousand dollars or as much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury not otherwise appropriated to meet the expense of preparing the plans and specifications and constructing the foundation for an exposition building, to be erected at the Panama-California exposition, to be held in San Diego in the year 1915, which plans and specifications shall provide for a building to cost not less than two hundred and fifty thousand dollars. The amount herein appropriated shall be available on and after July 1, 1912.

Controller to draw warrant.

§ 4. The state controller is hereby authorized and directed to draw his warrant or warrants on the general fund from time to time for such portions of said sum of fifty thousand dollars and in favor of such persons as the majority of said commissioners shall direct and the state treasurer is hereby authorized and directed to pay the same.

State institutions to assist.

§ 5. It shall be the duty of the state institutions of the state of California to assist the commission in every possible way by loaning it such material in their possession as will add to the attractive features of the state exhibit at said Panama-California exposition.

Exemptions.

§ 6. This act is exempt from the provisions of section 672 of the Political Code of the state of California, and from the provisions of an act entitled "An act to regulate contracts on behalf of the state in relation to the erection, construction, alteration, repair or improvement of any state structure, building, road, or other state improvement of any kind and to repeal an act entitled 'An act to regulate contracts on behalf of the state in relation to erections and buildings, approved March 28, 1876'" (approved March 22, 1909).

**PANAMA-CALIFORNIA INTERNATIONAL EXPOSITION—APPROPRIATION
TO COMPLETE EXPOSITION BUILDING.**

ACT 1442—An act appropriating two hundred thousand dollars (\$200,000) to complete the construction of the exposition building of the state of California at the Panama-California exposition to be held in San Diego, California, during the year 1915.

History: Approved June 6, 1913. In effect August 10, 1913. Stats. 1913, p. 893.

Appropriation: state building, Panama-California exposition.

§ 1. The sum of two hundred thousand dollars (\$200,000), or so much thereof as may be necessary, is hereby appropriated out of any money in the state treasury not otherwise appropriated to be used in the construction of that certain exposition building authorized by an act entitled "An act to provide for a state exhibit at the Panama-California exposition, to be held in San Diego, California, in 1915, to celebrate the completion of the Panama canal, and providing for the erection of necessary buildings therefor; creating a commission to have charge and control of said exposition and making an appropriation therefor," approved April 1, 1911.

Controller authorized to draw warrant.

§ 2. The state controller is hereby authorized and directed to draw his warrant or warrants on the general fund from time to time for such portion of said sum of two hundred thousand dollars (\$200,000) and in favor of such persons as the majority of the Panama-California exposition commissioners shall direct, and the state treasurer is hereby authorized and directed to pay the same.

Audit of bills.

§ 3. All bills for material and labor in carrying out the provisions of section one of this act shall be audited and approved by the Panama-California exposition commissioners of the said exposition before being paid.

Exempt from Political Code, § 672.

§ 4. This act is exempt from the provisions of section 672 of the Political Code of the state of California and from the provisions of an act entitled "An act to regulate contracts on behalf of the state in relation to the erection, construction, alteration, repair or improvement of any state structure, building, road, or other state improvement of any kind and to repeal an act entitled 'An act to regulate contracts on behalf of the state in relation to erections and buildings,' approved March 28, 1876'" (approved March 22, 1909).

**PANAMA-CALIFORNIA INTERNATIONAL EXPOSITION—MAINTENANCE OF
STATE BUILDING.**

ACT 1443—An act appropriating fifty thousand dollars for the completion, maintenance and repair of the California state building at the Panama-California international Exposition.

History: Approved January 11, 1916, Stats. 1916 (ex. sess.), p. 44.

Appropriation for repair of California building at San Diego.

§ 1. The sum of fifty thousand dollars is hereby appropriated out of the Panama-California international exposition fund for the purpose of the completion, maintenance and repair of the California state building at the Panama-California international exposition, at San Diego. The expenditure of said sum of money so appropriated shall be under the exclusive charge and control of the Panama-California exposition commissioners.

Exempt from Political Code, § 672.

§ 2. This act is exempt from the provisions of section six hundred seventy-two of the Political Code of the state of California and from the provisions of an act entitled "An act to regulate contracts on behalf of the state in relation to the erection, construction, alteration, repair or improvement of any state structure, building, road or other improvement of any kind and to repeal an act entitled 'An act to regulate contracts on behalf of the state in relation to erections and bulidings,' approved March 28, 1876" (approved March 22, 1909).

PANAMA-PACIFIC INTERNATIONAL EXPOSITION COMMISSION—POWERS AND DUTIES.

ACT 1444—An act relating to the Panama-Pacific international exposition commission of the state of California and defining its powers and duties.

History: Approved March 4, 1911, Stats. 1911, p. 273.

Panama-Pacific international exposition commission. Seal.

§ 1. The Panama-Pacific international exposition commission, after the appointment by the governor of the members thereof, shall immediately organize and establish offices in the city and county of San Francisco. At the time of the appointment of said commission, the governor shall designate the president thereof, and the member so designated shall be the president of said commission. Should any vacancy thereafter occur in the presidency of said commission the governor shall designate and appoint a member of said commission to be the president thereof. Three members of said commission shall constitute a quorum for the transaction of business. Said commission shall adopt a seal having thereon the words "Panama-Pacific international exposition commission of the state of California," and shall file with the state controller and state treasurer a certificate of the imprint of such seal, and all signatures of persons authorized by said commission to sign contracts, claims or other documents on behalf of said commission.

Powers and duties.

§ 2. For the purpose of performing the duties imposed by law upon said commission, it shall have power and authority to appoint and employ a secretary, executive officers, and such other assistants or persons as it may deem necessary, and fix their compensations. All the officers and employees so appointed shall hold office at the pleasure of the commission. All expense of said commission and all salaries of employees shall be payable out of the Panama-Pacific international exposition fund upon proper warrants drawn therefor as hereinafter specified. The said commissioners shall receive their actual traveling expenses. The commission shall have full and complete power and authority to carry out the provisions of this act and of section 22 of article IV of the constitution of the state of California, and the particular enumeration herein of powers and duties of said commission shall not be construed to be a limitation or restriction of the full and complete power and authority of the commission.

Powers and duties.

§ 3. Said commission shall have power to make and execute all contracts and agreements necessary to the business of said commission or to carry out the purposes of this

act and section 22 of article IV of the constitution of the state of California. All contracts, made by said commission, shall be executed in triplicate signed by the president thereof and executed under the seal of said commission, and one copy thereof shall be immediately filed with the state controller. No contract or agreement shall be made by said commission unless the parties thereto shall waive therein all claims and recourse against the state of California for loss or damage of person and property arising from, growing out of or in any way connected with or incident to such contract or agreement, and all contracts or agreements made by said commission in violation of this provision for waiver shall be void.

Audit claims.

§ 4. The said commission, through the president or such other officer as it shall authorize, shall audit all claims and demands for moneys expended by it, or for expenditures of money which they have authorized in writing, and shall certify such claims and demands to the state controller who shall thereupon draw his warrants therefor upon the state treasurer payable out of said Panama-Pacific international exposition fund, and the state treasurer shall pay the same.

Agreements with Panama-Pacific international exposition company.

§ 5. Said commission shall have power to make and enter into, with the Panama-Pacific international exposition company, a corporation, organized under the laws of the state of California on the twenty-second day of March, 1910, any and all agreements which, in the opinion of said commission, they shall deem necessary or advisable to bring about the union or joint action of said commission and said corporation in furtherance of said Panama-Pacific international exposition, or that they shall deem necessary or advisable to carry into effect the provisions of this act and section 22 of article IV of the constitution of the state of California; provided, however, that all moneys received or realized by said commission for the benefit of the state of California under such agreement, shall be immediately deposited by the commission with the state treasurer to the credit of said Panama-Pacific international exposition fund; said moneys so deposited by said commission shall be subject to the charge and control of said commission in like manner as other moneys in said fund; provided, further, that any exhibitor shall be permitted to unpack, install, maintain and repack all exhibits in such manner as he may see fit, subject to uniform rules and regulations established by the exposition authorities and approved by the commission appointed under the terms of this act.

Expenditure of funds.

§ 6. The said commission shall determine whether any of said fund or any of the moneys under its control shall be expended for any specific purpose in connection with said Panama-Pacific international exposition, and whether any contract of any character shall be entered into at any time with said Panama-Pacific international exposition company, and the determination of the said commission as to the expenditure of any sum of money, or as to the making of any contract, or as to the advisability, necessity or advantage of any act in connection with said fund, shall be final and conclusive. In making expenditures in pursuance of this act and in pursuance of the provisions of section 22 of article IV of the constitution of the state of California or in performing any act in reference to said fund or in the making of any contract with said exposition company, the said commission shall make such investigations as it may deem advisable or proper and may in any manner that it deems appropriate, inform itself in reference to any matter or thing; and may ask and demand at any time and as often as it desires of the said Panama-Pacific international exposition company, a corporation, a full and complete detailed statement of the receipts of said corporation and of the expenditures

for any purpose whatsoever, made or to be made, or incurred by said Panama-Pacific international exposition company, a corporation, and may at any time and as often as it desires, examine the books, records, contracts, accounts, vouchers, and all papers of every sort and character, in the possession of, kept or used by the Panama-Pacific international exposition company, a corporation, and the said books, records, contracts, accounts, vouchers and all papers of every sort and character of the said Panama-Pacific international exposition company, a corporation, shall be open to inspection of the said commission or its authorized agents, at all times; and if the said Panama-Pacific international exposition company, a corporation, shall fail or refuse, or neglect to permit an inspection, or examination, or investigation by said commission, or by any person or persons said commission may designate, of its said books, records, contracts, accounts, vouchers and papers, or any of them, then and in that event, the said commission may hold, determine and decide such failure, refusal or neglect on the part of said Panama-Pacific international exposition company, a corporation, to be ample and sufficient reason and justification for the refusal or the failure of said commission to make any expenditures, or to execute any contract, or to pay or disburse any sum of money.

Accounting system.

§ 7. The said commission shall ask and demand that in the expenditure of any fund in connection or conjunction with the fund herein described, proper books of account shall be kept and maintained and an appropriate accounting system shall be had, and that such records and books shall be maintained and kept within the city and county of San Francisco, as will enable a person of ordinary understanding from an inspection thereof to determine the source and amount of all income and moneys received and the exact purpose, in detail, for which expenditures are made or moneys paid.

Successors of Panama-Pacific international exposition company.

§ 8. All of the provisions of this act shall apply to the successors or assigns of the Panama-Pacific international exposition company, a corporation, and wherever in this act the said corporation is referred to, the said provisions shall in case any other corporation, or company, or individual, shall succeed to the rights of said corporation, or be substituted in its place, or shall undertake to hold the said exposition, be applicable to such other corporation, person or company.

State not liable.

§ 9. The state of California shall not in any manner, or under any circumstances, be liable for any of the acts, doings, or proceedings of any person, association or corporation with whom said commission shall act, co-operate, or join to carry out the purposes of this act, or of section 22 of article IV of the constitution of the state of California, nor for the services, salary, labor or wages of any officers, agents, servants, or employees of such person, association or corporation, nor for any debts, liabilities or expenses of any kind whatsoever of such person, association or corporation, provided, however, that the commission may, in its discretion, employ the same persons, servants, agents or officers that may be employed by such person, association or corporation with which said commission shall act, co-operate and join to carry out the purposes of this act, and contribute to or pay the whole or any part of their compensation.

No member of commission liable.

§ 10. No member of said commission, or employee thereunder, or any officers thereof, shall be personally liable for any debts or obligations, or liability that may be created or incurred by said commission or by the state of California acting by or through

said commission. Neither said commission nor any member thereof shall be liable in damages for the negligence, default or wrongful act of any of the agents, servants or employees of said commission.

Commission may sue.

§ 11. Said commission may execute contracts, hold property or sue in its own name as the Panama-Pacific international exposition commission of the state of California. The provisions of an act entitled: "An act to authorize suits against the state, and regulating the procedure therein," approved February 28, 1893, shall not apply to any claim or contract made by said commission or for negligence of said commissioners.

Financial statement.

§ 12. Said commission shall, on the first day of December of each year, file with the state controller a financial statement under the seal of said commission, and verified by the members thereof, which statement shall show in detail the disposition of all moneys expended by it and to whom the same were paid; all expenditures contracted by it, all amounts paid thereon, and the balance due, if any, and shall file with such financial statement a report of all proceedings of said commission, the work accomplished by it, and plans proposed and the status of all matters under or in connection with the work of said commission and its funds. Upon completion of all work by said commission at the time fixed by law, said commission shall render a full, complete and final report, and file the same with the state controller.

Claims exempt from section 672.

§ 13. All claims and demands arising under or in consequence of any contract or agreement made by said commission, and all expenditures authorized by it, shall be exempt from the provisions of section 672 of the Political Code.

Indebtedness.

§ 14. Indebtedness incurred and warrants issued by said commission shall be payable only from the Panama-Pacific international exposition fund, and shall never be or become general indebtedness of the state of California.

Profits of exposition.

§ 15. The commission shall make such contracts as it may deem necessary or appropriate to insure to the state of California, its proportionate share in the returns, income, profits and holdings of said exposition and shall perform such acts as to it may seem requisite for the protection of the interests of the state of California in such returns, income, profits and holdings and shall do all things it may deem advisable to enable the state to receive its proportionate share of said returns, income, profits and holdings, and to this end, if said commission shall deem it advisable, it may provide for its participation in the management and control of the said exposition.

Tax levy.

§ 16. The state board of equalization shall, at the time mentioned in section 3696 of the Political Code, for the fiscal year beginning July first in the year one thousand nine hundred and eleven, and for each fiscal year thereafter, to and including the fiscal year beginning July first in the year one thousand nine hundred and fourteen, fix, establish and levy such an ad valorem rate of taxation, upon every kind and character of property in the state of California not exempt from taxation on the first day of July in the year one thousand nine hundred and ten, as when levied upon all the property in this section mentioned, after making due allowance for delinquency, shall raise for each of said fiscal years, the sum of one million two hundred and fifty thousand dollars.

Tax collected.

§ 17. The taxes assessed, levied and collected for state purposes under the provisions of sections 3820, 3821, 3822, 3823, of the Political Code shall be deemed to have been assessed, levied and collected for the purposes of raising to the extent of the amount collected, the moneys directed to be raised by section 22 of article IV of the constitution of this state as that section was amended on the eighth day of November in the year one thousand nine hundred and ten and as required by section 16 of this act.

Exposition fund.

§ 18. All money collected by taxation as in this act provided shall be paid over to the state treasurer at the time and in the manner provided in chapter 10, part III, title IX of the Political Code and by said state treasurer credited to a fund to be known as the Panama-Pacific international exposition fund and paid out as provided in section 4 hereof.

Disposition of surplus.

§ 19. Any money remaining in the Panama-Pacific international exposition fund after the filing of the complete and final report of said commission shall be transferred to the general fund of the state of California.

§ 20. This act shall take effect immediately.

Constitutional authorization of appropriation and bond issue.—See amendment to state constitution authorizing state to appropriate \$5,000,000 for the exposition: Stats. 1910, p. 4. See, also, amendment to charter of San Francisco, authorizing that city to issue bonds for \$5,000,000, for the same purpose: Stats. 1910, p. 2.

1. **Construction of contract in favor of state.**—All intendments are in favor of the state in construing a contract entered into by a public commission under the authority of an ambiguous proviso in the act creating such commission and defining its power to make contracts, where the contract in question is itself uncertain in its terms.—Panama-Pacific International Exposition Co. v. Panama-Pacific International Commission, 178 Cal. 746, 174 Pac. 890.

2. **Qualifications of power of state commission to make contract construed as conditions limiting power.**—Where a public commission is granted power over property of the state, and the language of the grant contains terms which qualify the power, the qualifications are to be construed as conditions beyond which the grantee of the power cannot go, in so far as such qualifications are favorable to the state.—Panama-Pacific International Exposition Co. v. Panama-Pacific International Exposition Commission, 178 Cal. 746, 174 Pac. 890.

3. **Section 22, article IV, of the constitution is mandatory.**—The proviso of section 22, article IV of the constitution, is mandatory, and the clause authorizing the commission to make "proper contracts" for the purpose of enabling the state to share proportionately with the contributors in the returns from the exposition requires the contracts to be of that character, and

limits the power of the commission to that extent, and the commission did not have the power to make a contract which would not entitle the state to share in the returns to the extent stated, or would give the state less than its proportionate share.—Panama-Pacific International Exposition Co. v. Panama-Pacific International Exposition Commission, 178 Cal. 746, 174 Pac. 890.

4. **State entitled to share on equal footing with stockholders.**—The provisions of the constitution and of the act of 1911, contemplate that the state should be upon an equal footing with the stockholders of the company, in the event there should be a surplus to divide, and all contributions by stockholders are required to be counted in ascertaining the proportion the state is entitled to, and all other contributions to be excluded in the division of such surplus except those of the state and of the stockholders of the company.—Panama-Pacific International Exposition Co. v. Panama-Pacific International Exposition Commission, 178 Cal. 746, 174 Pac. 890.

5. **The provision of the contract between the commission and the company that the state "shall receive in any distribution of property, dividends, or surplus and out of any remaining property or assets of said exposition an amount bearing the same proportion to the total amount of said assets, property, dividends, or surplus, as the total contributions of the state of California to the exposition shall bear to the sum total of all contributions from all sources to said exposition," is void, because contrary to the provisions of the constitution.**—Panama-Pacific International Exposition Company v. Panama-Pacific International Exposition Commission, 178 Cal. 746, 174 Pac. 890.

PANAMA-PACIFIC INTERNATIONAL EXPOSITION—DISPOSITION OF
STATE'S SHARE OF RETURNS.

ACT 1445—An act to provide for the disposition of any money or other property accruing to or to be received by the state of California as its proportionate share of the returns from the holding of the Panama-Pacific international exposition.

History: Approved January 11, 1916, Stats. 1916 (ex. sess.), p. 43.

Returns accruing to state from Panama-Pacific international exposition.

§ 1. The Panama-Pacific international exposition commission of the state of California is hereby authorized to accept and receive from the Panama-Pacific international exposition company the returns accruing to the state of California from the holding of the Panama-Pacific international exposition.

Disposition of funds.

§ 2. On the receipt of said returns the said commission shall promptly make a full report thereof to the state controller and deposit said returns with the state treasurer, who shall place the first two hundred thousand dollars deposited to the credit of "the San Francisco state normal school-exposition preservation fund," and the next fifty thousand dollars thereof to the credit of a fund known as "the Panama-California international exposition fund," which fund is hereby created, and the remainder thereof to the credit of the general fund.

EXPOSITION BUILDING AT LOS ANGELES.

ACT 1446—An act to provide for an exposition building at Los Angeles in Agricultural park for the use of all of the counties of this state, for the purpose of maintaining permanent exhibits therein of the resources of the different counties, and to make an appropriation for the construction of said exposition building. [Approved April 22, 1909, Stats. 1909, p. 1076.]

History: Approved April 22, 1909, Stats. 1909, p. 1076.

EXPOSITION AT LOS ANGELES—FURNISHING AND EQUIPPING BUILDING.

ACT 1447—An act making an appropriation for furnishing, equipping and maintaining the exposition building at Los Angeles, California, and for establishing and maintaining a permanent exhibit therein of the products and resources of the different counties of the state of California.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 1156.

ACT 1448—An act to appropriate money to be used as a revolving fund by the sixth district agricultural association for the purpose of creating, installing and maintaining special expositions at Exposition park, Los Angeles.

History: Approved June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1619.

Appropriation: expositions at Exposition park.

§ 1. The sum of fifty thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated to be used by the board of directors of the sixth district agricultural association for holding special expositions of the resources and industries of the state of California, in Agricultural park, otherwise known as Exposition park in the city of Los Angeles, California during the sixty-ninth and seventieth fiscal years.

Revolving fund.

§ 2. The sum of fifty thousand dollars, so appropriated, shall constitute and remain a revolving fund in the hands of the state treasurer to be advanced to said sixth dis-

strict agricultural association for the express purpose and term set forth in section one of this act and said fund when so advanced shall be used by said association for the purpose of creating, installing and maintaining special expositions open to the resources and industries of every section of the state without discrimination.

Contingent fund sixth district agricultural association.

§ 3. All collections and receipts shall be reported monthly by the secretary to the controller of the state and paid into the state treasury. Such collections and receipts shall be credited to the contingent fund of the sixth district agricultural association, which is hereby created and which shall be for the use of the said sixth district agricultural association. Of the moneys in said contingent fund, when such action has been authorized by the board of control, the association may draw, without at the time furnishing vouchers and itemized statements, a sum not to exceed one thousand dollars, said sum so drawn to be used as a revolving fund where cash advances are necessary. At the close of each fiscal year, or at any other time, upon demand of the board of control, the moneys so drawn must be accounted for and substantiated by vouchers and itemized statements submitted to and audited by the board of control and by the controller.

Return of fund.

§ 4. The said sum of fifty thousand dollars, so appropriated, shall be returned to the state treasurer by said sixth district agricultural association on or before the thirtieth day of June, 1919.

Available for what expenditures.

§ 5. The said sum of fifty thousand dollars, or so much thereof as may be necessary, shall be made available to meet expenditures incurred subsequent to the first day of July, 1917.

ITALIAN INTERNATIONAL EXPOSITION—CALIFORNIA EXHIBIT.

ACT 1449—An act appropriating money to pay the expense of maintaining an exhibit of the products of the state of California at the Italian international exposition, to be held in the city of Turin, kingdom of Italy, in the year 1911.

History: Approved April 25, 1911, Stats. 1911, p. 1110.

This act appropriated \$10,000 for the purpose indicated.

GHENT UNIVERSAL AND INTERNATIONAL EXPOSITION—CALIFORNIA EXHIBIT.

ACT 1449a—An act appropriating money to pay the expense of maintaining an exhibit of the products of the state of California at the universal and international exposition, to be held in the city of Ghent, in the kingdom of Belgium, in the year nineteen hundred thirteen, and providing for a commissioner thereof.

History: Approved April 18, 1913. In effect immediately. Stats. 1913, p. 37.

This act appropriated \$12,848.05 for the purpose indicated.

EXTENSION OF TIME.

See tit. "Time."

FACTORIES.

See tits. "Industrial Welfare Commission"; "Master and Servant."

FAIRFIELD.

See Act 3094, note.

FEATHER RIVER.

See tits. "Bridges"; "Swamp and Overflowed Lands."

CHAPTER 109.

FEEBLE-MINDED CHILDREN.

References: Asexualization of, see tit. "Asexualization."

California home for the care and training of, established, see Kerr's Cyc. Political Code, § 2145.

Insane asylums, generally, see tit. "Insane Asylums."

CONTENTS OF CHAPTER.

- ACT. 1462. GOVERNMENT AND MANAGEMENT OF CALIFORNIA HOME FOR THE CARE AND TRAINING OF FEEBLE-MINDED CHILDREN.
1463. PERMANENT SITE FOR HOME.
1464. SALE OF BUILDING AND SITE OF HOME IN SANTA CLARA COUNTY.
1465. GRANT OF RIGHT OF WAY FOR HIGHWAY THROUGH GROUNDS OF HOME.
1466. SUPPLEMENT ACT—ADMISSION OF IDIOTS, EPILEPTICS, ETC.
1467. AUTHORIZING THE TRANSFER AND QUIT CLAIMING OF PROPERTY IN SANTA CLARA COUNTY.
1468. APPROPRIATION FOR IMPROVEMENTS AND REPAIRS TO BUILDINGS.
1469. AUTHORIZING COMPLETION OF MAIN BUILDINGS.
1470. AUTHORIZING CONVEYANCE OF CERTAIN REAL PROPERTY.
1471. AUTHORIZING CONSTRUCTION OF TWO PAVILIONS FOR EPILEPTICS.
1472. AUTHORIZING CONSTRUCTION OF DAIRY BUILDINGS.

CALIFORNIA HOME FOR FEEBLE-MINDED CHILDREN—GOVERNMENT AND MANAGEMENT.

ACT 1462—An act to provide for the government and management of the California home for the care and training of feeble-minded children.

History: Approved March 9, 1887, Stats. 1887, p. 69. Amended March 14, 1889, Stats. 1889, p. 155. Prior act of March 18, 1885, Stats. 1885, p. 198, repealed by present act.

Sonoma State Home.—The California Home for the Care and Training of Feeble Minded Children is now under the control of the state commission in lunacy.—See Kerr's Cyc. Political Code, § 2136, 2145, 2192 et seq. It is now known as the Sonoma State Home.—See Kerr's Cyc. Political Code, § 2145.

1. **Charge against the county.**—Neither

the act of 1885 nor the present act contained any provision in reference to the expense of the education and support of the inmates of the institution being a charge against the county from which they were sent.—State v. County of Sonoma, 139 Cal. 264, 72 Pac. 1003.

Supplementary act.—See Act 1466.

PERMANENT HOME.

ACT 1463—An act providing a permanent site for the California home for the care and training of feeble-minded children.

History: Approved March 6, 1889, Stats. 1889, p. 69.

1. **Constitutionality.**—The act is not obnoxious to section 34, article IV, inasmuch as it makes but a single appropriation for a single purpose.—People v. Dunn, 80 Cal. 211, 13 Am. St. Rep. 118, 22 Pac. 140. See, also, People v. Counts, 89 Cal. 15, 26 Pac. 612.

2. **The mere selecting of a site to be purchased for a state home for feeble minded children is not a legislative act, and authorizing this to be done by certain persons is not a delegation of legislative**

power to such persons.—People v. Dunn, 80 Cal. 211, 13 Am. St. Rep. 118, 22 Pac. 140.

3. **Same—Journals of the legislature.**—In determining whether all constitutional requirements were complied with in the enactment of this statute, it will not be presumed that every constitutional requirement not shown by the journals of the legislature to have taken place did not take place.—People v. Dunn, 80 Cal. 211, 13 Am. St. Rep. 118, 22 Pac. 140. See, also, County of Yolo v. Colgan, 132 Cal. 265, 84 Am. St. Rep. 41, 64 Pac. 403.

SALE OF SANTA CLARA COUNTY PROPERTY.

ACT 1464—An act to authorize and direct the sale of the site and buildings of the California home for the care and training of feeble-minded children, in Santa Clara county.

History: Approved March 19, 1891, Stats. 1891, p. 133.

GRANT OF RIGHT OF WAY FOR HIGHWAY.

ACT 1465—An act granting to the board of supervisors of Sonoma county, California, right of way through the lands of the California home for the care and training of feeble-minded children, to enable said board of supervisors to change the location of the public highway now traversing said lands.

History: Approved March 23, 1893, Stats. 1893, p. 277.

SUPPLEMENTARY ACT—ADMISSION TO HOME, OF IDIOTS AND EPILEPTICS.

ACT 1466—An act to authorize, empower, and direct the California home for the care and training of feeble-minded children, to admit idiots, epileptics and mentally enfeebled paralytics into said institution; to provide for the support of all inmates therein, and to repeal all acts or parts of acts in conflict with the provisions of this act.

History: Approved March 31, 1897, Stats. 1897, p. 251. Amended March 23, 1901, Stats. 1901, p. 795.

1. Complaint.—A complaint in an action by the state against a county for the expense of the care and training of a feeble minded child, under this act, which fails to show that the officiating judge made an order for such payment as provided for by

the act, or that the trustees ever made any arrangement without any county official for such payment, fails to state a cause of action.—*State v. Sonoma County*, 139 Cal. 264, 72 Pac. 1003.

TRANSFER AND QUITCLAIM SANTA CLARA PROPERTY.

ACT 1467—An act to authorize and empower the trustees of the California home for care and training of feeble-minded to transfer and quitclaim certain real property to the trustees of the town of Santa Clara.

History: Approved March 20, 1903, Stats. 1903, p. 319.

IMPROVEMENT AND REPAIRS OF HOME.

ACT 1468—An act to provide for certain improvements and repairs to the California home for the care and training of feeble-minded children, making an appropriation therefor.

History: Approved June 14, 1906, Stats. 1906 (ex. sess.), p. 27.

This act appropriated the sum of \$72,500 for the purpose indicated.

COMPLETION OF MAIN BUILDINGS.

ACT 1469—An act authorizing and directing the completion of the main buildings at the California home for the care and training of feeble-minded children, near Eldridge, California, and making an appropriation therefor.

History: Approved March 11, 1907, Stats. 1907, p. 199. Amended March 25, 1909, Stats. 1909, p. 794.

AUTHORIZING CONVEYANCE OF CERTAIN PROPERTY.

ACT 1470—An act to authorize and enable the board of managers of the California home for the care and training of feeble-minded children to convey certain real property.

History: Approved March 21, 1907, Stats. 1907, p. 781.

AUTHORIZING CONSTRUCTION OF TWO PAVILIONS FOR EPILEPTICS.

ACT 1471—An act authorizing and directing the construction and furnishing of two pavilions for colonizing epileptic patients at the California home for the care and training of feeble-minded children, near Eldridge, California, and making an appropriation therefor.

History: Approved March 11, 1907, Stats. 1907, p. 200.

AUTHORIZING CONSTRUCTION OF DAIRY BUILDINGS.

ACT 1472—An act authorizing and directing the construction of dairy buildings and for the purchase of dairy apparatus at the California home for the care and training of feeble-minded children, near Eldridge, California, and making an appropriation therefor.

History: Approved March 11, 1907, Stats. 1907, p. 201.

CHAPTER 110.

FEES.

References: Fees and salaries in general, see Kerr's Cyc. Political Code, appropriate title.

Fees in particular instances, see particular title.

Fees in pension matters, see Kerr's Cyc. Political Code, § 4302.

Fees for filing statement and affidavit of candidates, etc., see Kerr's Cyc. Political Code, § 4301.

Fees for filing and swearing to demand against county, see Kerr's Cyc. Political Code, § 4301.

CONTENTS OF CHAPTER.

ACT 1475. FEES AND SALARIES OF CERTAIN OFFICERS.

1477. FEES, ETC., IN CITIES AND COUNTIES OF OVER 100,000 INHABITANTS.

1479. FEES OF COUNTY, TOWNSHIP AND OTHER OFFICERS.

1480. PAYMENT OF FEES TO TRIAL JURORS.

1481. PAYMENT TO MUNICIPAL OFFICERS OUT OF FUNDS OF COUNTY.

ACT 1475—An act to regulate fees of office and salaries of certain officers, and to repeal certain other acts in relation thereto.

History: Approved March 5, 1870, Stats. 1869-70, p. 148. Amended April 4, 1870, Stats. 1869-70, pp. 677, 680; February 21, 1872, Stats. 1871-72, p. 140; March 1, 1872, Stats. 1871-72, pp. 178, 188; March 2, 1872, Stats. 1871-72, p. 219; March 1, 1878, Stats. 1877-78, p. 134; May 21, 1917. In effect July 27, 1917. Stats. 1917, p. 788. Supplemented April 1, 1872, Stats. 1871-72, p. 910; February 17, 1874, Stats. 1873-74, p. 102. Repealed as to Sacramento county February 28, 1874, Stats. 1873-74, p. 204; as to Colusa county, March 30, 1874, Stats. 1873-74, p. 873. Superseded as to various counties in various particulars at various times, and all particulars relating to fees and salaries of the county officers therein, by the various county government acts from 1883 to 1897, and their amendments (see Kerr's Cyc. Political Code, §§ 4230, et seq.). The provisions as to fees and commissions paid by the state for assessment, equalization, auditing and collecting ad valorem taxes, were repealed by the act of February 23, 1893, p. 5 (County of Yolo v. Colgan, 132 Cal. 265, 64 Pac. 403). The act is probably not now in force in any except minor particulars (see notes, also see Act 1479, and notes). The act repealed all previous acts relating to the subject dealt with.

The amendment of 1917 is as follows:

Fees of grand and trial jurors.

§ 28. Grand and trial jurors shall receive the fees as established by law. No juror who shall be excused from attendance upon his own motion, on the first day of his appearance, in obedience to the venire, shall receive per diem, but mileage only. In civil actions tried by a jury the party or parties to the action who shall announce that

a trial by jury is required shall pay the trial jury their per diem fees as jurors but shall recover the fees so paid, except in actions to recover the possession of personal property where the value of the property recovered amounts to less than three hundred dollars and in actions for the recovery of money or damages where the recovery is less than three hundred dollars, as costs from the party or parties against whom the verdict is rendered. For that purpose the party or parties to the action who shall announce that a trial by jury is required shall be required during the trial to deposit daily with the clerk of the court, at or before the time the case each day is called for trial, the amount of money necessary to pay in full the trial jury fees, for such day. Out of the total sum of money so deposited the clerk shall pay daily to each trial juror the fees to which he shall be entitled as provided by law. Clerks of courts of record shall keep an account of all money received for trials by each juror during the term, and if the sum so received by such juror shall not amount to the jury fees provided by law per day, he shall deliver to such juror a certificate of the time for which he is entitled to receive pay, which shall be paid out of the county treasury as other county dues. If in any trial in a civil case the jury be for any cause discharged without finding a verdict, the fees of the jury shall be paid by the party who shall have announced that a trial by jury is required, but may be recovered as costs if he afterwards obtain judgment; and until they are paid no further proceedings shall be allowed in the action. On the first day of each regular meeting of the board of supervisors the clerks of courts of record shall file with the clerk of the board of supervisors of their respective counties a detailed statement, containing a list of the jurors, and the amount of fees earned by each juror and paid out of the county treasury. No allowances shall be made to any clerk for any service performed by him, until the statement required by this section shall have been filed as aforesaid. [Amendment of May 21, 1917. In effect July 27, 1917. Stats. 1917, p. 788.]

The amending act of 1917 contains the following:

Repealed.

§ 2. All acts and parts of acts in conflict with this act are hereby repealed.

Act not in force—Exceptions.—This act is probably not in force in any respect except as to the provisions of section 28, as amended in 1917, and possibly section 33 as to fees of interpreters and translator, which does not appear to have been amended. These two sections are reprinted here.

Code commissioner's note: "Repealed, as to the salaries and fees therein named, by the various County Government Acts, commencing with 1883, p. 299, and ending with 1897, p. 452. Repealed by fee bill of 1895, p. 267, as to the officers therein named; also repealed as to sundry counties by special acts relating to them. (Swinerton v. Monterey Co., 76 Cal. 115 [18 Pac. 135]; Sacramento Co. v. Colgan, 114 Cal. 246, [46 Pac. 175]; County of Yolo v. Colgan, 132 Cal. 265, [84 Am. St. Rep. 41, 64 Pac. 43].)"

1. Act repealed.—The act of 1870 was repealed so far as Sacramento County was concerned by the act of February 28, 1874 (Stats. 1873-74, p. 204).—County of Sacramento v. Colgan, 114 Cal. 246, 46 Pac. 175.

2. Act not repealed.—That portion of the act of 1870 as amended in 1872 (Stats. 1871-72, p. 188) relating to fees of jurors in civil cases, was not repealed by the codes, nor by the act of 1895 (Stats. 1895, p. 267).—Carpenter v. Jones, 121 Cal. 362, 53 Pac. 842.

3. The act of 1895 (Stats. 1895, p. 267) did not repeal the act of 1870 except as to the amount of the fees allowed jurors, and not as to the mode of payment.—Hilton v. Curry, 124 Cal. 84, 56 Pac. 784.

4. Necessity for payment of cost of jury in civil cases.—Cases upholding the requirement that expenses of jury trials must be paid before further proceedings are allowed.—Lukes v. Logan, 66 Cal. 33; Fairchild v. King, 102 Cal. 320; Carpenter v. Jones, 121 Cal. 362.

5. Suits in forma pauperis.—The act of 1917 and the act of 1868 requiring payment of cost of jury trial have no application in a case where the plaintiff is permitted to sue in forma pauperis.—Majors v. Superior Court, 58 Cal. Dec. 273.

6. Fees of jurors in criminal cases in San Francisco.—Neither the act of 1870, nor the act of 1866 (Stats. 1865-66, p. 122), nor the consolidation act (Stats. 1856, p. 145), nor the act of 1895 (Stats. 1895, p. 267), authorizes the payment of jurors in criminal cases in San Francisco out of the municipal treasury.—Birch v. Phelan, 127 Cal. 49, 59 Pac. 209; Powell v. Phelan, 138 Cal. 271, 71 Pac. 335.

7. Fees of jurors in civil cases in San Francisco.—The act of 1870 expressly ex-

cepted and exempted San Francisco from its operations, and the provision as to the issue of a juror's certificate is not repugnant to the provisions of the act of 1895 (Stats. 1895, p. 267) relating to the fees of jurors.—*Hilton v. Curry*, 124 Cal. 84, 56 Pac. 784.

8. **The right of a juror to compensation** is purely statutory, and he can only claim such compensation in the manner and amount prescribed by statute.—*Hilton v. Curry*, 124 Cal. 84, 56 Pac. 784.

9. **Fees of trial jurors.**—Trial jurors are given compensation only for attendance, and not when excused from attendance.—*Jacobs v. Elliott*, 104 Cal. 318, 37 Pac. 942.

10. **Order to issue juror's certificate.**—The jurisdiction to make the order under section 28 as to issue of jurors' certificates in civil cases, in case the fees are not paid by the plaintiff, and payment out of the county treasury rests on special circumstances, and when those circumstances do not exist, the court has no power to make it.—*Ex parte Makinney*, 2 Cal. Unrep. 283, 3 Pac. 253.

11. **Justices' fees.**—The provision of the amendment of 1878 (Stats. 1877-78, p. 134) requiring "all fees of justices of the peace" to be paid before a justice is compelled to forward the papers on appeal, contemplates the payment of all fees incurred by both appellant and respondent; and that provision is not in conflict with section 977, Code of Civil Procedure.—*Webster v. Hanna*, 102 Cal. 177, 36 Pac. 421.

12. **District attorney—Fees in prosecutions before justices' courts.**—Where the district attorney did not institute the proceeding, and did not appear and prosecute the case, either in person or by deputy, he is not entitled to fees in prosecutions before

a justice court under the act of 1870 and sections 4256-4258, Political Code.—*Edwards v. County of Fresno*, 74 Cal. 475, 16 Pac. 239.

13. **Fines for breaches of city ordinances.**—The state has no interest whatever in fines collected for breaches of city ordinances, nor in the prosecution thereof, and the fees of the district attorney for the prosecution of such cases cannot, under the act of 1870, become a charge against the county.—*Pillsbury v. Brown*, 47 Cal. 477.

14. **Appealable order.**—The refusal of the court to make an order allowing the sheriff keeper's fees, is not appealable.—*Greehn v. Shumway*, 73 Cal. 263, 14 Pac. 863.

15. **Keeper's fees.**—A permission given on the street, to the sheriff, by the judge, to pay keeper's fees, is not an order; and even the judge had promised to have the order entered, it would not have amounted to an order.—*Shumway v. Leaky*, 73 Cal. 260, 14 Pac. 841.

15a. **Under this act the sheriff is not allowed payment for keeping possession of and preserving property under attachment or execution until an allowance is made by the court.**—*Geil v. Stevens*, 48 Cal. 590; *Bower v. Rankin*, 61 Cal. 108; *Shumway v. Leaky*, 73 Cal. 260, 14 Pac. 841.

After an order allowing keeper's fees has been made the amount due is just debt and may be set out as a counter claim in an action against the sheriff for damages for failure to sell property under execution.—*Alexander v. Wilson*, 7 Cal. Unrep. 195, 79 Pac. 274.

16. **Order for payment of keeper's fees** must be made in the attachment suit, and not in another action.—*Shumway v. Leaky*, 73 Cal. 260, 14 Pac. 841.

FEES, ETC., IN CITIES AND COUNTIES OF OVER 100,000 INHABITANTS.

ACT 1477—An act to provide and regulate the manner of receiving and paying fees, commissions, percentages, and other compensation for official services in cities and cities and counties having a population of over one hundred thousand inhabitants, and prescribing the duties of officers with reference thereto.

History: Approved March 11, 1893, Stats. 1893, p. 127. Amended March 20, 1895, Stats. 1895, p. 164.

1. **Constitutionality—Arbitrary distinction.**—The act is unconstitutional and invalid because based on an arbitrary distinction, since the law being for the protection of the municipality and not for the convenience of the public, there is no reason why the same protection should not be given cities of less population.—*Rauer v. Williams*, 118 Cal. 401, 50 Pac. 691.

2. **Same—Special law.**—The act is uncon-

stitutional and invalid, because it is a special law passed in a case where a general law is applicable.—*Rauer v. Williams*, 118 Cal. 401, 50 Pac. 691.

3. **Two-dollar judgment fee.**—This act does not contemplate or permit the reception by a justice of the peace personally of a two-dollar fee for the entry of a judgment.—*Reid v. Groezinger*, 115 Cal. 551, 47 Pac. 374.

FEES OF COUNTY, TOWNSHIP AND OTHER OFFICERS.

ACT 1479—An act to establish the fees of county, township and other officers, and of jurors and witnesses in this state.

History: Approved March 28, 1895, Stats. 1895, p. 267.

Code commissioners' note: "Unconstitutional as to the requirement of a deposit on the appraised valuation of estates (*Fatjo v. Pfister*, 117 Cal. 83 [48 Pac. 1012]); also in so

far as it provides that justices shall retain fees for their own use (*Reid v. Groezinger*, 115 Cal. 551 [47 Pac. 374]); also as to the amount of justices' fees generally (*Dwyer*

v. Parker, 115 Cal. 544 [47 Pac. 372]].—See *Tooley v. Calaveras Co.*, 121 Cal. 482 [53 Pac. 1075]; also as to constables in counties of the thirty-fourth class (*Kiernan v. Swan*, 131 Cal. 410 [63 Pac. 768])."

Editor's note: Statutes fixing fees of county and township officers prior to the County Government Act of 1883 were repealed by the latter statute in the following provisions: Sec. 164—"The salaries and fees provided for in this act shall be in full compensation for all services of every kind and description rendered by the officers therein named," etc. Sec. 182—"The provisions of this act, so far as it relates to the fees and salaries of all officers named, except justices of the peace and constables, shall not affect the present incumbents," etc. Sec. 184—"All acts and parts of acts inconsistent with this act are hereby repealed." So the statute here given purports to fix fees that may be charged and repeals "all acts or portions of acts inconsistent therewith."

Jury fees.—It may be further noted that, while the amount of jury fees is here fixed, yet it has been held that the provision in the statute of 1870, as amended by 1871-2, p. 188, ch. CLXVIII, that jury fees shall be paid by party calling for jury, where jury is discharged without having arrived at a verdict, has not been repealed by the codes nor by subsequent legislation.—*Carpenter v. Jones*, 121 Cal. 362, 364, 53 Pac. 842.

And as to fees in San Francisco. It was held that the statute of 1866 had not been repealed, as to the mode in which payment should be made.—*Hilton v. Curry*, 124 Cal. 84-89, 56 Pac. 784; *Birch v. Phelan*, 127 Cal. 49, 50, 51, 59 Pac. 209; but that statute is now repealed: 1905, 387, ch. CCCXXXI.

1. Constitutionality.—Whole act not invalidated.—The unconstitutionality of the provisions of the act relating to the compensation of justices of the peace and constables does not invalidate the whole act, and there remains a full and complete fee bill for all county and township officers named, which to that extent supersedes the county government act of 1893.—*Dwyer v. Parker*, 115 Cal. 544, 47 Pac. 372. See, also, *Burce v. Jack*, 135 Cal. 535.

2. Same.—Uniform operation.—The act is obnoxious to the provision of section 11, Article I of the constitution, requiring all laws of a general nature to have a uniform operation.—*Dwyer v. Parker*, 115 Cal. 544, 47 Pac. 372.

3. Same.—Fixing fees of justices of the peace without regard to classification of counties.—The act is obnoxious to section 5, Article XI of the constitution, because it attempts to fix the compensation of justices of the peace and constables without regard to the classification of counties required in order to fix such compensation in propor-

tion to duties performed.—*Dwyer v. Parker*, 115 Cal. 544, 47 Pac. 372. See, also, *Knight v. Martin*, 128 Cal. 245, 60 Pac. 849; *Kiernan v. Swan*, 131 Cal. 410, 63 Pac. 768; *Thom v. Los Angeles*, 136 Cal. 375, 69 Pac. 18; *Johnston v. Los Angeles*, 5 Cal. Unrep. 568, 47 Pac. 374; *Westerfield v. Riverside County*, 5 Cal. Unrep. 855, 50 Pac. 929.

4. Same.—Imposition of tax for county purposes.—Section 1 of the act violates section 12, Article XII of the constitution, in that it attempts to impose a tax for county purposes.—*Fatjo v. Pfister*, 117 Cal. 83, 48 Pac. 1012. See, also, *Wingerter v. San Francisco*, 134 Cal. 547, 86 Am. St. Rep. 294, 66 Am. Rep. 730; *Trower v. San Francisco*, 152 Cal. 479, 15 L. R. A. (N. S.) 183, 92 Pac. 1025.

5. Same.—Subject not germane.—Not expressed in title.—Section 1 of the act violates section 24, Article IV of the constitution, in that its subject is not expressed in the title and is not germane thereto.—*Fatjo v. Pfister*, 117 Cal. 83, 48 Pac. 1012. See, also, *Wingerter v. San Francisco*, 134 Cal. 547, 86 Am. St. Rep. 294, 66 Pac. 730; *Trower v. San Francisco*, 152 Cal. 479, 15 L. R. A. (N. S.) 183, 92 Pac. 1025.

6. Same.—Illegal tax.—Section 1 of the act is obnoxious to section 1, Article XIII of the constitution, in that it is an attempt under the guise of fee to impose an ad valorem property tax upon the estates named, regardless of their solvency or insolvency.—*Fatjo v. Pfister*, 117 Cal. 83, 48 Pac. 1012. See, also, *Wingerter v. San Francisco*, 134 Cal. 547, 86 Am. St. Rep. 294, 66 Pac. 730; *Trower v. San Francisco*, 152 Cal. 479, 15 L. R. A. (N. S.) 183, 92 Pac. 1025.

7. The act is applicable to San Francisco. Is repugnant to the act of 1866 (Stats. 1865-66, p. 66), is a valid law, and operated as a repeal of that act.—*Miller v. Curry*, 113 Cal. 644, 45 Pac. 877. But, see, *Doyle v. Eschen*, 5 Cal. App. 55, 89 Pac. 836.

8. The act had no application to the City and County of San Francisco.—*Powell v. Phelan*, 138 Cal. 271; 71 Pac. 335.

9. Fees of justices of the peace.—The two-dollar fee for all services performed by the justice of the peace before trial includes issuance of attachment and approval of bond, including justification of sureties, notwithstanding separate provisions for process not otherwise provided for, and for taking and approving bond.—*Kozminsky v. Williams*, 126 Cal. 26, 58 Pac. 310.

10. Witness fees in criminal cases.—The act does not provide for the means or manner of paying fees of witnesses in criminal cases.—*Murphy v. Madden*, 130 Cal. 674, 63 Pac. 80.

11. Superseded.—This act was superseded. See *Kerr's Cyc. Political Code*, §§ 4300, 4300a, 4300k, 4301.

PAYMENT OF TRIAL JURORS' FEES.

ACT 1480—An act for the payment of the fees due to trial jurors, who have served as such in the superior court of any county or city and county of this state, under the act of 1895.

History: Approved March 23, 1901, Stats. 1901, p. 684.

PAYMENT OF MUNICIPAL OFFICERS.

ACT 1481—An act forbidding the payment of municipal officers out of the funds of the county.

History: Approved March 8, 1905, Stats. 1905, p. 88.

§ 1. In no case shall the fees of a city justice of the peace, town or city recorder or city or town marshal, for services in any criminal action, be a charge against the county.

1. **Constitutionality.**—The act is clearly a violation of section 31, Article IV of the constitution.—*Powell v. Phelan*, 138 Cal. 271,

71 Pac. 335. See, also, *Jackson v. Baehr*, 138 Cal. 266, 71 Pac. 167.

CHAPTER 111.

FENCES.

References: Acts relating to, continued in force, *Kerr's Cyc. Political Code*, § 19.

Construction of along highways, see *Kerr's Cyc. Political Code*, § 2647.

Estrays, see tit. "Estrays."

Fences in particular counties, see particular county.

Opening, tearing down, destroying, see *Kerr's Cyc. Penal Code*, § 602, subdv. (h).

Removal of in laying out highways.

Trespassing animals, see tit. "Trespassing Animals."

See, generally, tits. "Hogs"; "Goats"; "Sheep."

CONTENTS OF CHAPTER.

ACT 1492. CONCERNING LAWFUL FENCES AND TRESPASSING ANIMALS ON ENCLOSED LANDS.

1493. CONCERNING LAWFUL FENCES IN CERTAIN COUNTIES.

1494. CONCERNING LAWFUL FENCES IN CERTAIN COUNTIES.

1495. CONSTRUCTION OF DIVISION FENCES.

1496. HEIGHT OF DIVISION AND PARTITION FENCES.

1497. "SPITE" FENCES, AND ABATEMENT THEREOF.

1499. ENTERING, PASSING THROUGH, AND HUNTING ON ENCLOSED LAND.

CONCERNING LAWFUL FENCES AND TRESPASSING ANIMALS.

ACT 1492—An act concerning lawful fences, and animals trespassing on premises lawfully enclosed.

History: Passed March 30, 1850, Stats. 1850, p. 131. (See Act 1493, and notes to this act.)

Code commissioners' note: "Repealed as to many counties by the statute of 1855, p. 154, from which, however, Amador, Butte, Calaveras, Colusa, Klamath, Nevada, Placer, San Bernardino, San Diego, Santa Barbara, Shasta, Siskiyou, Trinity, Tuolumne, and Yuba counties were omitted. The statute of 1855 was afterwards amended to include Butte, Calaveras, and Nevada. Special acts were passed relating to other counties, but the statute of 1850 has apparently not been repealed as to Amador, Klamath, San Diego, Santa Barbara, Siskiyou, and Trinity counties."

1. **Common law rule.**—This act is by necessary implication directly in conflict with and repugnant to the rule of the common law that every man is bound to keep his beasts in his own close under penalty of answering in damages for all injuries result-

ing from their being permitted to run at large.—*Logan v. Gedney*, 38 Cal. 579.

2. **Repeal.**—The effect of the act of March 7, 1878 (Stats. 1877-78, p. 176), concerning trespassing of animals in certain counties in California, was to repeal the act of 1850 concerning lawful fences, so far as the counties named were concerned.—*Blevens v. Mullally*, 22 Cal. App. 519, 135 Pac. 307.

3. **Liability for injuries to passing animals—Question of lawful fence, vel non, immaterial.**—The liability of one who maintains a fence along a public highway for injuries to passing animals, does not depend upon the question whether his fence came up to the standard adopted by the legislature in this act, which is merely descriptive of what the legislature considered a good fence, so far as trespassing animals were concerned.—*Loveland v. Gardner*, 79 Cal. 317, 21 Pac. 766.

CONCERNING LAWFUL FENCES.

ACT 1493—An act concerning lawful fences.

History: Approved April 27, 1855, Stats. 1855, p. 154. Amended April 9, 1859, Stats. 1858, p. 123; April 3, 1860, Stats. 1860, p. 141; May 18, 1861, Stats. 1861, pp. 510, 513; April 4, 1864, Stats. 1864, p. 465. Most of the amendatory acts were also supplementary.

Editor's note: This act excepted from its operation the counties of Butte, Amador, Tuolumne, Calaveras, San Diego, Nevada, San Bernardino, Colusa, Placer, Santa Barbara, Yuba, Trinity, Shasta, Klamath, and Siskiyou.

Marin county was included by the amendment of 1858, and was excepted in 1861. The amendment of 1861 (p. 513) also applied the act to all counties except Sonoma, Napa, El Dorado, Yuba and Marin.

This act and the supplementary act of 1860, p. 141, were continued in force by the Political Code, § 19, and consequently the counties to which they apply are not subject to the provisions of § 841 of the Civil Code.—*Meade v. Watson*, 67 Cal. 591, 8 Pac. 311. See, also, *Gonzales v. Wasson*, 51 Cal. 295.

1. Fence laws repealed.—The estray act of 1915 (636) repeals all fence laws in all the counties of the state except the six specified.—*Montezuma, etc., Co. v. Simmerly*, 58 Cal. Dec. 563.

2. The common law rule requiring the owner of cattle to keep his animals from his neighbor's lands, fenced or unfenced, is in operation in Mendocino county. *Montezuma, etc., Co. v. Simmerly*, 58 Cal. Dec. 563. (See Act 1401, notes.)

3. The complaint states a cause of action for damages for trespass on unenclosed lands.—*Montezuma, etc., Co. v. Simmerly*, 58 Cal. Dec. 563.

4. Section 5 of this act as amended in 1860 (Stats. 1860, p. 141), is in force in the counties named and section 841, Civil Code, is in force in all other counties.—*Gonzales v. Wasson*, 51 Cal. 295. (Note: The act of 1850 contained no section 5, and the opinion evidently refers to the act of 1855.)

5. Lawful fence—Recovery of damages.—A statutory fence or one equivalent thereto is essential to the right of recovery of damages for animals breaking into plaintiff's close.—*Comerford v. Dupuy*, 17 Cal. 308.

5a. A good, strong, substantial, and lawful stone fence, forming a perfect enclosure, and sufficient to prevent the ingress and egress of stock to and from the premises enclosed thereby, is an equivalent of the lawful fence prescribed by the statute.—*Meade v. Watson*, 67 Cal. 591, 8 Pac. 311.

6. Railroad fence.—The railroad act of 1861 (Stats. 1861, p. 607) requiring the company to make and maintain a good and lawful fence, must be considered as referring to and adopting the standard previously established by the act of 1855.—*Enright v. San Francisco, etc., R. R. Co.*, 33 Cal. 230.

7. Continued in force by the codes.—The act was continued in force by section 19 of the Political Code, and is not subject to the provisions of section 841, of the Civil Code, so far as the counties to which it applies are concerned.—*Meade v. Watson*, 67 Cal. 591, 8 Pac. 311. See, also, *Gonzales v. Wasson*, 51 Cal. 295.

8. Division fence.—A line, or division fence must be a lawful fence.—*Meade v. Watson*, 67 Cal. 591, 8 Pac. 311.

9. The fact that defendant's land was, by an understanding with the owners of other tracts of land lying adjacent to his tract, enclosed in one field by a common enclosure, does not make such enclosure any the less an enclosure within the meaning of section 5 of the act providing for partition or division fences between adjacent land owners, and the recovery of one-half the value thereof by the original owner of such fence.—*Gonzales v. Wasson*, 51 Cal. 295.

10. It is not necessary, in order to make an enclosure within the meaning of section 5, that defendant should have constructed a fence at a place where there was a natural barrier which was sufficient to protect his land.—*Gonzales v. Wasson*, 51 Cal. 295.

11. Same—Lien for one-half value.—The lien was not intended as an exclusive remedy for the recovery of compensation for the one-half of the value of the division fence, but is given as a further remedy, in addition to the ordinary remedy by action, which a party may avail himself of at his election.—*Gonzales v. Wasson*, 51 Cal. 295.

12. Same—Liability attaches when defendant encloses his land, and is not impaired by the passage of the act of February 4, 1874 (Stats. 1873-74, p. 50), an act to protect agriculture and to prevent the trespassing of animals, etc.—*Gonzales v. Wasson*, 51 Cal. 295.

LAWFUL FENCES IN CERTAIN COUNTIES.

ACT 1494—An act concerning lawful fences in San Bernardino, Colusa, Shasta, Tehama, and Placer counties.

History: Approved April 18, 1859, Stats. 1859, p. 279. Extended to Yuba county April 20, 1863, Stats. 1863, p. 357. Extending act repealed by the act of March 30, 1872, Stats. 1871-72, p. 700.

LAWFUL DIVISION FENCES.

ACT 1495—An act to provide for the constructing division fences.

History: Approved March 9, 1876, Stats. 1875-76, p. 175. Amended March 30, 1878, Stats. 1877-78, p. 765. Repealed April 1, 1878, as to San Mateo county, Stats. 1877-78, p. 1019.

This act applied to the counties of Sacramento, Solano, Sutter, Yuba, Butte, Contra Costa, San Joaquin (parts of), Amador, San

Luis Obispo, Santa Barbara, Ventura, Tulare, El Dorado, Tuolumne, San Mateo and Nevada.

HEIGHT OF DIVISION AND PARTITION FENCES.

ACT 1496—An act regulating the height of division and partition fences in cities.

History: Approved March 9, 1885, Stats. 1885, p. 45.

Partition fence not to exceed ten feet in height.

§ 1. It shall be unlawful for the owner of real property in any city or town in this state, or any person having possession thereof, to construct, erect, build, permit, or maintain upon such premises, any fence or partition wall which shall exceed ten feet in height, without first obtaining a permit to do so from the board of supervisors or city council of the city or town in which said fence or wall is to be erected and maintained.

Consent of adjoining owner.

§ 2. No permit to construct or maintain any fence or division partition wall having a greater height than ten feet, shall be granted by the board of supervisors or city council of any city or town in this state, unless the person applying therefor, and to whom such permit is granted, shall first obtain and present to such board of supervisors or city council the written consent of the person or persons having ownership and possession of the adjoining premises affected thereby; provided, that where such fence or wall is constructed around a public garden, or place of public resort where an admission fee is charged, no signature or consent of adjacent owners shall be required.

Misdemeanor. Penalty.

§ 3. Any violation of section one of this act shall be deemed a misdemeanor, and the person so offending shall be punished by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than sixty days nor more than one year, or by both fine and imprisonment.

1. The act is a general law, and operates alike upon all who are within the reason of the act.—*Western, etc., Co. v. Knickerbocker*, 103 Cal. 111, 37 Pac. 192.

2. Power of legislature as to creation of easements, etc.—The legislature cannot create an easement in favor of certain proprietors over the lands of another, nor declare the usual and ordinary use of property a nuisance, when such use infringes upon the legal rights of no one.—*Western, etc., Co. v. Knickerbocker*, 103 Cal. 111, 37 Pac. 192; *Ingwersen v. Barry*, 118 Cal. 342, 50 Pac. 536.

3. Construction of act.—The act must be construed to give it validity if possible, and it will not be construed to prevent an owner from erecting a fence or any other structure on his own land, although such structure may cut off his neighbor's light and air, but only to prevent the erection of a fence over ten feet high on the dividing line between the adjoining properties.—*Western, etc., Co. v. Knickerbocker*, 103 Cal. 111, 37 Pac. 192; *Ingwersen v. Barry*, 118 Cal. 342, 50 Pac. 536.

SPITE FENCES.

ACT 1497—An act in relation to fences and other structures erected to annoy, and for the abatement of nuisances.

History: Approved May 28, 1913, Stats. 1913, p. 342.

Fence ten feet high a nuisance.

§ 1. Any fence or other structure in the nature of a fence, unnecessarily exceeding ten feet in height maliciously erected or maintained for the purpose of annoying the owner or occupants of adjoining property, shall be deemed a private nuisance.

Injured person's recourse.

§ 2. Any such owner or occupant, injured either in his comfort or the enjoyment of his estate by such nuisance may enforce the remedies against the continuance of the same prescribed in title III, part III of the Civil Code of the state of California.

ENTERING, PASSING THROUGH, AND HUNTING IN INCLOSURES.

ACT 1499—An act to prevent persons passing through inclosures and leaving them open, by tearing down fences, or otherwise, and to prevent hunting upon inclosed lands in the state of California.

History: Approved March 23, 1876, Stats. 1875-76, p. 408. Amended January 25, 1878, Stats. 1877-78, p. 49; March 30, 1878, Stats. 1877-78, p. 776. Prior act approved March 16, 1872, Stats. 1871-72, p. 384, probably superseded, as also probably was the present act. See note.

Misdemeanor.

§ 1. Every person who shall open any gate, bars, or fence of another, for the purpose of passing through, and shall willfully leave the same open, without the permission of the owner, is guilty of a misdemeanor.

Same.

§ 2. Every person who willfully opens, tears down, or otherwise destroys any fence on the inclosed land of another, is guilty of a misdemeanor.

Same.

§ 3. Every person who willfully enters upon the inclosed land of another for the purpose of hunting, or who discharges firearms, or lights camp-fires thereon, without first having obtained permission of the owner or occupant of said land, is guilty of a misdemeanor.

Same.

§ 4. Every person who willfully, carelessly, or negligently, while hunting or camping upon the inclosed land of another, kills, maims, or wounds an animal, the property of another, is guilty of a misdemeanor.

Same.

§ 5. Every person who, upon departing from camp, willfully leaves the fire or fires burning or unextinguished, is guilty of a misdemeanor.

Penalty.

§ 6. Every person found guilty of any of the misdemeanors herein mentioned shall be fined not less than twenty nor more than fifty dollars, and shall be imprisoned in the county jail until such fine be satisfied, not exceeding one day for every two dollars thereof.

Conflicting acts repealed.

§ 7. All acts and parts of acts in conflict herewith are repealed; provided, however, nothing herein contained shall be construed as repealing section five hundred and ninety-four of the Penal Code.

Counties excepted.

§ 8. Section three of this act shall not apply to the counties of Los Angeles, San Diego, Sutter, San Benito, Del Norte, El Dorado, Colusa, Yuba, Humboldt, Amador, Tuolumne, Shasta, Plumas, Lassen, Siskiyou, Modoc, Trinity, Sierra, Placer, and Santa Cruz. [Amendment approved March 30, 1878. Stats 1877-78, p. 776.]

Another amendment of section 8 at same session of the legislature. By an act approved January 25, 1878 (Stats. 1877-78, p. 49), § 8 was amended to read:

"Sec. 8. Section three of this act shall not apply to the counties of Los Angeles, San Diego, Sutter, Del Norte, El Dorado, Colusa, Yuba, Humboldt, Amador, Tuolumne, San Luis Obispo, Plumas, Lassen, Siskiyou, Modoc, Shasta, Trinity, Sierra, and Placer."

Act takes effect when.

§ 9. This act shall take effect immediately.

Code commissioner's note: Concerning § 602 of the Penal Code, the code commissioner says: "The eighth subdivision is a codification of the statute of 1871-72, p. 384, and the ninth is a codification of part of § 3 of the statute of 1875-76, p. 408, to prevent hunting upon inclosed lands."

Code commissioner's note: In his "List of Statutes in Force," the code commissioner says of this act: "§ 5 of the act superseded by Pen. Code, § 384b, as adopted in 1905; § 4 superseded by Pen. Code, § 384c, as adopted in 1905; §§ 1-3 probably superseded by Pen. Code, § 602, subds. 8 and 9, as amended in 1905."

FERNDALE.

See Act 3094, note.

CHAPTER 112.

FERRIES.

References: Corporations, see Kerr's Cyc. Civil Code, §§ 528, et seq.

Crossing without pay, see Kerr's Cyc. Penal Code, § 389.

Defined, for assessment purposes, see Kerr's Cyc. Political Code, § 3643.

Ferries, generally, see Kerr's Cyc. Political Code, §§ 2843, et seq.

Maintaining without license, see Kerr's Cyc. Penal Code, § 386.

Violating condition to maintain, see Kerr's Cyc. Penal Code, § 387.

Wagon road corporations, rights and duties of, with respect to, see Kerr's Cyc. Civil Code, § 514.

See, generally, tit. "Bridges."

CONTENTS OF CHAPTER.

ACT 1505. ACROSS NAVIGABLE RIVERS BETWEEN COUNTIES.

1506. ACROSS STREAMS WHOLLY WITHIN COUNTIES.

ACROSS NAVIGABLE RIVERS BETWEEN COUNTIES.

ACT 1505—An act relating to ferries across navigable rivers separating counties, and empowering the boards of supervisors of such counties to establish and maintain ferries across such rivers, and to pay the expense thereof.

History: Approved March 16, 1903, Stats. 1903, p. 156.

Power to establish.

§ 1. When a navigable river forms a boundary between two counties of this state, the boards of supervisors of such counties are hereby given the power to establish and operate a ferry or ferries across such stream.

Expenses of operating.

§ 2. Each of such counties shall pay such proportion of the expenses of establishing and operating said ferry or ferries as may be agreed upon by the board of supervisors of such counties.

Refusal of one county to establish. Proceedings. Landing places.

§ 3. In case either of said counties shall refuse to enter into an agreement to establish and operate such ferry or ferries, the county situated upon the opposite bank of such river may establish and operate a ferry or ferries across such river, and such county is hereby empowered to acquire landing places for such ferry or ferries on the bank of such river opposite the boundary of such county, and may pay the expense of establishing and operating said ferry or ferries out of the general road fund of such county.

§ 4. This act shall take effect from and after its passage.

1. Licensing.—The provision of the act of admission that "all navigable waters within said state shall be common highways and forever free as well to the inhabitants of the

said states as to the citizens of the United States," does not prohibit the state from requiring a franchise or permit to operate a ferry upon such waters.—Vallejo, etc., Co. v.

Lang & McPherson, 161 Cal. 672, 120 Pac. 421.

2. The power of a municipality to grant a franchise for a ferry over navigable waters in its limits is not affected by the

fact that one of the termini is upon land over which the United States exercises exclusive jurisdiction.—Vallejo, etc., Co. v. Solano, etc., Club, 165 Cal. 255, 131 Pac. 864.

ACROSS STREAMS WHOLLY WITHIN COUNTIES.

ACT 1506—An act relating to ferries across rivers and streams wholly within one county, and empowering the boards of supervisors of such county to purchase, establish and maintain ferries across such rivers or streams and to pay the expenses thereof.

History: Approved April 16, 1909, Stats. 1909, p. 974.

Free ferries, operation of.

§ 1. Whenever the board of supervisors of any county within the state of California shall deem it advisable and for the best interests of the public that the county own and operate any ferry within such county, such board may purchase, establish and operate a ferry or ferries across any stream or river within said county and may operate the same as a free ferry or ferries.

Payment of expenses.

§ 2. Such board of supervisors is hereby empowered to acquire landing places for such ferry or ferries on the banks of such river or stream and may pay the expenses of establishing and operating said ferry or ferries out of the general road fund of said county; provided, however, that no supervisor or his bondsmen shall be responsible for the payment of damages incurred by any person while traveling on such ferry.

§ 3. This act shall take effect from and after its passage.

CHAPTER 113.

FERRY DEPOT.

References: See titles. "Bonds"; "Public Buildings."

SAN FRANCISCO FERRY DEPOT ACT.

ACT 1511—An act to provide for the issuance and sale of state bonds to create a fund for the construction and furnishing, by the board of state harbor commissioners, of a general ferry and passenger depot in the city and county of San Francisco; to create a sinking fund for the payment of said bonds, and providing for the submission of this act to a vote of the people.

History: Approved March 17, 1891, Stats. 1891, p. 110.

1. The purpose of the act was to enable the harbor board to anticipate their revenues and to create an indebtedness for the building of the depot, a thing they could not have done otherwise because of the restrictions of sections 2526 and 2527 of the Political Code.—Bateman v. Colgan, 111 Cal. 580, 44 Pac. 238.

2. The phrase in the act "in the manner and method authorized by law" in reference to the construction of the ferry building, refers to the provisions of the Political Code, relating to the powers and duties of the board, and not to the general Public Building Act (Stats. 1875-76, p. 427).—Bateman v. Colgan, 111 Cal. 580, 44 Pac. 238.

CHAPTER 114.

FERTILIZERS.

References: See tit. "Adulteration."

CONTENTS OF CHAPTER.

ACT 1516. SALE OF COMMERCIAL FERTILIZERS.

SALE OF COMMERCIAL FERTILIZERS.

ACT 1516—An act to regulate the sale of commercial fertilizers or materials used for manurial purposes, and to provide penalties for the infraction thereof, and means for the enforcement of this act.

History: Approved March 20, 1903, Stats. 1903, p. 259. Amended March 24, 1911, Stats. 1911, p. 488; April 10, 1915. In effect August 8, 1915. Stats. 1915, p. 42.

Commercial fertilizers shall be labeled.

§ 1. Every lot, parcel, or package of commercial fertilizers or materials to be used for manurial purposes (excepting the dung of domestic animals), sold, offered, or exposed for sale, within this state, shall be accompanied by a plainly printed label, stating the name, brand, and trademark, if any there be, under which the fertilizer is sold, the name and address of the manufacturer, importer, or dealer, the place of manufacture, and a chemical analysis, stating the percentages claimed to be therein; of nitrogen, specifying the form or forms in which it is present; of phosphoric acid, available and insoluble; and of potash, soluble in distilled water, and the materials from which all of said constituents are derived. All analyses are to be made according to the methods agreed upon by the American association of official agricultural chemists. In the case of those fertilizers, the selling price of which is less than eight dollars (\$8) per ton, said label need only give a correct general statement of the nature and composition of the fertilizer it accompanies.

Fertilizer to be plainly labeled.

§ 2. No person shall sell, offer or expose for sale in this state any pulverized leather, hair, ground hoofs, horns or wool waste, raw, steamed, roasted, or in any form, street sweepings, or the dung or urine of any domestic animal, mixed with, or in combination with, water artificially added thereto, or with any sand, soil or other material not commonly used for bedding domestic animals, as a fertilizer or as an ingredient for fertilizer or manure without an explicit statement of the fact in printing or writing conspicuously placed thereon and affixed to every package, container, car or vehicle in which the same shall be transported or delivered to any purchaser thereof, said statement to go with every lot, parcel or package of the same. [Amendment approved March 24, 1911. Stats. 1911, p. 488.]

Certificate of registration required.

§ 3. The manufacturer, importer, agent of, or dealer in any commercial fertilizers, or materials used for manurial purposes, the selling price of which to the consumer is eight (\$8) dollars or more per ton, shall, before the same is offered for sale, obtain a certificate of registration from the secretary of the board of regents of the University of California, countersigned by the director of the agricultural experiment station of the said university, authorizing the sale of fertilizers in this state, and shall securely fix to each lot, parcel, or package of fertilizer the word "Registered" with the number of registry. The manufacturer, importer, agent, or dealer obtaining such registry, shall pay to the said secretary the sum of fifty (\$50) dollars, to be applied as provided in section 9 of this act; such registration shall expire on the thirtieth day of June of the

fiscal year for which it was given; provided, the provisions of this section shall not apply to any agent whose principals shall have obtained a certificate of registration as herein provided. Every such manufacturer, importer, agent, or dealer, who makes or sells, or offers for sale, any such substances, under a name or brand, shall file, on or before the first day of July, in each year, a statement, under oath, with said director, stating such name or brand, and stating the component parts in accordance with the provisions of section 1 of this act, of the substances to be sold, or offered for sale, or manufactured under each such name or brand.

Analyses to be made. How users may obtain analyses.

§ 4. The said director shall annually, on or before the first day of September, take samples in accordance with the provisions of section 5 hereof of the substance made, sold, or offered for sale, under every such name or brand, and cause analyses to be made thereof in accordance with the provisions of section 1 hereof, and said analyses may include such other determinations as said director may at any time deem advisable. Dealers in, or manufacturers of fertilizers, must give free access to the director of the agricultural experiment station, or his duly authorized deputy, to all the materials which they may place on the market for sale in California. Whenever the analysis certified by the said director shall show a deficiency of not more than one-fourth of one per cent of nitrogen, or one per cent of soluble or available phosphoric acid, or one-half of one per cent of potash soluble in distilled water, the statement of the manufacturer or importer, as required in section 1 of this act, shall not be deemed to be false in the meaning of this act; provided, that this act shall not apply to sales of fertilizing materials made to a registered manufacturer of fertilizers, or to sales for export outside of this state; provided, further, that the said director of the agricultural experiment station of the University of California shall, upon the receipt of a sample of fertilizer, accompanied with a nominal fee of two (\$2) dollars, furnish to the user of said commercial fertilizers, such examination or analysis of the sample as will substantially establish the conformity or non-conformity of the said fertilizer to the guarantee under which it was sold.

Sample to be kept by party whose stock is sampled and by university.

§ 5. The director of the agricultural experiment station of the University of California, in person or by deputy, is hereby authorized to take a sample not exceeding two pounds in weight for analysis by the said director, or his deputies, from any lot, parcel, or package of fertilizer, or material, or mixture of materials used for manurial purposes, which may be in the possession of any manufacturer, importer, agent, or dealer, but said sample shall be drawn in the presence of said party or parties in interest, or their representatives. In lots of five tons or less, samples shall be drawn from at least ten packages, or, if less than ten packages are present, all shall be sampled; in lots of over five tons, not less than twenty packages shall be sampled. The samples so drawn shall be thoroughly mixed, and from it two equal samples shall be drawn and placed in glass vessels, carefully sealed, and a label placed on each, stating the name or brand of the fertilizer or material sampled, the name of the party from whose stock the sample was drawn, and the time and place of drawing; and said label shall also be signed by the said director or his deputy making such inspection, and by the party or parties in interest, or their representatives present at the drawing and sealing of said samples. One of said duplicate samples shall be retained by the party whose stock was sampled, and the other by the director of the agricultural experiment station of the University of California.

Results of analyses to be published.

§ 6. The director of the agricultural experiment station of the University of California shall publish in bulletin form, from time to time, at least annually, the results

of the analyses hereinbefore provided, with such additional information as circumstances may advise.

Appropriation for laboratory.

§ 7. There is hereby appropriated for the use of the agricultural experiment station of the University of California at Berkeley, Alameda County, as set forth in this act, out of any moneys in the treasury not otherwise appropriated, the sum of eighteen hundred (\$1,800) dollars for the equipment of a laboratory, with the chemicals and apparatus and other incidentals necessary to the successful prosecution of the work.

License fee and statement.

§ 8. In order to further provide for the necessary expenses of this work, there shall be paid by the manufacturer, importer, agent, or dealer, twenty-five cents for every ton of fertilizer sold, the selling price of which to the consumer is eight (\$8) dollars or more per ton. A statement sworn to by the manufacturer, importer, agent, or dealer, of such sales, shall be rendered quarterly to the secretary of the board of regents of the University of California, accompanied by the corresponding amount of special license fee as above specified; provided, that whenever the manufacturer or importer shall have paid the special license fee herein required, for any person acting as agent or seller for such manufacturer or importer, such agent or seller shall not be required to pay the special license fee named in this section. On receipt of said special license fee and statement, the said secretary shall issue to the manufacturer, importer, agent, or dealer, a certificate of compliance with this section.

Disposition of fees.

§ 9. All moneys, whether received from registry and analytical fees or special license fees, shall be paid to the secretary of the board of regents of the University of California, for the use of said board in carrying out the provisions of this act, including the erection of buildings. [Amendment of April 10, 1915. In effect August 8, 1915. Stats. 1915, p. 42.]

Violation of act a misdemeanor.

§ 10. Any party selling, offering, or exposing for sale, any commercial fertilizer without the statement required by section 1 of this act, or with a label stating that said fertilizer contains a larger percentage of any one or more of the constituents mentioned in said section than is actually contained therein, except as provided for in section 4, or respecting the sale of which all the provisions of this act have not been fully complied with, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be fined in a sum of not less than fifty (\$50) dollars and costs of action for the first offense, and one hundred (\$100) dollars and costs of the action for each subsequent offense. Said fines to be paid into the school fund of the county in which conviction is had.

Certificate is prima facie evidence of analysis.

§ 11. In any action, civil or criminal, in any court in this state, a certificate under the hand of said director, and the seal of said university, stating the results of any analysis, purporting to have been made under the provisions of this act, shall be prima facie evidence of the fact that the sample or samples mentioned in said analysis or certificate were properly analyzed as in this act provided; that such samples were taken as in this act provided; that the substances analyzed contained the component parts stated in such certificate and analysis; and that the samples were taken from the parcels or packages or lots mentioned or described in said certificate.

§ 12. This act shall take effect and be in force from and after July first, nineteen hundred and three.

The director of the department of agriculture is given power of administering and enforcing this act. See, ante, Act 96, § 9.

CHAPTER 115.

FIDDLETOWN.

CONTENTS OF CHAPTER.

- ACT 1521. TO PREVENT HOGS AND GOATS RUNNING AT LARGE.
1522. NAME CHANGED TO OLETA.

HOGS AND GOATS RUNNING AT LARGE.

ACT 1521—An act to prevent hogs and goats running at large in.

History: Approved March 10, 1874, Stats. 1873-74, p. 319.

The code commissioners seem to think law of 1897; but see editor's note to chapter this act was repealed by the general estray on "Estrays."

NAME CHANGED TO OLETA.

ACT 1522—An act to change the name of a town in Amador County.

History: Approved February 25, 1878. Stats. 1877-78, p. 109.

This act changed the name of Fiddletown to Oleta.

FILLMORE.

See Act 3094, note.

CHAPTER 116.

FIRE.

References: Arson, see Kerr's Cyc. Penal Code, tit. "Arson."

Explosives, see tit. "Explosives."

Forest fires, see tit. "Forestry," and Kerr's Cyc. Penal Code, tit. "Forests."

Fire department, see tit. "Fire Department."

CONTENTS OF CHAPTER.

- ACT 1528. DESTRUCTION BY FIRE OF CONTIGUOUS PROPERTY.

DESTRUCTION BY FIRE OF CONTIGUOUS PROPERTY.

ACT 1528—To prevent the destruction by fire of the property of contiguous owners.

History: Approved March 31, 1891, Stats. 1891, p. 473.

This statute is alluded to in Stephens v. Southern Pacific Co., 109 Cal. 86, 95, 50 Am. St. Rep. 17, 41 Pac. 783, 29 L. R. A. 751.

See Kerr's Cyc. Pen. Code, §§ 384, 384a, and Act 1527.

This act made it a misdemeanor to start a fire in hay, grain, stubble, or grass without first taking certain precautions.

Codified by § 384a, which was adopted in 1905, p. 758, and repealed 1907, p. 998. Con-

cerning the amendment of 1905 the code commissioner said: "The amendment designates the punishment, and in this respect conforms the section to the statute of 1871-72, p. 96, on the same subject, and inserts after the word 'lands' the words 'not his own' to conform the section to what was obviously the intent of the legislature." See § 384, Penal Code.

FIREBAUGH.

See Act 3094, note.

CHAPTER 117.

FIRE DEPARTMENT.

References: Arson, see Kerr's Cyc. Penal Code, tit. "Arson."

Explosives, see tit. "Explosives."

Fire districts, see tit. "Fire Districts."

Forest fires, see tits. "Fires"; "Forestry," and Kerr's Cyc. Penal Code, tit. "Forests."

See, generally, Kerr's Cyc. Political Code, tits. "Fire"; "Fire Department"; "Firemen."

CONTENTS OF CHAPTER.

- ACT 1533. FIREMEN'S RELIEF, HEALTH, LIFE INSURANCE AND PENSION FUNDS.
 1534. FIRE DEPARTMENTS IN UNINCORPORATED TOWNS.
 1536. EXEMPT FIREMEN'S RELIEF FUND.
 1537. FOREIGN INSURANCE COMPANIES—PAYMENT OF PREMIUMS FOR FIREMEN'S RELIEF FUNDS.
 1538. PENSIONS FOR AGED, INFIRM AND DISABLED FIREMEN.
 1539. YEARLY VACATION FOR FIREMEN.
 1541. SALARIES OF OFFICERS IN CITIES OF FIRST CLASS.
 1542. INCREASE OF EFFICIENCY OF FIRE DEPARTMENTS.

FIREMEN'S RELIEF, HEALTH, INSURANCE AND PENSION FUND.

ACT 1533—An act to create a firemen's relief, health, and life insurance and pension fund in the several counties, cities and counties, cities, and towns of the state.

History: Approved March 20, 1905, Stats. 1905, p. 412. Amended June 11, 1913. In effect August 10, 1913. Stats. 1913, p. 690; April 14, 1917. In effect July 27, 1917. Stats. 1917, p. 119. Prior act of March 7, 1901, Stats. 1901, p. 101, amended March 16, 1903, Stats. 1903, p. 158, superseded by the present act.

Firemen's relief fund, trustees of. Board of fire commissioners to act as trustees.

§ 1. The chairman of the board of supervisors of the county, city and county, city or incorporated town in which there is no board of fire commissioners, the treasurer of the county, city and county, or incorporated town, and the chief of the fire department, and their successors in office, are hereby constituted a board of trustees of the firemen's relief or pension fund of the fire department, to provide for the disbursement of the same and to designate the beneficiaries thereof as hereinafter directed, which board shall be known as the "Board of Firemen's Pension Fund Commissioners"; provided, however, that where there is in any county, city and county, city, or town, a board of fire commissioners, then such body shall constitute said board of trustees of the firemen's relief and pension fund of the fire department.

Organization of board. Duties of.

§ 2. They shall organize as such board by choosing one of their number as chairman, and by appointing a secretary. The treasurer of the county, city and county, city, or town, shall be ex-officio treasurer of said fund. Such board of trustees shall have charge of and administer said fund, and to order payments therefrom in pursuance of the provisions of this act. They shall report annually, in the month of June, to the board of supervisors, or other governing authority of the county, city and county, city, or incorporated town, the condition of the firemen's relief and pension fund, and the receipts and disbursements on account of the same, with a full and complete list of the beneficiaries of said fund and the amounts paid them.

Retired firemen after twenty years of service. Pension of retired firemen.

§ 3. Whenever any person at the taking effect of this act, or thereafter shall have been duly appointed or selected and sworn, and have served for twenty years, or more, in the aggregate, as a member, in any capacity or any rank whatever, of the regularly constituted fire department of any such county, city and county, city, or town which may hereafter be subject to the provisions of this act, said board may, if it see fit, order and direct that such person after becoming sixty years of age be retired from further service in such fire department, and from the date of the making of such order the service of such person in such fire department shall cease, and such person so retired shall thereafter, during his lifetime, be paid from such a fund a yearly pension equal to one-half of the amount of salary attached to the rank which he may have held in said fire department for the period of one year next preceding the date of such retirement.

Retired when disabled. Pension.

§ 4. Whenever any person, while serving as fireman in any such county, city and county, city, or town, shall become physically disabled by reason of any bodily injury received in the immediate or direct performance or discharge of his duty as such fireman, said board may, upon his written request, or without such request, if it deem it to be for the good of said fire department force, retire such person from said department, and order and direct that he shall be paid from said fund, during his lifetime, a yearly pension equal to one-half of the amount of salary attached to the rank which he may have held on such fire department force at the date of such retirement, but on the death of such pensioner his heirs or assigns shall have no claim against or upon such firemen's relief or pension fund; provided, that whenever such disability shall cease such pension shall cease, and such person shall be restored to active service at the same salary he received at the time of his retirement.

Certificate as to disability.

§ 5. No person shall be retired, as provided in the next preceding section, or receive any benefit from said fund, unless there shall be filed with said board certificates of his disability, which certificates shall be subscribed and sworn to by said person, and by the county, city and county, city, or town physician (if there be one), and two regularly licensed practicing physicians of such county, city and county, city, or town, and such board may require other evidence of disability before ordering such retirement and payment as aforesaid.

Fireman losing life while on duty. Widow or children to receive yearly pension. Exception.

§ 6. Whenever any member of the fire department of such county, city and county, city, or town, shall lose his life while in the performance of his duty, leaving a widow, or child or children under the age of sixteen years, then upon satisfactory proof of such facts made to it, such board shall order and direct that a yearly pension, equal to one-third the amount of the salary attached to the rank which such member held in said fire department at the time of his death, shall be paid to such widow during her life, or if no widow, then to the child or children, until they shall be sixteen years of age; provided, if such widow, or child or children, shall marry, then such person so marrying shall thereafter receive no further pension from such fund.

Death after ten years of service. Widow to receive contribution.

§ 7. Whenever any member of the fire department of such county, city and county, city, or town, shall, after ten years of service, die from natural causes, then his widow or children, or if there be no widow or children, then his mother or unmarried sisters, shall be entitled to the sum of one thousand dollars from such fund.

Examination of retired disabled firemen. Retired firemen to report to chief.

§ 8. Any person retired for disability under this act may be summoned before the board herein provided for at any time thereafter, and shall submit himself thereto for examination as to his fitness for duty, and shall abide the decision and order of such board with reference thereto; and all members of the fire department force who may be retired under the provisions of this act shall report to the chief of the fire department of the county, city and county, city, or town where so retired, on the first Mondays of April, July, October, and January of each year; and in cases of great public emergency may be assigned to and shall perform such duty as said chief of the fire department may direct; and such persons shall have no claim against the county, city and county, city, or town, for payment for such duty so performed.

When pension ceases.

§ 9. When any person who shall have received any benefit from said fund shall be convicted of any felony, or shall become an habitual drunkard, or shall become a non-resident of this state, or shall fail to report himself for examination for duty as required herein, unless excused by the board, or shall disobey the requirements of said board under this act, in respect to said examination or duty, then such board shall order that such pension allowance as may have been granted to such person shall immediately cease, and such person shall receive no further pension, allowance, or benefit under this act.

Meetings of trustees. President and secretary. Report to treasurer and auditor. Duty of auditor.

§ 10. The board herein provided for shall hold quarterly meetings on the first Mondays of April, July, October, and January of each year, and upon the call of its president; it shall biennially select from its members a president and secretary; it shall issue warrants, signed by its president and secretary, to the persons entitled thereto of the amount of money ordered paid to such persons from such fund by said board, which warrant shall state for what purpose such payment is to be made; it shall keep a record of all its proceedings, which record shall be a public record; it shall, at each quarterly meeting, send to the treasurer of the county, city and county, city, or town, and to the auditor of such county, city and county, city, or town, a written or printed list of all persons entitled to payment from the fund herein provided for, stating the amount of such payments and for what granted, which list shall be certified to and signed by the president and secretary of such board, attested under oath. The auditor shall thereupon enter a copy of said list upon a book to be kept for that purpose, and which shall be known as "The firemen's relief and pension fund book." When such list has been entered by the auditor, he shall transmit the same to the board of supervisors, or other governing authority of such county, city and county, city, or town, which board of authority shall order the payment of the amounts named therein out of "The firemen's relief and pension fund." A majority of all the members of said board herein provided for shall constitute a quorum, and have power to transact business.

Powers of board.

§ 11. The board herein provided for shall, in addition to other powers herein granted, have power:

First—To compel witnesses to attend and testify before it, upon all matters connected with the operation of this act, in the same manner as is or may be provided by law for the taking of testimony before notaries public; and its president, or any member of said board, may administer oaths to such witnesses.

Second—To appoint a secretary, and to provide for the payment from said fund of all its necessary expenses including secretary hire and printing; provided, that no compensation or emolument shall be paid to any member of said board for any duty required or performed under this act.

Third—To make all needful rules and regulations for its guidance, in conformity with the provisions of this act.

Moneys to be paid into firemen's pension fund.

§ 12. The board of supervisors, or other governing authority, of any county, city and county, city or town, shall, for the purposes of said "firemen's relief and pension fund," hereinbefore mentioned, direct the payment annually, and when the tax levy is made, into said fund, of the following moneys:

First—All rewards given or paid to members of such firemen's force.

Second—All fines imposed upon members of such fire department in keeping with rules and regulations of the department.

Third—An amount equal to two per cent of the salaries paid to the firemen of such county, city and county, city, or town, during the preceeding year, payable from the funds of such municipal corporation.

Fourth—One-half of all fines imposed and collected for violation of laws pertaining to precaution against fire. [Amendment of April 14, 1917. In effect July, 27, 1917. Stats. 1917, p. 119.]

Who are and who are not entitled to benefits.

§ 13. Any firemen's life and health insurance fund, or any fund provided by law, heretofore existing in any county, city and county, city, or town, for the relief or pensioning of firemen, or their life or health insurance, or for the payment of a sum of money on their death, shall be merged with, paid into, and constitute a part of the fund created under the provisions of this act; and no person who has resigned or been dismissed from said fire department shall be entitled to any relief from such fund; provided, that any person who, within one year prior to the passage of this act, has been dismissed from the fire department for incompetency or inefficiency, and which incompetency or inefficiency was caused solely by sickness or disability contracted or suffered while in service as a member thereof, and who has, prior to said dismissal, served for twelve or more years as such member, shall be entitled to all the benefits of this act.

Auditor to report to supervisors surplus to be transferred to general fund. Auditor's report on firemen's relief and pension fund.

§ 14. On the last day of June of each year, or as soon thereafter as practicable, the auditor of each county, city and county, city, or town, shall make a report to the board of supervisors or other governing authority of such county, city and county, city, or town, of all moneys paid on account of said fund during the previous year, and of the amount then to the credit of the "firemen's relief and pension fund," and all surplus of said fund then remaining in said fund, exceeding the average amount per year paid out on account of said fund during the three years next preceding, shall be transferred to, and become a part of, the general fund of every such county, city and county, city, or town, and no longer under the control of said board or subject to its order. Payments provided for by this act shall be made monthly upon proper vouchers. [Amendment approved June 11, 1913. Stats. 1913, p. 690.]

FIRE DEPARTMENTS IN UNINCORPORATED TOWNS.

ACT 1534—An act to allow unincorporated towns and villages to equip and maintain a fire department, and to assess and collect taxes, from time to time, for such purpose, and to create a board of fire commissioners.

History: Approved March 4, 1881, Stats. 1881, p. 26. Amended in its entirety March 6, 1899, Stats. 1899, p. 69, and April 21, 1909, Stats. 1909, p. 1028. Amended March 26, 1919. In effect July 22, 1919. Stats. 1919, p. 7. Entire act amended. The act of 1881, Stats. 1881, p. 26, was amended in its entirety by the act of 1899, Stats. 1899, p. 69, which, in turn, was subjected to an entire amendment in the present act of 1909.

The title of the amending act of 1899 was as follows:

"An act to amend an act to allow unincorporated towns and villages to equip and maintain a fire department, and to assess and collect taxes, from time to time, for such purpose, and to create a board of fire commissioners (approved March 4, 1881; Stats. 1881, 26), relating to assessing and collecting said taxes."

The title of the amending act of 1909 was as follows:

"An act to amend an act entitled an act to amend an act to allow unincorporated

towns and villages to equip and maintain a fire department, and to assess and collect taxes from time to time for such purpose, and to create a board of fire commissioners, approved March 4, 1881; amended March 6, 1899."

Fire departments in unincorporated towns

§ 1. Any unincorporated town or village of this state may equip and maintain a fire department for the purpose of protecting property from destruction by fire.

Appointment of commissioners.

§ 2. Upon the application, by petition, of fifty or more taxpayers and residents of said town or village to the board of supervisors of the county in which said town or village is situated, the said board of supervisors shall appoint three commissioners, to be known as and called a board of fire commissioners, of the town or village for which they are appointed, who shall hold their office until the second Monday in April next thereafter, and until their successors are elected and qualified.

Powers and duties of commissioners.

§ 3. The board of fire commissioners so appointed by said board of supervisors, and their successors, shall be authorized and empowered, and it shall be their duty:

1. To fix and establish the fire limits of said town or village, and shall accurately describe the same, in writing by metes and bounds and file a copy thereof, subscribed by them, in the office of the county recorder of the county in which said town or village is situated;

2. To make all contracts with water companies for a supply of water, and attaching hydrants or fire-plugs to the pipes, or conduits, or cisterns of such water company; to make contracts for and to purchase the engines, hose, hose carts or carriages, and other appliances for the full equipment of a fire company or department;

3. To call an election and to submit to the electors residing within said fire limits fixed by them, the question whether a tax shall be levied and raised for the purpose of establishing and equipping a fire department for the said town or village, and for protecting the same from loss by fire;

4. In the event of the establishment and equipment of a fire department in any unincorporated town or village, as provided for in this act, the board of fire commissioners are hereby directed and empowered, and it shall be their duty, to estimate and determine the annual amount of money required for the maintenance of said fire department for the ensuing fiscal year, and shall report the same to the board of supervisors of the county in which said fire district is located not later than the first day of July of each year;

5. To appoint judges, not less than three, and other officers, to conduct such election, and to issue certificates of election;

6. To do and perform such other acts and things as may be proper and necessary to carry out the full intent and meaning of this act.

Purchase of land as site for firehouse. Special election. Sale of land purchased as site for firehouse.

§ 3½. The board of fire commissioners so appointed by said board of supervisors, and their successors, are further authorized and empowered, in their discretion, to purchase or otherwise acquire land and to erect thereon a firehouse for purposes of housing the fire equipment and fire apparatus, or to purchase or otherwise acquire land already improved with a building thereon suitable for housing said equipment and apparatus, and to pay for said land, improved or unimproved, as the case may be out of the annual tax provided for under section nine of this act, or by special tax to be voted by the voters within the fire limits in the manner provided for by section fifteen of this act. Said board of fire commissioners may furthermore in their discretion sub-

mit to the qualified electors within said fire limits at a special election for that purpose, or at the annual election provided for in section seventeen of this act, the proposition whether or not land shall be purchased or otherwise acquired and a firehouse built thereon, or the proposition of whether or not land with a firehouse already thereon shall be purchased or otherwise acquired, or both of said propositions, and in event of such submission the vote registered for or against the proposition or propositions so made to the voters shall be binding upon said board of fire commissioners. Said board of fire commissioners are further hereby empowered to sell or otherwise dispose of any such land, improved or unimproved, as the case may be, theretofore by them or by their predecessors acquired for firehouse purposes; provided, however, that if the same shall have been originally acquired pursuant to the vote of the electors within the fire limits, as herein permitted, then the same shall not be sold excepting by like vote of the electors within said limits. The proceeds derived from the sale of any such land or improvements thereon shall be exclusively devoted to the purchase of other land or other improvements. All real property acquired under the provisions of this section shall be conveyed to, and held in the name of, the "board of fire commissioners of the unincorporated town (or village) of....." (naming said town or village). [New section added March 26, 1919. In effect July 22, 1919. Stats. 1919, p. 8.]

Tax elections, how called.

§ 4. Said election must be called by posting notices in three of the most public places in said town or village, for not less than ten days, and also, if there is a newspaper printed and published in the town or village, by advertising such notice therein at least two regular issues of the paper.

What notice must specify.

§ 5. Such notice must specify the time and place for holding the election, and the amount required for the establishment and equipment of said fire department, and the amount of money to be raised for such purpose shall not exceed in any one year one per cent of the assessable property within the fire limits, as fixed by the board of supervisors; provided, that the amount to be raised for the maintenance of said fire department each year shall not exceed one-half of one per cent of the assessable property within the fire limits as fixed by the board of fire commissioners.

Conduct of election.

§ 6. The board of fire commissioners must appoint three judges and two clerks to conduct the election and it must be held in all respects as nearly as practicable in conformity with the general election law; provided, that no new register shall be required, nor legal ballot paper; and provided further, that the polls may be opened at eight o'clock a. m. and close at five o'clock p. m. on the day appointed for such election.

Ballots.

§ 7. At such election the ballots must contain the words "Tax—Yes" or "Tax—No."

Returns.

§ 8. The judges of the election shall, within twenty-four hours after holding said election, make returns and certify to the board of fire commissioners said votes, showing the number of votes cast, and the number of votes in favor of, and the number of votes against the matter voted upon.

Tax levy.

§ 9. The board of supervisors must, at the time of levying the county taxes, levy a tax upon all the taxable property within the fire limits of the unincorporated town or village authorizing such tax sufficient to raise the amount authorized. The rate of

taxation shall be ascertained by deducting fifteen per cent for anticipated delinquencies from the aggregate assessed value of the property in the district, as it appears on the assessment roll of the county, and then dividing the sum authorized by the remainder of such aggregate assessed value. The taxes so levied shall be computed and entered on the assessment roll of the county auditor and collected at the same time and in the same manner as the state and county taxes, and when collected shall be paid into the county treasury for the use of the district in which the tax was authorized.

Moneys arising from tax.

§ 10. All moneys arising from the tax herein authorized to be levied and collected shall be kept by the treasurer of the county in which said town or village is situated subject only to the order of said board of fire commissioners of said town or village authorizing said tax.

Treasurer receives no compensation.

§ 11. The treasurer shall receive no compensation for the receipt and disbursement of moneys derived under the provisions of this act.

Purchase of fire hose, etc.

§ 12. The board of fire commissioners are hereby directed and empowered to make all necessary arrangements for the purchase of rights of making connections with the pipes of water companies for fire plugs or hydrants, in such part of the town or village as they shall deem best for the common interest, and also for purchasing fire hose and carriages, subject, however, to the provisions hereinbefore contained.

Record books.

§ 13. They shall procure all necessary books and blanks for the purpose of keeping a correct record of their proceedings; and they shall keep a record of all their acts, of all moneys received and disbursed by them, which said books shall be open to public inspection at all times.

Audit of bills.

§ 14. All accounts, bills, and demands against the fire department shall be audited, allowed, and paid by the board of fire commissioners by warrants drawn on the county treasurer, and the county treasurer shall pay the same in the order in which they are presented.

Compensation of officers.

§ 15. No officer or officers created by this act shall receive any compensation for his or their services.

Vacancies.

§ 16. In case of a vacancy of any or all of the members of the board of fire commissioners, after election had, by death, resignation or otherwise, such vacancy shall be filled by appointment by the board of supervisors of the county in which said vacancy may happen.

Annual election.

§ 17. An election shall be held on the first Monday of April subsequent to the appointment of the fire commissioners by the board of supervisors for the election of three fire commissioners who shall take office on the next succeeding Monday of the same month. Said commissioners shall at their first meeting so classify themselves by lot that one of their number shall go out of office on the second Monday of April of the year next succeeding said first election, one thereof on the second Monday of April of the second year succeeding, and one thereof on the second Monday

of April of the third year succeeding. On the first Monday of April of the year next succeeding said first election and on the first Monday of April of every year thereafter, an election shall be held for the election of one fire commissioner, who shall take office on the next succeeding Monday in the same month and shall hold office for the term of three years, or until his successor is elected and qualified; provided, that as to fire districts heretofore created under this act, the commissioners of which were elected prior to the date this amendment becomes operative, said commissioners at their first meeting after said amendment becomes operative shall classify themselves by lot so that one of their number shall go out of office on the second Monday of April of the year next succeeding, one thereof on the second Monday of April of the second year succeeding, and one thereof on the second Monday of April of the third year succeeding. Notice of such elections shall be given by the board of fire commissioners by posting in three public places within the fire limits for at least two weeks before the day of election. They shall also appoint the judges of election. The elections shall be conducted in accordance with the provisions of the general election laws of the state of California, excepting as in this act provided to the contrary. [Amendment of March 26, 1919. In effect July 22, 1919. Stats. of 1919, p. 7.]

Returns.

§ 18. The judges of election shall, within twenty-four hours after holding said election, make returns and certify said votes, and the names of the person or persons voted for, to the said board of fire commissioners, and within five days after the returns have been received by the board of fire commissioners they shall count the votes, determine who has been elected, and forthwith issue certificates of election to the persons elected.

Succession.

§ 19. Each board of fire commissioners shall at the expiration of their term of office, turn over to their successors all the books and documents belonging to the office of said board of fire commissioners, taking their receipt therefor.

Act to be liberally construed.

§ 20. No assessment or act relating to assessment or collection of taxes, or elections held under the provisions of this act, shall be illegal, void, or voidable on account of any error, omission, or informality, or failure to comply strictly with the provisions of this act, nor on account of any misnomer; but the same shall be liberally construed, with a view to hold valid all acts done under this act.

Regulation of chimneys.

§ 21. The said board of fire commissioners may regulate the construction of, and order the suspension, discontinuance, removal, repair, or cleaning of, fireplaces, chimneys, stove and stovepipes, flues, ovens, boilers, kettles, forges, or any apparatus used in any building, manufactory, or business, which may be dangerous in causing or promoting fires, and prescribe limits within which no dangerous nor obnoxious and offensive business may be carried on, and they may order the clearing of land or the removal therefrom of dry grass, stubble, brush, rubbish, litter, or other inflammable material, if, in their judgment, said inflammable material endangers the public safety by creating a fire hazard. [Amendment of March 26, 1919. In effect July 22, 1919. Stats. 1919, p. 9.]

Fire ordinances.

§ 22. They may adopt such ordinance, within the purview of the preceding section, as they may deem proper to prevent fires and conflagrations, and for the protection of property at and during the pendency of any fire, and for that purpose may provide that

at and during the pendency of any fire the officers of the fire company or companies present shall be vested with police powers. Such ordinances shall be signed by the said fire commissioners, and published in a newspaper printed in said town or village, or posted in three of the most public places thereof, for the period of two weeks, at the end of which time it shall be and become a law for the government of the inhabitants of said town or village.

Misdemeanor.

§ 23. Any person who shall violate any of the provisions of said ordinance shall be guilty of misdemeanor.

Prosecutions.

§ 24. Any justice of the peace within the townships within which said town or village is situated shall have jurisdiction of all prosecutions under this act, and sections fourteen hundred and twenty-six to fourteen hundred and forty-nine, both inclusive, title nine, chapter one, of the Penal Code, are hereby made applicable to proceedings under this act.

Repeal of prior acts.

§ 25. All acts and parts of acts, so far as they do conflict with the provisions hereof, are hereby repealed.

Act takes effect when.

§ 26. This act shall take effect and be in force from and after its passage.

EXEMPT FIREMEN'S RELIEF FUND.

ACT 1536—An act to create an exempt firemen's relief fund in the several counties, cities and counties, cities and towns of the state, and relating to the enrollment, formation into fire companies, and services as firemen of such exempt firemen.

History: Approved March 26, 1895, Stats. 1895, p. 108.

1. Constitutionality — Gift of public money.—The act is obnoxious to sections 31 and 32, Article IV of the constitution, and is void, in that it attempts a gift of public moneys.—*Taylor v. Mott*, 123 Cal. 497, 56 Pac. 256.

Superseded. The code commissioners say this act was superseded by the act of 1905 See Act 1533.

Act of 1889 for the relief of aged, infirm, and disabled firemen. Act 1538, for comparison.

FOREIGN INSURANCE COMPANIES—PAYMENT OF PREMIUMS FOR FIREMEN'S RELIEF FUNDS.

ACT 1537—An act to require the payment of certain insurance premiums by fire insurance companies not organized in California, to cities and counties.

History: Approved March 3, 1885, Stats. 1885, p. 13. Amended March 4, 1887, Stats. 1887, p. 15.

Purpose of act. The moneys collected under this act were for the benefit of the firemen's relief fund.

1. Constitutionality — Imposing county tax.—The act imposes a tax for county, city, town or other municipal purpose, and is obnoxious to section 12, Article XI of the constitution, and void.—*San Francisco v. Liverpool, etc., Co.*, 74 Cal. 113, 5 Am. St. Rep. 425, 15 Pac. 380.

2. Same.—The federal courts are bound by the decision of the supreme court of California that a statute of that state is null and void on the ground that it is obnoxious to the constitution of that state, and the decision of that court upon the constitutionality of the act of 1885 is a decision of that character.—*Liverpool, etc., Co. v. Clunie*, 88 Fed. 160.

PENSIONS FOR AGED, INFIRM AND DISABLED FIREMEN.

ACT 1538—An act authorizing boards of supervisors to provide pensions for the relief of aged, infirm, and disabled firemen.

History: Approved March 11, 1889, Stats. 1889, p. 108. Amended March 23, 1901, Stats. 1901, p. 575.

Pensions for aged, infirm, or disabled firemen.

§ 1. The board of supervisors, or other governing authority of the several counties, cities and counties, cities and towns of the state in which fire departments exist, shall, upon the written petition of a majority of the lawfully registered electors of any such political division respectively, by appropriate ordinances, provide a fund by general tax upon the property of the county, city and county, city, or town, for the relief of aged, infirm, or disabled firemen; provided, that such disability shall be caused by exposure while in the discharge of such duty. [Amendment approved March 23, 1901. Stats. 1901, p. 575.]

Qualifications of beneficiaries under this act. Amount of pension. Exception.

§ 2. No person shall be entitled to any benefits from any fund created by authority of this act, unless he shall have served as an active member in the fire department of such county, city and county, city, or town, at least fifteen years, and any person having served in the fire department of such county, city and county, city, or town, at least fifteen years, may make application to be placed on the retired list of such fire department, and he shall receive the sum of not more than twenty-five (25) dollars and not less than fifteen (15) dollars per month, to be paid out of said fund, and those members of a fire department who have been paid a stipulated salary, having served fifteen years in such fire department, shall receive an amount equal to one half of the salary provided by law at the time of such retirement; provided, that any person injured in the actual discharge of fire duty shall be entitled to the benefits of this act regardless of his length of service in the fire department of any such county, city and county, city, or town. [Amendment March 23, 1901. Stats. 1901, p. 575.]

Act takes effect when.

§ 3. This act shall take effect from and after its passage.

YEARLY VACATION FOR FIREMEN.

ACT 1539—An act authorizing and requiring boards of commissions having the management and control of paid fire departments, to grant the members thereof yearly vacations.

History: Approved March 26, 1895, Stats. 1895, p. 76. Amended March 4, 1899, Stats. 1899, p. 57; March 3, 1905, Stats. 1905, p. 39.

Vacations for members.

§ 1. In every city or city and county of this state where there is a regularly organized paid fire department, the board of supervisors, common council, commissions or other body having the management and control of the same are authorized and required once in every year to provide for each regular or permanent member thereof, a leave of absence from active duty of not less than five, nor more than fifteen days, in each year and in addition thereto a leave of absence from active duty of four days in every month of such service. Leave of absence so granted, as aforesaid, must be arranged by said board of [or] commissions, so as not to interfere with or [in] any way impair the efficiency of the said department; no deduction must be made from the salary or pay of any member of such fire department granted such leave of absence in [under] the provisions of this act. [Amendment. Approved March 3, 1905. Stats. 1905, p. 39.]

This section was also amended March 4, 1899, Stats. 1899, p. 57.

Act takes effect when.

§ 2. This act shall take effect immediately.

1. **Charter of San Francisco**, upon its approval by the legislature in 1899, became by the express terms of the constitution (Art. XI, §§ 6 and 8), the organic law of the city and county, and superseded the existing

charter, and all laws inconsistent therewith, including firemen's relief fund laws.—*Burke v. Board of Trustees*, 4 Cal. App. 235, 87 Pac. 421.

SALARIES OF OFFICERS IN CITIES OF FIRST CLASS.

ACT 1541—An act relating to fire departments of municipalities of the first class, and fixing the salaries of officers thereof.

History: Approved March 27, 1897, Stats. 1897, p. 192. Prior act in same terms and having same effect was passed by the same legislature and approved March 3, 1897, Stats. 1897, p. 54.

Salaries of officers of fire departments in cities of first class.

§ 1. In municipalities of the first class the following officers of its fire department shall receive the following salaries per annum:

Chief engineer, five thousand dollars.

Assistant chief engineer, three thousand six hundred dollars.

Secretary, or clerk, three thousand dollars.

Assistant engineers, two thousand one hundred dollars each.

Veterinary surgeons, one thousand eight hundred dollars.

Said salaries shall be paid in the same manner as is now provided by law.

Act takes effect when.

§ 2. This act shall take effect immediately.

1. Constitutionality — Interference with municipal affairs.—The act is unconstitutional and void as an interference with a

"municipal affair" within the meaning of section 6, Article XI, of the constitution.—*Fopper v. Broderick*, 123 Cal. 456, 56 Pac. 53.

INCREASE OF EFFICIENCY OF FIRE DEPARTMENTS.

ACT 1542—An act to provide for increasing the efficiency of fire departments within municipalities of the first class in the state of California.

History: Approved March 4, 1897, Stats. 1897, p. 61.

Providing for organization of fire department. Purchase of apparatus, etc.

§ 1. Whenever the public interest, safety, or convenience may require, or it be deemed expedient, the city council of any municipality of the first class may, by ordinance, make and enforce such rules and regulations within said municipality as may be necessary or proper for increasing the efficiency of its fire department, and to that end, among other things, may provide for and authorize the appointment and continued employment of such officers, engineers, members, firemen, employees, and other help in and for said fire department, in addition to those whose employment is now or may be hereafter authorized by law, as the needs of said department may require; and may fix their salaries and compensation, and may increase the salaries and compensation of the officers, engineers, members, firemen, employees, and other help now or hereafter authorized by law, whose salaries and compensation, as now or hereafter fixed, may be deemed inadequate. And said city council may in like manner provide for the purchase and repair, and authorize to be purchased and kept in repair, in addition to those for the purchase and repair of which provision is now or may be hereafter made by law, all additional engines, horses, hook-and-ladder wagons, and all such other engines, machinery, implements, extinguishers, and other apparatus that may be necessary, advantageous, or auxiliary, to extinguish or afford adequate protection against fire. And in order to provide the necessary funds with which to accomplish the foregoing ends, may make all necessary and supplementary appropriations, allowances, and payments in addition to those now or hereafter authorized by law.

Control of appointees.

§ 2. The officers, engineers, members, firemen, employees, and other help to be appointed as provided in section one of this act, shall be appointed, governed, and controlled in the same manner and by the same laws as their fellow-officers, engineers, members, firemen, employees, and other help whose appointment is now or may be

hereafter authorized by law are appointed, governed, and controlled. The engines, wagons, machinery, implements, extinguishers, and other apparatus, the purchase and repair of which are authorized by section one of this act, shall be purchased and repaired in like manner and under the same regulations as like articles, the purchase and repair of which are now or may be hereafter authorized by law are purchased and repaired.

City council, defined.

§ 3. The term "city council" as used in this act is hereby declared to include any body or bodies, board or boards, which, under law, constitute the legislative department of any municipality of the first class.

Act takes effect when.

§ 4. This act shall take effect and be in force from and after its passage.

1. **Constitutionality.**—As to constitutionality of this act, see *Popper v. Broderick*, 123 Cal. 456, 56 Pac. 53.

FIRE DISTRICTS.

See tit. "Forestry."

FIRE PATROL.

See *Kerr's Cyc. Civil Code*, §§ 453a, et seq.

FISCAL YEAR.

See tit. "Municipal Corporations."

FISH AND GAME.

See "Game Laws."

FISH COMMISSIONERS.

See "Game Laws."

CHAPTER 113.

FLAG.

References: Advertisement, use of national flag for, see *Kerr's Cyc. Penal Code*, § 310.
Desecration of national flag, see *Kerr's Cyc. Penal Code*, § 310.
Protection of bear flag, see *Kerr's Cyc. Penal Code*, § 310a.

CONTENTS OF CHAPTER.

ACT 1563. ADOPTION OF BEAR FLAG AS STATE FLAG.

ADOPTION OF BEAR FLAG AS STATE FLAG.

ACT 1563—An act to select and adopt the bear flag as the state flag of California.

History: Approved February 3, 1911, Stats. 1911, p. 6.

Bear flag as state flag.

§ 1. The bear flag is hereby selected and adopted as the state flag of California.

Of what to consist.

§ 2. The said bear flag shall consist of a flag of a length equal to one and one-half the width thereof; the upper five-sixths of the width thereof to be a white field, and the lower sixth of the width thereof to be a red stripe; there shall appear in the white field in the upper left-hand corner a single red star, and at the bottom of the white field the words "California republic," and in the center of the white field a California grizzly bear upon a grass plat, in the position of walking toward the left of the said field; said

bear shall be dark brown in color and in length, equal to one-third of the length of said flag.

§ 3. This act shall be in full force and effect from and after its passage.

CHAPTER 119.

FOLSOM.

CONTENTS OF CHAPTER.

ACT 1568. PREVENT GOATS RUNNING AT LARGE.

GOATS RUNNING AT LARGE.

ACT 1568—An act to prevent goats from running at large in the town of Folsom, county of Sacramento.

History: Approved March 21, 1876, Stats. 1875-76, p. 385.

Repeal.—The code commissioners say this of 1897; but see editor's note to chapter on act was repealed by the general estray law "Estrays."

CHAPTER 120.

FOODS.

References: Adulteration of foods, see tit. "Adulteration."

See, generally, tits. "Butter"; "Cheese"; "Dairies"; "Eggs"; "Potatoes."

CONTENTS OF CHAPTER.

ACT 1573. PROHIBITING DESTRUCTION OF FOOD AND FOOD PRODUCTS.

1574. INSPECTION OF ANIMALS SLAUGHTERED FOR FOOD.

DESTRUCTION OF FOOD AND FOOD PRODUCTS.

ACT 1573—An act prohibiting the destruction of food stuffs, food products or food articles.

History: Approved June 5, 1913. In effect August 10, 1913. Stats. 1913, p. 387. Amended May 27, 1915. In effect August 8, 1915. Stats. 1915, p. 866.

Food stuffs not to be destroyed in restraint of trade.

§ 1. It shall be unlawful for any person, firm or corporation to destroy, in restraint of trade, any fish, fowl, animal, vegetable, or other stuffs, products or articles which are customary food, or which are proper for food, for human beings, and are in fit sanitary condition to be used as such. [Amendment of May 27, 1915. In effect August 8, 1915. Stats. 1915, p. 866.]

Punishment for violation of act.

§ 2. Any person, firm or corporation who shall violate any of the provisions of this act shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars, or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment.

The director of the department of agriculture is given power of administering and enforcing this act. See, ante, Act 96, § 9.

INSPECTION OF ANIMALS SLAUGHTERED FOR FOOD.

ACT 1574—An act providing for the inspection of animals slaughtered for human food, providing for the inspection of the meat and meat food products of such animals; providing for the collection of fees to defray the expenses incurred by maintaining such inspection, providing for the appointment and duties of officials to carry into effect the provisions of this act, providing for the marking of carcasses and parts thereof, and providing a penalty for violation thereof.

History: Approved May 11, 1917. In effect July 27, 1917. Stats. 1917, p. 423.

Inspection of slaughtering establishments by state veterinarian.

§ 1. Any person, firm or corporation in the state of California, engaged in the slaughtering of cattle, sheep, swine, or goats, desiring to have the healthfulness of the meat and meat food products of such animals certified to, may make application for the inauguration of an inspection service in such establishment. Said application shall be in writing addressed to the state veterinarian of California, and shall be made on blanks which will be furnished by said state veterinarian. In such application such applicant for inspection shall agree to comply with the provisions of this act and to maintain said establishment in a clean and sanitary manner. Upon receipt of said application the state veterinarian shall make an inspection of said establishment and if found clean and sanitary, and properly equipped to conduct its business in a clean and sanitary manner, he shall inaugurate an inspection service therein, and shall give to such establishment an official number, and this number shall be used to mark the meat and meat food products of the establishment as hereinafter provided. Such an establishment shall thereafter be known as "official establishment No."

Fees.

§ 2. The cost of such inspection service shall be borne by the establishment where it is maintained and shall be paid for in the following manner: When, in the opinion of the state veterinarian, the volume of business is sufficient to occupy the continuous services of one inspector, such establishment shall pay a fee of one hundred and fifty dollars per month. When in the opinion of the state veterinarian the services of more than one inspector are required to properly carry on the work, the fee in such cases shall be one hundred fifty dollars per month for the first inspector, and one hundred twenty-five dollars per month for each additional inspector. When, in the opinion of the state veterinarian, the inspection work in two or more neighboring establishments can be properly supervised by one inspector, said state veterinarian may, in such cases, prorate the fees among such establishments, but in no instance where only one inspector is employed to supervise the work in more than one establishment shall the aggregate fees be less than one hundred fifty dollars per month, and in no such instance shall the individual fees be less than fifty dollars per month. All such fees shall be paid during the first week of January, April, July and October of each year and they shall be paid in advance for the ensuing three months. Such fees shall be paid to the state veterinarian, who shall at least as often as once each month and oftener if required to do so, report to the state controller the total amount of fees collected, and at the same time he shall pay into the state treasury the entire amount of said receipts. All such receipts shall be credited to the meat hygiene fund, which fund is hereby created, out of which shall be paid the salaries of inspectors who are appointed in accordance with the provisions of this act, as well as other expenses that may be incurred incidental thereto. In no instance, however, shall any of the fees collected as provided herein be refunded. The state veterinarian is hereby authorized to appoint such inspectors as may be necessary to carry out the provisions of this act.

Hours for slaughtering.

§ 3. All slaughtering in each official establishment shall be conducted between the hours of seven o'clock a. m. and seven o'clock p. m. of any one week day, unless a special permit in writing or by telegram, authorizing slaughtering at any other time, is granted by the state veterinarian. The manager or other person in charge of such establishment shall inform the inspector when work has been concluded for the day, and of the day and hour when work will be resumed. Where one inspector is detailed to conduct the work at two or more establishments where few animals are slaughtered, the inspector may designate the hours for work.

Ante mortem examination.

§ 4. In each official establishment an ante mortem examination shall be made of all cattle, sheep, swine and goats about to be slaughtered, and satisfactory facilities shall be provided for conducting such examinations, and for separating and holding apart from passed animals those that are unfit for immediate slaughter.

Parts inspected. Mark.

§ 5. In each official establishment a careful inspection shall be made of all animals at the time of slaughter. The head and tongue, tail, thymus gland, and all viscera, and all parts and blood used in the preparation of meat food and medicinal products shall be retained in such a manner as to preserve their identity until after the post-mortem examination has been completed. Carcasses and parts thereof found to be sound, healthful, wholesome and fit for human food shall be passed and marked in the following manner: Upon all passed carcasses and parts thereof slaughtered in an official establishment the inspector shall place a mark bearing the words "Cal. Inspected and Passed." This mark shall also contain the official number of the establishment. The number of such marks that shall be affixed and their location on the carcasses and parts thereof shall be determined by the state veterinarian. Each carcass or part thereof, which is found on post-mortem inspection to be unsound, unhealthful, unwholesome or otherwise unfit for human food shall be marked conspicuously by the inspector at the time of inspection with the words "Cal. Inspected and Condemned," and such carcass or part thereof shall, under the supervision of the inspector, be rendered unfit for human consumption in some manner approved by the state veterinarian.

Rules and regulations.

§ 6. The state veterinarian shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this act, and all inspections and examinations made under this act shall be such and made in such manner as described in the rules and regulations prescribed by said state veterinarian not inconsistent with the provisions of this act; provided, however, that in making such rules and regulations said state veterinarian shall be guided by the regulations governing meat inspection of the United States department of agriculture.

Violation.

§ 7. It shall be unlawful for any person, firm or corporation except the inspector as herein provided, to have in possession, keep or use any mark, stamp or brand provided or used for marking, stamping or branding any article herein required to be marked, stamped or branded. It shall be unlawful for any person, firm or corporation to have in possession, keep, make or use any mark, stamp or brand having thereon a device or words similar in character or import to the marks, stamps or brands provided or used for marking, stamping or branding such articles, and any violation hereof shall be deemed a misdemeanor.

FORCIBLE ENTRY AND UNLAWFUL DETAINER.

See Kerr's Cyc. Code Civil Procedure, §§ 1159, et seq.

CHAPTER 121.

FORECLOSURE.

References: Foreclosure suits, see Kerr's Cyc. Code Civil Procedure, §§ 726, et seq.

CONTENTS OF CHAPTER.

ACT 1577. ATTORNEY'S FEES ABOLISHED.

ATTORNEY'S FEES ABOLISHED.

ACT 1577—An act to abolish attorney's fees and other charges, in foreclosure suits.

History: Approved March 27, 1874, Stats. 1873-74, p. 707.

Court to fix attorney's fees.

§ 1. In all cases of foreclosure of mortgage the attorney's fee shall be fixed by the court in which the proceedings of foreclosure are had, any stipulation in said mortgage to the contrary notwithstanding.

Repeal of conflicting acts.

§ 2. All acts and parts of acts, so far as they conflict with the provisions of this act, are hereby repealed, and this act shall take effect and be in force from and after its passage.

1. Construction and application.—The act applies only to an action to foreclose a mortgage and not to an action to enforce a pledge.—*Hildreth v. Williams*, 4 Cal. Unrep. 141, 33 Pac. 1113. See, also, *Mason v. Luce*, 116 Cal. 232, 48 Pac. 72.

2. It was the province of the court under the act to fix the amount of the attorney's fee.—*Stockton, etc., Soc. v. Donnelly*, 60 Cal. 481.

3. Same—Amount fixed by jury.—Although it is the province of the court, under the act, to fix the attorney's fee in a foreclosure suit, but when the court adopted as correct the amount returned by the jury, the amount may be considered as having been fixed by the court.—*Stockton, etc., Soc. v. Donnelly*, 60 Cal. 481.

4. Same—No evidence as to value of services necessary.—The duty of fixing the amount of the attorney's fee is imposed upon the court, and no evidence as to value of services is necessary.—*Woodward v. Brown*, 119 Cal. 283, 63 Am. St. Rep. 108, 51 Pac 2; *Hotaling v. Montieth*, 128 Cal. 556, 61 Pac. 95.

5. Same—When fee is agreed upon, larger fee is excluded.—The act is not to be construed as allowing an attorney's fee, to be fixed by the court, whether the mortgage provides for one or not; but, if it be construed as authorizing the court to fix a fee where the mortgage is silent, it must be held that, when a fee is agreed upon between the parties a larger fee is excluded.—*Monroe v. Fohl*, 72 Cal. 568, 14 Pac. 514.

6. Same—Stipulation in mortgage not

controlling.—The stipulation in the mortgage as to an attorney's fee is not controlling upon the court.—*Grangers' Business Ass'n v. Clark*, 84 Cal. 201, 23 Pac. 1081.

7. Same—Unreasonable allowance corrected on appeal.—If the attorney's fee fixed by the trial court exceeds a reasonable amount, it will be corrected on appeal.—*Grangers' Business Ass'n v. Clark*, 84 Cal. 201, 23 Pac. 1081.

8. Same—Where mortgage contained a stipulation for a fee.—It was proper to allow an attorney's fee in a foreclosure suit where the copy of the mortgage attached to the complaint contained a stipulation for such fee, although the complaint contained no allegation on the subject.—*Kern Valley Bank v. Chester*, 55 Cal. 49.

9. Same—Same—When payable.—Where a mortgage contained a stipulation for an attorney's fee, "to become payable on filing the complaint for foreclosure," on bringing the suit plaintiff was entitled to a lien on the mortgaged premises for the amount of such, and was entitled to proceed to foreclosure for such amount, notwithstanding defendant paid the principal and interest of suit brought and before judgment.—*Stockton, etc., Soc. v. Donnelly*, 60 Cal. 481.

10. Same—Presumptions on appeal.—In the absence of anything in the record to the contrary it must be presumed in the appellate court that the court below proceeded regularly in fixing the amount of the attorney's fee in a foreclosure suit, and that the judgment is, in all respect, correct.—*Montgomery v. Merrill*, 62 Cal. 335.

CHAPTER 122.

FORESTRY.

References: See, generally, tits. "Agriculture"; "Fruit"; "Horticulture"; "Silk Culture"; "Viticulture."

CONTENTS OF CHAPTER.

ACT 1578. STATE BOARD OF FORESTRY ACT.

- 1578a. PREVENTION AND SUPPRESSION OF FOREST FIRES.
- 1579. SALARIES STATE FORESTER, DEPUTY AND ASSISTANT.
- 1580. "STATE FORESTRY FUND."
- 1581. STATE FORESTRY NURSERY CREATED.
- 1583. UNITED STATES FOREST RESERVE FUND.
- 1585. REFORESTATION OF SAN BERNARDINO FOREST RESERVE.
- 1586. REFORESTATION OF ANGELES NATIONAL FOREST.
- 1588. PREVENTION OF DESTRUCTION OF WILD GAME IN CLEVELAND NATIONAL FOREST.
- 1589. DISINCORPORATION OF FIRE DISTRICTS.
- 1590. TAMALPAIS FOREST FIRE DISTRICT.
- 1591. PREVENTION OF FOREST FIRES ON PUBLIC LANDS.
- 1592. FIGHTING FOREST FIRES IN SAN ANTONIO CANYON.
- 1593. FIGHTING FOREST FIRES IN SAN DIMAS CANYON.
- 1594. PREVENTION OF FOREST FIRES IN SAN ANTONIO CANYON.

FORESTRY ACT.

ACT 1578—An act to provide for the regulation of fires on, and the protection and management of, public and private forest lands within the state of California, creating a state board of forestry and certain officers subordinate to said board, prescribing the duties of such officers, creating a forestry fund, and appropriating the moneys in said fund, and defining and providing for the punishment of certain offenses for violations of the provisions of this act, and making an appropriation therefor.

History: Approved March 18, 1905, Stats. 1905, p. 235. Amended April 7, 1911, Stats. 1911, p. 709; May 2, 1919. In effect July 22, 1919, Stats. 1919, p. 234; May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1191. Prior act of May 3, 1885, Stats. 1885, p. 10. Amended and supplemented March 7, 1887, Stats. 1887, p. 46. Repealed March 23, 1893, Stats. 1893, p. 229.

State board of forestry.

§ 1. The governor shall appoint four persons, one of whom shall be familiar with the timber industry, one with the live stock industry, one with the grain and hay industry, and one at large, who together with the state forester, shall constitute the state board of forestry, which shall supervise and direct all matters of state forest policy, management and protection. Said board shall make rules and regulations for its government, and shall meet at such times and places as it sees fit. The members, except the state forester, shall receive no compensation for their services, but shall be paid actual traveling expenses which may be incurred in the performance of their official duties, which shall be paid out of the fund appropriated for the support of the state board of forestry. [Amendment of May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1192.]

State forester and his duties.

§ 2. There shall be a state forester, who shall be a civil executive officer, and who shall be a technically trained forester, appointed by the governor to hold office at the pleasure of the appointing power; and whether any candidate for the position is a technically trained forester shall be determined by certificate from the secretary of the United States department of agriculture, or from the department of forestry of the state university after such department is established. He shall receive a salary of twenty-four hundred dollars per annum, and shall be authorized and empowered to appoint two assistant foresters, whose salaries shall not exceed twelve hundred dollars

each per annum. He shall maintain headquarters at the state capitol in an office provided by the secretary of state, and shall be allowed necessary office and contingent expenses. He and his assistants shall be paid reasonable traveling and field expenses which may be incurred in the necessary performance of their official duties. He shall act as secretary of the state board of forestry. He shall, under the supervision of the state board of forestry, execute all matters pertaining to forestry within the jurisdiction of the state; have charge of all fire wardens in the state, and direct and aid them in their duties; direct the protection and improvement of state parks and forests; collect data relative to forest destruction and conditions; take such action as is authorized by law to prevent and extinguish forest, brush and grass fires; enforce all laws pertaining to forest and brush-covered land, and prosecute for any violation of such laws; co-operate with land owners, as described in section 4 of this act; and publish from time to time such information of forestry as he may deem wise. He shall prepare annually a report to the governor on the progress and condition of state forest work, and recommend therein plans for improving the state system of forest protection, management and replacement.

Supervision and care of state parks.

§ 3. The California Redwood Park and the Mt. Hamilton tract, together with all moneys heretofore or hereafter appropriated for the purchase of land for or care of said parks, tracts and stations, shall be in charge of the state board of forestry, said board to take place of and forthwith shall have all the powers and duties now possessed in accordance with law by persons or commissions with regard to the state parks, tracts of land, and forest stations mentioned in this act, and also any forest or brush land which may hereafter become state property, or be placed definitely in the care of the state; and it is hereby further enacted that, if the government of the United States or any individual or corporation shall, at any time, donate or entrust to the state of California, for state park or state forest reserve purposes, any tract or tracts of wholly or partially wooded land, such tract or tracts of land shall be administered at the expense of the state, as provided by law.

Co-operative work.

§ 4. The state forester shall, upon request and whenever he deems it essential to the best interests of the people and the state, co-operate with counties, towns, corporations and individuals in preparing plans for the protection, management and replacement of trees, woodlots and timber tracts, on consideration and under an agreement that the parties obtaining such assistance pay at least the field expenses of the men employed in preparing said plans.

Publication of laws and notices.

§ 5. The state forester shall prepare and print for public distribution, an abstract of all the forest laws of California, together with such rules and regulations in accord therewith as he may deem necessary, and shall annually print and distribute a list of all fire wardens with their addresses, all such matters to be published with the approval of the state board of forestry. He shall also furnish notices, printed in large letters on cloth, calling attention to the danger from forest fires and to forest fire and trespass laws and their penalties. Such notices shall be posted by the fire-wardens in conspicuous places along every highway in brush and forest covered country, at frequent intervals along streams and lakes frequented by tourists, hunters or fishermen, at established camping sites, and in every postoffice in the forested region.

Fire districts.

§ 6. The state forester shall divide the state into such number of fire districts as shall be deemed by him most necessary to the efficiency of his work; and, furthermore,

any county, or combination of less than four counties, shall be made a separate fire district, upon request of the county board or board of supervisors, in which case such special fire district shall pay the cost of maintaining its district fire-warden.

Duties of assistant foresters.

§ 7. The duties of the assistant foresters shall be to devote their entire time to state forest interests according to rules and directions to be determined by the state forester, with the approval of the state board of forestry. They shall take prompt measures to prevent and extinguish forest fires; keep a record of the cause, extent and damage of all forest fires in their respective districts, and perform such other duties as the state forester may direct.

Voluntary fire-wardens and their duties.

§ 8. The state forester shall appoint, in such number and localities as he deems wise, public-spirited citizens to act as voluntary fire-wardens, who may receive payment for their services from the counties or from private sources. They shall promptly report all fires and take immediate and active steps toward their extinguishment, report any violation of the forest laws, assist in apprehending and convicting offenders, and perform such other duties as the state forester may direct. The supervisors and rangers on the federal forest reserve within the state, whenever they formally accept the duties and responsibilities of fire-wardens, may be appointed as voluntary fire-wardens, and shall have all the powers given to fire-wardens by this act.

Powers and requirements of fire-wardens.

§ 9. The state forester and all fire-wardens shall have the powers of peace officers to make arrests without warrant, for violations of any state or federal forest laws, and no fire-warden shall be liable to civil action for trespass committed in the discharge of his duties. Any fire-warden who has information which would show, with reasonable certainty that any person had violated any provision of such forest laws, shall immediately take action against the offender, either by using his own powers as a peace officer, or by making complaint before the proper magistrate, or by information to the proper district attorney, and shall obtain all possible evidence pertaining thereto. Failure on the part of any paid fire warden to comply with the duties prescribed by this act shall be a misdemeanor, and punishable by a fine of not less than twenty dollars, nor more than two hundred and fifty dollars, or imprisonment for not less than ten days nor more than three months, or both such fine and imprisonment and the state forester is hereby authorized to investigate and prosecute such violations.

Assistance of citizens in fighting fires.

§ 10. All fire-wardens shall have authority to call upon able-bodied citizens between the ages of sixteen and fifty years, for assistance in putting out fires, and any such person who refuses to obey such summons, unless prevented by good and sufficient reasons, is guilty of a misdemeanor, and must be fined in a sum not less than fifteen dollars, nor more than fifty dollars, or imprisonment in the county jail of the county in which such conviction shall be had, not less than ten days, nor more than thirty days, or both such fine and imprisonment; provided, that no citizen shall be called upon to fight fire a total of more than five days in any one year.

Fire patrol.

§ 11. In times and localities of particular fire danger the state forester may maintain a fire patrol through the fire-wardens, at such places in brush or forest land as the public interest may require, the expense of such patrol to be paid by the county in which such patrol is maintained; and, furthermore, he may, upon written request by counties, corporations or individuals, maintain a fire patrol on their forest lands, provided, that the expense of said patrol be paid by the party or parties requesting same.

District attorneys to prosecute vigorously.

§ 12. Whenever an arrest shall have been made for violation of any provision of this act, or whenever any information of such violation shall have been lodged with him, the district attorney of the county in which the criminal act was committed must prosecute the offender or offenders with all diligence and energy. If any district attorney shall fail to comply with the provisions of this section he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars nor more than one thousand dollars in the discretion of the court. Action against the district attorney shall be brought by the attorney general in the name of the people of the state on the relation of the state forester. The penalties of this section shall apply to any magistrate with proper authority, who refuses or neglects to cause the arrest and prosecution of any person or persons when complaint, under oath, of violation of any terms of this act has been lodged with him.

Destruction of warning notices.

§ 13. Any person who shall destroy, deface, remove or disfigure any sign, poster or warning notice posted under the provisions of this act shall be guilty of a misdemeanor and punishable, upon conviction, by a fine of not less than fifteen dollars nor more than one hundred dollars, or imprisonment in the county jail for a period of not less than ten days nor more than three months, or both such fine and imprisonment.

Willfully, maliciously and negligently setting forest fires.

§ 14. Every person who willfully, maliciously or negligently sets on fire or causes or procures to be set on fire any woods, brush, prairies, grass, grain or stubble on any lands not his own, or allows the fire to escape from his own land, whereby any property of another is injured or destroyed, or accidentally sets any such fire or allows it to escape from his control without extinguishing it or using every effort to extinguish it, shall be guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than fifty dollars, nor more than one thousand dollars, or imprisonment for not less than thirty days, nor more than one year, or both such fine and imprisonment. Setting such fires or allowing them to escape shall be prima facie proof of willfulness, malice or neglect under this section, provided, that nothing herein contained shall apply to a person who, in good faith, sets a back-fire to check a fire already burning.

Extinguishment of camp-fires.

§ 15. Every person who upon departing from a camp or camping place, leaves fire burning or unextinguished, or who after building such fire allows it to spread, shall be guilty of a misdemeanor and punishable by a fine of not less than fifty dollars nor more than five hundred dollars, with costs of suit and collection, one-half of such fine or such a portion thereof as shall not exceed fifty dollars, to be paid to the person securing the arrest and conviction of such offender, and if the defendant refuses or neglects to pay the fine and costs imposed, he shall be confined in the county jail of the county in which conviction shall be had, for a period not to exceed one day for every two dollars of the fine imposed, or may be subject to both such fine and imprisonment.

Restriction of use of fire in dry season.

§ 16. It shall be unlawful during what is locally known as the "dry season," this to be considered as the period between May fifteenth and the first soaking rains of autumn or winter, for any person or persons to burn brush, stumps, logs, fallen timber, fallows, grass or forest-covered land, or blast wood with dynamite, powder or other explosives, or set off fire-works of any kind in forest or brush-covered land, either their own or the property of another, without written permission of and under the direction or supervision of a fire-warden in that district; these restrictions not to apply to the ordinary

use of fire or blasts in logging redwood, nor in cases where back-fires are set in good faith to stop an existing fire. Violation of these provisions shall be a misdemeanor, punishable, upon conviction, by a fine of not less than fifty dollars, nor more than one thousand dollars, or imprisonment not less than thirty days nor more than one year, or both such fines and imprisonment.

Engines in forest land.

§ 17. Logging, locomotives, donkey or threshing engines, and other engines and boilers operated in, through or near forests, brush or grass land, which do not burn oil as fuel, shall be provided with appliances to prevent the escape of fire and sparks from the smoke-stacks thereof, and with devices to prevent the escape of fire from ash-pans and fire-boxes. Failure to comply with these requirements shall be a misdemeanor, punishable, upon conviction, by a fine of not less than one hundred dollars nor more than five hundred dollars, and any person violating any provisions of this section shall be liable to a penalty of not less than fifty dollars nor more than one hundred dollars, for every such violation, or imprisonment for not less than thirty days nor more than three months, or both such fine and imprisonment.

Civil liability for forest fires.

§ 18. In addition to the penalties provided in sections fourteen, fifteen, sixteen and seventeen of this act, the United States, state, county, or private owners, whose property is injured or destroyed by such fires may recover in a civil action, double the amount of damages suffered if the fires occurred through wilfulness, malice or negligence; but if such fires were caused or escaped accidentally or unavoidably, civil action shall lie only for the actual damage sustained as determined by the value of the property injured or destroyed, and the detriment to the land and vegetation thereof. The presumption of wilfulness, malice or neglect shall be overcome; provided, that the precautions set forth are observed; or, provided, fires are set during the "dry season" with written permission of and under the direction of the district fire-warden. Persons or corporations causing fires by violations of this act shall be liable to the United States, state, county, or private owners in action for debt to the full amount of all expenses incurred by the United States, state, county or private owners in fighting such fires. [Amendment of May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 234.]

Inspection of forest area. Posting notice. Order that area be cleaned up. Declaring area a nuisance. Expense.

§ 19. It shall be the duty of the state board of forestry, whenever it shall be deemed necessary, to notify the owner of any forest area within the state by a written notice to be served upon the person or persons or corporation, or either of them, owning or having charge of such area, or upon the agents, attorney or representative of either, by any fire-warden, deputy fire-warden or special fire-warden or any employee of the state board of forestry, in the same manner as a summons in a civil action, or if such area belongs to any non-resident person or corporation and there is no person in control or possession thereof, and such non-resident person or corporation has no tenant, attorney, representative or agent upon whom such service can be had, or if the owner or owners of such area, or their tenants, attorneys, representatives, or agents can not after due diligence be found, then by posting the said notice in some conspicuous place upon such area and by mailing a copy thereof to the owner thereof at his last known place or residence if the same is known or can be ascertained, that the said state board of forestry intends to cause an inspection to be made of the said forest area for the purpose of ascertaining whether or not the same constitutes a nuisance as hereinafter provided. The said notice shall describe the forest area to be inspected by general description and shall designate the time of such inspection. At the time so designated

in said notice the said state board of forestry shall cause an inspection to be made of the said forest area and the said owner or his agent shall be permitted to be present during such inspection and shall be given a full opportunity of showing that such forest area is not a nuisance as contemplated by this act. If the said state board of forestry after such inspection finds any forest area inadequately protected adjoining, lying near, or intermingled with other forest and covered wholly or in part with inflammable debris, which by reason of such location or condition or lack of protection endangers life or property, the state board of forestry shall in writing notify the owner or owners of such areas that the condition of said areas endangers life or property and shall require such persons or corporation to clean up such areas by the use of fire or otherwise at a time and in a manner to be therein specified. Said notice may be served upon the person or persons or corporation, or either of them, owning or having charge of such areas or upon the agents of either, by any fire-warden, deputy fire-warden, or special fire-warden or any employee of the state board of forestry, in the same manner as a summons in a civil action; provided, however, that if any such area belong to any non-resident person or corporation and there is no person in control or possession thereof and such non-resident person or corporation has no tenant, bailee, depository or agent upon whom such service can be had; or if the owner or owners of such areas can not after due diligence be found, then such notice may be served by posting the same in some conspicuous place upon such area, and by mailing a copy thereof to the owner thereof at his last known place of residence, if the same is known or can be ascertained. Any and all such inadequately protected forest areas adjoining, lying near, or intermingled with other forest and covered wholly or in part with inflammable debris, which by reason of such location or condition or lack of protection endangers life or property, are hereby declared to be a public nuisance; and whenever any such nuisance shall exist within the state, and the proper notice shall have been served, as herein provided, and the time specified in said notice shall have elapsed without the nuisance having been abated, it shall be the duty of the state board of forestry to cause said nuisance to be at once abated, by burning or otherwise disposing of the inflammable debris. The expense thereof shall be paid by the state in like manner as bills for fire fighting are paid. Any and all such sum or sums so paid shall be and become a lien on the property from which said nuisance has been removed or abated in pursuance of this section, and said lien shall continue as long as the said sum or sums above referred to shall remain unpaid. The claim for any lien shall be filed by the state forester, or, under his direction, by any of his assistants or fire-wardens, in the office of the county recorder of the county in which the property on which said nuisance existed is situated. Proceedings for the enforcement of such lien shall be instituted by the district attorney of the county where the nuisance existed, at the request of the state board of forestry and in the name of the state of California as claimant; and the costs shall be recovered in the usual manner. The state board of forestry is hereby vested with the power to cause any and all such nuisances to be abated in a summary manner. [Amendment approved April 7, 1911. Stats. 1911, p. 709.]

Disposals of moneys received as penalties.

§ 20. All moneys received as penalties for violations of the provisions of this act, less the cost of collection, and not otherwise provided for, shall be paid into the state treasury to the credit of the forestry fund, which fund is hereby created, and the moneys therein are hereby appropriated for purposes of forest protection, management and replacement under direction of the state board of forestry.

Moneys for forest purposes.

§ 21. County boards of supervisors may appropriate money for purposes of forest protection, improvement and management.

Payment of expenses under this act.

§ 22. There is hereby appropriated for the fifty-seventh and fifty-eighth fiscal years, the sum of seventeen thousand six hundred dollars (\$17,600) for carrying out the provision of this act, and for the payment of all salaries and expenses herein provided for.

§ 23. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

Code commissioners' note: "Cf. §§ 14 and 15 with Penal Code, §§ 384, 384a, 384b (1905, pp. 757, 758). See, also, § 33½, added to county government act of 1897 (1905, p. 394), and Civil Code, § 3346a, as adopted in 1905 (1905, p. 621)."

1. **Fire wardens—Appointment.**—It is the duty of the state forester, under this act, to appoint local fire wardens, and the board of supervisors have no power to make such an appointment.—*Welch v. Ware*, 161 Cal. 641, 119 Pac. 1080.

2. **An appointment by the board of supervisors of a fire warden, and an order fixing his compensation as such, can only be taken**

as evidencing an election by the board under the forestry act to pay him as the appointee of the state forester for his services in the discharge of the duties of his appointment.—*Welch v. Ware*, 161 Cal. 641, 119 Pac. 1080.

3. **Same.—Compensation.**—The only authority given the board of supervisors is to provide for the compensation of voluntary fire wardens; but there is no provision of the law which requires the board to make compensation in any given amount, or if compensation is allowed, that it should be continued for any given time or term.—*Welch v. Ware*, 161 Cal. 641, 119 Pac. 1080.

PREVENTION AND SUPPRESSION OF FOREST FIRES.

ACT 1578a—An act providing for the prevention and suppression of forest fires.

History: Approved May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 262.

Prevention and suppression of forest fires.

§ 1. For the prevention and suppression of forest fires the state board of forestry shall—

(a) Make and enforce such rules and regulations as may be necessary and proper for the organization, maintenance, government and direction of the fire protective system provided for in this act;

Fire districts.

(b) Divide the state into such number of suitable and convenient fire districts as may be necessary;

Fire rangers.

(c) Appoint a district fire ranger for each of such fire districts to serve during the seasons when fires are liable to occur at a salary of not to exceed one hundred fifty dollars per month and necessary expenses. Said district fire rangers shall, under the direction of the state forester, have charge of the fire fighting system and men in such districts; and shall be charged with the duty of preventing and extinguishing forest fires and with the performance of such other duties as may be required by the forester;

Implements and apparatus.

(d) Provide all proper fire-prevention and fire-fighting implements and apparatus, organize fire companies and establish observation stations and employ men to attend them in all fire districts established as herein provided; construct and maintain telephone lines and provide such other means of communication as shall be necessary to prevent and extinguish forest fires.

Co-operation with other agencies.

§ 2. For the purpose of co-operating with federal, county, municipal and private agencies for fire protection, forest management, reforestation and afforestation the state forester may—

Agreements with federal government.

(a) Enter into agreements with the federal government, under such terms as he

deems advisable or as may be provided by law, and renew, revise or terminate such agreements, for the purpose of maintaining a fire patrol system for the prevention and suppression of any forest fires in any timber, brush, grass or other inflammable vegetation or material; provided, that the expenses incurred by the terms of said agreements shall be paid from the appropriations or funds available for forest fire protection.

Agreements with counties or municipalities.

(b) Whenever any county or municipality shall make any appropriation for the prevention and suppression of forest fires on any lands within said county, or municipality, or for the protection and forest management of any lands over which such county or municipality has jurisdiction, or for reforestation or afforestation on lands within said county or municipality, the state forester may, with the approval of the state board of control, enter into agreements with such county or municipality for said purposes on such terms and under such considerations as he deems wise.

Agreements with persons, firms, etc.

(c) Enter into agreements, with the approval of the state board of control, with any person, firm, association or corporation owning or controlling any forest, brush, grass or grain lands, under such terms as he deems advisable or as may be provided by law, and renew, revise or terminate such agreements, for the prevention and suppression of forest fire; provided, that said agreements shall not provide that the state shall pay more than one-third of the expenses for said prevention and suppression of forest fires; provided, however, that the expenses incurred by the terms of said agreements shall be paid from the appropriations or funds available for forest fire protection.

Special fire rangers.

§ 3. Where owners of land, or any organization, shall maintain a fire patrol for the prevention and suppression of forest fires the state forester may designate such patrolman as special fire ranger and give to him, for the protection of lands patrolled by him or adjacent thereto, all the rights and powers of district fire rangers as herein provided; and such special fire rangers shall be paid wholly by such owners or organizations or as may be provided for by section two of this act.

Power to summon help for suppression of fires.

§ 4. The state forester, deputy state forester and assistant state foresters, shall have power to summon any able-bodied male to assist in suppressing any forest fire; and whosoever fails to obey such summons shall be guilty of a violation of this act; and the above-mentioned officers shall have power to authorize any district fire ranger, special fire ranger or any voluntary fire warden to summon any able-bodied man to assist in suppressing any forest fire within their respective jurisdictions, and whosoever fails to obey such summons from any such authorized district fire ranger, special fire ranger or voluntary fire warden shall be deemed guilty of a violation of this act; and every person who in obedience to such summons assists in extinguishing any forest fire shall be compensated at the rate of twenty-five cents per hour of service actually rendered; provided, that said compensation shall be paid from the appropriations or funds available for forest fire protection.

Power to make arrests.

§ 5. The state forester, deputy state forester, assistant state foresters, district fire rangers and special fire rangers, shall have the powers of peace officers to make arrests without warrant, for violation of any state, county or federal fire law, and none of them shall be liable to civil action for trespass committed in the discharge of their duties.

"Forest fire" defined.

§ 6. The term "forest fire" as used in this act, means any fire burning uncontrolled on any lands covered wholly or in part by timber, brush, grass, grain, or other inflammable vegetation.

Penalty.

§ 7. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and shall be punishable upon conviction by a fine of not less than fifty dollars nor more than five hundred dollars, and if the defendant refuses, on conviction, to pay said fine he shall be confined in the county jail of the county in which conviction shall be had for a period not to exceed one day for every two dollars of the fine imposed, or may be subject to both such fine and imprisonment.

Repealed.

§ 8. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

SALARIES OF FORESTRY OFFICERS.

ACT 1579—An act to fix the salaries of the state forester, deputy forester and assistant forester.

History: Approved March 22, 1909, Stats. 1909, p. 669. Amended May 14, 1917. In effect July 27, 1917. Stats. 1917, p. 439.

Salaries of state forester and assistants.

§ 1. The salary of the state forester shall be three thousand dollars per annum. The state forester shall have authority to appoint a deputy forester at a salary of two thousand four hundred dollars per annum and an assistant forester at a salary of one thousand six hundred dollars per annum. The deputy forester shall exercise all the powers and duties of the state forester during the latter's absence. All the salaries mentioned herein are to be paid in the same manner as the salaries of other state officers are paid. [Amendment of May 14, 1917. In effect July 27, 1917. Stats. 1917, p. 439.]

Repeal of conflicting acts.

§ 2. All acts and parts of acts inconsistent with this act are hereby repealed.

STATE FORESTRY FUND.

ACT 1580—An act to appropriate one hundred thousand dollars from any moneys hereafter collected and received by the state of California from the United States in payment of the claims of the state arising out of the Indian and civil wars, to be expended in the acquisition, preservation, and protection of the forests of this state; creating the state board of examiners a commission to carry this act into effect and for the disbursement of said moneys, and creating the "state forestry fund."

History: Approved March 18, 1905, Stats. 1905, p. 183.

State forestry fund. Preservation and protection of forests.

§ 1. From the moneys hereafter collected and received by the state of California from the United States in payment of the claims of this state arising out of the Indian and civil wars, there is hereby appropriated the sum of one hundred thousand dollars which shall be set aside and covered into the "state forestry fund," which fund is hereby created, and which moneys shall be devoted by the state of California for the acquisition, preservation and protection of the forests within the state, and to the interests of scientific forestry generally within the state.

Board of examiners to expend moneys.

§ 2. The state board of examiners shall constitute a commission for the carrying into effect the provisions of this act, and is hereby authorized to expend such moneys in

such manner and for such purposes within the purview of this act as it shall deem advisable, and for that purpose shall audit all claims and demands arising hereunder, and the controller is hereby directed to draw his warrants for the amounts as the same may become due and payable and the treasurer of the state is directed to pay such warrants.

§ 3. This act shall take effect and be in force from and after its passage.

STATE FORESTRY NURSERY.

ACT 1581—An act providing for the establishment and maintenance of a state nursery under the jurisdiction and management of the state forester for the growing of stock for reforestation and the planting of trees along highways and in public places, and making an appropriation therefor.

History: Approved May 15, 1917. In effect July 27, 1917. Stats. 1917, p. 563.

State nursery established.

§ 1. There is hereby established a state nursery under the jurisdiction and management of the state forester for the growing of stock for reforestation of public lands, the planting of trees along public streets and highways and for the beautifying of parks and school grounds. The state nursery shall be located by the state forester upon lands now owned by the state or donated to the state for that purpose.

Duty of state forester.

§ 2. The state forester shall construct and maintain such buildings, improvements and equipment, and shall employ and fix the compensation of such employees as may be necessary to carry out the provisions of this act. He may also purchase nursery stock and seed and distribute the same at cost for public planting or reforestation.

Governor to receive deeds, etc.

§ 3. The governor, on behalf of the state, is hereby authorized to receive all such deeds, conveyances, assurances or donations of real or personal property as may be necessary in law to vest in the people of the state of California the title to any site or sites for said nursery and any equipment and supplies therefor that may be donated to the state and accepted by the governor.

Appropriation.

§ 4. Out of any money in the state treasury not otherwise appropriated there is hereby appropriated the sum of fourteen thousand dollars for the purposes of this act.

UNITED STATES FOREST RESERVE FUND.

ACT 1583—An act to create a fund to be known as the United States forest reserve fund and to provide for the payment out of such fund to the treasuries of the several counties entitled thereto of certain moneys received from the government of the United States, and also to regulate the manner of expenditure by the counties of the moneys so paid.

History: Approved March 18, 1907, Stats. 1907, p. 346. Amended March 20, 1909, Stats. 1909, p. 550.

Creation of United States forest reserve fund.

§ 1. All moneys which have been received, and all moneys which may hereafter be received by the state of California from the government of the United States in pursuance of any and all acts of congress providing for the distribution and payment to states and territories of a fixed and definite percentage of the moneys received by the government of the United States from the forest reserves established therein, shall be credited to a fund to be known as the United States forest reserve fund, which fund

is hereby specifically created, and such moneys shall be disposed of, in accordance with the terms of such act of congress, by the payment of the same to the counties in which such forest reserves are situated. The payment made to each county from the receipts of any given forest reserve shall be in the proportion which the area of such forest reserve situated in such county bears to the total area of such reserve. [Amendment of March 20, 1909. Stats. 1909, p. 550.]

Controller to keep record of receipts.

§ 2. The controller of state shall keep a record of the receipts from the government of the United States on account of each forest reserve in this state. On or before the thirtieth day of June of each year the controller shall draw his warrant in favor of the treasurer of each and every county entitled to payment hereunder for whatever sum of money may be due to such county according to the terms of this act. The state treasurer shall pay the warrants so drawn.

Duty of supervisors and county surveyors.

§ 3. It shall be the duty of the board of supervisors of each county, upon application of the state controller, to instruct the county surveyor to furnish the controller, without expense to the state, a statistical statement showing the area of each United States forest reserve located within that county, and the data thus secured shall be made the basis of the computation of the amount of money due that county under the provisions of this act. [Amendment of March 20, 1909. Stats. 1909, p. 550.]

County auditor to apportion money.

§ 4. It shall be the duty of the county auditor of any county receiving a payment of money under the provisions of this act, immediately to apportion such money by placing fifty per cent thereof to the credit of the unapportioned county school fund of such county and fifty per cent to the credit of the general road fund. The money thus added to the unapportioned county school fund shall be apportioned by the county superintendent of schools in the same manner as other county school fund moneys, and the money so added to the county general road fund shall be used for the same purposes as other general road fund moneys.

§ 5. This act shall take effect immediately.

REFORESTATION OF SAN BERNARDINO FOREST RESERVE.

ACT 1585—An act to provide for the reforestation, the cutting of fire lanes and fire trails on the San Bernardino forest reserve, and to make an appropriation therefor.

History: Approved April 14, 1909, Stats. 1909, p. 868. Prior act of March 11, 1907, Stats. 1907, p. 206, identical in all respects with present act, except that it authorized the department of engineering to enter into the necessary contract, etc., while the present gave that authority to the board of examiners.

REFORESTATION OF THE ANGELES NATIONAL FOREST.

ACT 1586—An act to provide for the reforestation, constructing and maintaining of fire lanes and fire trails on the Angeles national forest, and to make an appropriation therefor.

History: Approved May 22, 1919. In effect July 22, 1919. Stats. 1919, p. 1240. Prior acts: Act of June 3, 1913, Stats. 1913, p. 374; May 17, 1915, Stats. 1915, p. 481; May 15, 1917, Stats. 1917, p. 532; all of which were practically identical with the present act.

Appropriation: fire protection in San Bernardino mountains.

§ 1. The sum of five thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the state treasury not otherwise appropriated, which money shall be used and expended for the purpose of constructing and maintaining fire lanes and fire trails to protect the timber and brush and other growth on the

water shed now standing or that may be planted upon the San Bernardino mountains, in the state of California.

Contracts with United States forest service.

§ 2. The state board of control is hereby empowered to enter into a contract or contracts with the forest service of the United States government for the purpose of constructing and maintaining fire lanes and fire trails for the protection of the forest and brush specified in section one of this act; provided, however, that these expenditures shall not be in excess of the amount or amounts to be expended by the forest service of the federal government in collaboration with the specific work named above; and provided, further, that in case the forest service above mentioned does not contribute the fund for said co-operation, that the state board of control shall not have power to enter into such contract or contracts with the said forest service for the expenditure of the said money.

PREVENTION OF DESTRUCTION OF GAME IN CLEVELAND NATIONAL FOREST.

ACT 1588—An act to prevent the destruction of wild game within certain territory lying within the boundaries of the Cleveland national forest, in the state of California, and providing a penalty therefor.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 952.

Penalty for hunting in Cleveland national forest.

§ 1. Every person who shall hunt, pursue, kill or destroy any wild game of any kind within that certain territory embraced in the Cleveland national forest, more particularly described as follows, to wit: "The east one-half of township five south, range seven west; all of township seven; all of township five south, range six west, except sections one, two, three, four, ten, eleven and twelve; all of township six south, range five west; all in San Bernardino base and meridian, in the state of California," is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred, nor more than five hundred dollars, or by imprisonment in the county jail of the county in which the conviction shall be had, not less than fifty days nor more than two hundred days, or by both such fine and imprisonment.

Not applicable to lions, etc.

§ 2. The provisions of this act shall not apply to the hunting, pursuing, killing or destroying of California lions, wildcats or coyotes under a permit therefor issued by the fish and game commission of California.

DISINCORPORATION OF FIRE DISTRICTS.

ACT 1589—An act to provide for the disincorporation and discontinuance of fire districts where the same become wholly or partly within the corporate limits of a town or city, incorporated subsequently to the organization thereof, and providing for the disposal of the property of such districts.

History: Approved March 20, 1909, Stats. 1909, p. 576.

Discontinuance of fire districts, proceedings for.

§ 1. Whenever the territory comprising a fire district organized under the laws of this state, governing the organization and establishment of fire districts and fire departments in unincorporated towns or villages in this state, shall be wholly within, or be identical with the corporate limits of a town or city, which shall have become incorporated as a municipality, after said fire district was organized and established, the board of supervisors of any county in which any such fire district shall have been or may be hereafter established at any time, upon the written verified petition of the inhabitants

of any such fire district, whose names appear upon the last preceding assessment-roll of the county, town or city within which said fire district is located, owning or representing more than one-half in value of the assessed real property of such fire district, or owning or representing more than one-half in value of the assessed real property in such fire district owned by the residents thereof, may, by a resolution adopted and entered in their minutes, discontinue such fire district, and declare the same to be disincorporated; and upon such action being taken by said board of supervisors, the board of fire commissioners of such fire district, shall turn over to any fire department organized by the board of trustees of said town or city, or to the board of trustees of said town or city, all the property of such fire district or fire department; such town or city to pay all the debts of said fire district, and department, and thereupon said fire district shall be discontinued and disincorporated.

Change of districts.

§ 2. Whenever any portion of the territory of any fire district heretofore or hereafter established shall be incorporated into the corporate limits of any incorporated town or city, the board of supervisors of the county in which such fire district is located, upon the written verified petition of the inhabitants of such incorporated portion of such fire district, whose names appear upon the last preceding assessment-roll of the county, city or town within which said incorporated portion of said fire district is located, owning or representing more than one-half in value of the assessed real property in such incorporated portion of such fire district; or owning or representing more than one-half in value of the assessed real property within such incorporated portion of such fire district owned by the residents thereof, shall by a resolution duly adopted and entered in their minutes, change the boundaries of such fire district, in such manner as shall exclude such incorporated portion from such fire district, and thereafter such incorporated portion of such fire district, shall cease to be a portion of said fire district, and shall not be entitled to the protection of, nor liable to be assessed or taxed for the support and maintenance of the fire department of such fire district.

Order of discontinuance to be recorded.

§ 3. A certified copy of any resolution of said board of supervisors, discontinuing, and disincorporating such fire district or excluding a portion therefrom, or changing the boundaries thereof, after being adopted, and duly signed by the chairman of said board and the clerk thereof, and the seal of said board affixed thereto, and duly certified to by the clerk of said board, shall within ten days after the adoption thereof by said board, be filed by the clerk of said board in the office of the county recorder of the said county in which said fire district is located, and the said recorder shall record the same, but shall not make any charge or collect any fees for filing or recording the same.

§ 4. This act shall take effect and be in force from and after its passage.

TAMALPAIS FOREST FIRE DISTRICT.

ACT 1590—An act to provide for the formation, government, operation and dissolution of Tamalpais forest fire district, to prevent and extinguish forest, brush and grass fires therein, and protect persons and property from injury, loss or damage resulting from any such fires; and to provide for the assessment, levy, collection and disbursement of taxes and revenues therein, and the contribution or payment of public funds therefor.

History: Approved May 21, 1917. In effect July 27, 1917. Stats. 1917, p. 774.

"Tamalpais forest fire district" organized.

§ 1. There is hereby organized, created, established and incorporated a forest fire district within the county of Marin, to be known as "Tamalpais forest fire district,"

the boundaries of which are hereby established, described and determined as follows, to wit: Commencing at the point where the electric pole line of the Pacific Gas and Electric company running from the Alto power house to Bolinas first joins the state highway between the town of Mill Valley and Alto; running thence along the line of said pole line, southerly, southwesterly, and westerly across the Rancho Saucelito and the Rancho Las Baulinas until the said pole line crosses the county road along the easterly side of Bolinas inner bay or lagoon; running thence northwesterly along said county road to its intersection with the lower county road leading from Bolinas to Olema; running thence northwesterly along said Bolinas and Olema county road to its intersection with the Tocaloma road at the village of Olema; running thence easterly along said county road leading to Tocaloma to its intersection with the county road running along the easterly bank of Paper Mill creek; running thence northerly and easterly along said county road running along the easterly bank of Paper Mill creek to the mouth of Nicasio creek; running thence up the county road running up Nicasio creek, in an easterly and southerly direction, through the village of Nicasio to the intersection of the Nicasio and San Geronimo county road with the Lucas valley county road; thence easterly along said Lucas valley county road to its intersection with the state highway at Las Gallinas; thence southerly along the state highway as at present laid out to the northerly corporate limits of the city of San Rafael; thence westerly along said northerly corporate limits of said city of San Rafael to the easterly corporate limits of the town of San Anselmo; thence southerly along the easterly corporate limits of the town of San Anselmo to the easterly corporate limits of the town of Ross; thence southerly along the easterly corporate limits of the town of Ross and westerly along the southerly corporate limits of the town of Ross to the intersection thereof with the state highway; thence southerly along the state highway to the northwesterly corporate limits of the town of Larkspur; thence northerly, easterly and southerly, along the corporate limits of the town of Larkspur to their intersection with the northerly corporate limits of the town of Corte Madera; thence easterly, southerly and westerly along the corporate limits of the town of Corte Madera to their intersection with the state highway; and thence southerly along the state highway to the point of beginning.

Appointment of board of trustees.

§ 2. Within thirty days after this act shall go into effect, a governing board of trustees for said district shall be appointed. Said board shall consist of one trustee to be appointed from said district at large by the board of supervisors of said county of Marin, and of one trustee to be appointed from each municipality lying wholly or partially within said district by the governing board of such municipality. The governing board of such district shall be called "the board of trustees of Tamalpais forest fire district." Each trustee appointed by a municipal board shall be an elector of the municipality from which he is appointed, and each appointee of the board of supervisors shall be an elector of the district.

Term.

All such trustees shall hold office for the term of two years from and after the second day of the calendar year succeeding their appointment; provided, however, that the first board of trustees appointed under the provisions of this act shall, at their first meeting, so classify themselves by lot that one-half of their number, if the total membership is an even number, and if uneven then that a majority of their number, shall go out of office at the expiration of one year and the remainder at the expiration of two years, from the second day of the calendar year succeeding their appointment.

Officers. Expenses. Meetings.

§ 3. The members of the board of trustees shall meet on the first Monday subsequent to thirty days after this act shall go into effect and shall organize by the election of

one of their members as president and one thereof as secretary. The members of the board shall serve without compensation provided that the necessary expenses of each member for actual traveling expenses on meetings or business connected with said board shall be allowed and paid. In event of the resignation, death or disability of any member, his successor shall be appointed by the board of supervisors, if such board originally made such appointment, or by the governing board of the appropriate municipality, if such appointment were originally made by the board of a municipality. The board of trustees shall provide for the time and place of holding its regular meetings, and the manner of calling the same, and shall establish rules for its proceedings. Special meetings may be called by three trustees and notice of the holding thereof shall be given to each member at least three hours before the meeting. All sessions, whether regular or special, shall be open to the public and a majority of the members of the board shall constitute a quorum for the transaction of business.

Powers of board of trustees.

§ 4. The board of trustees of such district shall have power to take all necessary or proper steps for the prevention or extinguishing of forest, brush or grass fires within the district, and for the protection of persons or property from any injury, loss or damage resulting from any such fire or fires; to purchase such supplies and materials and to employ such labor or skilled services as may be necessary or proper in furtherance of the objects of this act, and if necessary or proper in the furtherance of the same to build, construct and thereafter to keep clear and maintain necessary fire roads or fire trails, hydrants or other fire fighting apparatus upon the lands within the district or adjacent thereto, and to acquire by purchase, condemnation, license or other lawful means, in the name of the district, all necessary lands, rights of way, easements or property or material requisite or necessary for any of such purposes; to make contracts, to indemnify or compensate any owner of land or other property for any injury or damage necessarily caused by the exercise of the powers by this act conferred, or arising out of the use, taking or damage of such property for any such purposes, and generally to do any and all things necessary or incident to the powers hereby granted and to carry out the objects specified herein.

Estimate of money needed.

§ 5. The board of trustees of said district shall at least fifteen days before the first day of the month in which the board of supervisors of Marin county is required by law to levy the amount of taxes required for county purposes, furnish to said board of supervisors and to the county auditor of said county, respectively, an estimate in writing of the amount of money necessary for all purposes required under the provisions of this act during the next ensuing fiscal year.

"Tamalpais forest fire district tax."

The board of supervisors of such county shall thereafter at the time and in the manner of levying other county taxes levy upon all of the taxable property within the district and cause to be collected a tax, to be known as the "Tamalpais forest fire district tax," the maximum rate of which must not be greater than sufficient to raise the amount estimated to be raised by the said board of trustees of the district, nor in any event shall such tax exceed ten cents on each one hundred dollars of taxable property in such district.

Levy and collection.

All taxes levied under the provisions of this section shall be computed and entered on the county assessment roll of said county by the county auditor, thereof, and collected at the same time and in the same manner as state and county taxes, and when collected shall be paid into the county treasury of said county for the use of said district.

The funds shall be withdrawn from said county treasury upon the warrant of the board of trustees of such district signed by the president or acting president of the board, and countersigned by its secretary.

Proposal of amount to be paid toward expenses by state, etc. Governing board authorized to make proposal.

§ 6. The board of trustees of such forest fire district, prior to its estimate of the amount of money necessary for all purposes of the district for the ensuing fiscal year, as hereinabove provided, may request from the governing board or body having jurisdiction and control over any forest, brush or grass lands within such district owned or held for any purpose whatsoever by the state of California, or any county, city, township, municipal corporation, public corporation, or other political corporation or subdivision of the state, a proposal or promise as to what amount, if any, the state of California, or any county, city, township, municipal corporation, public corporation or other political corporation or subdivision of the state owning or holding such lands, will agree to pay to such district towards its necessary expenses for the next ensuing fiscal year, or such proposal may be for the next two ensuing fiscal years in the event that such lands shall be under the control of the state of California, in consideration of said district taking over the supervision and concurrent control, as hereinafter set forth, of such lands so owned or held, only, however, in so far as is necessary or proper to prevent or extinguish forest, brush or grass fires thereon or within such district, or to protect persons or property from any injury, loss or damage resulting from any such fire, and said governing body having jurisdiction and control over such lands is hereby authorized and empowered, for the consideration aforesaid, to propose or promise, as aforesaid, and so obligate the state of California or any county, city, township, municipal corporation, public corporation or other political corporation or subdivision of the state owning or holding such lands respectively, to such district upon its board of trustees accepting such proposal for such purpose, whereupon such agreement shall be duly executed in the form of a contract, and such district shall thereupon take over the supervision and control of the prevention and extinguishing of forest, brush or grass fires upon such lands in the manner aforesaid for the next ensuing fiscal year, or for the life of such contract.

Annexation of territory. Petition. Proposition submitted to electors. If majority vote favors, territory deemed added. Exclusion of land. Petition. Hearing. Notice. When deemed excluded.

§ 7. Any territory, incorporated or unincorporated, lying adjacent and contiguous to said forest fire district, and within the same county therewith, may be added and annexed to such district, at any time, upon proceedings being had and taken as in this act provided; and any territory, incorporated or unincorporated, lying within said district, may be withdrawn and excluded therefrom upon proceedings being had and taken as in this act provided. The board of trustees of such district upon receiving a written petition containing a description of the new territory sought to be annexed to such district, signed by the owners comprising more than one-half of the assessed value of such territory as shown by the last county assessment roll, must thereupon submit to the electors of the district and also to the electors residing in the territory sought to be annexed, the proposition of whether such proposed territory shall be annexed and added to such district. The proposition to be submitted to the electors at such election, both within said district and within said territory so proposed to be annexed, shall be as follows: "for annexation," or "against annexation," or words equivalent thereto. Such election must be called and held, and notice thereof shall be published for at least four weeks prior to such election in a newspaper printed and published in such district, and also in a newspaper, if any, printed and published in such territory so proposed

to be annexed. The board of trustees, shall canvass, separately, the votes cast within said district, and the votes cast within said territory so proposed to be annexed, and if it shall appear from such canvass that a majority of all the ballots cast in such district and a majority of all the ballots cast in such territory so proposed to be annexed are in favor of annexation, the board of trustees shall certify such fact to the secretary of state describing said property proposed to be annexed and upon receipt of such last mentioned certificate, the secretary of state shall thereupon issue his certificate reciting that the territory (describing the same) has been annexed and added to the Tamalpais forest fire district and a copy of such certificate of the secretary of state shall be transmitted to and filed with the county clerk of said county in which such forest fire district is situated. From and after the date of such certificate the territory named therein shall be deemed added and annexed to and form a part of said forest fire district, with all the rights, privileges and powers set forth in this act and necessarily incident thereto. If the property so proposed to be annexed is included within a municipality, consent to such annexation shall first be obtained from the governing board of such municipality, and an authenticated copy of the resolution or order of such board so consenting to such annexation, shall be attached to the petition, and be made a part thereof. At any time after the organization of said forest fire district, and the appointment of the board of trustees thereof, the owner or owners of the record title to any land or lands within said district may file a petition with the board of supervisors of the county praying that his or their lands be excluded from the district; provided, that no petition shall be presented or received for the exclusion of lands which, either by themselves, or together with other lands included in the same petition, do not lie adjacent to the exterior boundaries of said forest fire district. At its first regular meeting after the filing of such petition the board of supervisors shall, by its order, set said petition for hearing, which hearing shall not be more than forty days nor less than ten days from the date of its said order. Notice of such hearing shall be mailed to the petitioners, and to the members of the board of trustees of the forest fire district at least one week before the hearing. At such hearing, or at any continuation thereof, the board of supervisors shall hear and determine the facts urged for or against said petition, and shall make a finding determining whether or not the said lands petitioned to be withdrawn, or any part thereof, shall be withdrawn from the district. In case such finding shall be in favor of excluding such lands, or any portion thereof from the district, the board of supervisors shall make its order certifying such fact to the secretary of state, describing said property proposed to be excluded by said findings, and upon receipt of such last mentioned certificate, the secretary of state shall issue his certificate reciting that the territory (describing the same) has been excluded from the Tamalpais forest fire district, and a copy of such certificate of the secretary of state shall be transmitted to and filed with the county clerk of the county of Marin. From and after the date of such certificate, the territory described therein shall be deemed excluded from said forest fire district.

Dissolution of district.

§ 8. The district may at any time be dissolved upon the vote of two-thirds of the qualified electors thereof, upon an election called either by its board of trustees or by petition signed by twenty-five per cent of the registered voters within the district upon the question of dissolution, and the proposition which shall be submitted to the electors at such election shall be as follows: "Shall the district be dissolved?" Such election must be called and held; and notice thereof shall be published for at least four weeks prior to such election in a newspaper printed and published in such district. If two-thirds of the votes at such election shall be in favor of the dissolution of the district, the board of trustees shall certify such fact to the secretary of state, and upon receipt of such last mentioned certificate, the secretary of state shall thereupon issue his cer-

tificate reciting that said forest fire district has been dissolved, and a copy of such certificate of the secretary of state shall be transmitted to and filed with the county clerk of said county in which such forest fire district is situated. From and after the date of such certificate the district named therein shall be deemed dissolved, and the property of the district shall thereupon vest in the county wherein said district is situate, if the district at the time of its dissolution comprises unincorporated territory alone, and if it comprises incorporated territory alone, or partly incorporated and partly unincorporated territory, then in such event its property shall be ratably apportioned amongst the several municipalities and the county in proportion to the assessed value of the property included within said district as shown upon the last county assessment roll; provided, however, that any real property, easements or rights of way belonging to said district shall in such event remain the property of the municipality wherein the same is situate, if situated within incorporated territory, otherwise the same shall remain the property of the county.

Publication of notices. Words defined.

§ 9. Every notice herein required to be published may be published in a daily or weekly or semiweekly newspaper; and if there is no daily, or weekly or semiweekly newspaper published within the district or within a subdivision thereof or other territory wherein the same is required to be published, then such notice shall be posted for the length of time herein required for the publication of the same in three public places of such district or such subdivision thereof or such other territory as the case may be. The term "municipality," as used in this act, shall include a city or town, and shall be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized, for municipal purposes. The word "district" shall apply, unless otherwise expressed or used, to said forest fire district formed under the provisions of this act, and the word "trustees," and the words "board of trustees," shall apply to the trustees and to the board of trustees of such district.

Provision optional and permissive.

§ 10. The provision herein contained for the entering into proposals and contracts with said forest fire district by the state of California, or any county, city, township, municipal corporation, public corporation or other political corporation or subdivision of this state, is hereby declared to be optional and permissive and no further authority of law shall be required for such proposals or contracts than that herein contained, and no further authority of law shall be required than that contained in this act for the levy of taxes by boards of supervisors for the purposes herein specified, and no further authority shall be required by law for the bringing of actions in eminent domain, for the acquiring by said forest fire district of rights of way for fire roads or trails, and easements to cut timber, brush or grass thereon, and to maintain the same, than the authority contained in this act.

Constitutionality.

§ 11. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

PREVENTION OF FOREST FIRES ON PUBLIC LANDS.

ACT 1591—An act to prevent the destruction of forests by fire on public lands.

History: Approved February 13, 1872, Stats. 1871-72, p. 96.

Compare.—Kerr's Cyc. Penal Code, § 384, and Act 1528.

1. The act relates to public lands, either state or United States, and relates to those who wilfully and deliberately set fire, etc. —Galvin v. Gualala Mill Co., 98 Cal. 268, 33 Pac. 93.

2. The act implies that one may lawfully set a forest fire on his own lands and makes it a misdemeanor to allow such fire to spread, though "made for a lawful purpose." —Garnier v. Porter, 90 Cal. 105, 27 Pac. 55.

FIGHTING FOREST FIRES IN SAN ANTONIO CANYON.

ACT 1592—An act to provide for the fighting of forest fires in the San Antonio canyon in the San Gabriel mountains, California, and to make an appropriation therefor.

History: Approved June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1452.

Appropriation: fighting forest fires.

§ 1. Out of any money in the state treasury not otherwise appropriated, there is hereby appropriated annually the sum of fifteen hundred dollars, during the sixty-seventh and sixty-eighth fiscal years, which money shall be used and expended for the purpose of preventing and extinguishing forest fires and the constructing and maintaining of fire trails and firebreaks in the San Antonio canyon in the San Gabriel mountains, California, and the canyons adjacent thereto.

Certain contracts authorized.

§ 2. The state board of control is hereby authorized and empowered to enter into a contract or contracts with the San Antonio Fruit Exchange, a corporation organized and existing under and by virtue of the laws of the state of California, for the purpose of protecting said San Antonio canyon from devastation by fire; provided, however, that the expenditures for such purposes shall not be in excess of the amount or amounts expended by the said San Antonio Fruit Exchange, the San Antonio Water Company and the county of San Bernardino, in collaboration with the specific work named above; and provided, further, that in the event that the said San Antonio Fruit Exchange, the San Antonio Water Company and the county of San Bernardino do not contribute an amount equal to the appropriation hereby made for the purposes hereinbefore specified, the state board of control shall not have power to enter into such contract or contracts with the said San Antonio Fruit Exchange for the expenditure of the said money.

FIGHTING FOREST FIRES IN SAN DIMAS CANYON.

ACT 1593—An act to provide for the fighting of forest fires in the San Dimas canyon in the San Gabriel mountains, California, and to make an appropriation therefor.

History: Approved May 14, 1917. In effect July 27, 1917. Stats. 1917, p. 476.

Appropriation: prevention of forest fires in San Dimas canyon.

§ 1. Out of any money in the state treasury not otherwise appropriated, there is hereby appropriated annually the sum of eight hundred dollars, during the sixty-ninth and seventieth fiscal years, which money shall be used and expended for the purpose of preventing and extinguishing forest fires and the constructing and maintaining of fire trails and firebreaks in the San Dimas canyon in the San Gabriel mountains, California, and the canyons adjacent thereto.

Contract with San Dimas Fruit Exchange.

§ 2. The state board of control is hereby authorized and empowered to enter into a contract or contracts with the San Dimas Fruit Exchange, a corporation organized and existing under and by virtue of the laws of the state of California, for the purpose of protecting said San Dimas canyon from devastation by fire; provided, however, that the expenditures for such purposes shall not be in excess of the amount or amounts expended by the said San Dimas Fruit Exchange; and provided, further, that in the

event that the said San Dimas Fruit Exchange, the San Antonio Water Company and the county of Los Angeles do not contribute an amount equal to the appropriation hereby made for the purposes hereinbefore specified, the state board of control shall not have power to enter into such contract or contracts with the said San Dimas Fruit Exchange for the expenditure of the said money.

PREVENTION OF FOREST FIRES IN SAN ANTONIO CANYON.

ACT 1594—An act to provide for the prevention of forest fires in the San Antonio canyon in the San Gabriel mountains, California, and to make an appropriation therefor.

History: Approved May 22, 1919. In effect July 22, 1919. Stats. 1919, p. 818. Prior act of May 14, 1917, Stats. 1917, p. 526, identical in all respects, except as to amount of appropriation, with present act.

Appropriation: prevention of forest fires in San Antonio canyon.

§ 1. Out of any money in the state treasury not otherwise appropriated, there is hereby appropriated the sum of five thousand dollars, during the seventy-first and seventy-second fiscal years, which money shall be used and expended for the purpose of preventing forest fires, and the construction and maintenance of fire trails and fire-breaks in the San Antonio canyon in the San Gabriel mountains, California, and the canyons adjacent thereto.

Contracts for purposes of protection.

§ 2. The state board of control is hereby authorized and empowered to enter into a contract or contracts with the San Antonio Fruit Exchange, a corporation organized and existing under and by virtue of the laws of the state of California, for the purpose of protecting San Antonio canyon from devastation by fire; provided, however, that the expenditures for such purposes shall not be in excess of the amount expended by the said San Antonio Fruit Exchange, the San Antonio Water Company, and the counties of San Bernardino and Los Angeles, in collaboration with the specific work named above; provided, further, that in the event that the said San Antonio Fruit Exchange, San Antonio Water Company, the county of San Bernardino or the county of Los Angeles do not contribute an amount equal to the appropriation hereby made for the purposes hereinbefore specified, the state board of control shall not have power to enter into such contract or contracts with the said San Antonio Fruit Exchange for such expenditure of said money.

FORT BRAGG.

See Act 3094, note.

FORT JONES.

See Act 3094, note.

FORTUNA.

See Act 3094, note.

FOWLER.

See Act 3094, note.

CHAPTER 123.

FRANCHISES.

References: Franchise tax, see Kerr's Cyc. Political Code, tits. "Board of Equalization"; "Taxation."

Franchises for particular purpose, see Kerr's Cyc. Civil Code, and Kerr's Cyc. Political Code, particular title.

Horseless vehicles, franchises for, see Kerr's Cyc. Civil Code, § 524; Kerr's Cyc. Political Code, § 4047.

See, also, tit. "Motor Vehicles," Act 3014.

CONTENTS OF CHAPTER.

ACT 1600. CANCELLATION OF BONDS TO SECURE PERFORMANCE OF CONDITIONS OF.

1601. "BROUGHTON ACT."

1607. RAILROADS TO PARKS BEYOND CITY LIMITS.

1608. RESETTLEMENT OF FRANCHISES.

CANCELLATION OF BONDS TO SECURE PERFORMANCE OF CONDITIONS OF.

ACT 1600—An act providing for the cancellation of bonds given to secure the performance of the terms and conditions of franchises or privileges granted by the legislative or other governing body of counties or municipalities, the release of the sureties on such bonds, and the filing and acceptance of new bonds in lieu thereof.

History: Approved March 20, 1907, Stats. 1907, p. 747.

Bonds to secure conditions of franchises. Petition of sureties for release. New bonds, conditions for. Corporation as surety.

§ 1. That in all cases where a bond or bonds have been given to secure the observance, fulfillment and performance of each and every term or condition, terms or conditions, or any thereof, of a franchise or privilege granted by a board of supervisors, board of trustees or common council, or other governing or legislative body of any county, city and county, city or town within this state, the governing or legislative body of such county, city and county, city or town may, upon the petition of the owner of said franchise or privilege, or upon the petition of the sureties on said bond or bonds, or upon the petition of any one or more of said sureties cancel and annul said bond or bonds, and release the sureties thereon from any future liability, and accept and take in lieu thereof a new bond or bonds to be approved by the governing or legislative body of such county, city and county, city or town, in the same penal sum and containing the same terms and conditions as the bond or bonds so canceled and annulled; which new bond or bonds must be executed by the owner of said franchise or privilege and by new sureties satisfactory to the governing or legislative body of such county, city and county, city or town; provided, that any person, firm or corporation who acted as surety on the old bond or bonds so canceled and annulled may act as surety on the new bond or bonds, if the same be satisfactory to the governing or legislative body of such county, city and county, city or town.

When old bond shall become annulled.

§ 2. Immediately upon the acceptance by the governing or legislative body of such county, city and county, city or town of any new bond or bonds, filed with the governing or legislative body of such county, city and county, city or town as herein provided for, the old bond or bonds shall become canceled and annulled, and the sureties thereon shall by such cancellation and annulment be released from any future liability on such old bond or bonds, but such cancellation and annulment shall not release said sureties from any past liability; and thereafter the new bond or bonds, herein provided for, shall take the place of such old bond or bonds.

§ 3. This act shall take effect immediately.

"BROUGHTON ACT."

ACT 1601—An act providing for the sale of street railroad and other franchises in counties and municipalities, and providing conditions for the granting of such franchises by legislative or other governing bodies, and repealing conflicting acts.

History: Approved March 22, 1905, Stats. 1905, p. 777. Amended March 3, 1909, Stats. 1909, p. 125; June 8, 1915. In effect August 8, 1915. Stats. 1915, p. 1300. Prior acts: Act of March 23, 1893, Stats. 1893, p. 288. Amended March 19, 1897, Stats. 1897, p. 176. Act of March 13, 1897, Stats. 1897, p. 135. Act of March 11, 1901, Stats. 1901, p. 265. Amended March 6, 1903, Stats. 1903, p. 90. Act of February 24, 1893, Stats. 1893, p. 29. The act of 1893 was probably superseded by the act of 1897, although it was amended six days after the enactment of the latter. The act of 1897 was also probably superseded by the act of 1901. The latter act was probably superseded by the present, the "Broughton Act." The act of February 24, 1893, was an act limiting the time for granting franchises. The code commissioner says it was superseded by the act of 1901. In any event it can not be doubted that the entire mass of legislation has finally crystalized in the present act.

Street franchises granted on condition.

§ 1. Every franchise or privilege to erect or lay telegraph or telephone wires, to construct or operate street or interurban railroads upon any public street or highway, to lay gas pipes for the purpose of carrying gas for light, heat or power, to erect poles or wires for transmitting electricity for light, heat or power, along or upon any public street or highway, or to exercise any other privilege whatever hereafter proposed to be granted by boards of supervisors, boards of trustees or common councils, or other governing or legislative bodies of any county, city and county, city or town within this state, except steam railroads and except telegraph or telephone lines doing an interstate business, and renewals of franchises for piers, chutes or wharves, shall be granted upon the conditions in this act provided, and not otherwise. The grantor may, however, in such franchise impose such other and additional terms and conditions not in conflict herewith, whether governmental or contractual in character, as in the judgment of the legislative body thereof are to the public interest. [Amendment of June 8, 1915. In effect August 8, 1915. Stats. 1915, p. 1300.]

Franchise, advertisement of application for.

§ 2. An applicant for any franchise or privilege above mentioned shall file with the governing or legislative body of the county or municipality an application, and thereupon said governing body shall, in its discretion, advertise the fact of said application, together with a statement that it is proposed to grant the same, in one or more newspapers of the county, city and county, city or town wherein the said franchise or privilege is to be exercised. Said advertisement must state that bids will be received for such franchise, and that it will be awarded to the highest bidder, and the same must be published in such newspaper once a day for ten successive days, or as often during said period as said paper is published, if it be a daily newspaper, and if there be no daily newspaper published in such county, city and county, city or town, then it shall be published in a weekly newspaper once a week for four successive weeks, and in either case the full publication must be completed not less than twenty nor more than thirty days before any further action can be taken thereon. [Amendment approved March 3, 1909. Stats. 1909, p. 125.]

Publication must state character of and term for which it is granted. Percentage paid when. Forfeited when.

§ 3. The publication must state the character of the franchise or privilege proposed to be granted, the term for which it is granted, and, if it be a street railroad, the route to be traversed; that sealed bids therefor will be received up to a certain hour and day

named therein, and that the successful bidder and his assigns must, during the life of said franchise, pay to the county or municipality two per cent (2%) of the gross annual receipts of the person, partnership or corporation to whom the franchise is awarded, arising from its use, operation or possession. No percentage shall be paid for the first [five] (5) years succeeding the date of the franchise, but thereafter such percentage shall be payable annually; and in the event said payment is not made, said franchise shall be forfeited; provided, further, that if the franchise be a renewal of a right already in existence, the payment of said percentage of gross receipts shall begin at once.

When an extension granted.

§ 4. In case the franchise granted shall be an extension of an existing system of street railroad, then the gross receipts shall be estimated to be one-half of the proportion of the total gross receipts of said system which the mileage of such extension bears to the total mileage of the whole system, and said estimate shall be conclusive as to the amount of the gross receipts of said extension.

Sold to highest bidder. Highest bid may be increased. Check and deposit. Deposit of balance. Readvertised, when.

§ 5. Said advertisement shall also contain a statement that the said franchise will be struck off, sold and awarded to the person, firm or corporation who shall make the highest cash bid therefor; provided, only, that at the time of the opening of said bids any responsible person, firm or corporation present or represented may bid for said franchise or privilege, a sum not less than ten per cent above the highest sealed bid therefor, and said bid so made may be raised not less than ten per cent by any other responsible bidder, and said bidding may so continue until finally said franchise shall be struck off, sold, and awarded by said governing body to the highest bidder therefor in gold coin of the United States. Each sealed bid shall be accompanied with cash or a certified check, payable to the treasurer of such county or municipality, for the full amount of said bid, and no sealed bid shall be considered unless said cash or check is enclosed therewith and the successful bidder shall deposit, at least ten per cent of the amount of his bid with the clerk of such county or municipality before the franchise shall be struck off to him. And if he shall fail to make such deposit immediately, then and in that case, his bid shall not be received, and shall be considered as void, and the said franchise shall then and there be again offered for sale to the bidder who shall make the highest cash bid therefor, subject to the same conditions as to deposit, as above mentioned. Said procedure shall be had until said franchise is struck off, sold, and awarded to a bidder who shall make the necessary deposit of at least ten per cent of the amount of his bid therefor, as herein provided. Said successful bidder shall deposit with the clerk of such county or municipality, within twenty-four hours of the acceptance of his bid, the remaining ninety per cent of the amount thereof, and in case he or it shall fail to do so, then the said deposit theretofore made, shall be forfeited, and the said award of said franchise shall be void, and the said franchise shall then and there, by said governing body, be again offered for sale to the highest bidder therefor, in the same manner, and under the same restriction as hereinbefore provided, and in case said bidder shall fail to deposit with the clerk of such county or municipality, the remaining ninety per cent of his bid, within twenty-four hours after its acceptance, the award to him of said franchise shall be set aside, and the deposit theretofore made by him shall be forfeited, and no further proceedings for a sale of said franchise shall be had unless the same shall be readvertised and again offered for sale, in the manner hereinbefore provided.

Commencement of work. Franchise forfeited.

§ 6. Work to erect or lay telegraph or telephone wires, to construct street or interurban railroads, to lay gas pipes for the purpose of carrying gas for light, heat or power, to erect poles or wires for transmitting electricity for light, heat or power along or upon any public street or highway, or to exercise any other privilege whatever, a franchise for which shall have been granted in accordance with the terms of this act, shall be commenced in good faith within not more than four months from the granting of any such franchise, and if not so commenced within said time said franchise so granted shall be declared forfeited, and work to construct street or interurban railroads under any such franchise shall be completed within not more than three years from the granting of such franchise, and if not so completed within said time such franchise so granted shall be forfeited; provided, that for good cause shown, the governing or legislative body may by resolution extend the time for completion thereof, not exceeding three months. Work under any franchise other than for a street or interurban railroad shall be prosecuted diligently and in good faith so as to meet and fill the reasonable needs of the inhabitants of the territory for the service of which the franchise is granted. [Amendment of June 8, 1915. In effect August 8, 1915. Stats. 1915, p. 1301.]

Bond of successful bidder. When and where filed. Failure to file.

§ 7. The successful bidder for any franchise or privilege struck off, sold, and awarded under this act shall file a bond running to said county, city and county, or city or town, with, at least, two good and sufficient sureties, to be approved by such governing body, in a penal sum by it to be prescribed, and set forth in the advertisement for bids, conditioned that such bidder shall well and truly observe, fulfill and perform each and every term and condition of such franchise, and that in case of any breach of condition of such bond, the whole amount of the penal sum therein named shall be taken and deemed to be liquidated damages, and shall be recoverable from the principal and sureties upon said bond. Said bond shall be filed with such governing body within five days after such franchise is awarded, and upon the filing and approval of such bond, the said franchise shall, by said governing or legislative body, be granted by ordinance to the person, firm or corporation to whom it has been struck off, sold, or awarded, and in case that said bond shall not be so filed, the award of such franchise shall be set aside, and any money paid therefor shall be forfeited, and said franchise shall, in the discretion of said governing or legislative body, be readvertised, and again offered for sale in the same manner, and under the same restrictions, as hereinbefore provided.

Duty of attorney general.

§ 8. It shall be the duty of the attorney general, upon the complaint of any county or municipality, or, in his discretion, upon the complaint of any taxpayer, to sue for the forfeiture of any franchise granted under the terms of this act, for the noncompliance with any condition thereof.

Certain clauses and conditions to be omitted.

§ 9. No clause or condition of any kind shall be inserted in any franchise or grant offered or sold under the terms of this act, which shall directly or indirectly restrict free and open competition in bidding therefor, and no clause or provision shall be inserted in any franchise offered for sale, which shall in any wise favor one person, firm or corporation, as against another, in bidding for the purchase thereof.

Violation of act by members of governing body.

§ 10. Any member of any common council or other governing or legislative body of any county, city and county, city or town of this state, who, by his vote, violates

or attempts to violate the provisions of this act, or any of them, shall be guilty of a misdemeanor, and may be punished therefor, as provided by law, and may be deprived of his office by the decree of a court of competent jurisdiction, after trial and conviction.

Conflicting acts repealed. Certain acts not repealed.

§ 11. All acts or parts of acts in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall be construed as repealing, or amending the following acts, to wit: "An act relating to the granting by the counties and municipalities of franchise for the construction of paths and roads for the use of bicycles and other horseless vehicles," approved March twenty-seventh, eighteen hundred and ninety-seven; "An act to authorize cities and towns to grant franchises for the construction and maintenance of railroads beyond the limits of such cities and towns leading to public parks owned thereby," being chapter forty of the laws of eighteen hundred and ninety-seven of the state of California.

This act shall take effect immediately.

The amending act of 1915 contained the following section:

§ 3. Nothing in this act contained shall affect any franchise or the conditions thereof heretofore granted under the terms of the act of which this is amendatory.

1. **The code commissioners say of the act of 1901:** "Repealed and superseded by 1905, pp. 777, 780.—See *City of Los Angeles v. Davidson*, 32 Cal. Dec." [150 Cal. 59, 88 Pac. 42].

2. **Act of 1897 superseded.**—The act of 1897 superseded the act of 1893.—*Horton v. Los Angeles*, 119 Cal. 602, 52 Pac. 956.

3. **Act of 1893 not repealed by county government act.**—The act of 1893 was not repealed by subdivision 40 of section 25 of the county government act, which went into effect the day after, as to granting of franchises by the boards of supervisors of counties.—*Thompson v. Board of Supervisors*, 111 Cal. 553, 44 Pac. 230.

4. **Section 536, Civil Code, repealed by act of 1895.**—The act of 1905 (franchise act) repeals by necessary implication section 536, Civil Code, so far as the franchises of telegraph and telephone companies are concerned.—*Sunset, etc., Co. v. City of Pomona*, 164 Cal. 161.

4a. **Same.**—The franchise act had the effect of repealing section 536, Civil Code, except as to telegraph and telephone lines doing an interstate business and where a telephone company had not taken advantage of the grant under that section prior to the passage of the act, it had no right, by virtue of said section, to maintain poles and wires in the streets of a city of the fifth class except upon the conditions and subject to the regulations prescribed by the municipality.—*Pomona v. Sunset, etc., Co.*, 224 U. S. 330, 56 L. ed. 783, 32 Sup. Ct. 477.

5. **Proceedings functus officio when act repealed.**—Proceedings taken under the act of 1893 after that act was superseded by the act of 1897, would become functus officio when the last-named act went into effect, and could not be completed under the new act.—*Horton v. Los Angeles*, 119 Cal. 602, 52 Pac. 956.

G. **Constitutionality—Title.**—The title of

the act of 1893 is sufficiently broad to include the subject matter of the issuance and sale of franchises by the boards of supervisors of counties, notwithstanding counties are not, strictly speaking, municipalities.—*Thompson v. Board of Supervisors*, 111 Cal. 553, 44 Pac. 230.

7. **Same—Act of 1897—Clause as to exclusiveness of franchise.**—The fact that the grant of a franchise under the act of 1897 to supply a municipality with water, contained a clause to the effect that it was not to be construed as an exclusive franchise, does not prevent such a grant from being invalid for the reason of the unconstitutionality of the act as an attempt to modify the provisions of section 19, article XI, of the constitution.—*Town of St. Helena v. Ewer*, 26 Cal. App. 191, 146 Pac. 191.

See *Clark v. Los Angeles*, 160 Cal. 31, 116 Pac. 722.

8. **Same—Same—Franchises for light and water.**—So far as the grant of franchises for light or water was concerned the act of 1897 was unconstitutional, as a modification of the provisions of section 19, article XI of the constitution.—*Pereira v. Wallace*, 129 Cal. 397, 62 Pac. 61; *Town of St. Helena v. Ewer*, 26 Cal. App. 191, 146 Pac. 191.

See, also, *In re Johnston*, 137 Cal. 115, 69 Pac. 973; *In re Russell*, 163 Cal. 668, Ann Cas. 1914A, 152, 126 Pac. 875.

9. **Same—Same—Constitutional provision mandatory.**—The provisions of section 19, article XI, of the constitution, are mandatory and prohibitory and exclude the right of the municipality to award the privileges referred to in the act of 1897, and said act is unconstitutional.—*Pereira v. Wallace*, 129 Cal. 397, 62 Pac. 61.

10. **Same—Use of gas for illumination but not for heating, under constitutional restriction.**—While the same gas may be used through the same mains and laterals, the use thereof for heating is a different and distinct use from its use for illumination,

and section 19, article XI, of the constitution, protects only the latter use.—*City of Hanford v. Hanford, etc., Co.*, 169 Cal. 749, 750, L. R. A. 1915E, 165, 147 Pac. 969.

11. Same—Electric poles and wires.—An ordinance of a municipality granting a franchise to erect and maintain poles and wires in the public streets of such city for the distribution of electric light and power throughout such city is, in view of section 19, article XI, of the constitution, inoperative as to the distribution of electricity for lighting purposes, but valid as to power.—*Suisun City v. Pacific, etc., Co.*, 35 Cal. App. 380, 170 Pac. 1078.

11a. Same—Same.—An ordinance of Los Angeles, fixing the telephone rates to be charged by a telephone company, was held not unconstitutional.—*Home, etc., Co. v. Los Angeles*, 211 U. S. 265, 53 L. ed. 176, 29 Sup. Ct. Rep. 50.

12. Same—Federal court bound by state decision.—The rule that the federal courts are bound by the construction given a state statute by the highest court of the state, has no application where a federal question is involved, as where the statute impairs the obligations of contracts.—*Sunset, etc., Co. v. City of Pomona*, 164 Cal. 561.

13. Powers of local body—Street railroad franchise can not extend beyond city limits.—A franchise for a street railroad can only be obtained through the action of the council or governing body of the municipality, and can not extend beyond the city limits, and gives no authority for the operation of such a railroad in more than one county.—*San Francisco, etc., Co. v. Scott*, 142 Cal. 222, 75 Pac. 575.

See, also, *Huntington v. Curry*, 14 Cal. App. 468, 112 Pac. 583.

14. Same—Same—Carriage of freight, mail and express.—Under the Broughton act a municipality may grant a franchise for a street railway to carry passengers, freight, mail and express.—*Albany v. United States, etc., Co.*, 38 Cal. App. 466, 176 Pac. 705.

15. Same—Same—Same—Citizen or resident only can object to grant.—Only a citizen or resident or property owner of the city of Albany can raise the question of the right of a street railway to carry freight, express and mail in conjunction with passenger service therein.—*Albany v. United States, etc., Co.*, 38 Cal. App. 466, 176 Pac. 705.

15a. Same—Street railway franchise—Fixing rates.—The city of Los Angeles, by an ordinance, had the power to grant a franchise for a period of fifty years, under the authority of the Broughton act, and by granting such franchise it did not surrender its right to fix fares.—*Home, etc., Co. v. Los Angeles*, 155 Fed. 554, 211 U. S. 265, 53 L. ed. 176, 29 Sup. Ct. Rep. 50.

16. Same—Same—Special terms and regulations may be provided.—The city of Albany in granting a franchise for a street railway under the Broughton act, was empowered to provide special terms and regulations for its construction and operation.

—*Albany v. United States, etc., Co.*, 38 Cal. App. 466, 176 Pac. 705.

17. Same—Same—Scope and effect of grant.—At the instant of the grant under the Broughton act of a franchise for a street railway by the city of Albany to E. A. Gowe, his heirs, successors and assigns, the franchise became an irrevocable contract, and the property of Gowe, of which he could not be divested, for the period of four months, during which time he was to commence work, and by his activity in commencing work within that period, he made a forfeiture at the end of four months an impossibility, and secured to himself, his heirs, successors and assigns, the absolute right to a time limit of three years from the date of the grant to complete work.—*Albany v. United States, etc., Co.*, 38 Cal. App. 466, 176 Pac. 705.

18. Same—Same—Same.—The rights of Gowe vested in his heirs and his estate, upon his death, without completing the work, and the work could have been completed by them, or by his legal representatives or bondsmen, and when they did not do so, and elected not to do so, they are bound by that election, and the franchise was lost to them, but the liability on the bond remains for the benefit of the city of Albany as compensation for the damage it has suffered.—*Albany v. United States, etc., Co.*, 38 Cal. App. 466, 176 Pac. 705.

18a. Same—Street railway franchise—Resale.—A street railway franchise can be sold under the provisions of the act of March 11, 1901, only in the event the highest bidder fails to file the bond required under the act, and an order of the council purporting to make such a sale is invalid, confers no contract rights, and such order does not impair the obligation of any contract within the meaning of the contract clause of the federal constitution.—*Pacific Electric Ry. Co. v. Los Angeles*, 194 U. S. 112, 48 L. ed. 896, 24 Sup. Ct. Rep. 586.

18b. Same—Same—Same.—The Broughton act contemplates that the competitive bidding should take place when the bids were opened and before the franchise was "struck off and sold," and the power of the Los Angeles city council was limited, in a case where the highest bidder failed to deposit the amount required by his bid, to granting or refusing the franchise to the next highest bidder, and the acceptance of an oral bid thereafter was ultra vires and created no valid contract.—*Pacific Electric Co. v. Los Angeles*, 118 Fed. 746, 194 U. S. 112, 48 L. ed. 896, 24 Sup. Ct. Rep. 586.

19. Same—Disposal of garbage.—The board of supervisors of the city and county of San Francisco are authorized to provide for the removal and disposition of garbage and other materials which are or may become nuisances, and they may do so by a contract giving a single person the sole and exclusive privilege for a term of years of collecting and cremating such garbage.—*Sanitary, etc., Works v. California, etc., Co.*, 94 F. 693.

19a. Same—Same.—The act (1893-288)

shows that the legislature intended that it should embrace privileges as well as franchises and under its authority the board of supervisors of San Francisco had power to enter into a contract giving to a single company the privilege for fifty years of collecting the garbage and refuse of the city, and disposing of it.—*California, etc., Co. v. Sanitary, etc., Works*, 199 U. S. 306, 50 L. ed. 204, 26 Sup. Ct. Rep. 100.

19b. Same—Gas works permit—Arbitrary restrictions—Void ordinance.—Where a permit was granted under an ordinance fixing the limits within which gas works might be maintained, a second ordinance passed two months after the passage of the first ordinance, and after gas works were in course of erection under the permit, was held to be an arbitrary and discriminatory exercise of the police power, amounting to the taking of property without due process of law, and an impairment of property rights protected by the fourteenth amendment to the federal constitution.—*Dobbins v. Los Angeles*, 195 U. S. 223, 49 L. ed. 169, 25 Sup. Ct. Rep. 18.

20. Purpose of act.—The only purpose of the act was to prevent the granting of the franchise in any other manner than that prescribed.—*McGinnis v. Mayor, etc.*, 153 Cal. 711, 96 Pac. 367.

20a. Same.—Where an act provides that franchises granted by a municipality "shall be granted upon the conditions in this act provided, and not otherwise," it becomes imperative that the requirements of the act should be strictly complied with, both as to terms and the time and manner of procedure.—*Pacific Electric Co. v. Los Angeles*, 118 Fed. 746, 194 U. S. 112, 48 L. ed. 896, 24 Sup. Ct. Rep. 586.

21. Same.—The sole purpose of the act is to prescribe the method and conditions upon which the franchises included within its terms might be granted by the legislative body authorized to make the grant.—*Sunset, etc., Co. v. Pasadena*, 161 Cal. 265, 118 Pac. 796.

22. Effect of act.—The Broughton act merely places restrictions upon the granting of franchises where the power to grant franchises exists otherwise.—*Oro Electric Corp. v. Railroad Commission*, 169 Cal. 466, 482, 147 Pac. 118.

23. Grant rests in discretion of board.—The act vests the governing or other legislative body of the county, city and county, city, or town, with the sole power to determine, in the exercise of its discretion, whether the franchise should be granted at all, and it is not compelled to take any step in the direction of granting it, and may advertise or not "in its discretion."—*McGinnis v. Mayor, etc.*, 153 Cal. 711, 96 Pac. 367.

24. Action of board legislative.—The action of the board in granting a franchise under the act of 1893 is purely legislative, not judicial, or quasi-judicial, and can not be reviewed on certiorari.—*People ex rel. Dean v. Board of Supervisors*, 122 Cal. 421, 55 Pac. 131.

25. Act applied—Privilege for disposal of garbage.—The provisions of the act are applicable to the sale of a franchise to cremate and reduce the garbage of the city of San Francisco.—*Sanitary, etc., Works v. California, etc., Co.*, 94 Fed. 693.

26. Same—Ferry.—The act of 1893 does not apply to the grant of a franchise for a ferry over a river between two counties.—*Pool v. Simmons*, 134 Cal. 621, 66 Pac. 821.

27. Same—Wharf.—The act of 1893 authorizes the granting of a franchise to construct and maintain a wharf.—*People ex rel. Dean v. Board of Supervisors*, 122 Cal. 421, 55 Pac. 131.

28. Same—Competitive bidding, necessity for.—The act only applies to the sale of franchises where there can be competitive bidding, and not a franchise for a steam railroad for the extension of its track through the streets of a city, en route between its termini, where there can be no bona fide competition.—*People ex rel. San Francisco, etc., Co. v. Craycroft*, 111 Cal. 544, 44 Pac. 463.

See, also, *Russ & Sons v. Crichton*, 117 Cal. 695, 49 Pac. 1043.

28a. Same—Sale to highest bidder required.—The act of 1893 requires franchises sold thereunder to be sold to the highest bidder, and such a requirement means sold for cash, and the act can not be construed to allow the consideration to be accepted in any other commodity, at the discretion of the board.—*Thompson v. Board of Supervisors*, 111 Cal. 553, 44 Pac. 230.

28b. Same—Sale on agreement to pay percentage.—The act of 1893 does not authorize the franchise to be sold on an agreement to pay a percentage of the gross receipts, after completion and when in operation.—*Thompson v. Board of Supervisors*, 111 Cal. 553, 44 Pac. 230.

29. Same—Payment of two per cent of gross annual income.—A public service gas corporation exercising a franchise under section 19, article XI, of the constitution, prior to the 1911 amendment, and occupying the streets of the city with its mains and laterals, by virtue thereof, became obligated to pay the city two per cent of its gross annual receipts by accepting an additional franchise for heat, light and power from the city under the act of 1901 (265).—*City of Hanford v. Hanford Gas & Power Co.*, 169 Cal. 749, 750, L. R. A. 1915E, 165, 147 Pac. 969.

30. Act and ordinances applied together.—The requirement of the 1903 amendment to the act of 1901 that franchises shall be granted by ordinance, is to be construed with the charter requiring ordinances to be approved by the mayor, or passed over his veto; and such an ordinance vetoed by the mayor, and not passed over his veto, does not become effective.—*City of Los Angeles v. Davidson*, 150 Cal. 59, 88 Pac. 42.

31. Public highways.—The act can not reasonably be construed as granting any right in public highways.—*Sunset, etc., Co. v. Pasadena*, 161 Cal. 265, 118 Pac. 719.

32. Same—Telegraph companies.—The

act of congress granting telegraph companies rights of way over the public lands and post roads gives no right to such companies to occupy the streets of a city with its poles and wires without the consent of such city.—*Sunset, etc., Co. v. City of Pomona, 184 Cal. 344.*

33. *Same*.—Telegraph and telephone wires and poles.—The fact that the telephone wires of a company engaged in both telegraph and telephone business, may be used for the local delivery of telegraph messages does not make them an integral part of the telegraph lines so as to bring them within the purview of the act of congress granting telegraph companies rights of way over the public lands and post roads.—

Sunset, etc., Co. v. City of Pomona, 184 Fed. 261.

34. *Same*.—Telephone company.—A telephone company is not within the act of congress granting telegraph companies rights of way over public lands and post roads.—*Sunset, etc., Co. v. City of Pomona, 184 Fed. 261.*

34a. *Same*.—*Same*.—A telephone company doing an interstate business is not required under the Broughton act to obtain the consent of a city for the construction and maintenance of its lines in the streets, although used both for local and intrastate business, and for interstate business.—*Sunset, etc., Co. v. Eureka, 172 Fed. 765.*

RAILROADS TO PARKS BEYOND CITY LIMITS.

ACT 1607—An act to authorize cities and towns to grant franchises for the construction and maintenance of railroads beyond the limits of such cities or towns leading to public parks owned thereby.

History: Became a law under constitutional provision without governor's approval March 1, 1897, Stats. 1897, p. 46.

City may grant railroad franchises outside city limits. Fare.

§ 1. It shall be lawful for the council, trustees, or other governing body of any city or town owning public parks situated outside of said city or town, to grant franchises for the building and operation of railroads from any point in, or at the exterior boundary of such city or town, to, in, or through such park, in the same manner and to the same extent as it now has power to grant the same for street railroads within the limits of such city or town; provided, that in addition to all other conditions, it shall be made a condition of such franchise that the fare of passengers on such road or roads shall never exceed five cents for a single trip.

Government of railroads, sale of franchises, etc.

§ 2. All railroads, except as otherwise provided in this act, authorized by this act to be so chartered shall be governed by the provisions of part four, title four, of the Civil Code of California, concerning street railroads and corporations, so far as the same shall be applicable thereto, and of all acts amendatory thereof. Also by the provisions of "An act providing for the sale of railroad and other franchises in municipalities and relative to the granting of franchises," approved March twenty-third, eighteen hundred and ninety-three.

RESETTLEMENT ACT.

ACT 1608—An act providing for the resettlement of franchise rights of and the granting of a resettlement franchise to any person, firm or corporation actually engaged in operating a street, suburban or interurban railroad in cities or cities and counties having at the effective date of this act a freeholders' charter adopted under the provisions of section eight of article XI of the constitution of the state of California, which charter provides for the resettlement of franchise rights of and the granting of resettlement franchises to any person, firm or corporation engaged in operating a public utility in such a municipality, and providing conditions for the granting of such franchises by legislative or other governing bodies of such city or city and county.

History: Approved May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 829.

Power of board of supervisors, etc., to provide for resettlement of franchise rights.

§ 1. The board of supervisors, the board of trustees or common council, or other governing or legislative body of any city or city and county having at the effective date of this act a freeholders' charter adopted under the provisions of section eight of article XI of the constitution of the state of California, and which charter provides for the resettlement of and the granting of a resettlement franchise to any person, firm or corporation engaged in operating a public utility in such city or city and county, is hereby empowered to provide for a general resettlement of the franchise rights and to grant a resettlement franchise to any person, firm or corporation actually engaged in operating a street, suburban or interurban railroad in said city or city and county, upon written application therefor, and upon such terms and conditions as are in this act provided, and may, in such resettlement of any such franchise impose other and additional terms and conditions not in conflict herewith.

Franchise submitted to vote of electors.

§ 2. Every such resettlement franchise which is granted shall be granted after such publication and upon such notice as the governing or legislative body shall by resolution determine, or failing such determination after such publication and upon such notice as is or shall be prescribed by law for the enactment of ordinances by such governing or legislative body. After the final passage of such franchise, the same shall be referred and submitted to the vote of the electors of the city or city and county at the general or special election next ensuing not less than twenty days after the final passage of such ordinance, or if no general or special election is to be held in the city or city and county within a period of not less than twenty days and not more than ninety days after such final passage, the said governing or legislative body may call a special election for the purpose of submitting said ordinance to the electors as aforesaid, said special election to be held not less than thirty days and not more than sixty days after such final passage. No such resettlement franchise shall go into effect until it shall have been so submitted to the electors of the city or city and county and receive the approval of a majority of the electors voting thereon; and provided, further, that such resettlement franchise shall not be effective unless accepted in writing by the grantee of such resettlement franchise.

Rights conferred by franchise.

§ 3. Every such resettlement franchise, permit or privilege shall confer upon the grantee thereof the right to occupy the roads, streets, highways, avenues, boulevards, lanes, alleys, courts, places, and pathways of the city or city and county, particularly set out in the terms and conditions of such franchise, permit or privilege, for the purpose of conducting, operating and maintaining thereon a street, suburban or interurban railroad, subject always to the right of the city or city and county to acquire and possess the property of said grantee; provided, however, that said grantee shall pay to the city or city and county such a percentage of the net revenue annually collected from any and all sources under and by virtue of such franchise, permit or privilege, as shall be fixed in such franchise. What constitutes such annual net revenue shall be provided in such franchise.

New franchise may be part of resettlement franchise.

§ 4. The legislative or governing body may in such resettlement franchise provide that any new franchise granted to the holder of such resettlement franchise shall be considered as part of such resettlement franchise.

Extension of franchise to annexed territory.

§ 5. The legislative or governing body may in such resettlement franchise provide that in case of consolidation or annexation to the city or city and county of any terri-

tory not now included in said city or city and county at the date said resettlement franchise is granted, any franchise to operate such street, suburban or interurban railroad, or any part thereof, held or claimed by the holder of such resettlement franchise in or for any portion of such consolidated or annexed territory shall thereupon be surrendered to the city or city and county, and that the rights and obligations of such resettlement franchise shall thereupon automatically extend to such additional territory, and that a valuation for the purpose of public acquisition of the properties used and useful, or, in the discretion of the city or city and county, prospectively useful, in the operation of such street, suburban or interurban railroad in the area so consolidated or annexed, and not included in the capital valuation already fixed in such resettlement franchise shall be added to the capital account of such resettlement franchise grantee at a valuation for the purpose of public acquisition fixed by the railroad commission of the state of California, or its successors in interest, and otherwise determined as provided in this act.

Grantee to surrender franchises owned.

§ 6. Every resettlement franchise shall provide that the grantee thereof shall surrender the franchises or rights, owned or claimed by the grantee, to occupy such portion of the roads, streets, highways, avenues, boulevards, lanes, alleys, courts, places and pathways as it is proposed such street, suburban or interurban railroad shall thereafter occupy under the provisions of such resettlement franchise, and that the grantee shall accept in lieu thereof the rights and privileges granted by such resettlement franchise as a franchise for the continued operation of such street, suburban or interurban railroad within the limits of the city or city and county or such portion thereof as had theretofore been operated under the franchise or franchises surrendered.

Granted for indeterminate period. Purchase by city. Valuation by railroad commission.

§ 7. Every such resettlement franchise, permit or privilege shall be granted for an indeterminate period, subject always to the right of the city or city and county to acquire and possess the property of the grantee. Every resettlement franchise shall be granted upon the express condition that the city or city and county may, at a valuation for the purpose of public acquisition, fixed and determined as hereinafter provided, either assume ownership by purchase, take over and possess the property used and useful, or, in the discretion of the city or city and county prospectively useful, of the franchise grantee, his or its successors or assigns, upon giving said grantee written notice of its intention to purchase and take over said property, which written notice shall be given only when authorized by ordinance of the legislative or governing body of the city or city and county. The valuation for the purpose of public acquisition of such property used and useful, or, in the discretion of the city or city and county, prospectively useful, and owned by the grantee at the time application is made for such resettlement franchise, permit or privilege, shall be fixed by the railroad commission of the state of California, or its successors in interest. The valuation of such property, as fixed by the railroad commission of the state of California, may be set forth in said resettlement franchise, permit or privilege, in which case a readjustment from time to time of this valuation by the addition of the cost of extensions and betterments and by the deduction of the value of property sold or abandoned, and of the amount of depreciation sustained by the property used or useful, or prospectively useful, of the franchise grantee shall be made in such manner as may in said resettlement franchise be provided. All expenses of such valuation by the railroad commission of the state of California, or its successors in interest shall be paid by the city or city and county to the railroad commission of the state of California, or its successors in interest.

Value in excess of amount paid not to be claimed.

§ 8. Said resettlement franchise shall provide that the grantee thereof, its successors or assigns, shall never claim before any court or other public authority in any proceeding of any character any value for said resettlement franchise, permit or privilege in excess of the amount originally paid for the same by the grantee thereof to the public authority granting the same.

Amendment.

§ 9. Any resettlement franchise may be amended from time to time by ordinance passed by the governing or legislative body of the city or city and county and ratified by the electors of the city or city and county in the manner herein prescribed for the passage of such resettlement franchise in the first instance, and not otherwise; provided, that no such amendment shall be effective unless accepted in writing by the grantee of such resettlement franchise.

Exercise of police power.

§ 10. The legislature hereby declares that this act is passed subject to the continued power of the state of California in the exercise of its police power or otherwise through the instrumentality of the railroad commission of the state of California or other agency to provide at any and all times for the supervision and regulation of public utilities notwithstanding any franchise, permit or privilege or any provision thereof granted under this act, or any part thereof.

Right of city to acquire property by right of eminent domain.

Nothing herein contained, nor any provision of any franchise granted hereunder shall be deemed to prevent a city or city and county from acquiring at any time the property of any public utility through the exercise of the right of eminent domain under the then constitution and laws, and the legislature hereby declares it to be against the policy of the state for any city or county to contract away, either for a term or in perpetuity, the right to exercise the right of eminent domain in respect to any public utility.

Constitutionality.

§ 11. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

FRAUDULENT CONVEYANCES.

See Kerr's Cyc. Civil Code, §§ 1227-1231, 1624, 3439-3442.

FREE LIBRARIES.

See tit. "Libraries."

FREEHOLDER CHARTERS.

See tits. "Elections"; "Municipal Corporations."

CHAPTER 124. FRESNO CITY.

CONTENTS OF CHAPTER.

ACT 1629. FREEHOLDERS' CHARTER OF FRESNO.

FREEHOLDERS' CHARTER.

ACT 1629—Charter of city of Fresno.

History: Voted for and ratified at a special election held October 19, 1899; adopted January 28, 1901, Stats. 1901, p. 832. Amendments voted for and ratified at a special election held February 13, 1905; adopted February 28, 1905, Stats. 1905, p. 1026. Originally incorporated in 1885 under the general law of 1883, as a city of the fifth class.

1. Police court's a municipal affair.—The effect of subdivision 1 of section 8½ of article XI of the constitution was to make the matter of police courts a purely municipal affair as to any freeholder charter city which subsequently made provision in its charter for such court.—*Graham v. Mayor*, etc., of Fresno, 151 Cal. 465, 91 Pac. 147.

2. Charter provision as to verification of claims.—The provision of the Fresno charter requiring demands against the city to be verified by the claimant, or some one for him, having a knowledge of the facts, is substantially complied with, where several separate claims were presented together by an assignee, and were verified by his at-

torney, having a knowledge of each claim.—*Madary v. City of Fresno*, 20 Cal. App. 91, 128 Pac. 340.

3. Section 103, Code of Civil Procedure, superseded by charter provision.—Section 103, Code of Civil Procedure, is inconsistent with and was superseded as to Fresno, by the freeholder charter provisions of that city, establishing a police court, so far as that section requires the city to maintain a city justice's court at its own expense, paying the salary of the justice and providing a place to hold such court.—*Graham v. Mayor*, etc., of Fresno, 151 Cal. 465, 91 Pac. 147.

CHAPTER 125.

FRESNO COUNTY.

References: Boundaries, see *Kerr's Cyc. Political Code*, § 3918, and see tit. "County Boundaries."

Classification, see *Kerr's Cyc. Political Code*, § 4006.

County officers, compensation, duties, etc., see *Kerr's Cyc. Political Code*, §§ 4000, 3124.

CONTENTS OF CHAPTER.

- ACT 1638. COUNTY COURTHOUSE AND HOSPITAL IMPROVEMENT BONDS.
- 1642. INCREASE OF SUPERIOR JUDGES.
- 1644. ISSUE OF BONDS FOR THE CONSTRUCTION OF ROADS AND BRIDGES.
- 1649. BOARD OF COUNTY WATER COMMISSIONERS.

COURTHOUSE AND HOSPITAL IMPROVEMENT BONDS.

ACT 1638—An act to provide funds and empower the board of supervisors of Fresno county to improve the courthouse and county hospital grounds.

History: Approved March 7, 1878, Stats. 1877-78, p. 174.

This act authorized the issue of bonds cent and redeemable at any time after to the amount of \$10,000, bearing 8 per issuance.

INCREASE OF SUPERIOR JUDGES.

ACT 1642—An act to increase the number of judges of the superior court of the county of Fresno, and to provide for the appointment of an additional judge.

History: Approved May 5, 1917. In effect July 27, 1917. Stats. 1917, p. 283. Prior act of March 8, 1887, Stats. 1887, p. 57, increased the number of judges from one to two; act of March 10, 1893, Stats. 1893, p. 125, increased the number from two to three; act of March 26, 1895, Stats. 1895, p. 156, reduced the number from three to two.

Fresno county judges.

§ 1. The number of judges of the superior court of Fresno county is hereby increased from two to three.

Appointment of one additional judge. Election.

§ 2. Within ninety days after the taking effect of this act, the governor shall appoint one additional judge of the superior court of the county of Fresno, state of California, who shall hold office until the first Monday after the first day of January, A. D., one thousand nine hundred nineteen. At the general election to be held in November, 1918, a judge of the superior court of said county shall be elected in said county, who shall be the successor of the judge appointed hereunder, to hold office for the term prescribed by the constitution and by law.

Salary.

§ 3. The salary of said additional judge shall be the same in amount, and shall be paid at the same time and in the same manner as the salary of the other two judges of the superior court of said county now authorized by law.

BONDS FOR THE CONSTRUCTION OF ROADS AND BRIDGES.

ACT 1644—An act to authorize the board of supervisors of Fresno county to build certain roads and bridges, and to issue bonds of said county for the construction thereof, and to provide for the payment of the same.

History: Approved March 22, 1878, Stats. 1877-78, p. 395.

This act authorized the issuance of bonds and completion of certain wagon roads and not exceeding \$20,000, for the construction bridges.

BOARD OF COUNTY WATER COMMISSIONERS.

ACT 1649—An act to create a board of water commissioners in Fresno county, and to define their powers and duties.

History: Approved April 2, 1866, Stats. 1865-66, p. 777. Continued in force, Kerr's Cyc. Political Code, § 19.

Water commissioners for Fresno, Tulare and Kern counties.—See tit. "Water Commission."

CHAPTER 126.**FRUIT.**

References: See, generally, tits. "Adulteration"; "Foods"; "Horticulture"; "Marks and Brands"; "State Commission Market"; "Viticulture."

CONTENTS OF CHAPTER.

ACT 1652. STANDARD FRUIT ACT OF 1915.

1654. "THE STANDARD APPLE ACT OF 1917."

1654a. STANDARD FRESH FRUIT PACKING ACT OF 1917.

1654b. STANDARD FOR SULPHUR FOR SULPHURING FRUITS AND FOODS.

1654c. STANDARD FRUIT AND VEGETABLE ACT OF 1919.

STANDARD FRUIT ACT OF 1915.

ACT 1652—An act to establish a standard for the packing in the state of California of the kinds of fresh fruits specified in this act, for sale or for transportation for sale, for interstate and foreign shipment, and to prevent deception in the packing; also to establish a system of inspection for the same.

History: Approved June 8, 1915. In effect August 8, 1915. Stats. 1915, p. 1298. This act was partially superseded by the act of 1917. See Act 1654a for comparison.

Standard fruit pack.

§ 1. There is hereby created and established a standard for the packing of fresh fruits, for interstate and foreign shipment, of the kinds specified in this act.

§ 2. Any box, basket, package or container of fresh fruit of the kinds specified in this act, which shall be packed and offered for sail or for transportation for sale, shall be packed in accordance with the specifications herein made.

Free from insects.

§ 3. All deciduous fruits of the kinds specified in this act when packed shall be practically free from insects and fungous diseases.

In bulk.

§ 4. All fresh fruit of the kind specified in this act which shall be sold in bulk or loose in the box without packing, shall be exempt from the provisions of this act.

Cherries.

§ 5. All cherries packed in boxes or packages shall contain fruit of practically uniform quality and maturity and one variety only, excepting that such boxes or packages may contain more than one variety if such fact be plainly stamped on the outside of the box or package with the words "Mixed Varieties" with letters one-half inch high. Each box or package shall be stamped on the outside with the minimum weight of contents, and name of variety or varieties.

Peaches, etc.

§ 6. Peaches, apricots, pears, plums and prunes, shall be of practically uniform size, quality and maturity. When packed in crates, packages or containers made up of two or more sub-containers having sloping sides, for the purpose of ventilation of the fruit therein, the fruit shall not vary in size more than ten per cent and no layer below the top layer shall contain a greater numerical count than the top layer. Each box, crate, package, container or sub-container shall be stamped upon the outside with the minimum weight of its contents. Each box, crate, package or container, except sub-containers, shall bear in plain letters the name of the variety contained therein. When packed in a box, package or container having perpendicular sides and ends, each box shall contain approximately the same numerical count in each layer; provided, that when peaches are packed in boxes, packages or containers, having perpendicular sides the box, package or container shall also be marked upon the outside of the end thereof in plain figures with the approximate number of peaches in the box, which shall be within four peaches of the true count.

Grapes.

§ 7. Grapes packed for table use shall be of uniform quality and maturity and shall be well matured and show a sugar content of not less than seventeen per cent Balling's scale, except Emperor, which shall show not less than sixteen per cent Balling's scale. Each crate or other package and containers therein shall bear in plain figures the minimum weight of contents. Each crate or package except sub-containers shall be stamped in plain letters with the name of the variety.

Berries.

§ 8. Berries shall be packed in uniform packages of dry quart containing an interior capacity of 67.2 cubic inches, or dry pint containing an interior capacity of 33.6 cubic inches and shall be reasonably uniform in size, quality and maturity throughout the package or container.

Cantaloupes.

§ 9. Cantaloupes shall be placed in standard crates 12 x 12 x 23½ inches containing forty-five cantaloupes of uniform size and maturity. Pony crates 11 x 11 x 23½ inches containing forty-five cantaloupes of uniform size and maturity. Jumbo crates 4½ x 13½ x 23½ inches containing twelve cantaloupes of uniform size and maturity or containing fifteen cantaloupes of uniform size and maturity.

Name of orchard.

§ 10. All boxes, crates, packages or containers deciduous fruits of the kinds specified in this act, except sub-containers, when packed and offered for sale, or for transportation for sale, shall bear upon them in plain sight and plain letters on the outside the name of the orchard, if any, and the name and post office address of the person, firm, company, corporation or organization, who shall have first packed or authorized the packing of the same, also the name of the locality where the fruit is grown.

Duty of county horticultural commissioners.

§ 11. In counties having a county horticultural commissioner it shall be his duty (and the duty of his deputies) acting as inspectors, which office is hereby created, to enforce the provisions of this act. Additional inspectors shall be appointed by the county horticultural commissioner, upon petition of like nature and at the same pay as provided in section twelve of this act; provided, that any county having and enforcing a standard higher than the standard in this act shall be exempt from the provisions of this act upon declaration to such effect by the state horticultural commissioner.

Appointment of inspectors.

§ 12. In a city and county or in counties having no county horticultural commissioner, or deputy, it shall be the duty of the county board of supervisors, upon petition filed with them to appoint inspectors. Said petition shall be signed by at least twenty-five bona fide fruit growers residing in that county, or city and county. The inspectors shall receive for their services the sum of three and one-half dollars per day to be paid monthly upon warrants drawn upon the county treasurer. Upon the petition of twenty-five resident freeholders who are fruit growers or shippers of fruit, the county horticultural commissioner, or board of supervisors, where there is no county horticultural commission, shall immediately remove said inspector for neglect of duty, malfeasance in office, or general unfitness for office. In case of such removal the office shall immediately be filled.

Penalty.

§ 13. Any person, firm, company, corporation, or organization, who shall knowingly pack, or cause to be packed, fruit of the kinds specified herein, in boxes, crates, packages, containers, or sub-containers, to be offered for sale or for transportation for sale, in willful violation of this act, shall be guilty of a misdemeanor.

§ 14. All laws in conflict with this act or any part thereof are hereby repealed.

Constitutionality.

§ 15. If any section, sub-section, sentence, clause or phrase of this act is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, sub-section, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, sub-sections, sentences, clauses or phrases be declared unconstitutional.

"THE STANDARD APPLE ACT OF 1917."

ACT 1654—An act to establish standards for the packing and marketing of apples, forbidding the sale of certain infected and diseased apples, providing for its enforcement, fixing penalties for its violation, and making an appropriation to carry into effect the provisions thereof, and repealing an act entitled "An act to establish a standard for the packing and marketing of apples, fixing penalties for the violation of its provisions, and providing for its enforcement and making an appropriation to carry into effect the provisions hereof," approved June 10, 1915.

History: Approved May 7, 1917. In effect July 27, 1917. Stats. 1917, p. 285. Amended April 30, 1919. In effect July 20, 1919. Stats. 1919, p. 258. Prior act of June 10, 1915, Stats. 1915, p. 1386, repealed by present act.

Title.

§ 1. This act shall be known, and for any and all purposes may be designated and referred to, as "The standard apple act of 1917."

Standard grades established.

§ 2. The following standard grades and standard box are hereby established for apples, packed, shipped, delivered for shipment, offered for sale or sold, in the state of California:

"California fancy."

(a) The "California fancy" grade shall consist of apples of well-grown, properly matured specimens of one variety, hand picked, with stems retained therein, either in whole or in part, well colored and normally shaped for the variety and locality where produced, uniform in size, well packed, and shall be free from pests, diseases, visible rot, visible dry rot, visible Baldwin spot, insect bites, bruises and other defects, except such bruises and defects as are necessarily caused in the operation of packing, and virtually free from dirt; provided, however, that a variation from the said standard, as to insect pests, diseases, dry rot, Baldwin spot, insect bites, bruises and other defects, shall be allowed, not to exceed ten per cent total of such defects in any one package, nor to exceed three per cent of any one such defect; and provided, further, that a variation in size of the apples shall be allowed, not to exceed three-eighths of one inch, when measured through widest portion of cross section thereof, and that no apples less than two and one-fourth inches when measured in like manner, shall be placed in "California fancy" grade except Lady and Winesap apples, when the smallest size shall be not less than two inches when measured in like manner.

"B grade."

(b) The "B grade" shall consist of apples of well-grown, properly matured specimens of one variety, hand picked, uniform in size, well packed, free from insect pests, diseases, visible rot, visible dry rot, visible Baldwin spot, insect bites, sun scald and frost bite more than skin deep, and bruises resulting in the breaking of the skin, and virtually free from dirt; provided, however, that insect bites which have healed in the process of maturity of the apple, and which do not cause serious deformity, and slightly misshapen apples, shall be permitted in this grade, that a variation in size of the apples shall be allowed, not to exceed three-eighths of one inch when measured through widest portion of cross section thereof, and that a variation from the said standard, as to insect pests, diseases, dry rot, Baldwin spots, bruises and other defects, shall be allowed, not to exceed ten per cent total of such defects in any one package, nor to exceed three per cent of any one such defect.

"C grade."

(c) The "C grade" shall consist of apples of properly matured specimens of one variety, free from insect pests, visible rot, visible dry rot, visible Baldwin spots and

diseases; provided, however, that a variation from said standard as to insect pests, dry rot, Baldwin spots and diseases, shall be allowed, not to exceed ten per cent total of such defects in any one package, nor to exceed three per cent of any one such defect.

Standard container.

(d) The standard container shall be a box of the following dimensions, inside measurements, when measured without distention of parts: Depth of end ten and one-half inches; width of end eleven and one-half inches; length of box eighteen inches, and having a cubical content of as nearly as possible two thousand one hundred seventy-three and one-half cubic inches.

Use after July 1, 1920.

(e) On and after July 1, 1920, all packed apples, when shipped, offered for sale or sold, shall be placed in the standard box herein described; provided, however, that other size containers may be used if conspicuously marked in letters not less than one-half inch high "irregular container." [Amendment of April 30, 1919. In effect July 22, 1919. Stats. 1919, p. 258.]

Labeling of container.

§ 3. Every packed container of apples shipped, delivered for shipment, offered for sale or sold, in the state of California, shall bear upon the outside thereof, and on the end, the plain words or figures and in the English language, the following: The grade of the apples therein contained, as herein defined, the designation of grade, when the stamps hereinafter provided for are not used, being stated in letters not smaller than thirty-six point type, that is, not less than one-half inch in height; the number of apples contained in the package, or the minimum net weight of the apples contained therein; the variety of the apples contained in the package, unless the variety be unknown to the packer, in which case the variety shall be stated as unknown; the name and business address of the person, firm, company, organization or corporation, who first packed or caused the same to be packed, and, if repacked, the name and business address of the person, firm, company, organization or corporation who repacked the same or caused same to be repacked; the date when such apples were first packed, or if repacked, the date of repacking; provided, however, that a variation of five apples, more or less than the number stated, shall be allowed.

Definitions.

(a) The term "packed," whenever used in this act, shall mean the regular, compact arrangement of all or a part of the fruit in any container.

(b) The terms "three and one-half tier," "four tier," and "four and one-half tier," whenever used as the designation of the size of apples sold or offered for sale, shall have the following meanings, respectively, to wit: The term "three and one-half tier" shall mean an apple larger in size than three and one-eighth inches, when measured through the widest cross section thereof; the term "four tier" shall mean an apple larger in size than two and five-eighth inches but not larger than three and one-eighth inches, when so measured; and the term "four and one-half tier" shall mean an apple not smaller in size than two and one-fourth inches nor larger than two and five eighths inches, when so measured.

(c) The term "cross-section," whenever used in this act, shall mean the section of an apple taken at a right angle to a straight line drawn from the stem end to the blossom end thereof. [Amendment of April 30, 1919. In effect July 22, 1919. Stats. 1919, p. 259.]

Labeled apples must conform to standard.

§ 4. No person, firm, company, organization or corporation, shall sell or offer for sale, within the state of California, any apples labeled, designated, invoiced or represented to be, of "California Fancy" or "B" or "C" grade, whether contained in closed packages or otherwise, unless the same shall conform to the standard for such grade herein established; provided, however, that nothing herein contained shall prevent the grading of Gravenstein apples as "California Fancy," though the stems be not retained therein.

Importation of infected apples forbidden.

§ 5. No person, firm, company, organization or corporation, shall import into this state, or sell, barter, offer for sale or have in his possession for sale, any apples infected with any insect pest or the pupae or larvae thereof or any disease; provided, however, that this section shall not be construed to prevent a grower of fruit so infected in the state of California from selling the same, as a part of his crop, in bulk, to a packer, or to prevent a grower or packer from manufacturing the same into an apple by-product, or from selling the same to the operator of a by-product factory for the purpose of such manufacture; and provided, further, that the provisions of this section shall be construed to be limited by the variations allowed by the terms of section two of this act.

False statements, etc.

§ 6. No statement, figure, design or device, appearing upon any container in which apples are sold, bartered, or offered for sale, or in which apples are packed for sale or shipment, or upon the brand or lining of any such container, or upon the wrapper of any apple therein contained, or upon any sign or placard used in connection therewith and having reference to the apples contained, shall be false or misleading, in any particular. The word "Fancy" shall not be used with reference to any apples the grade of which does not conform to the standard for "California Fancy" as in this act defined.

Powers of state commissioner of horticulture.

§ 7. The state commissioner of horticulture of California shall be charged with the enforcement of the provisions of this act, and for that purpose shall have power:

(a) To enter and to inspect every place within the state of California where apples are produced, packed, shipped, delivered for shipment, offered for sale or sold, and to inspect such places and all apples and apple containers and equipment found in any such place.

(b) To design, and cause to be printed or lithographed, suitable uniform stamps to be used on packages containing apples of the various grades, standards for which are established by the terms of this act, to sell the same as hereinafter provided, and to prescribe the method of canceling the same.

(c) In accordance with the provisions of the civil service law of this state, to appoint, superintend, control and discharge such chief inspectors and subordinate inspectors as in his discretion may be deemed to be necessary, for the special purpose of enforcing the terms of this act, to prescribe their duties, and, in conjunction with the board of control, to fix their compensation, provided that no chief inspector shall be paid more than seven dollars per day and no subordinate inspector more than five dollars per day.

(d) Personally, or through any deputy or any such inspector, to seize and retain possession of, any apples or apple boxes packed, shipped, delivered for shipment, offered for sale or sold, in violation of any of the provisions of this act.

(e) In the name of the people of the state of California to cause to be instituted

and to prosecute, in the superior court of any county or city and county of the state of California, in which apples packed, shipped, delivered for shipment, offered for sale or sold, in violation of any of the provisions of this act, may be found, an action or actions for the condemnation of apples as provided in section thirteen of this act.

Sale of stamps.

§ 8. The stamps designed and provided by the state commissioner of horticulture of California as provided by section seven of this act, by him shall be placed on sale and sold to any person who may apply therefor, at the price of one-half cent each. All moneys received by him from the sale of such stamps shall be paid over to the treasurer of the state of California, who shall deposit the same to the credit of a fund to be used exclusively for the payment of the expenses of enforcing the provisions of this act, and to be paid out only upon claims approved by the state commissioner of horticulture of California and by the board of control.

Qualifications of inspectors. Powers.

§ 9. The inspectors appointed by the state commissioner of horticulture of California, as in section seven hereof provided, shall be citizens of the United States, and of the state of California, not less than twenty-one years of age, shall be skilled in the inspection of apples, and have a thorough knowledge of insect pests and diseases commonly preying upon such fruit; they shall have power to enter and to inspect every place within the state of California where apples are produced, packed, shipped, delivered for shipment, offered for sale or sold, and to inspect all such places and apples and apple containers, found in any such place; and shall perform such other duties as may be prescribed by the state commissioner of horticulture of California, or by law.

Assignment of inspectors.

The said commissioner shall assign such inspectors to such territory, within the state, as he may see fit; provided, that when the stamps purchased for any year by packers in any town, city or district, shall yield a sum of money sufficient to pay the expense thereof, such commissioner shall assign one inspector or more for special duty in such town, city or district, during the packing season of that year, or for a longer period, if deemed to be necessary; and provided, further, that in the discretion of said horticultural commissioner, he may refuse to permit inspection of fruit at the place where same is being packed if packed by any person, firm, company, organization or corporation who shall not make use of the stamps hereinabove provided for upon the packages of "California Fancy," "B" and "C" grade apples packed by him or it.

Powers and duties of inspectors.

§ 9a. Every such inspector shall have power to enter and to inspect any place within this state where any apples are produced, packed, shipped, delivered for shipment, offered for sale or sold, and to inspect such places and all such apples and the containers thereof and the equipment found in any such place. It shall be the duty of the inspectors to enforce the provisions of this act and to cause the prosecution of any person, company, firm, corporation or organization, whom he knows or has reason to believe to be guilty of the violation of any of its provisions. Every inspector, in the performance of his duties, shall have the same powers possessed by peace officers under the laws of the state of California. [New section added April 30, 1919. In effect July 22, 1919. Stats. 1919, p. 260.]

Repacking.

§ 10. No container to or on which is attached any such stamp or on which shall appear the designation of grade as "California Fancy," "B" grade or "C" grade, shall be used as the container of any apples, other than those originally packed therein,

until such stamp or grade designation has been removed; provided, that when apples are repacked, without the addition of new stock, other than stock of the same grade and from the same lot of which the package or packages repacked is or are a part, the same containers may be used without removing the stamps or grade designations.

Refusal to permit inspectors to enter.

§ 11. No person, firm, company, organization or corporation, shall refuse to permit the state commissioner of horticulture of California, or any of his duly appointed deputies, or any inspector duly appointed by said commissioner under the provisions of this act, to enter or to inspect any place within the state of California where apples are produced, packed, shipped, delivered for shipment, offered for sale or sold, or to inspect such places, or any apples or apple containers or any equipment found there.

Penalty.

§ 12. Any person, firm, company, organization or corporation, who shall violate any of the provisions of this act shall be punishable by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.

Apples packed, shipped, etc., in violation of law, nuisance.

§ 13. Any apples packed, shipped, delivered for shipment, offered for sale or sold, in violation of any of the provisions of this act, and the containers in which they may be, shall be deemed to be a public nuisance, may be seized by said commissioner of horticulture, or his deputy, or by any inspector appointed under the provisions of this act, or by any county horticultural commissioner or his deputy, and by order of the superior court of the county or city and county within which the same may be found, shall be condemned and destroyed or released upon such conditions as the court in its discretion may impose to insure that they will not be packed, shipped, delivered for shipment, offered for sale or sold in violation of any of the provisions of this act.

Refusal to receive or ship.

§ 13a. It shall be lawful for any person, firm, corporation or organization and for any common carrier to refuse to accept for shipment or transportation and to refuse to ship or transport any apples which upon inspection are found to be or to be packed in violation of any of the provisions of this act, and any such person, firm, corporation, organization or common carrier may reserve the right in any receipt, bill of lading or other writing given to the consignor thereof, to reject for shipment and to return to such consignor or to hold at the expense and risk of the latter all apples which upon inspection are found to be or to be packed in violation of any of the provisions of this act. [New section added April 30, 1919. In effect July 22, 1919. Stats. 1919, p. 260.]

Guaranty.

§ 14. No person, firm, company, organization or corporation, shall be convicted of a violation of any provision of this act, if he shall establish a guaranty, signed by the person, firm, company, organization, or corporation, residing or lawfully engaged in business in the state of California, by or for whom the apples in question were originally packed, or repacked, to the effect that the apples, container, brand and label in question comply in all respects with the provisions of this act, and in addition, shall establish that the same are in substantially the same condition, in every respect, as they were when they were delivered out of the possession of such packer, and that the accused was not aware that such apples, container, brand or label, were or was in any respect in violation of any provision of this act. The signature to such guaranty may be printed, when done by the authority of the signer. To afford protection, such guaranty, in form and substance, must be substantially as follows:

Form of guaranty.

"The undersigned guarantees that (this box or other package of apples or the boxes or other packages of apples mentioned in this, or the attached invoice, or all boxes or other packages of apples packed or repacked by the undersigned), comply, in all respects with the standard apple act of 1917. (Signature of the packer, with statement as to whether packer is firm, company, organization or corporation and business address.)"

Where the guaranty is used on each separate box, it may consist of the legend, "guaranteed by the packer, under the standard apples act of 1917," printed, stamped or written on the labeled or branded end of the package.

Duty of district attorney.

§ 15. It shall be the duty of the district attorney of the county, or city and county, in which any violation of this act may occur, to prosecute the person, firm, company, organization or corporation accused of such violation, and also, at the request of the state commissioner of horticulture, or any one of his deputies, to institute and prosecute such actions for condemnation as may be authorized under the provisions of this act.

Effect on foods and liquors act.

§ 16. No act which is made unlawful by any provision of an act of the legislature of the state of California, entitled, "An act for preventing the manufacture, sale or transportation of adulterated, mislabeled or misbranded foods and liquors and regulating the traffic therein, providing penalties, establishing a state laboratory for foods, liquors and drugs and making an appropriation therefor," approved March 11, 1907, or any amendment thereto, shall be deemed lawful by reason of any provision of this act; nor shall this act be construed in any respect to limit the powers of the state board of health.

Appropriation.

§ 17. The sum of five thousand dollars (\$5,000) is hereby appropriated out of any money in the state treasury, not otherwise appropriated for the payment of the cost of printing, lithographing, stationery, stamps, clerical assistance, traveling expenses and salaries of inspectors and office rentals, incurred by the state commissioner of horticulture in the enforcement of this act during the fiscal years commencing July 1, 1917, and July 1, 1918, respectively. The state controller is hereby authorized to draw his warrants for the sum herein appropriated in favor of said commissioner and the state treasurer is hereby directed to pay the same.

Constitutionality.

§ 18. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Stats. 1915, p. 1386, repealed.

§ 19. An act entitled "An act to establish a standard for the packing and marketing of apples, fixing penalties for the violation of its provisions, and providing for its enforcement and making an appropriation to carry into effect the provisions hereof," approved June 10, 1915, is hereby repealed.

The amending act of 1919 contained the following:

Constitutionality.

§ 5. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional such decision shall not affect the validity of the

remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

STANDARD FRESH FRUIT PACKING ACT OF 1917.

ACT 1654a—An act to promote the development of the California fresh fruit industry in state and interstate markets, and to protect the state's reputation in these markets by establishing a standard for the packing of certain fresh fruits specified therein, and to prevent deception in the packing, prescribing penalties for violation of the provisions hereof, and repealing all acts inconsistent herewith.

History: Approved May 24, 1917. In effect July 27, 1917. Stats. 1917, p. 909.

Standard for packing fresh fruits.

§ 1. To promote the development of the California fresh fruit industry and to prevent deception in packing for state or interstate shipment, there is hereby created and established a "standard" for the packing of fresh fruits of the kinds specified in this act.

Application.

§ 2. Unless specifically excepted in this act, all of its provisions shall be applicable to all fresh fruits specified herein when packed, shipped, delivered for shipment, offered for sale or sold in any container or subcontainer.

Free from diseases.

§ 3. All fresh fruits of the kinds specified in this act when packed shall be practically free from insects and fungous diseases.

Fruits exempt.

§ 4. All fresh fruits of the kind specified in this act, except citrus fruits, which shall be sold in bulk or loose in the box or in any other manner, excepting in standardized packs as provided in this act (excepting grapes, which must conform to the sugar standards provided in section eight a hereof), shall be exempt from the provisions of this act.

Words defined.

§ 5. When used in this act the words herein mentioned shall be defined as follows: "Pack, packing or packed," shall mean the regular compact arrangement of all or part of the fruit in any container or subcontainer used for the purpose of sale or transportation for sale. The words "in bulk or loose in the box without packing" shall mean the indiscriminate placing without any thought of regular arrangement of any of the kinds of fresh fruit mentioned in this act into a box, wagon or other receptacle used for the purpose of sale or transportation for sale.

The words "fresh fruit" shall mean the fresh product of any tree, vine or plant mentioned in this act.

The word "maturity" shall mean a degree of ripeness fit for shipment.

The word "county" includes a consolidated "city and county."

The word "container" shall mean any box, crate or other package used to hold or contain packed fresh fruit.

The word "subcontainer" shall mean any basket or other receptacle used within a container of packed fresh fruit.

Cherries.

§ 6. All cherries packed in containers or subcontainers shall contain cherries well colored, of practically uniform size, quality, and maturity and one variety only, excepting that such containers may contain more than one variety if such fact be plainly stamped on the outside thereof with the words "mixed varieties" with letters not less than one-half inch high. Each container or subcontainer shall be stamped on the outside with the minimum weight of contents and the container shall have the name of variety or varieties stamped thereon.

Peaches, apricots, pears, etc.

§ 7. Peaches, apricots, pears, quinces, tomatoes, plums and prunes when packed shall be of practically uniform size, quality and maturity. When packed in containers made up of two or more subcontainers having sloping sides, for the purpose of ventilation of the fresh fruit therein, the contents shall not vary in size more than ten per cent in each layer, and not more than twenty per cent in the whole subcontainer, and no layer below the top layer shall contain a greater numerical count than the top layer. Each container or subcontainer shall be stamped upon the outside with the minimum weight of its contents. Each container shall bear in plain letters the name of the variety contained therein. When packed in a container having perpendicular sides and ends, each shall contain approximately the same numerical count in each layer; provided, that when peaches are packed in containers having perpendicular sides the container shall also be marked upon the outside of the end thereof in plain figures with the approximate number of peaches in the box, which shall be within four peaches of the true count.

When the fresh fruits mentioned in this section are packed in containers known to the trade as "lug" boxes, the provisions of this section appertaining to variety, numerical count and marking shall not apply.

Table grapes.

§ 8a. Table grapes, when packed, shall be of practically uniform quality and shall be well matured and show a sugar content of not less than seventeen per cent Balling scale, except Emperor, Gros Coleman and Cornichon, which shall show not less than sixteen per cent Balling scale. Each crate or package except subcontainers shall be stamped in plain letters with the name of the variety of grapes therein. Each container, or subcontainer, shall be stamped in plain figures and letters upon one end with a minimum net weight, and no container or subcontainer shall contain less than the minimum stamped thereon. Irregular containers in addition thereto, shall be plainly marked "irregular" and have the actual gross weight stamped thereon.

Standard containers for table grapes.

§ 8b. The standard containers for table grapes when packed shall be:

1. Standard crate, which after packing when measured at the end, shall not exceed five inches between the top and bottom and when measured in the center shall not exceed five and three-fourths inches between the top and bottom and containing a minimum net weight of not less than twenty-four pounds.
2. Double crates containing a minimum net weight of not less than forty-eight pounds.
3. One-half crates containing a minimum net weight of not less than twelve pounds.
4. Thirty pound lugs containing a minimum net weight of not less than twenty pounds.
5. Forty pound lugs containing a minimum net weight of not less than thirty-two pounds.
6. Fifty pound lugs containing a minimum net weight of not less than forty-two pounds.

7. Williams lugs containing a minimum net weight of not less than twenty-four pounds.

8. Kegs or drums packed with sawdust or other preserving material, containing a minimum net weight of not less than twenty-nine pounds and a maximum net weight of not more than thirty-five pounds.

"Irregular" containers.

9. All other containers of table grapes shall be "irregular" containers.

Standard container for berries.

§ 9. The standard container for berries shall be: Dry quart containing an interior capacity of sixty-seven and two-tenths cubic inches, or dry pint containing an interior capacity of thirty-three and six-tenths cubic inches, or dry one-half pint containing an interior capacity of sixteen and eight-tenths cubic inches, or baskets four and one-half by four and one-half by two and one-fourth in depth, or baskets four and one-half by four and one-half by two in depth, or baskets four and one-half by four and one-half by one and three-eighths in depth; all measurements are in inches or fractions thereof. All other sizes shall be marked "irregular." When packed the berries in any container or subcontainer shall be practically uniform throughout the container, or subcontainer, in quality, color and maturity. Irregular container shall be marked "irregular."

Cantaloupes.

§ 10. Cantaloupes packed in containers as follows shall be known as standard packed:

Standard crates twelve by twelve by twenty-two and one-half inches containing forty-five or thirty-six cantaloupes;

Pony crates eleven by twenty-two and one-half inches containing forty-five or fifty-four cantaloupes;

Jumbo crates thirteen by thirteen by twenty-two and one-half inches containing thirty-six or forty-five cantaloupes;

Standard flats four by twelve by twenty-two and one-half inches containing twelve or fifteen cantaloupes;

Jumbo flats four and one-half by thirteen and one-half by twenty-two and one-half inches containing twelve or fifteen cantaloupes.

All measurements herein to be inside measurements without distention.

All other sizes of containers when packed shall be marked "irregular." All standard packs shall be marked "standard." All containers when packed shall have the number of cantaloupes contained therein stamped in plain figures on the label end of the crates with figures not less than one-half inch high. All cantaloupes when packed shall be fully netted of uniform size, firm and mature, free from bruises and practically free from aphid honey dew and other defects.

Sale of immature or frozen citrus fruits.

§ 11a. It shall be unlawful for any one to sell, offer for sale, ship or deliver for shipment any citrus fruits, which are immature or frozen to the extent of injuring the reputation of the citrus industry of the State of California if shipped, and for any one to receive any such citrus fruits under a contract of sale, or for the purpose of sale, or for shipment, or for delivery for shipment; provided, however, that nothing in this section contained shall be construed to prevent the sale or shipment for sale of frozen or otherwise defective fruit to a by-product factory, or the manufacture thereof into citrus by-products; nor shall this section apply to the sale, or contract or sale, of citrus fruits on the trees, nor shall it apply to common carriers or their agents who are not interested in such fruits and are merely receiving the same for transportation.

Matured oranges.

§ 11b. An orange shall be deemed properly matured for sale, or to be offered for sale, for shipment, or to be offered for shipment, under the provisions of this act, either when the juice contains soluble solids equal to, or in excess of, eight parts to every part of acid contained in the juice, the acidity of the juice to be calculated as citric acid without water of crystallization, or when the orange is substantially colored on the tree. The foregoing provisions shall not apply to shipments of oranges to foreign countries other than the Dominion of Canada, during any season, provided such shipments are made after the first day of November.

Name marked on containers.

§ 12. All containers of fruit of a kind specified in this act, except subcontainers, when packed and offered for sale, shall bear upon them in plain sight and in plain letters on the outside thereof, the name of the orchard where the same was produced, with the post-office address thereof, or the name and post-office address of the person, firm, company or corporation, or organization who shall have first packed or authorized the packing of the same, or the name under which such packer shall be engaged in business, together with the post-office address of such packer.

Office of "inspector of fresh fruits" created. "Inspectors in chief of fresh fruits."

§ 13. The office of "inspector of fresh fruits," is hereby created for each and every county in the state. The horticultural commissioner of each county, and all deputy horticultural commissioners shall be ex officio inspectors of fresh fruits thereof, and the district inspectors under each county horticultural commissioner are ex officio "deputy inspectors of fresh fruits" in their respective districts. The board of supervisors shall appoint as many deputy "inspectors of fresh fruits" as are necessary to carry out the provisions of this act. Their term of office shall be for such time as is deemed necessary by said board of supervisors. For the purpose of creating and securing unity in inspection, the offices of "inspectors in chief of fresh fruits" are hereby created, and the state commissioner of horticulture and his chief deputy, for the purposes of this act, are hereby made ex officio such inspectors in chief and shall, where there is a dispute or difference between the inspectors of fresh fruits of two or more counties, or where the interpretation of inspection standards between two or more counties differs materially, have the power and authority to settle the dispute between the inspectors of fresh fruit of such counties and to fix reasonable standards between such counties where they materially differ.

Appointment when no commissioner of horticulture.

§ 14. If in any county or city and county of this state, there is no commissioner of horticulture, it shall be the duty of the board of supervisors thereof to appoint an inspector of fresh fruits and such deputy inspectors of fresh fruits as the said board of supervisors shall deem necessary. Such inspectors and deputy inspectors of fresh fruits shall be appointed to serve for such time during each year as fresh fruits are being packed or shipped in said county or city and county. The salary of an inspector of fresh fruits shall be five dollars per day and necessary traveling expenses. The salary of a deputy inspector of fresh fruits shall be three dollars and fifty cents per day and necessary traveling expenses.

Deputy state commissioner of horticulture assigned, when.

§ 15. In case the board of supervisors of any county, or city and county, shall fail or neglect, for thirty days after receipt of a written request from the state commissioner of horticulture, to appoint an inspector of fresh fruits, or necessary deputy inspectors of fresh fruits for such county, or city and county, then the said state commissioner of horticulture shall forthwith assign to said county, or city and county, one or more

deputy state commissioners of horticulture, as he shall deem necessary, and such deputy or deputies shall perform all of the duties, within the said county or city and county to which assigned, as is provided in this act to be performed by an inspector of fresh fruits. The actual cost of services rendered by an inspector or deputy inspector, as the case may be, of fresh fruits, assigned to any county in pursuance hereof, together with his necessary traveling expenses shall be a county charge and shall be paid in the same manner in which other claims against the county are paid.

Removal. Vacancy.

§ 16. The board of supervisors shall remove any inspector of fresh fruits and the inspector of fresh fruits shall remove any deputy upon proper showing of neglect of duty, malfeasance in office, or general unfitness for office. Whenever a vacancy in the office of inspector of fresh fruits or deputy inspector of fresh fruits occurs, the vacancy shall immediately be filled by the appointing power.

Power of inspector.

§ 17a. Every inspector of fresh fruits and every deputy inspector of fresh fruits shall have power to enter and to inspect every place within the county for which he has been appointed where any fruit mentioned in this act is produced, packed, shipped, delivered for shipment, offered for sale or sold, and to inspect such places and all such fruits and the containers thereof and the equipment found in any such places.

Duty of inspector.

§ 17b. It shall be the duty of the inspectors or deputy inspectors of fresh fruits in their respective districts to enforce the provisions of this act and to cause the prosecution of any person, firm, corporation or organization, whom they know or have reason to believe is guilty of the violation of its provisions.

Inspectors have powers of peace officers.

§ 17c. An inspector or deputy inspector of fresh fruits in the performance of their duties shall have the same powers as are possessed by peace officers of the city, county or state and shall have the right while exercising such police powers to seize and hold as evidence such amount of any pack, load, consignment or shipment of fresh fruit packed in violation of this act, as may in his judgment be necessary to secure the conviction of the party he knows or believes has violated or is violating this act.

Duty of district attorney.

§ 17d. It shall be the duty of the district attorney of each and every county in the state to prosecute all persons charged with any violation of this act.

Lawful to refuse shipments in violation of act.

§ 18. It shall be lawful for any fresh fruit forwarding person, firm, corporation or organization and for any common carrier to decline to accept for shipment or transportation and to decline to ship or transport any fresh fruits which upon inspection are found to be packed in violation of the provisions of this act, and any such fruit forwarder or common carrier may reserve the right in any receipt, bill of lading or other written writing given to the consignor, thereof, to reject for shipment and to return to such consignor or hold at the expense and risk of the latter, all fresh fruits which upon inspection are found to be packed in violation of the provisions of this act.

Penalty for violation.

§ 19. No person, firm, corporation, company or organization shall pack or cause to be packed for sale or shipment, or shall ship or sell or offer for sale fruit which, or the container or subcontainer in which, the same shall be contained, shall in any respect fail to comply with the requirements of this act.

Any person, firm, corporation, company or organization who shall violate the provisions of this act shall be deemed to be guilty of a misdemeanor.

Conflicting laws.

§ 20. All laws in conflict with this act or any part thereof are hereby repealed only in so far as they may conflict with any of the provisions of this act.

Constitutionality.

§ 21. If any section, subsection, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

SULPHUR STANDARD FOR SULPHURING FRUITS AND FOODS.

ACT 1654b—An act to prevent the sale and use of sulphur containing material quantities of arsenic for the purpose of sulphuring fruits or other foods; to provide a standard for sulphur for sulphuring fruits or other foods, and to provide penalties for the violation of the provisions hereof.

History: Approved May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 282.

Amount of arsenic permitted in sulphur.

§ 1. No person, firm, company or corporation shall sell, offer for sale, or keep for sale sulphur containing more than ten parts per million of arsenic oxide (As_2O_3) for the purpose of sulphuring fruits or other foods.

Definition.

§ 2. For the purposes of this act the term "sulphur for sulphuring fruits or other foods" shall be construed to mean sulphur which contains not more than ten parts per million of arsenic oxide (As_2O_3).

Sale.

§ 3. No person, dealer, jobber, firm, company or corporation shall sell, keep for sale, or offer for sale sulphur for sulphuring fruits or other foods which contains more than ten parts per million of arsenic oxide (As_2O_3). Every package, parcel, bag or container of sulphur for sulphuring fruits or other foods shall be labeled or tagged, and said label or tag shall contain the words in bold faced type, not less than one-fourth inch in height, "Sulphur for sulphuring fruits or other foods." Said label or tag shall also contain the name and address of the person, firm, company or corporation which manufactures, prepares or packs the sulphur.

Use.

§ 4. No person, firm, company or corporation shall use sulphur containing more than ten parts per million of arsenic oxide (As_2O_3) for the purpose of sulphuring fruits or other foods.

Penalty.

§ 5. Any person, firm, company or corporation which violates any provision of this act shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars, nor more than five hundred dollars, or shall be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment.

Enforcement by state board of health.

§ 6. The state board of health is hereby empowered to enforce the provisions of this act and to prescribe the form of tags, or labels to be used, and to prescribe and enforce such rules and regulations as it may deem necessary to carry into effect the full intent and meaning of this act.

STANDARD FRUIT AND VEGETABLE ACT OF 1919.

ACT 1654c—An act to promote the development of the California fruit and vegetable industry in state and interstate markets, and to protect the state's reputation in these markets by establishing standards and standard packages for certain fruits and vegetables specified therein, and to prevent deception in fruit packages, prescribing penalties for violation of the provisions hereof and making an appropriation for the enforcement of the provisions hereof, and repealing all acts inconsistent herewith.

History: Approved May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1221. This act superseded both the acts of 1915 and 1917 in certain features. See Acts 1652 and 1654a.

Standard packages for fruits, etc., established.

§ 1. To promote the development of the California fresh fruit, nut and vegetable industry and to prevent deception in fruit or vegetable packages for state or interstate shipment, there are hereby created and established certain standards and standard packages for apricots, almonds, walnuts, berries, cantaloupes, cherries, grapes, oranges, peaches, pears, plums, prunes, quinces, tomatoes, onions, sweet potatoes and potatoes.

§ 2. All fresh fruits, nuts and vegetables of the kind specified in section one of this act, except oranges which shall be governed by the provisions of section nine, and except such fruits and vegetables for which special grades shall be established under section three of this act, when being packed, or after packing, or when shipped, delivered for shipment, offered for sale or sold, in any container or subcontainer, shall be mature but not overripe, well colored for the variety and locality, virtually uniform in quality, virtually free from insect and fungous pests, rots, bruises, frost injury, sunburn and other serious defects, and, except in the case of unpacked fruit or vegetables, shall be virtually uniform in size. When packed in layers there shall be approximately the same numerical count in each layer throughout a container or subcontainer having straight sides. In the case of sloping side containers no layer below the top layer shall contain a greater numerical count than the top layer.

Enforcement by commissioner of horticulture.

§ 3. The state commissioner of horticulture is hereby empowered, through his deputies and the inspectors of fresh fruit and vegetables of each county in the state, to enforce all the provisions of this act, and to establish and enforce such grades and grading rules as may be deemed necessary after a thorough investigation has been made of the needs of the particular fruit or vegetable for which grades are contemplated. Such grades and grading rules must, before they become effective, be approved in one or more public meetings attended or represented by at least fifty per cent of the growers and shippers of that locality interested in the industry affected. Such meetings shall be widely advertised in a newspaper published in that locality for at least two weeks prior to the meetings; said meetings shall be presided over by the state commissioner of horticulture, or any of his deputies, and shall, in so far as possible and practicable, be conducted at places that can be conveniently reached by representatives of the affected industry. In like manner the state commissioner of horticulture may provide for standard packages other than those provided for in section six of this act. Grades and grading rules established in accordance with the provisions of this section shall not be modified, nor shall standard packages which have been established be changed during

the current shipping season of the fruits or vegetables for which such grades or standard packages were established.

Exemptions.

§ 4. All fresh fruits or vegetables of the kind specified in this act for use in the manufacture of by-products, shall be exempt from the provisions of this act, and any inspector or deputy inspector of fresh fruits and vegetables may require from the owner or shipper of such fruits or vegetables such proof as he may deem necessary that they will be used in the manufacture of by-products, and shall hold same until satisfactory proof is given.

Definitions.

§ 5. When used in this act the words herein mentioned shall be defined as follows: "Packages" shall mean any box, basket, barrel, drum, or crate used as a container or subcontainer for fruits or vegetables. "Pack, packing or packed," shall mean the regular compact arrangement of all or part of the fruit or vegetables in any container or subcontainer used for the purpose of sale or transportation of sale. "Deceptive pack" shall mean any package of fruits or vegetables, which has in the outer layer or the exposed surface fruit or vegetables which are so superior in quality or condition to those in the interior of the package, or the unexposed portion, as to materially misrepresent the entire contents. "Fresh fruit (except oranges) or fresh vegetables" shall mean the fresh product of any tree, vine or plant mentioned in this act. "Mature" shall mean a degree of ripeness fit for shipment. "Virtually uniform in size" shall mean in the case of packed fruits a difference in size of the various fruits as follows: pears, peaches and quinces, a variation of not more than one-quarter of an inch when measured through widest portion of cross-section; apricots, plums, prunes, cherries and berries, a variation of not more than one-eighth of an inch when measured through widest portion of cross-section. "Virtually free" from insect and fungous pests, rots, bruises, frost injury, sunburn and other serious defects, shall mean that the total defects shall not exceed ten per cent in any one package of fruits or vegetables, and excepting grapes that there shall not be more than three per cent of any one defect. "By-product" shall mean any product manufactured from fresh fruits, fresh vegetables, or their juices. "County" shall include in its meaning a consolidated city and county. "Container" shall mean any box, crate or other package utilized in handling fresh fruit or vegetables. "Subcontainer" shall mean any basket or other receptacle used within a container. "Substantially colored" shall mean at least seventy per cent color.

Specifications for standard containers.

- § 6. Standard containers are hereby established as follows:
- (1) Standard apricot, plum and grape basket, approximately eight inches square on top, six and one-half inches on bottom and four inches deep, inside measurements.
- (2) Standard berry baskets, dry pint containing an interior capacity of approximately thirty-three and six-tenths cubic inches and dry one-half pint containing interior capacity of approximately sixteen and eight-tenths cubic inches.

(3)	Depth inside	Width inside	Length outside
Standard pear box.....	8½"	11½"	19¾"
Half pear box.....	4½"	11½"	19¾"
Standard peach box.....	4¼"	11½"	19¾"
Standard peach box.....	4½"	11½"	19¾"
Standard peach box.....	4¾"	11½"	19¾"
Standard crates	4¼"	16 "	17½"
Standard crates	4½"	16 "	17½"
Standard crates	4¾"	16 "	17½"

(4) Standard grape crates.....	4 1/4"	16 "	17 1/2"
with heavy cleat 11/16" by 11/16"			
(5) Standard grape drum.....	14 "	15 1/2"	.....
containing 2923 cubic inches			
(6) Standard grape keg.....	.....	.....	.....
containing 2923 cubic inches			
(7) Standard lug box.....	5 3/4"	14 "	17 1/2"
(8) Standard cherry lug.....	4 1/2"	11 1/2"	19 3/4"
(8 1/2) Standard cherry lug.....	4 1/2"	9 "	19 3/4"
(9) Standard cherry box.....	2 1/4"	9 "	19 3/4"
(10) Standard cantaloupe crates, twelve inches by twelve inches by twenty-two and one-half inches, to be packed with thirty-six or forty-five cantaloupes; four inches by twelve inches by twenty-two and one-half inches, to be packed with twelve or fifteen cantaloupes; eleven inches by eleven inches by twenty-two and one-half inches, to be packed with forty-five or fifty-four cantaloupes; thirteen inches by thirteen inches by twenty-two and one-half inches, to be packed with thirty-six or forty-five cantaloupes; four and one-half by thirteen and one-half by twenty-two and one-half inches, containing twelve or fifteen cantaloupes.			

Labels for fruit containers.

§ 7. All containers of fruit of a kind specified in this act, except subcontainers, when packed and offered for sale, shall bear upon them in plain sight and in plain letters on the outside thereof the following: Name of the orchard where the same was produced, with the post-office address thereof, or the name and post-office address of the person, firm, company or corporation, or organization who shall have first packed or authorized the packing of the same, or the name under which such packer shall be engaged in business, together with the post-office address of such packer; name of variety if known, and when not known the words "unknown variety"; minimum net weight or approximate number of fruits in the container or subcontainer, which number shall be within four of the true count, and no container or subcontainer shall have less than the minimum stamped thereon. When two or more varieties are packed or placed in a container, they shall be labeled "mixed varieties"; provided, that pears and peaches, when packed, shall have the correct number within four placed on the container.

Subcontainers exempt.

Standard or other containers when used as subcontainers are exempt from the provisions regarding marking, when the container in which they are placed is marked in compliance with the terms of this section. No containers or subcontainers of fresh fruits or vegetables shall bear grade or other designations that are in any way false or misleading.

Standard containers. "Irregular container."

§ 8. After January 1, 1920, all fresh fruits of the kinds specified in this act, except such as shall be used in the manufacture of by-products, when prepared or offered for sale or sold, shall be packed or placed in standard containers, which are hereby established, and shall conform to all provisions of this act; provided, that other sized containers may be used if conspicuously marked in letters not less than one-quarter inch high, "irregular container."

Standard for table grapes. Standard for oranges.

§ 9. In addition to the standards prescribed in section two of this act, table grapes shall show a sugar content of not less than seventeen per cent Balling scale, except Emperor, Gros Coleman and Cornichon, which shall show not less than sixteen per cent

Balling scale. Oranges shall be deemed properly matured for shipment or sale under the provisions of this act when the juice contains soluble solids equal to or in excess of eight parts to every part of acid contained in the juice, the acidity of the juice to be calculated as citric acid without water of crystallization; provided, that the oranges have attained at least twenty-five per cent yellow or orange color before picking, and oranges which are substantially or at least seventy per cent colored at the time of picking shall be deemed properly matured for shipment or sale, irrespective of analysis of the juice. When packed, shipped, delivered for shipment, offered for sale or sold, oranges shall be virtually free from insect and fungous diseases and other serious defects. Oranges shall be considered unfit for shipment when frosted to the extent of endangering the reputation of the citrus industry, if shipped. The foregoing provisions shall not apply to shipments of oranges to foreign countries other than the dominion of Canada, during any season, provided such shipments are made after the first day of November.

Inspectors of fresh fruit and vegetables.

§ 10. The office of "inspector of fresh fruit and vegetables" is hereby created for each and every county in the state. The horticultural commissioner of each county, and all deputy horticultural commissioners shall be ex officio inspectors of fresh fruits and vegetables thereof, and the inspectors under each county horticultural commissioner are ex officio "deputy inspectors of fresh fruits and vegetables" in their respective counties. The county horticultural commissioner shall appoint as many deputy "inspectors of fresh fruits" as are necessary to carry out the provisions of this act. Their term of office shall be for such time as is deemed necessary by said board of supervisors. The offices of "inspectors in chief of fresh fruits and vegetables" are hereby created, and the state commissioner of horticulture and his chief deputy, for the purposes of this act, are hereby made ex officio such inspectors in chief. It shall be the duty of the "ex officio inspectors in chief of fresh fruits and vegetables" to secure strict and uniform enforcement of the provisions of this act throughout the state, and for that purpose, immediately after this act becomes a law, the state commissioner of horticulture shall appoint two state inspectors of fresh fruits and vegetables, each of whom shall receive a salary of two thousand four hundred dollars per annum and necessary traveling expenses when engaged in the duties of enforcing this act.

Appointed by supervisors. Compensation.

§ 11. If in any county, or city and county, of this state there is no commissioner of horticulture, it shall be the duty of the board of supervisors thereof to appoint an inspector of fresh fruits and vegetables and such deputy inspectors of fresh fruits and vegetables as shall be deemed necessary. Such inspectors and deputy inspectors of fresh fruits and vegetables shall be appointed to serve for such time during each year as fresh fruits and vegetables are being packed or shipped in said county, or city and county. Inspectors of fresh fruits and vegetables thus appointed shall receive six dollars per day and necessary traveling expenses. The salary of a deputy inspector of fresh fruits and vegetables shall be five dollars per day and necessary traveling expenses. In case the board of supervisors of any county, or city and county, shall fail or neglect, for thirty days after receipt of a written request from the state commissioner of horticulture, to appoint an inspector of fresh fruits and vegetables, or necessary deputy inspectors of fresh fruits and vegetables for such county, or city and county, then the said state commissioner of horticulture shall forthwith assign to said county, or city and county, one or more deputy state commissioners of horticulture, as he shall deem necessary, and such deputy or deputies shall perform all of the duties within the said county, or city and county, to which assigned, as are provided in this act to be performed by an inspector of fresh fruits and vegetables. The actual cost of services

rendered by an inspector or deputy inspector, as the case may be, of fresh fruits and vegetables, assigned to any county in pursuance hereof, together with his necessary traveling expenses, shall be a county charge and shall be paid in the same manner in which other claims against the county are paid.

Powers and duties of inspector.

§ 12. Every inspector of fresh fruits and vegetables and every deputy inspector of fresh fruits and vegetables shall have power to enter and to inspect every place within the county for which he has been appointed where any fruit or vegetables mentioned in this act are produced, stored, packed, shipped, delivered for shipment, offered for sale or sold, and to inspect such places and all such fruits and vegetables and the containers thereof and the equipment found in any such places. It shall be the duty of the inspectors or deputy inspectors of fresh fruit or vegetables in their respective districts to enforce the provisions of this act and to cause the prosecution of any person, firm, corporation or organization, whom they know or have reason to believe to be guilty of the violation of any of its provisions. Any inspector or deputy inspector of fresh fruits and vegetables in the performance of his duties shall have the same powers possessed by peace officers of the city, county, or state, and shall have the right while exercising such police powers to seize and hold as evidence part or all of any pack, load, consignment or shipment of fresh fruits or vegetables packed, in violation of this act, as may in his judgment be necessary to secure the conviction of the party he knows or believes has violated or is violating any of the provisions of this act. He may start proceedings in any court of the county, or city and county, within his jurisdiction to secure the conviction of the party or parties who have violated any of the provisions of the act. It shall be the duty of the district attorney of said county, or city and county, in which any violation of this act may occur, to prosecute the person, firm, company, organization or corporation accused of such violation and also, at the request of the state commissioner of horticulture, or any one of his deputies, to institute and prosecute such action for condemnation as may be authorized under the provisions of this act.

Refusal to ship.

§ 13. It shall be lawful for any fresh fruit or vegetables forwarding person, firm, corporation or organization and for any common carrier to decline to ship or transport any fresh fruits or vegetables, which upon inspection are found to be packed in violation of the provisions of this act, and any such fruit or vegetables forwarder or common carrier may reserve the right in any receipt, bill of lading or other writing given to the consignor thereof, to reject for shipment and to return to such consignor or hold at the expense and risk of the latter all fresh fruits or vegetables which upon inspection are found to be packed in violation of the provisions of this act.

Penalty for violation.

§ 14. It shall be unlawful for any person, firm, company, organization or corporation, to pack or cause to be packed for sale or shipment, import, sell, offer for sale, or deliver for shipment any of the fresh fruits or vegetables specified in this act that do not conform to the standards herein provided. It shall also be unlawful to prepare, sell or offer for sale, a deceptive pack of fresh fruits, fresh vegetables or dried fruits or dried vegetables or to mislabel any package of any such fruits or vegetables. Any person, firm, corporation, company or organization who shall violate any of the provisions of this act shall be deemed to be guilty of a misdemeanor.

Repealed.

§ 15. All laws in conflict with this act are hereby repealed.

Constitutionality.

§ 16. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Appropriation.

§ 17. The sum of seven thousand five hundred dollars per annum is hereby appropriated out of any money in the state treasury not otherwise appropriated to be used in the enforcement of the provisions of this act.

FULLERTON.

See Act 3094, note.

CHAPTER 127.

FUNDS.

References: See, generally, tits. "Banks"; "Bonds"; "Treasurer."

County funds, see Kerr's Cyc. Political Code, tit. "County Government."

Fish and game preservation fund, see Act 1694.

Municipal funds, see tit. "Municipal Corporations."

Particular funds, see particular title.

CONTENTS OF CHAPTER.

- ACT 1656. CONVERSION OF BALANCES OF UNEXPENDED APPROPRIATIONS.
- 1657. REVERSION OF BALANCES OF UNEXPENDED APPROPRIATIONS.
- 1658. TRANSFER OF MONEY FROM SALARY FUND TO THE PRINTING FUND OF THE NORMAL SCHOOL AT SAN FRANCISCO.
- 1659. TRANSFER OF MONEY TO THE GENERAL FUND FROM CERTAIN FUNDS.
- 1660. LOAN TO GENERAL FUND FROM SCHOOL LAND FUND.
- 1661. TRANSFER OF MONEY FROM STATE DRAINAGE CONSTRUCTION FUND TO GENERAL FUND.
- 1662. TRANSFER OF MONEY FROM CONSTRUCTION FUND DRAINAGE DISTRICT No. 1 TO GENERAL FUND.
- 1663. TRANSFER OF MONEY FROM THE GENERAL FUND TO OTHER FUNDS.
- 1664. REDEMPTION OF COUPONS CIVIL BONDS OF 1857.
- 1665. REDEMPTION OF COUPONS C. P. R. R. BONDS OF 1864.
- 1666. PAYMENT OF STATE MONEYS INTO THE TREASURY.
- 1667. PAYMENTS FROM THE SWAMP LAND FUND TO THE SEVERAL COUNTIES.
- 1667a. RETURN OF PAYMENTS UNDER § 570, CODE CIVIL PROCEDURE.
- 1669. INVESTMENT AND REINVESTMENT OF COUNTY AND MUNICIPAL SINKING FUNDS.
- 1670. INVESTMENT AND REINVESTMENT OF SURPLUS MONEYS OF COUNTIES AND MUNICIPALITIES.
- 1671. INVESTMENT AND REINVESTMENT OF SURPLUS MONEY OF STATE.
- 1673. AUTHORIZING DEPOSIT OF STATE MONEY IN BANKS.
- 1674. AUTHORIZING DEPOSIT OF COUNTY AND MUNICIPAL MONEY IN BANKS.

CONVERSION OF BALANCES OF UNEXPENDED APPROPRIATION.

ACT 1656—An act to convert, transfer and return to the general fund of the state treasury, all unexpended moneys heretofore appropriated for the care, management or improvement, or for any other purpose, with reference to the "Yosemite valley and Mariposa big tree grove" or any money which may be or hereafter come into the Yosemite valley and Mariposa big tree grove.

History: Approved March 15, 1901, Stats. 1907, p. 268.

REVERSION OF BALANCES OF UNEXPENDED APPROPRIATIONS.

ACT 1657—An act to provide for the reversion of unexpended balances of certain appropriations.

History: Approved June 13, 1913. In effect August 10, 1913. Stats. 1913, p. 809.

Reversion of unexpended balances.

§ 1. No money shall hereafter be paid out of the general fund of the state treasury for or on account of any appropriation made by the legislature of the state of California prior to the first day of January, nineteen hundred and six; but all unexpended balances of all such appropriations shall revert to and become a part of the unappropriated moneys in the general fund; provided, that nothing herein contained shall be so construed as to repeal or otherwise affect any act providing for the transfer of moneys from the general fund for the benefit of the elementary schools, the high schools, the university, the interest and sinking fund, or any other bond interest fund; provided, also, that this act shall not in any manner affect acts creating statutory salaries, or acts whereby the regular annual expenditure of fixed sums for any public purpose is provided for. All acts or parts of acts inconsistent herewith are hereby repealed.

SAN FRANCISCO STATE NORMAL—TRANSFER OF MONEY FROM THE
SALARY TO THE PRINTING FUND.

ACT 1658—An act authorizing the transfer of moneys from the salary fund of the state normal school at San Francisco to the printing fund of said school.

History: Approved March 19, 1907, Stats. 1907, p. 687.

TRANSFER OF MONEY—CERTAIN FUNDS TO GENERAL FUND, ABOLISHING
CERTAIN FUNDS.

ACT 1659—An act authorizing the controller and treasurer to transfer to the general fund all moneys now in the election reward fund, the leprosy fund, and interest and sinking fund, levee district No. 5, and abolishing the leprosy fund and interest and sinking fund, levee district No. 5.

History: Approved February 23, 1893, Stats. 1893, p. 6.

LOAN TO GENERAL FUND FROM SCHOOL LAND FUND.

ACT 1660—An act to provide for the loan from the school land fund to the state of California of the sum of two hundred fifty thousand dollars, providing for the transfer of said amount from the school land fund to the general fund and for the repayment of said amount with interest thereon, and authorizing the controller to transfer moneys from the school land fund to the general fund and from the general fund to the school land fund and from the general fund to the state school fund to carry out the purposes of this act.

History: Approved March 20, 1907, Stats. 1907, p. 752.

TRANSFER FROM STATE DRAINAGE CONSTRUCTION FUND TO GENERAL
FUND.

ACT 1661—An act authorizing the treasurer and controller to transfer moneys from the state drainage construction fund to the general fund.

History: Approved March 31, 1891, Stats. 1891, p. 237.

TRANSFER OF MONEY FROM CONSTRUCTION FUND DRAINAGE DISTRICT
NUMBER ONE TO GENERAL FUND.

ACT 1662—An act to authorize the controller and treasurer to transfer moneys from the construction fund of drainage district No. 1 to the general fund.

History: Approved March 31, 1891, Stats. 1891, p. 279.

TRANSFER OF MONEY FROM GENERAL FUND TO OTHER FUNDS.

ACT 1663—An act requiring the transfer of funds from the general fund of the state treasury to the interest and sinking fund and to other funds to pay interest and principal of state bonds, and interest on diverted funds of the university of California.

History: Approved March 24, 1911, Stats. 1911, p. 484.

Transfer of funds to pay interest on state bonds.

§ 1. Whenever and as often as there is about to become due and payable any interest on state bonds, or any part of the principal of said bonds or any interest on diverted funds of the university of California, referred to in chapter LXV, statutes of 1893, and chapter LXXVII, statutes of 1899, and there is not sufficient money in the interest and sinking fund, or any other special fund established by law for the purpose to pay the interest or principal as becoming due, the state controller and the state treasurer shall proceed to transfer from the general fund of the state treasury to the interest and sinking fund, or to any other fund provided by law for such purpose, sufficient money to meet said debt obligations.

REDEMPTION OF COUPONS OF CIVIL BONDS OF 1857.

ACT 1664—An act authorizing the payment into the general fund of the state treasury of moneys held for the redemption of certain coupons of the civil bonds of 1857 and providing for the redemption of said coupons.

History: Approved April 12, 1909, Stats. 1909, p. 842.

REDEMPTION OF COUPONS, RAILROAD BONDS OF 1864.

ACT 1665—An act authorizing the payment into the general fund of the state treasury of moneys held for the redemption of certain coupons of the Central Pacific railroad bonds of 1864 and providing for the redemption of said coupons.

History: Approved April 12, 1909, Stats. 1909, p. 843.

REQUIRING PAYMENT OF STATE MONEYS INTO THE TREASURY.

ACT 1666—An act requiring the payment into the state treasury of all moneys belonging to the state, received by the various state institutions, commissions, and officers, and directing the disposition of the same.

History: Approved March 17, 1899, Stats. 1899, p. 110. Amended March 20, 1905, Stats. 1905, p. 382; June 14, 1906, Stats. 1906 (extra session), p. 43.

Moneys belonging to the state to be paid into the treasury. Credited to certain funds.

Exceptions.

§ 1. All moneys belonging to the state received from any source whatever by any officer, commission or commissioners, board of trustees, board of managers, or board of directors shall be accounted for at the close of each month to the state controller, in such form as the controller may prescribe, and at the same time, on the order of the controller, be paid into the state treasury, provided, in the case of any state hospital, asylum, prison, school or harbor, supported by or under control of the state said money shall be credited to a fund to be known as the contingent fund of the particular institution from which such money is received, and may be expended under the same laws and provisions that govern the expenditure of money appropriated for the support of such institutions, and provided, that in every case where the law directs the board of trustees, managers or directors or officer to refund any money upon the death or discharge of any inmate of said hospital, asylum, prison, school or other institution, or to provide a discharged inmate with any sum of money or with wearing apparel, such amount of money as necessary shall be paid by the board of trustees, managers or directors or officer, upon demand; and in the statement to the controller herein provided

for, these amounts shall be itemized and the aggregate deducted from the amount to be paid into the state treasury; provided, further, that all money collected by boards of harbor commissioners shall be paid into the harbor improvement fund of the respective harbor where collected, except so much thereof as may be necessary to pay the expense of urgent repairs, not to exceed in the aggregate ten thousand dollars per month, which sum, if so much be required, may be used in repairing the wharves, piers, landings, thoroughfares, sheds, and other structures, and the streets bounding on the water front under the jurisdiction of such board of harbor commissioners, without advertising the proposals therefor. [Amendment of June 14, 1906. Stats. 1906 (extra session), p. 43.]

This section was also amended March 20, 1905, Stats. 1905, p. 382.

§ 2. Immediately upon the passage of this act, any moneys belonging to the state now in the hands of the boards of trustees, managers, or directors of the institutions mentioned herein, or of any treasurer or secretary thereof, shall be accounted for to the controller and paid into the state treasury, to be credited and disposed for in the manner hereinbefore indicated.

§ 3. All acts and parts of acts in conflict with this act are hereby repealed.

§ 4. This act shall take effect immediately.

PAYMENTS FROM THE SWAMP LAND FUND TO THE SEVERAL COUNTIES.

ACT 1667—An act providing for the payment of moneys in the state treasury to the credit of the swamp land fund, to the treasurers of the counties wherein the said swamp land districts are situated, and to provide for the control of the same by the auditor and treasurer of said counties, and prescribing the duties of the controller and treasurer in relation thereto.

History: Approved March 31, 1891, Stats. 1891, p. 243.

1. **Swampland fund**—No adjustment between counties as to funds in treasury.—The act did not provide for the adjustment between counties of funds already in their treasuries, nor does it contain any words of grant or donation to the counties—but merely put into the county treasuries swampland money that had found its way into the state treasury.—*County of Kings v. County of Tulare*, 119 Cal. 509, 51 Pac. 866.

2. **Swampland fund**—Change of custody not provided for.—No provision of law exists for a change in the custody of the swampland fund entrusted to any county, upon the division of that county and the creation of a new county and the subject is one purely for the legislature and not for the courts.—*County of Kings v. County of Tulare*, 119 Cal. 509, 51 Pac. 866.

RETURN OF PAYMENTS UNDER § 570, C. C. P.

ACT 1667a—An act to provide for the return to the owners thereof of any funds paid into the state treasury by any receiver in conformity with the provisions of section five hundred seventy of the Code of Civil Procedure; prescribing the procedure relative thereto; and making an appropriation therefor.

History: Approved May 17, 1915. In effect August 8, 1915. Stats. 1915, p. 467.

Appropriation: from receiver's fund.

§ 1. From the moneys in the state treasury to the credit of the receiver's fund there is hereby appropriated the sum of four thousand nine hundred forty-nine dollars and twenty-four cents, to be used exclusively for the purpose of returning to the owner, or owners, thereof the amount of money belonging to any person, or persons, which has been heretofore, or shall hereafter, be paid into the state treasury by any receiver, or receivers, pursuant to the provisions of section five hundred seventy of the Code of Civil Procedure.

Verified claim for money from receiver's fund.

§ 2. The owner, or owners, of any such money, or moneys, shall present to the board of control a verified claim therefor, accompanied by all such data respecting the same as the board of control may require for its information. Such claim shall be audited by the board of control in the manner provided by law, and, if approved, shall be transmitted to the state controller, with such approval endorsed thereon. The controller shall thereupon draw his warrant upon the said receiver's fund in favor of such owner, or owners, for the amount so ascertained to belong to him, or them, and the state treasurer shall pay the same; provided, however, that the aggregate sum of all warrants so drawn and paid shall not exceed the amount by this act appropriated.

Unexpended balance reverts to receiver's fund.

§ 3. Any balance of such appropriation remaining unexpended on the first day of September, A. D. 1917, shall, without further action, revert to and become a part of the said receiver's fund.

INVESTMENT OF COUNTY AND MUNICIPAL SINKING FUNDS.

ACT 1669—An act authorizing the investment and reinvestment, and disposition, of any moneys in any sinking fund of any county, city and county, or incorporated city or town, and repealing an act entitled "An act authorizing the investment and reinvestment and disposition of any moneys in any sinking fund of any county, city and county, or incorporated city or town," approved March 3, 1909.

History: Approved April 3, 1911, Stats. 1911, p. 582. Prior act of March 3, 1909, Stats. 1909, p. 139, repealed by the present act.

Money in sinking funds may be invested in bonds.

§ 1. Any county, city and county, or incorporated city or town, which has now or hereafter shall have any moneys in any sinking fund established for the purpose of providing for the payment of the principal or interest of any bonded or other indebtedness, or for any other purpose, is hereby authorized to invest any such moneys temporarily in any bonds already issued or hereafter issued of such county, city and county, or incorporated city or town, respectively, or of the United States or the state of California, or of any other county, city and county, or incorporated city or town, or of any school district within the state, and such investment may be made by direct purchase of any issue of bonds, or part thereof, at the original sale of such bonds, or by the purchase of such bonds after they have been so issued. Any bonds thus purchased and held in any such sinking fund may, from time to time, be sold and the proceeds temporarily reinvested in bonds, as above provided. Sales of any bonds thus purchased and held in any sinking fund shall, from time to time, be made in season, so that the proceeds may be applied to the purposes for which the sinking fund was created.

§ 2. The functions and duties in this act authorized shall be performed by the legislative or governing body of the county, city and county, or incorporated city or town, or under its authority.

§ 3. An act entitled, "An act authorizing the investment and reinvestment and disposition of any moneys in any sinking fund of any county, city and county, or incorporated city or town," approved March 3, 1909, is hereby repealed.

INVESTMENT OF SURPLUS FUNDS OF COUNTIES AND MUNICIPALITIES.

ACT 1670—An act authorizing the investment and reinvestment and dispositions of any surplus moneys in the treasury of any county, city and county or incorporated city or town.

History: Approved April 23, 1913. In effect August 10, 1913. Stats. 1913, p. 76.

Investment of surplus county funds. Sale of bonds.

§ 1. Any county, city and county, or incorporated city or town which now has, or hereafter shall have, any surplus money in the treasury thereof, not required for the immediate necessities of the said county, city and county, or incorporated city or town, is hereby authorized to invest such portion of any such surplus as to the governing body of the said county, city and county, or incorporated city or town may be deemed wise or expedient in any bonds already issued or hereafter issued by such county, city and county, or incorporated city or town respectively, or in bonds already issued or hereafter issued by any school district situated in whole or in part within the limits of such county, city and county, or incorporated city or town, or in bonds already issued or hereafter issued by the state of California, or the United States, and such investment may be made by direct purchase of any issue of bonds, or part thereof, at the original sale of such bonds, or by the purchase of such bonds after they have been thus issued. Any bonds thus purchased and held may, from time to time, be sold and the proceeds reinvested in bonds as above provided. Sales of any bonds thus purchased and held shall, from time to time, be made in season so that the proceeds may be applied to the purposes for which the money, with which the bonds were originally purchased, was placed in the treasury of the county, city and county, or incorporated city or town.

Legislative body of city or county to perform duties under act.

§ 2. The functions and duties of this act authorized shall be performed by the legislative or governing body of the county, city and county, or incorporated city or town, or under its authority.

INVESTMENT OF SURPLUS MONEY OF STATE.

ACT 1671—An act providing for the designation of money in the state treasury as surplus money, authorizing the investment and reinvestment of such money in certain classes of bonds, directing the disposal of interest or premium received therefrom and permitting the subsequent sale or exchange of the bonds so purchased.

History: Approved June 10, 1913. In effect August 10, 1913. Stats. 1913, p. 563.

Investment of surplus money in state treasury.

§ 1. Any money in the state treasury which shall have been designated as surplus money under the provisions of this act may in the manner hereinafter provided be invested in bonds of any of the following classes:

(a) Bonds or interest-bearing notes or obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest;

(b) Bonds of this state, or those for which the faith and credit of the state of California are pledged for the payment of principal and interest;

(c) Bonds of any county, city and county, city or school district of this state.

Designation of surplus money. Maximum.

§ 2. The state treasurer, and the members of the state board of control shall at such times as they deem necessary, or upon request in writing of the state treasurer, meet and determine whether any portion of the money then in the state treasury is not necessary for immediate use, and if so, the amount thereof, which amount shall thereupon be designated as "surplus money"; provided, however, that the amount so fixed and determined as surplus money shall not at any time be in excess of seventy-five per cent of the least amount of money shown by the records in the treasurer's office to have been in the state treasury at the end of any day's transactions during the twelve months' period next preceding compiled in accordance with the provisions of section

six hundred seventy-five of the Political Code. Upon the unanimous approval of said state officials, there shall be spread upon the minutes of the state board of control at each such meeting a resolution designating the amount of money so determined by them to be surplus money within the meaning of this act, and thereupon the state board of control shall proceed to invest the same in the purchase of bonds of any of the classes described in section one of this act.

Sale or exchange of bonds purchased. Interest paid into "bond investment fund."

§ 3. Any bonds purchased or held under the provisions of this act may be sold or exchanged for other bonds of any of the classes described in section one of this act, and the money received from any such sale may be reinvested by the state board of control in the purchase of any such bonds; provided, that no such sale or exchange shall be made at a price which will result in a net loss to the state; and provided, further, that any interest or premium collected or received by the state from any bonds purchased or held under the provisions of this act shall be credited by the state treasurer to a fund to be known as the "bond investment fund" which fund is hereby established. The state treasurer shall semi-annually, on the last days of June and December, transfer one-half of the amount then in said fund to the general fund, and shall transfer one-half of the amount then in said fund to the state school land fund.

Certain funds not affected.

§ 4. This act shall not be construed as affecting the method of investing the state school land fund, the estates of deceased persons fund, the dissolved savings bank fund, or the sinking funds under the control of the state treasurer, and the laws relating thereto shall remain in full force and effect.

DEPOSIT OF STATE MONEY IN BANKS.

ACT 1673—An act to authorize the deposit of state moneys in banks in this state, and to repeal all acts or parts of acts in conflict with this act.

History: Approved February 28, 1907, Stats. 1907, p. 67. Amended March 24, 1911, Stats. 1911, p. 482; April 29, 1913. In effect August 10, 1913. Stats. 1913, p. 108. Prior act of March 20, 1905, Stats. 1905, p. 67, repealed by the present act.

Money of state may be deposited in approved banks.

§ 1. All moneys under the control of the state treasurer, belonging to the state, may be deposited by the state treasurer to the credit of the state in such state or national bank, or banks, in the state as the treasurer, with the approval of the governor and state controller, shall select for the safekeeping of such deposits, and any sum so deposited shall be deemed to be in the state treasury; provided that the bank or banks in which such money is deposited shall furnish security as hereinafter provided; and provided further, that such depository bank or banks be selected from those agreeing to pay the highest rate of interest, not less than two per cent per annum, for such deposits, as may be determined by bids to be submitted at such times and in such manner as the treasurer, with the approval of the governor and the state controller shall direct; provided, that not more than one-tenth of the aggregate amount of state moneys available for deposit and on deposit shall be deposited in any one bank; and provided, further, that such deposit shall not exceed fifty per cent of the paid-up capital, exclusive of reserve and surplus, of any depository bank. Any and all bids may be rejected by the treasurer, with the approval of the governor and state controller, and new bids asked for. The expense of transportation of moneys to and from the state treasury to such depositories shall be borne by such depositories. Said deposits, with interest thereon, shall be subject to withdrawal at any time upon the demand of the state treasurer, unless the treasurer, with the consent of the governor and controller,

shall deposit any part of such moneys upon different terms; provided that no agreement for the deposit of said moneys shall be for a longer period than one year. [Amendment approved March 24, 1911. Stats. 1911, p. 482.]

Interest, when payable. School moneys.

§ 2. The interest to be paid by any such depository bank shall be on the average daily balances of the state moneys kept on deposit therewith, and shall be paid and credited to the state monthly on the first day of each and every month, and such interest shall accrue to the general fund of the state treasury; provided that if any moneys belonging to the state school fund or the state school land fund shall at any time be deposited under the provisions of this act, the interest received thereon shall be paid into the state school fund.

Security for state funds deposited in banks.

§ 3. For the security of the funds deposited by the state treasurer under the provisions of this act, there shall be deposited with the treasurer bonds of the United States, or of this state, or any county, municipality, school district or irrigation district within this state, which bonds shall be approved by the governor, controller and treasurer, to an amount in value at least ten per cent in excess of the amount of the deposit with such bank or banks; and if in any case, or at any time, such bonds are not deemed satisfactory security to the governor, controller and treasurer, they may require such additional security as may be satisfactory to them. Said bonds, or any part thereof, may be withdrawn on the written consent of the governor, controller and treasurer; provided, that a sufficient amount of said bonds to secure said deposits shall always be kept in the treasury; and in the event that said bank or banks of deposit shall fail to pay such deposits, or any part thereof, on the demand of the state treasurer, then it shall be the duty of the state treasurer to forthwith convert said bonds into money and to disburse the same according to law. [Amendment approved April 29, 1913. Stats. 1913, p. 108. In effect August 10, 1913.]

This section was also amended March 24, 1911, Stats. 1911, p. 483.

Provisions of contract. Treasurer's annual statement to banks.

§ 4. The treasurer shall take from such depository or depositories a written contract, in duplicate setting forth the conditions and terms upon which the funds of the state are deposited therewith, one of which shall be filed with the controller. One provision of said contract shall be that each depository shall at the end of each month render to the treasurer a statement in duplicate showing the daily balances or amount of money of the state held by it during the month and the amount of the accrued interest thereon separately, one of which shall be filed by the treasurer with the controller. The treasurer shall annually on the first day of July furnish each depository bank with a statement showing the amount and description of the bonds on deposit with him by such bank to secure state deposits.

Indemnity bonds.

§ 5. The treasurer, with the approval of the governor and controller, shall, if in his judgment it shall appear necessary for the security of the state, require said banks of deposit to give an indemnity bond, the sureties on which shall not be interested as stockholders in said bank or banks, to be approved by the governor, controller and treasurer, to secure the state against loss by any depreciation in value that may occur in such bonds held by him as security for the safekeeping and prompt payment of the state moneys in such depositories.

Treasurer not responsible for deposits.

§ 6. The state treasurer shall not be responsible for any moneys deposited in a bank or in banks under the provisions of this act while the same remain there deposited

with the consent of the governor and controller; but the treasurer shall be chargeable with the safekeeping, management and disbursement of the bonds and certificates of deposit deposited with him as security for deposits of state moneys, and with the interest thereon, and the proceeds of any sale under the provisions of this act.

Receipt for money deposited.

§ 7. At the time of depositing state moneys in any bank, designated as a depository, the state treasurer shall take and preserve a receipt therefor, stating the amount deposited and referring to the contract made between the depository banks and the treasurer. The moneys so deposited may be drawn out by the check or order of the state treasurer. [Amendment approved March 24, 1911. Stats. 1911, p. 482.]

Act of 1905 repealed.

§ 8. The act of March 20, 1905, entitled "An act to authorize the deposit of state moneys in banks in this state, and to repeal all acts or parts of acts in conflict with this act," and all other acts or parts of acts in conflict with this act are hereby expressly repealed.

DEPOSIT OF COUNTY AND MUNICIPAL MONEY IN BANKS.

ACT 1674—An act to provide for and regulate the deposit of county and municipal moneys in banks and banking corporations, limiting the amount of public moneys that may be deposited therein, and providing a penalty for the illegal deposit and use thereof.

History: Approved March 23, 1907, Stats. 1907, p. 974. Amended April 29, 1913. In effect August 10, 1913. Stats. 1913, p. 107.

Deposit of county and city funds. Security. Interest.

§ 1. All moneys belonging to any county or municipality within the state may be deposited by any officer of such county or municipality having the legal custody of such county or municipal funds in any licensed national bank or banks within this state, or in any bank, banks or corporations authorized and licensed to do a banking business and organized under the laws of this state; provided, that such bank or banks in which such moneys are deposited shall furnish as security for such deposits bonds of the United States, or of this state, or of any county, municipality, school district, or irrigation district within this state, approved by the officer making the deposit and the district attorney for the county or city attorney for the municipality to which the deposit belongs. The market value of the bonds furnished shall be at least ten per cent in excess of the amount of the deposit secured thereby; but the amount of the deposit shall in no case exceed the face value of the bonds furnished as security therefor; and provided, that such bank or banks shall pay a reasonable rate of interest, not less than two per cent per annum, on the daily balances therein deposited. [Amendment approved April 29, 1913. Stats. 1913, p. 107. In effect August 10, 1913.]

Rate of interest to be fixed. when.

§ 2. The rate of interest shall be fixed annually as herein provided in the month of January of each year on all deposits to be made for such year; provided, that the rate of interest for the year ending December 31, 1907, may be fixed as herein provided within ninety days after this act goes into effect. The rate of interest shall be fixed in the case of counties, by the treasurer, auditor, and chairman of the board of supervisors, and in the case of municipalities by the treasurer, auditor (or clerk in municipalities having no auditor), and chairman of the council or other governing body of such municipality. Said rate of interest shall be a reasonable rate and not less than two per cent per annum on the daily balances deposited; and the rate of interest so established for each year as herein provided, shall be the uniform rate of interest required from all banks receiving deposits from the county or municipality, for that year.

Interest on all moneys deposited as herein provided for shall belong to the county or municipality represented by the officer making such deposit and shall be paid quarterly into the general fund of such county or municipality except where the law otherwise directs.

Receipt for deposit.

§ 3. It shall be the duty of the officer making the deposit, to receive from the bank in which the deposit is made, a receipt or receipts in duplicate showing the date and amount of deposit and rate of interest to be paid thereon, one copy of which said officer shall keep on file in his office and he shall file one copy with the auditor of the county or auditor of the municipality (or clerk in municipalities having no auditor) as the case may be.

Record of deposits.

§ 4. Every treasurer shall keep a record in his office which shall be open to public inspection, showing at all times the amount of money on deposit and all banks in which the same is deposited, and dates of deposit. Also a record of all banks making application for the deposit of the public funds.

Amount that may be deposited.

§ 5. The total amount of public moneys on deposit in any bank, shall not at any one time exceed fifty per cent of the paid up capital stock of such depositary bank or banks. No officer shall have on deposit at any one time more than ten per cent of the public moneys under his control and available for deposit in any bank while there are other qualified banks requesting such deposits; provided, that no treasurer of a county or municipality, shall be required to deposit public moneys in any bank outside of the county owning the money or in which the municipality is situated.

Receipts to be counted as cash.

§ 6. The receipt issued by any bank for deposits made therein, together with the bonds held as security therefor, shall be held by the treasurer making the deposit and be recognized and counted as cash to the amount recited in the receipt by the officers required by law to count the same.

Deposits subject to call.

§ 7. Deposits, with interest thereon, shall be subject to withdrawal on demand of the treasurer making the same, or his successors in office, and any bank receiving the deposit of public moneys, may at any time return the same to the public officer making such deposit, together with interest to date of return, and it shall be the duty of the public officer upon receiving the return of such deposit, to immediately return to such bank all bonds held as security for the deposit returned. When any officer withdraws his deposit he shall return, on demand of the bank, such bonds as were held as security for the deposit or portion thereof withdrawn.

On failure of bank to repay security to be sold.

§ 8. Should any bank fail to pay any public moneys held on deposit as herein provided, the officer making such deposit may, after ten days' written notice to such bank, proceed to sell at public or private sale, such of the bonds held by him as security as he may see fit; provided, however, that he shall sell no bonds for less than their face value except at public sale after ten days' printed notice in some newspaper of general circulation published in the county where the sale is to take place. The proceeds of such sale, after paying all expenses, shall be credited to the account of the bank which deposited the bonds as collateral. Any bank failing to make payment, may, at any time before the sale of the bonds is completed, stop such sale by repaying all the moneys deposited with it, together with any expense that may have been incurred by the officer

making such deposit, as the result of such failure. Should the proceeds of any such sale fail to fully repay any deposit, the balance remaining unpaid may be collected in an action of law in the name of the officer making the deposit.

Public officials not responsible for loss.

§ 9. Public officials shall not be responsible for any loss of public moneys resulting from the deposit thereof when made in accordance with the provisions of this act. It shall be the duty of the officer making the deposit to safely keep all evidence of indebtedness issued by banks for deposits made therein, and bonds deposited for security and such public officer shall be responsible for such evidence of indebtedness, and for bonds held as security therefor, together with the interest thereon and the proceeds of any sale of such bonds; and the city, county or municipality for which said officer acts, shall be responsible to such bank for the safe return of the securities furnished by it to such officer.

Transportation of moneys.

§ 10. The expenses of transportation of moneys to or from the state, county or municipal treasuries to such depositaries shall be borne by such depositaries.

Violation of act a felony.

§ 11. The making of profit out of county, city, town or other public moneys, or using the same for any purpose not authorized by law by any officer having possession or control thereof, shall be a felony. Any violation of the provisions of this act by a bank or a banking corporation, shall be punishable by a fine not exceeding five hundred dollars for each offense and the officers of such bank or banking corporation and officer receiving such deposit shall be guilty of a felony.

Present laws not abrogated.

§ 12. Nothing in this act contained shall prevent any county or municipality within this state from buying bonds or otherwise investing its money in any manner now provided by law and nothing herein contained as to the disposition of interest on public moneys deposited shall apply to any money received or held by any county or municipality wherein any law provides for the payment of interest or profit thereon, into any particular fund.

§ 13. All acts or parts of acts in conflict with this act are hereby repealed.

§ 14. This act shall take effect immediately.

1. Deposit of public money—Action to prevent.—A taxpayer may maintain an action to prevent a city treasurer from depositing money of the municipality in his custody with banks or banking corporations, where such deposit is forbidden by law.—*Rothschild v. Bantel*, 152 Cal. 5, 91 Pac. 803.

See, also, *Yarnell v. Los Angeles*, 87 Cal. 603, 25 Pac. 767.

2. San Francisco charter provision paramount.—The provisions of sections 2 and 3, chapter 3, article IV, of the San Francisco charter, prohibiting the deposit of municipal funds in banks is paramount to the provisions of this act, the subject of the deposit of such funds in banks being a municipal affair.—*Rothschild v. Bantel*, 152 Cal. 5, 91 Pac. 803.

GALLINAS SLOUGH.

See *Kerr's Cyc. Political Code*, § 2349.

CHAPTER 128.

GAME LAWS.

References: Acts continued in force relating to fish and game protection and preservation, see Kerr's Cyc. Political Code, § 19; Kerr's Cyc. Penal Code, § 23.
 Fish and game warden, see Kerr's Cyc. Political Code, §§ 4149, et seq.
 Fish and Game Commission, see Kerr's Cyc. Political Code, §§ 342, 343.
 Fish and Game Commissioners, see Kerr's Cyc. Political Code, § 368.
 Fish screens, see Kerr's Cyc. Penal Code, § 629.
 Fishways, see Kerr's Cyc. Penal Code, §§ 636c, et seq.
 Game birds enumerated, see Kerr's Cyc. Penal Code, § 637a.
 Protection of fish and game, power of supervisors, see Kerr's Cyc. Political Code, § 4041.
 Protection of game and fish, see Kerr's Cyc. Penal Code, §§ 626, et seq.
 Protection of fish and game in particular county, see particular title.
 Protection of wild birds, see Kerr's Cyc. Penal Code, § 637a.
 State Market Director, see tit. "State Market Commission."
 Transportation of non-game birds, see Kerr's Cyc. Penal Code, § 637d.
 See, generally, tits. "Animals"; "Foods."

CONTENTS OF CHAPTER.

- ACT 1688.** HUNTING LICENSE ACT OF 1909.
 1690. VOCATIONAL FISHING LICENSE ACT OF 1909.
 1691. DEALERS' LICENSE ACT OF 1911.
 1691a. CANNERS' LICENSE ACT OF 1917.
 1692. FISHING LICENSE ACT OF 1913.
 1692a. ISSUANCE FOR RESALE ACT OF 1915.
 1693. FISH PROPAGATOR'S LICENSE ACT OF 1911.
 1693a. PARASITIC FISH ACT.
 1693b. COMMERCIAL FISHERY STATISTICS.
 1693c. FISH SUPPLY CONSERVATION.
 1694. FISH AND GAME PRESERVATION FUND.
 1694a. DISPOSITION OF FINES AND FORFEITURES.
 1696. FISH AND GAME DISTRICT ACT OF 1917.
 1696a. "MOUNT TAMALPAIS GAME REFUGE."
 1697. RAILWAY CAR FOR FISH DISTRIBUTION.
 1698. PURCHASE OF FISH HATCHERIES AT SISSON.
 1699. PURCHASE OF ADDITIONAL LAND FOR FISH HATCHERY AT SISSON.
 1700. REMOVAL OF OBSTRUCTION IN AMERICAN RIVER.
 1701. SALMON HATCHERY.
 1702. REMOVAL OF OBSTRUCTIONS IN PIT RIVER.
 1703. DISPOSAL OF HATCHERY AT BATTLE CREEK, TEHAMA COUNTY.
 1704. FISH REPOSITORY ON STANISLAUS RIVER, TUOLUMNE COUNTY.
 1705. AUTHORIZING CONSTRUCTION OF STEAM LAUNCH.
 1706. PURCHASE OF GASOLINE LAUNCH.
 1707. DISPOSAL OF STEAM LAUNCH GOVERNOR STONEMAN.
 1708. IMPORTATION OF GAME BIRDS FOR PROPAGATION.
 1709. PROTECTION OF GAME IN NEVADA COUNTY.
 1710. RESTRICTING HUNTING IN YOLO COUNTY.
 1712. PRESERVATION OF MOCKING BIRDS.
 1715. PREVENTION OF DESTRUCTION OF FISH AND GAME IN LAKE MERRITT.
 1716. PROTECTION OF FISH AND GAME IN NAPA COUNTY.
 1720. PROHIBITING DESTRUCTION OF FISH IN ALAMEDA COUNTY.
 1721. PREVENTION OF DESTRUCTION OF FISH IN BOLINAS BAY.
 1722. PROTECTION OF FISH IN BUTTE CREEK, BUTTE COUNTY.
 1723. REGULATING SALMON FISHERIES ON EEL RIVER.
 1724. PRESERVATION OF FISH IN LAKE BIGLER.
 1725. PREVENT DESTRUCTION OF FISH IN KINGS RIVER.
 1727. USE OF SEINES, ETC., IN NAPA RIVER PROHIBITED.
 1728. USE OF SEINES, ETC., IN SAN ANTONIO CREEK, ALAMEDA COUNTY, PROHIBITED.
 1731. PRESERVATION OF FISH IN SISKIYOU COUNTY.
 1733. PROTECTION OF FISH IN FALSE BAY.
 1735. PROTECTION OF FISH IN CERTAIN WATER OF MENDOCINO COUNTY.
 1736. PREVENTION OF DESTRUCTION OF WILD GAME IN PINNACLES FOREST RESERVE.

- 1737. USE OF WEIRS, ETC., IN MONTEREY BAY PROHIBITED.
- 1738. USE OF NETS, ETC., IN CACHE SLOUGH PROHIBITED.
- 1738a. RESTRICTION OF FISHING IN FISH AND GAME DISTRICT NO. 19.
- 1739. EXPENSES AND COSTS OF TRIAL FOR VIOLATION OF FISH AND GAME LAWS.
- 1740. COUNTY FISH HATCHERIES.
- 1741. CRAB PRESERVE IN EEL RIVER.
- 1742. SHELL FISH PRESERVE IN MONTEREY BAY.
- 1743. TRANSFER OF LAND FOR GAME PRESERVE.
- 1744. PROTECTION OF FUR-BEARING ANIMALS.
- 1745. CONTAMINATED SOURCES OF SHELL FISH.
- 1746. FREE CAMPING GROUND IN PLACER COUNTY.

HUNTING LICENSE ACT OF 1909.

ACT 1688—An act to regulate and license the hunting of wild birds and animals, and to provide revenue therefrom, for game and fish preservation and restoration.

History: Approved March 22, 1909, Stats. 1909, p. 663. Amended May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 650; April 21, 1919. In effect July 22, 1919, Stats. 1919, p. 119. Prior act of March 13, 1907, Stats. 1907, p. 247, repealed by the present act.

Licenses to hunt game.

§ 1. Every person in the state of California, who hunts, pursues or kills any of the wild birds or animals, excepting predatory birds or animals, without first procuring a license therefor, as provided in this act, is guilty of a misdemeanor.

By whom issued.

§ 2. Licenses granting the privilege to hunt, pursue or kill wild birds or animals, shall be issued and delivered upon application, by the county clerk of any of the counties of this state, or by the state board of fish commissioners, who shall prepare suitable licenses of convenient form and size, and have printed or stamped thereon the words: "Hunting License No. —, State of California, expires June 30, 19—," with the registration number, and appropriate year printed or stamped thereon, which said license shall be prepared and furnished to the county clerk, and for their own disposition, by the state board of fish commissioners, which board shall take receipt therefor by number and quantity, from the several county clerks, and the county clerk shall be responsible therefor and shall account for the same to the controller of the state every three months, beginning with July 1st of each year. For each license sold, registered and accounted for by any person excepting by a fish commissioner, he shall be allowed as compensation out of the game preservation fund, ten per cent of the amount accounted for.

Fees for hunting licenses.

§ 3. The licenses herein provided for shall be issued as follows:

First—To any citizen of the United States who is a bona fide resident of the state of California, upon the payment of one dollar.

Second—To any citizen of the United States, not a bona fide resident of the state of California, upon the payment of ten dollars.

Third—To any person not a citizen of the United States who shall have declared his intention to become such citizen according to the law made and provided for such purpose, who is a bona fide resident of the state of California, upon the payment of ten dollars; provided, that after he has declared his intention to become a citizen, he must complete his naturalization at the earliest period allowed by law; provided, further, that said applicant shall make and subscribe an oath before the person issuing such license that he has not claimed his citizenship in a foreign country as a basis for avoiding service in the armed forces of the United States and the person issuing such license is hereby empowered to administer said oath.

Fourth—To any person not a citizen of the United States, upon the payment of twenty-five dollars, except as provided in the third subdivision of this section. [Amendment of April 21, 1919. In effect July 22, 1919. Stats. 1919, p. 119.]

This section was also amended May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 650.

Application for license.

§ 4. Every person applying for and procuring a license as herein provided shall furnish to the county clerk or state board of fish commissioners, his name and resident address, which information shall be by the clerk or board entered in a book kept for that purpose, and provided by the state board of fish commissioners, together with a statement of the date of issuance and the number of the license issued to such person. Such applicant shall also furnish to the county clerk or fish commissioners a written description of himself, by age, height, nationality and color of the eyes and hair.

Term of license.

§ 5. All licenses issued as herein provided shall be valid, and shall authorize the person to whom issued, to hunt, pursue and kill wild birds and animals, excepting predatory birds and animals, on and from the first day of July of the year in which such license is issued until the date of expiration written or stamped thereon, but no license shall continue in force for a period longer than one year.

Disposition of moneys.

§ 6. All moneys collected from licenses as provided herein, and all fines collected for the violation of the provisions hereof shall be paid into the state treasury and credited to the game preservation fund.

License not transferable.

§ 7. Not more than one license shall be issued to any one person for the same fiscal year, except upon an affidavit by the applicant that the one issued has been lost or destroyed, and no license issued as herein provided shall be transferable or used by any other person than the one to whom it was issued.

Must be exhibited on demand.

§ 8. Every person having a license as provided herein, who while hunting refuses to exhibit such license upon demand of any officer authorized to enforce the game and fish laws of this state, or any peace officer of the state, shall be guilty of a misdemeanor; and every person lawfully having such license, who transfers or disposes of the same to another person to be used as a hunting license, shall forfeit the same.

Violation of act.

§ 9. Every person violating any of the provisions of this act, shall, upon conviction thereof be punished by a fine of not less than ten, nor more than one hundred dollars, or by imprisonment in the county jail for a term of not less than ten, nor more than one hundred days, or by both such fine and imprisonment.

Act of 1907 repealed.

§ 10. An act entitled "An act to regulate and license the hunting of game birds and animals and to provide revenue therefrom for game preservation and restoration and to make appropriation for the purpose of carrying out the objects of this act," approved March 13, 1907, is hereby repealed.

§ 11. This act shall take effect and be in force on and after July 1st, 1909.

This act should be read in connection with the "issuance for resale act of 1915."—See Act 1692a.

1. **Issuance by county clerk—Entitled to retain fees.**—Under section 2 of the act of

1909, relating to the issuance of hunting licenses by county clerks, a county clerk whose term of office commenced two years after the act went into effect, is entitled to retain his commission for licenses issued by

him and accounted for and paid into the state treasury, notwithstanding section 9, article XI, of the constitution, and sections 4235 and 4290 of the Political Code, and the amendments thereto of 1911 (134, 251), construed under section 325, Political Code.—

County of Sacramento v. Pfund, 165 Cal. 84, 88, 130 Pac. 1041.

See, also, County of Alameda v. Cook, 32 Cal. App. 165, 162 Pac. 405; County of Sacramento v. Chambers, 33 Cal. App. 142, 164 Pac. 613.

VOCATIONAL FISHING LICENSE ACT OF 1909.

ACT 1690—An act to regulate the vocation of fishing, and to provide therefrom revenue for the propagation, restoration and preservation of fish in the waters of the state of California.

History: Approved March 13, 1909, Stats. 1909, p. 302. Amended June 16, 1913. In effect August 10, 1913, Stats. 1913, p. 985; May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 686. prior act of March 21, 1887, Stats. 1887, p. 233, superseded by the present act.

License required.

§ 1. Every person who uses or operates or assists in using or operating, any boat, net, trap, line or other appliance in the state for the purpose of catching or taking fish, mollusks or crustaceans for profit, and every person using or operating, or assisting in using or operating any boat, net, trap, line or other appliance for taking or catching fish, mollusks or crustaceans, or who brings or causes said fish, mollusks or crustaceans to be brought ashore at any point in the state for the purpose of selling the same as fresh fish, without first procuring a commercial fishing license, is guilty of a misdemeanor. [Amendment of May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 686.]

Licenses prepared by controller. Duty of president of commission.

§ 2. The controller of state shall prepare suitable licenses, of the classes designated by the fish and game commissioners, which shall license the holder of such license to catch or take fish, mollusks or crustaceans or to assist in catching or taking fish, mollusks or crustaceans, as provided in section one of this act, for the term of one year from the first day of April of one year to the first day of April of the year following. The licenses shall be numbered consecutively, beginning with number one, and contain blanks for the insertion of the name of the holder, his resident address, and his description, by age, height, nationality and color of eyes and hair, which description shall be furnished by the applicant to the board of fish and game commissioners. The controller shall sign all licenses and deliver the same to the fish and game commissioners, on demand, who shall be charged for the same by the controller. Each license, before delivery to the applicant for a license, must be countersigned by the president of the board of fish and game commissioners, and the president of the board of fish and game commissioners shall execute a bond to the people of the state of California, in the sum of two thousand dollars, for the faithful performance of the duties imposed upon him by this act. [Amendment of May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 687.]

Fee. Forfeiture of license.

§ 3. Licenses shall be issued and delivered upon application to the state board of fish and game commissioners, or their deputies. The license fee shall be ten dollars for each person. Not more than [than] one license shall be issued to any one person for the same year, except upon affidavit by the applicant that the one issued has been lost or destroyed, and no license issued as herein provided shall be transferable or used by any other person than the one to whom it was issued. Every person having a license as provided herein, who refuses to exhibit such license upon demand of any officer authorized to enforce the fish and game laws of this state, or any peace officer of this state, or who transfers or disposes of the same to another person to be used as a fisherman's license, or who fails to have his license with him where it may be readily examined by

any officer authorized to enforce the fish and game laws, at the time he is using or operating or assisting in using or operating any net, trap, line or other appliance, or who uses or assists in using any net, trap, line or other appliance by modes or methods in violation of any law, for the preservation of fish and game shall forfeit this license. [Amendment of May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 687.]

This section was also amended June 16, 1913, Stats. 1913, p. 985.

Fees paid to whom.

§ 4. The said license fees must be paid to the fish and game commissioners, or to some one designated by them for that purpose. [Amendment of May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 687.]

Credited to preservation fund.

§ 5. The money collected from such licenses shall be paid by the commissioners into the state treasury to the credit of the fish and game preservation fund. [Amendment of May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 687.]

Penalty.

§ 6. The violation of any provisions of this act is hereby declared a misdemeanor, and every person violating any of its provisions, shall, upon conviction thereof, be fined in a sum not less than ten nor more than one hundred dollars, or by imprisonment in the county jail for a term of not less than ten nor more than one hundred days, or by both such fine and imprisonment; and all fines collected for any violation of any of the provisions of this section shall be paid into the state treasury, to the credit of the fish and game preservation fund. [Amended May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 687.]

§ 7. All acts and parts of acts, so far as they conflict with this act, are hereby repealed.

§ 8. This act shall take effect immediately.

1. Constitutionality—Right of fishery.—The act is not violative of section 25, article I, of the constitution, guaranteeing the right of fishery upon and from the public lands of the state and the waters thereof, and is valid.—In re Parra, 24 Cal. App. 339, 141 Pac. 393.

2. Same.—Section 25½, article IV, of the constitution expressly empowers the legislature to protect fish and prevent their extermination, and this act is appropriate for that purpose.—In re Parra, 24 Cal. App. 339, 141 Pac. 393.

DEALERS' LICENSE ACT OF 1911.

ACT 1691—An act to regulate the vocation of dealing in fish and in wild game and animals by wholesale for profit and to provide therefrom revenue for the propagation and restoration of fish and game in the state of California.

History: Approved April 14, 1911, Stats. 1911, p. 900.

License for fish dealers.

§ 1. Every person engaged in the vocation of dealing in, buying and selling fish or shellfish or wild game or animals by wholesale in this state, must first obtain a license before engaging in such vocation.

Controller to prepare license. Countersigned.

§ 2. The controller of state shall prepare suitable licenses, of the classes designated by the fish and game commissioners which shall purport to license the holder of such license to buy, sell and deal in fish and shellfish and wild game and animals in this state by wholesale for the term of one year from the first day of July of one year to the first day of July of the year following. All licenses shall be numbered consecutively beginning with number one and contain blanks for the insertion of the name of the holder,

his residence, and place of business, which information shall be furnished by the applicant to the board of fish and game commissioners. The controller shall sign all licenses and deliver the same to the fish and game commissioners, on demand, who shall be charged for the same by the controller. Each license, before delivery to the applicant for a license, must be countersigned by the president of the board of fish and game commissioners and the president of the board of fish and game commissioners shall execute a bond to the people of the state of California in the sum of two thousand dollars for the faithful performance of the duties imposed upon him by this act.

To whom issued.

§ 3. Licenses shall be issued and delivered upon application to the state board of fish and game commissioners or their deputies. The licenses herein provided for shall be issued as follows: To any citizen of the United States and to any person who has duly made his declaration of intention to become a citizen of the United States as provided by law, upon the payment of five dollars; to any person not a citizen of the United States upon the payment of twenty dollars. Not more than one license shall be issued to any one person for the same year, except upon an affidavit by the applicant that the one issued has been lost or destroyed, and no license issued as herein provided shall be transferable or used by any other person than the one to whom it was issued. Every person having a license as provided herein, who refuses to exhibit such license upon demand of any officer authorized to enforce the fish and game laws of this state, or any peace officer of this state, or who transfers or disposes of the same to another person to be used as a license, shall forfeit this license.

To whom fee is paid.

§ 4. The said license fees must be paid to the fish and game commissioners or to some one designated by them for that purpose.

Money collected from licenses, disposition of.

§ 5. The money collected from the sale of such licenses shall be paid by the board of fish and game commissioners into the state treasury to the credit of the fish and game preservation fund.

Penalty for violation.

§ 6. The violation of any provision of this act is hereby declared a misdemeanor, and every person violating any of its provisions, shall, upon conviction thereof, be fined in a sum not less than twenty nor more than five hundred dollars, or by imprisonment in the county jail for a term of not less than ten nor more than one hundred days, or by both such fine and imprisonment; and all fines collected for any violation of any of the provisions of this section shall be paid into the state treasury to the credit of the fish and game preservation fund.

§ 7. All acts and parts of acts in conflict with this act, are hereby repealed.

§ 8. This act shall take effect immediately.

Modified, if not entirely superseded by the "state market commission act."—See Act 4875.

GAME AND FISH LAWS.

As affecting interstate commerce.—13 L. R. A. 804; briefs in 29 L. R. A. 715 and 33 L. R. A. 696.

As to sale of game and fish imported.—33 L. R. A. 696.

Innocent violation of.—Brief in 29 L. R. A. 715.

Constitutionality of statute authorizing summary forfeiture of property used in violation of.—Brief in 65 L. R. A. 610.

Construction of.—Brief in 36 L. R. A. 765.
Cruel and unusual punishment for violation of.—35 L. R. A. 572.

Of various states.—8 L. R. A. 443.

Power of state as to.—Brief in 40 L. R. A. 152.

Prohibiting guiding in fishing or forest

hunting without registration.—50 L. R. A. 544.

Right of state to regulate taking of fish and game.—Brief in 58 L. R. A. 95.

Fish Laws.

Power of state to control and regulate fisheries.—53 Am. St. Rep. 293.

Regulations for preserving game.—40 L. R. A. 151.

Restriction of consignment of game to market by common carrier.—32 L. R. A. 131.

Power of states to regulate taking of fish in tide waters.—23 Am. St. Rep. 837.

Right to fish on lands of another.—13 Am. St. Rep. 416.

Ownership or property in fish.—131 Am. St. Rep. 751.

Right to take or catch fish.—131 Am. St. Rep. 752.

Power of state to regulate taking of fish in tide water.—23 Am. St. Rep. 837.

Property in fish, arises when.—58 Am. St. Rep. 187.

Game Laws.

Right to hunt on lands of another.—13 Am. St. Rep. 416.

Applicable to game purchased on Indian reservation.—40 L. R. A. 759.

Carriers not in provision as to penalty.—13 L. R. A. 33.

Constitutionality of laws protecting game.—Note 42 Am. St. Rep. 138.

Validity of statute prohibiting importation of game during closed season.—128 Am. St. Rep. 534.

Contract for cold storage of game during close season.—40 L. R. A. 151.

Deer in large park; right of owner to kill in close time.—35 L. R. A. 279.

Following moose till snowbound and capturing during close time.—8 L. R. A. 448.

Game laws as affecting interstate commerce.—Brief in 53 L. R. A. 134.

Game laws; game as property of the state; validity of statute authorizing summary seizure and forfeiture to state of all guns, etc., in actual use in violation of law.—Brief in 65 L. R. A. 611.

Individual property in game; liability for unlawful transportation of.—Brief in 9 L. R. A. 183.

Intent in killing game birds taken out of state.—13 L. R. A. 804.

Liability of carrier for transporting game.—29 L. R. A. 714.

Taking carcasses from carrier during interstate transportation.—13 L. R. A. 33.

Possession during closed season; prior acquisition.—Brief in 52 L. R. A. 803.

Power of state to impose restriction on right to kill.—Brief in 51 L. R. A. 405.

Prohibited possession of game killed in other state.—36 L. R. A. 765.

Prohibiting possession of quail during closed season.—51 L. R. A. 404.

Prohibiting transportation of game killed.—9 L. R. A. 138.

Protecting game by either general or special laws.—33 L. R. A. 114.

State act prohibiting killing of birds to be taken from state.—13 L. R. A. 804.

Third person liberating animal captured during close time.—8 L. R. A. 448.

As to shipping of wild game by parcel post.—See *In re Phoeodovius*, 177 Cal. 238.

See, also, Kerr's Cyc. Penal Code, § 627b.

CANNERS' LICENSE ACT OF 1917.

ACT 1691a—An act to license canners, curers, preservers and packers of fish and handlers of crustaceans and mollusks, and providing a revenue therefrom for the conservation, propagation and restoration of fish in the state of California, and providing for a record of fish caught or received, and providing penalties for the violations of the provisions thereof, and repealing all acts and parts of acts in conflict therewith.

History: Approved May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1275.

Unlawful to can, etc., fish without license.

§ 1. Any person in this state, who engages in the business of canning, curing, preserving or packing fish, which are taken in the waters of this state or are brought into this state in a fresh condition; or of manufacturing fish scrap, fish meal, fish oil, chicken feed or fertilizer from fish or fish offal; or of dealing in mollusks or crustaceans by wholesale, without first procuring a license for each plant or place of business, is guilty of a misdemeanor.

Licenses prepared by controller.

§ 2. The controller of state shall prepare suitable licenses, of the classes designated by the fish and game commissioners, which shall license the holder of such license to can, cure, preserve or pack fish, to manufacture fish meal, fish oil and other products from fish, and to deal in mollusks and crustaceans by wholesale in this state, (subject to the restrictions provided by law) as provided in section one of this act, for the term

of one year, from the first day of July of one year to the thirtieth day of June of the year following. All licenses shall be numbered consecutively, beginning with number one and contain blanks for the insertion of the name of the holder, his residence, and place of business, which information shall be furnished by the applicant to the board of fish and game commissioners. The controller shall sign all licenses and deliver the same to the fish and game commissioners, on demand, who shall be charged for the same by the controller. Each license, before delivery to the applicant for a license, must be countersigned by the president of the board of fish and game commissioners and the president of the board of fish and game commissioners shall execute a bond to the people of the state of California in the sum of two thousand dollars for the faithful performance of the duties imposed upon him by this act.

Issued to whom.

§ 3. Licenses shall be issued and delivered upon application to the state board of fish and game commissioners or their deputies. The licenses herein provided for shall be issued as follows: To any citizen of the United States and to any person who has duly made his declaration of intention to become a citizen of the United States as provided by law, upon the payment of five dollars; to any person not a citizen of the United States, upon the payment of twenty dollars. In case a license is lost or destroyed, a duplicate may be issued to any licensee by the fish and game commission, upon the affidavit by him that the one issued has been lost or destroyed. Every person having a license as provided herein, who refuses to exhibit such license upon demand of any officer authorized to enforce the fish and game laws of this state, or any peace officer of this state, or who transfers or disposes of the same to another person to be used as a license, shall forfeit this license.

Payment of fees.

§ 4. The said license fees must be paid to the fish and game commissioners or to some one designated by them for that purpose.

Record of fish purchased. Monthly statement to fish and game commission.

§ 5. Every person operating under a license as provided in section one of this act, and every person dealing in fresh fish shall keep a book or books in which shall be entered a full and correct record, in the English language, of all fresh fish purchased or received by them from fishermen or taken by themselves, giving the names of the different species, and the number of pounds so received or caught of each different species, and the name and address of the person or persons from whom such fish were received. Said book or books are to be open at all times for the inspection of members of the fish and game commission or persons duly authorized by them. They shall also render to the fish and game commission, on or before the tenth day of each month on blanks to be furnished by the said fish and game commission, a true and correct statement showing the amount of each species of fresh fish, stated separately, so purchased, received or caught during the previous month, together with the name and address of the person or persons from whom such fish were received or purchased. Said monthly statements are to be accompanied by an affidavit to the effect that the said report is a true and correct statement of all the fish received from fishermen or caught by themselves during the time covered by the report.

Receipts to fishermen.

§ 6. Every person operating under a license as provided in section one of this act, and every person dealing in fish who receives fish from fishermen shall issue receipts to the fishermen from whom fish are received and shall give in such receipt the date of issuance, the name of the fisherman or fishermen to whom issued, the weight in pounds of each variety of fish received, the price per pound paid to the fishermen, and the signature of the dealer who issued the receipt. A duplicate manifold copy of this

receipt shall be kept on file by the dealer issuing the same, for a period of six months and the said duplicate copy shall be available for inspection at any time within six months, upon demand of the fish and game commission, or any duly authorized assistant thereof.

Privilege tax. Quarterly report of fresh fish purchased. Affidavit. Forfeiture of license.

§ 7. Every person operating under a license, as provided in section one of this act, shall, in addition to the license fee, pay a privilege tax of two and one-half cents for each one hundred pounds, or fraction thereof, of fish purchased or received by them, or fish caught or taken by themselves, with their own equipment; provided, that any fish, excepting mollusks and crustaceans, so taken or received, which are utilized for human consumption in its fresh state, shall not be subject to such tax; and provided, further, that herring and buck shad shall also be exempt from the tax provided herein; and such person shall, in addition to making a monthly report as provided in section five of this act, make a quarterly report to the fish and game commission, showing the the total amount of fresh fish, in pounds, purchased, caught or received by them (for purposes other than human consumption in its fresh state), and of mollusks and crustaceans purchased or received by them from fishermen, or caught by themselves, whether they be used fresh or otherwise, during the three months next preceding March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year. Blanks for this report shall be furnished by the fish and game commission, and such report shall be rendered to the fish and game commission, not later than the fifteenth day of the month following the months of March, June, September and December of each year. Said reports shall be accompanied by an affidavit by the person or firm purchasing, taking, catching or receiving such fish, to the effect that said report is a true and correct record of all fish caught or received by them (for purposes other than human consumption in its fresh state); and of all mollusks and crustaceans purchased or received from fishermen, or caught by themselves, during the quarterly period covered by the report. Upon the failure of any person operating under a license, as provided in section one of this act, to pay the privilege tax provided herein, said person shall forfeit his license for a period of one year. Said privilege tax shall be paid to the fish and game commission, or some one authorized by them, within thirty days after the close of each quarterly period.

Moneys used for conservation work.

§ 8. All moneys collected from the sale of licenses and from the privilege tax on fish, as herein provided, shall be paid to the fish and game commissioners, or some one designated by them for that purpose and all moneys so collected shall be paid by the fish and game commission into the state treasury, to the credit of the fish and game preservation fund, and shall be expended on conservation work for the benefit of the commercial fishing industries within the districts from which the revenues are derived.

Penalty for violation.

§ 9. The violation of any of the provisions of this act is hereby declared a misdemeanor, and every person violating any of its provisions, shall, upon conviction thereof, be fined in a sum not less than one hundred nor more than five hundred dollars, or by imprisonment in the county jail for a term of not less than twenty-five nor more than one hundred and fifty days, or by both such fine and imprisonment; and all fines collected for any violation of any of the provisions of this section shall be paid into the state treasury, to the credit of the fish and game preservation fund.

Repealed.

§ 10. All acts and parts of acts in conflict herewith are hereby repealed.

Modified by the "state market commission act," enacted at same session.—See Act 4875.

FISHING LICENSE ACT OF 1913.

ACT 1692—An act to regulate and license the taking and catching of game fishes and to define game fish and to provide revenue therefrom, for fish preservation and restoration.

History: Approved June 16, 1913. In effect January 1, 1914. Stats. 1913, p. 986. Amended April 5, 1917. In effect July 27, 1917, Stats. 1917, p. 37.

License to take game fish.

§ 1. Every person over the age of eighteen years who, in the state of California, takes, catches, or kills any game fish for any purpose other than for profit, without first procuring a license therefor, as provided in this act is guilty of a misdemeanor.

Licenses issued by county clerks.

§ 2. Licenses granting the privilege to take, catch or kill game fishes for purposes other than for profit, shall be issued and delivered, upon application, by the county clerk of any of the counties of this state, or by the state board of fish and game commissioners, which board shall prepare suitable licenses of convenient form and size and have printed or stamped thereon the words "Sporting Fishing License No. —, State of California, expires December 31, 19—," with the registration number and appropriate year printed or stamped thereon, which said license shall be prepared and furnished to the county clerks for their own disposition by the state board of fish and game commissioners, which board shall take receipt therefor by number and quantity, from the several county clerks and the county clerks shall be responsible therefor, and shall account for the same to the controller of the state every three months beginning with the first day of January of each year. For each license sold, registered and accounted for by any person, excepting by a fish and game commissioner, he shall be allowed as compensation, for his own use, out of the fish and game preservation fund, ten per cent of the amount accounted for.

Fees for game fish license.

§ 3. Licenses as herein provided for shall be issued as follows:

First—To any citizen of the United States, over the age of eighteen years, who is a bona fide resident of the state of California, upon the payment of one dollar; provided, that licenses shall be issued to veterans of the Civil War free of charge.

Second—To any citizen of the United States, over the age of eighteen years, not a bona fide resident of the state of California, upon the payment of three dollars.

Third—To any person, not a citizen of the United States and over the age of eighteen years, upon the payment of three dollars. [Amendment of April 5, 1917. In effect July 27, 1917. Stats. 1917, p. 37.]

Facts given by applicant.

§ 4. Every person applying for and securing a license as herein provided, shall furnish to the county clerk and the state board of fish and game commissioners his name and residence address, which information shall be by the clerk or board entered in a book kept for that purpose, and provided by the state board of fish and game commissioners, together with a statement of the date of issuance and the number of the license issued to such person. Such applicant shall also furnish to the county clerk or fish and game commissioners a written description of himself, by age, height, nationality, and color of eyes and hair.

Life of license.

§ 5. All licenses issued as herein provided shall be valid, and shall authorize the person to whom issued to take, catch and kill game fishes in accordance with law, on

and from the first day of January of the year in which such license is issued, until the date of expiration written or stamped thereon, but no license shall continue in force for a period longer than one year, nor shall such license be issued to any person unless the holder thereof shall agree to exhibit any game fish in his possession to any regularly appointed deputy fish and game commissioner upon demand, said agreement to be contained in said license.

Only one license to a person.

§ 6. Not more than one license shall be issued to any one person for the same license year, except upon an affidavit by the applicant that the one previously issued has been lost or destroyed, and no license issued as herein provided shall be transferable or used by any other person than the one to whom it was issued.

Must exhibit license or fish.

§ 7. Every person having a license as provided herein must exhibit such license, or any game fish that may be in his possession, upon demand of any officer authorized to enforce the fish and game laws of this state, or any peace officer of the state.

Game fish.

§ 8. For the purposes of this act the following only shall be considered game fishes: Tuna, yellow-tail, jewfish or black sea bass, albicore, barracuda, bonita, rock bass, California whiting, also known as corbina and surf-fish, yellow-fin croaker, spot-fin croaker, salmon, steelhead and other trout, charr whitefish, striped bass and black bass.

Penalty for false statement.

§ 9. Every person who makes any false statement as to any of the facts required by this act, for the purpose of obtaining a license, and every person violating any of the provisions of this act shall be guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of not less than twenty-five, nor more than one hundred dollars or by imprisonment in the county jail for a term of not less than ten days nor more than one hundred days or by both such fine and imprisonment and shall forfeit such license as may have been obtained, and no new license shall be issued to such person for the remainder of the license year.

Disposition of receipts.

§ 10. All moneys collected from the sale of licenses as provided in this act and all fines and forfeitures imposed and collected for the violation of any of the provisions thereof, shall be paid into the state treasury to the credit of the fish and game preservation fund.

Not applicable to game commission.

§ 11. Nothing in this act shall apply to any deputy or employee of the California fish and game commission while employed in taking fish for scientific purposes or for the purposes of propagation under the direction of said commission.

In effect.

§ 12. This act shall take effect January 1, 1914.

This act should be read in connection with the "issuance for resale act" of 1915.—See Act 1692a.

ISSUANCE FOR RESALE ACT OF 1915.

ACT 1692a—An act to regulate the issuance of licenses for resale to hunters and anglers.

History: Approved May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 685. Amended April 5, 1917. In effect July 27, 1917. Stats. 1917, p. 40; May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 663.

Who may issue hunting and fishing licenses.

§ 1. Licenses granting the privilege to take, catch, hunt or kill fishes, wild mammals or wild birds shall be issued and delivered, upon application in writing, by the county clerk of any of the counties of the state, or by the state board of fish and game commissioners, or by the persons duly appointed and authorized by any such county clerk or the board of fish and game commissioners. [Amendment of May 18, 1917. In effect July 17, 1917. Stats. 1917, p. 663.]

This section was also amended April 5, 1917, Stats. 1917, p. 40.

Compensation for sale of licenses.

§ 2. For each license sold, registered and accounted for by any person, except by a fish and game commissioner or a deputy or assistant fish and game commissioner paid a salary in full for his services to the state, he shall be allowed as compensation, for his own use, out of the fish and game preservation fund, ten per cent of the amount or amounts accounted for by him. [Amendment of May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 663.]

This section was also amended April 5, 1917, Stats. 1917, p. 40.

Bond.

§ 3. Every person authorized to issue and sell licenses under the provisions of this act shall, when required by said board of fish and game commissioners, execute to the fish and game commission a good and sufficient bond in a sum equal to the value of such licenses so delivered to such person to be sold as herein provided, to secure the faithful accounting and payment to the fish and game commission of the funds collected from the sale of such licenses and the faithful performance of the duties imposed upon him by this act, and said board of fish and game commissioners is hereby authorized and empowered to pay the premium on such bond out of the fish and game preservation fund. [Amendment of May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 663.]

This act was also amended April 5, 1917 (in effect July 27, 1917; Stats. 1917, p. 40), to read as follows:

Who may issue hunting and fishing licenses.

§ 1. Licenses granting the privilege to take, catch, hunt or kill fishes, wild mammals or wild birds shall be issued and delivered, upon application in writing, by the county clerk of any of the counties of the state, or by the state board of fish and game commissioners, or by the persons duly appointed and authorized by the said county clerks or the board of fish and game commissioners.

Compensation for sale of licenses.

§ 2. For each hunting or angler's license sold, registered and accounted for by any person, except by a fish and game commissioner or a deputy or assistant fish and game commissioner paid a salary in full for his services to the state, he shall be allowed as compensation, for his own use, out of the fish and game preservation fund, ten per cent of the amount or amounts accounted for by him, and for each market fishermen's license hereunder fifty cents.

FISH PROPAGATORS' LICENSE ACT OF 1911.

ACT 1693—An act to authorize and regulate the possession, use, transportation and sale of trout or other fish, by persons engaged in the business of propagating and rearing such fish, and by persons who transport such fish, and by persons who purchase fish so reared.

History: Approved March 17, 1911, Stats. 1911, p. 373. Amended May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 940.

Fish culture.

§ 1. Any citizen of the state of California who owns or leases land held in private ownership may establish and maintain thereon ponds for the culture and propagation of trout or other fish subject to all of the provisions contained in this act.

Application for license.

§ 2. Every citizen desiring to propagate and raise domesticated trout or other domesticated fish in any artificial body of water or private hatchery shall file with the fish and game commission a written application for a license so to do. Said application shall state the name, residence and place of business of the applicant and shall set forth the exact description of the land upon which said artificial body of water or private hatchery is to be located and the applicant's title to said land and the kind and number of fish desired to be kept therein. Said application shall be accompanied by a fee of five dollars, which, if such application be granted, shall be paid into the state treasury by the state fish and game commission to the credit of the fish and game preservation fund. [Amendment of May 16, 1917. In effect July 27, 1917. Stats. 1917, p. 941.]

No outlet or inlet.

§ 3. All artificial bodies of water or private hatcheries in which domesticated trout or other domesticated fish may be propagated and raised under the provisions of this act shall be entirely within the exterior boundaries of the land owned or leased by the applicant for said license and there shall be no natural inlet or outlet for the waters contained therein. All artificial inlets and outlets of said artificial bodies of water or private hatcheries must be screened to prevent the ingress or egress of fish to or from any natural body of water. [Amendment of May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 941.]

Granting of license.

§ 4. Upon the receipt of said application the state board of fish and game commissioners shall make an examination of the land and waters described in the said application. All the expenses of the said examination shall be borne by the applicant. If it shall appear that the aforesaid artificial body of water or private hatchery has been constructed and screened according to the provisions of this act and the application is in other respects proper and reasonable, the said fish and game commission shall grant to such applicant a license to propagate and raise domesticated trout or other domesticated fish mentioned in the application and to possess said domesticated trout or other domesticated fish during the entire calendar year. The license shall be posted or displayed in a conspicuous place on the land described in the application and shall expire on the last day of December in each year at midnight.

Permit to import domesticated fish.

Upon obtaining a permit from the fish and game commission domesticated trout or other domesticated fish raised in a regularly licensed hatchery under the laws of any other state may be imported into this state, transported, sold or offered for sale during the entire calendar year upon the payment of a fee of five dollars per year; provided,

that such imported domesticated trout or other domesticated fish shall be duly tagged in accordance with the rules and regulations to be prescribed by the fish and game commission. The permit issued under the provisions of this act shall be posted in a conspicuous place in the principal place of business of the person importing such fish and shall expire on the last day of December in each year at midnight. [Amendment of May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 941.]

Domesticated fish may be sold during year.

§ 5. Domesticated trout or other domesticated fish propagated and raised in this state under the license granted in accordance with the provisions of this act may be transported, sold or offered for sale during the entire calendar year when duly tagged according to the rules and regulations to be prescribed by the fish and game commission. [Amendment of May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 942.]

Tags.

§ 6. The fish and game commission will furnish to each person to whom a license or a permit has been issued under the provisions of this act metallic tags inscribed with the letters "C. F. & G. C." Each applicant shall pay to the fish and game commission for such tags the actual cost of said tags. One of each of said tags shall be affixed to each domesticated trout or other domesticated fish raised under the provisions of this act and transported, sold or offered for sale and said tag shall remain so affixed until said domesticated trout or other domesticated fish has been prepared for consumption. The possession of any domesticated trout or other domesticated fish without such tag affixed thereto shall be a violation of this act. Only tags so furnished shall be used; no tag shall be used more than once. [Amendment of May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 942.]

Live trout transported.

§ 7. Live trout, for propagation purposes only, may be transported when accompanied by a permit issued by the fish and game commission, and not otherwise. [Amendment of May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 942.]

Marking of package.

§ 8. Before any domesticated trout, or other domesticated fish named in the aforesaid license or permit, are shipped or transported, the package in which the same are contained must have affixed thereto a tag on which shall be plainly marked the number of pounds and kind of fish contained therein, together with the name and address of the consignee and the consignor, the initial point of billing and the point of destination. [Amendment of May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 942.]

Sale of domesticated fish.

§ 9. Any person may buy, sell or have in possession for sale for use as food at any season of the year any trout, or other domesticated fish, artificially propagated and kept; and provided, also, that the same is tagged as hereinbefore provided. The tag shall be removed only by the consumer, and when removed shall be destroyed. [Amendment of May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 942.]

Report to fish and game commission.

§ 10. Every person receiving a license, as aforesaid, to propagate and raise trout, or other domesticated fish, shall make a written report to the fish and game commission on or before December thirty-first of each year, stating the number and variety of trout, or other fish named in the permit, sold or exchanged, or given away, for use as food, or for propagation or exhibition during the preceding year. [Amendment of May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 943.]

Public nuisance.

§ 11. Any lake, pond, or any body of water maintained in violation of this act shall be deemed a continuing public nuisance, and may be abated as provided by law for the abatement of public nuisances, and each day the same is maintained in violation thereof shall be deemed a separate offense. [Amendment of May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 943.]

Penalty for violation. License revoked.

§ 12. The violation of any of the provisions of this act is hereby declared a misdemeanor and every person violating any of its provisions shall, upon conviction thereof, be fined in a sum not less than twenty-five dollars, or by imprisonment in the county jail for a term of not less than twenty days, or by both such fine and imprisonment; and all fines collected for any violation of any of the provisions of this act shall be paid into the state treasury, to the credit of the fish and game preservation fund.

If any person to whom such license or permit shall have been issued, under the provisions of this act, shall be convicted of a violation of any of the fish and game laws of this state, the state board of fish and game commissioners may revoke the license or permit of such person and thereafter no similar license or permit shall be issued to such person. [Amendment of May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 943.]

§ 13. [This section is not referred to in the amending act, but appears as section 11, as amended.]

§ 14. [This section is not referred to in the amending act, but it appears as the first paragraph of section 12, as amended.]

§ 15. This act shall take effect immediately.

Editor's note: The amendatory act of 1917 omits any mention of sections thirteen and fourteen, although section thirteen is incorporated in section eleven, and section fourteen in section twelve, as amended. It seems obvious that it was the legislative purpose, by the amendatory act, to amend the original act entirely, except the title and section one and to make a new act with twelve instead of fourteen sections. Several sections and parts of sections of the original act were consolidated, and, with new matter,

made to form practically new sections. For this reason, the original sections thirteen and fourteen are omitted, although nominally, they are still in force.

1. Employee of trout farm not in excluded class under "workmen's compensation act."—An employee of one engaged in the propagation of trout under this act, is not excluded, as a farm laborer, from the benefits of the workmen's compensation act of 1917.—*Krobitzsch v. Industrial Accident Commission* (Cal.), 185 Pac. 396.

PARASITIC FISH ACT.

ACT 1693a—An act to provide for the protection of fish and to prevent the introduction into this state of parasitized, infected or diseased fish, shellfish, mollusks, crustaceans, amphibians, aquatic plants or aquatic animal life, and declaring the same to be a public nuisance and authorizing the summary destruction of same; providing for a quarantine, for the enforcement of this act, and making a violation of the terms of this act a misdemeanor and providing for a penalty therefor.

History: Approved April 9, 1919. In effect July 22, 1919. Stats. 1919, p. 59.

Importation and transportation of diseased fish, etc. Notice to commission. Penalty.

§ 1. Any person, firm or corporation, who, for the purpose of propagation, receives, brings in, or causes to be brought into the state of California, any fish, shellfish, crustacean, amphibian, mollusk, or the ova of any fish, shellfish, crustacean, amphibian or mollusk, or any aquatic plant, or the seeds of any aquatic plant, from any state, district or foreign country, wherein any infected, diseased or parasitized fish, shellfish, crustaceans, amphibians, mollusks or aquatic plants are known to exist, or who carries

or causes to be carried from one point in this state which has been posted according to the provisions of this act to any other point in this state any infected, diseased or parasitized fish, shellfish, crustacean, amphibian or mollusk, or the ova of any such infected, diseased or parasitized fish, shellfish, crustacean, amphibian or mollusk, aquatic plant or seeds of such aquatic plant; any person, firm or corporation who receives, brings or causes to be brought into the state of California for the purpose of propagation any fish, shellfish, crustacean, amphibian, mollusk, aquatic plant or the seeds of any aquatic plant or the ova of any fish, shellfish, crustacean, amphibian or mollusk before notifying the board of fish and game commissioners of the probable date of arrival of such fish, shellfish, crustacean, amphibian, mollusk, aquatic plant or the seeds of any aquatic plant, or who places or causes or suffers to be placed any fish, shellfish, crustacean, amphibian, mollusk, aquatic plant or the seeds of any aquatic plant or the ova of any fish, shellfish, crustacean, amphibian or mollusk, in or into any private or public waters of this state before inspection by the state fish and game commission, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars, or be imprisoned in the county jail of the county in which the conviction shall be had, not less than fifty days, or by both such fine and imprisonment.

All fines and forfeitures imposed and collected for any violation of any of the provisions of this act shall be paid into the state treasury, to the credit of the fish and game preservation fund.

Inspection by commission.

§ 2. The board of fish and game commissioners, or any deputy fish and game commissioner, is hereby authorized to enter at any time any car, warehouse, depot or upon any ship, within the boundaries of the state of California, whether in the stream, or at the dock, wharf, depot, mole, or any other place, where such fish, shellfish, mollusks, amphibians, crustaceans, aquatic plants, or the seeds of any such aquatic plants, or ova of such fish, shellfish, mollusks, amphibians or crustaceans are held or stored, for the purpose of making an investigation or examination to ascertain whether such fish, shellfish, mollusks, amphibians or crustaceans, aquatic plants or the seeds of any aquatic plants, or ova of such fish, shellfish, mollusks or amphibians are infected, diseased or parasitized.

Destruction of diseased fish, etc.

§ 3. If, after such examination or inspection of any of said fish, shellfish, mollusks, amphibians, crustaceans, aquatic plants or the seeds of any aquatic plant, or ova of such fish, shellfish, mollusks, amphibians or crustaceans, the same are found to be infected, diseased or parasitized as aforesaid, then the same are hereby declared to be a public nuisance, and it shall be the duty of the state fish and game commissioners to summarily destroy said infected, diseased or parasitized fish, shellfish, mollusks, amphibians, crustaceans, aquatic plants or the seeds of any aquatic plants, or ova of such fish, shellfish, mollusks, amphibians or crustaceans.

Reshipment of diseased fish, etc.

§ 4. If, after such examination or inspection of any of said fish, shellfish, mollusks, amphibians, crustaceans, aquatic plants or the seeds of any aquatic plant, or ova of such fish, shellfish, mollusks, amphibians or crustaceans, such fish, shellfish, mollusks, amphibians, crustaceans, aquatic plants, or the seeds of any aquatic plant, or ova of such fish, shellfish, mollusks, amphibians or crustaceans, shall be deemed to be deleterious to any fish, aquatic plant or aquatic animal life of this state, it shall be the duty of the owner, person, firm or corporation having charge or possession thereof to reship said fish, shellfish, mollusk, amphibian, crustacean, aquatic plant or seeds of any aquatic plant, or ova of such fish, shellfish, mollusks, amphibians or crustaceans, within

the time ordered by the fish and game commission, or said fish, shellfish, mollusks, amphibians, crustaceans, aquatic plants or seeds of any aquatic plant, or ova of such fish, shellfish, mollusks, amphibians or crustaceans, shall be destroyed by said fish and game commission.

Notice of diseased areas to be posted and published. Expense of inspection. Tag on package containing fish, etc.

§ 5. If upon examination by the fish and game commission, infected, diseased or parasitized fish, shellfish, mollusks, amphibians, crustaceans, or aquatic plants, are found growing within this state, the said fish and game commission shall post notices describing as nearly as possible, the boundaries of such areas within which said infected, diseased or parasitized fish, shellfish, mollusks, amphibians, crustaceans, or aquatic plants are found, and shall state the period during which the taking, carrying and transportation of said infected, diseased or parasitized fish, shellfish, mollusks, amphibians, crustaceans, or aquatic plants, from said area shall be unlawful. The fact of posting of said notices shall be published once a week for four successive weeks in some newspaper of general circulation in the county in which said infected area is situated, and, if there be no such newspaper in said county, then in a newspaper of general circulation published in an adjoining county.

The expense of any inspection or examination made necessary by the provisions of this act, shall be borne by the owner or owners of said fish, shellfish, mollusks, amphibians, crustaceans, aquatic plants or the seeds of any aquatic plant, or ova of such fish, shellfish, mollusks, amphibians, and crustaceans, or the person or persons importing same into this state.

Each package containing such fish, shellfish, mollusks, amphibians, crustaceans, aquatic plants or the seeds of any aquatic plants, or ova of such fish, shellfish, mollusks, amphibians and crustaceans, must bear in a conspicuous place a tag containing the name and residence of the consignor and the name and residence of the consignee, and the exact contents of each package.

Repealed.

§ 6. All acts or parts of acts inconsistent with any of the provisions of this act are hereby repealed.

Oysters exempt.

§ 7. None of the provisions of this act shall apply to oysters.

COMMERCIAL FISHERY STATISTICS.

ACT 1693b—An act empowering the state fish and game commission to collect statistical data of the commercial fisheries and to make investigations for the purpose of gaining knowledge for the conservation of the fisheries; providing a system for obtaining an accurate record of each variety of fish caught; providing for the registration of fishing boats and their fishing equipment, and providing penalties for violations of this act.

History: Approved May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1201.

Data of commercial fisheries to be gathered.

§ 1. It shall be the duty of the fish and game commission to gather data of the commercial fisheries and to prepare the data so as to show the real abundance of the most important commercial fishes; to make such investigations of the biology of the various species of the fish as will guide in the collection and preparation of the statistical information necessary to determine evidence of overfishing; to make such

investigations as will bring to light as soon as possible those evidences of overfishing as are shown by changes in the age groups of any variety of fish; to determine what measures may be advisable to conserve any fishery, or to enlarge and assist any fishery where that may be done without danger to the supply.

Record of fish, etc., received from fishermen. When fish dealer, etc., catches own fish.

§ 2. Every person, firm or corporation engaged in the business of buying, canning, curing or preserving fish, or manufacturing fish meal, fish oil or fish fertilizer, or dealing in fish, mollusks or crustaceans, shall make a legible record in the form of a receipt, said record to be in triplicate carbon copies and on forms to be furnished by the fish and game commission, which shall show the name of the fisherman and boat or the dealer from which the fish, mollusks, or crustaceans were received, together with the date received, the weight of the fish, mollusks or crustaceans by species, the price received by the fishermen and the name of the person receiving same.

It shall be stated in the record for what use the fish are intended, whether to be sold fresh or whether they are to be canned, cured, made into fish meal or fertilizer, or any other disposition is to be made of them, or if a commercial distinction is made between different sizes or qualities of any species or variety, it must be so stated on said record or receipt, and the record shall also state if the fish were taken in foreign waters, or in the high seas off another state or foreign country. The names used in the record for designating the variety or species of fish handled must be the name which is in common usage, and the fish and game commission shall have the power to decide what is the common usage name of any variety.

The original copy of this record shall be delivered to the fisherman at the time of the purchase or receipt of the fish, the duplicate copy shall be kept by the dealer or person receiving the fish and the triplicate copy shall be delivered to the fish and game commission or any duly authorized assistant thereof.

Where a fish dealer, canner or preserver catches his own fish he shall fill out the above record as required when he purchases the fish from fisherman or dealer or if it so desires the fish and game commission may furnish a separate form for such cases. It shall be the duty of the fish and game commission to preserve all such records of the fisheries as are obtained by it in places adequately safeguarded from fire or other destructive agencies and such records are to be kept in such manner as to render them accessible for reference or research, the intention being to guard against the destruction or such neglect of the records as will detract from their future value.

Record of fish caught.

§ 3. Any master of any otter or beam trawl, paranzella net or similar gear taking fish in the public waters of this state, or taking fish by such nets without the state and bringing the same within the state, shall keep a record in a book, to be furnished by said fish and game commission, stating the time and place of each haul made on each trip, the duration of the haul and approximate catch according to species or variety made in each haul, the time of the voyage and the total catch by species as weighed out when landed; provided, further, that where the owner of the vessel or boat is the dealer selling such fish, the information must be kept by the dealer in a form approved by the fish and game commission.

Annual statement of fish canneries.

§ 4. Every person, firm or corporation engaged in the business of canning, curing or preserving fish or manufacturing fishery products from fish or fish offal, shall render on or before the fifteenth day after the last day of each calendar year for the preceding year, a statement on forms to be furnished by the board of fish and game com-

missioners, showing name of person, firm or corporation, location of plant, kind of business, capital invested, number of persons employed, number of months operating, the amount and kind of fishery products canned, preserved or manufactured.

Annual statement of fishing boat owners.

§ 5. Every person, firm or corporation owning or operating any boat engaged in the business of fishing for profit in the public waters of this state or who catch fish without the state and bring them into the state, shall on or before April first of each calendar year, file with the board of fish and game commissioners on a form to be provided by the fish and game commission, a statement giving the dimensions of the fishing boat or boats operated by said person, firm or corporation, together with the motive power, number in crew, equipment and description of fishing gear.

Right to enter premises. Penalty.

§ 6. The board of fish and game commissioners or their duly appointed agent shall have the right to board any fishing boat, or enter any place of business where fish are sold fresh, or canned, or cured, or any reduction works, or place of business where fish meal is made, and to examine any and all books and records containing any account of fish caught, bought or sold.

Every person violating any of the provisions of this act, or who fails to permit an inspection as provided in section six of this act, or refuses to produce any books or records containing any record of fish bought or sold shall be guilty of a misdemeanor and punished by a fine not less than one hundred dollars, nor more than five hundred dollars, or imprisoned in the county jail in the county in which the conviction shall be had, not less than fifty days, nor more than six months, or by both such fine and imprisonment. All fines and forfeitures imposed and collected under this act shall be paid into the state treasury to the credit of the fish and game preservation fund.

FISH SUPPLY CONSERVATION.

ACT 1693c—An act to conserve the fish supply in California by empowering the fish and game commission to regulate and control the handling of fish or other fishery products for the purpose of preventing deterioration or waste; to establish grades to which the fish or other fishery products offered for delivery to canners or preservers or to the fresh fish market must conform; to make regulations to insure the proper handling and delivery of fish or fishery products to canners, preservers or fresh fish dealers; to regulate and control the use of fish or other fishery products for reduction purposes, and to provide penalties for any violation of any of the provisions of this act.

History: Approved May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1203.

Jurisdiction over fish industry.

§ 1. The fish and game commission is hereby vested with jurisdiction to regulate and control fishing boats, barges, lighters or tenders, commercial fishermen, fish canners, packers or preservers, fish reduction plants, dealers in fish, mollusks or crustaceans or other fishery products, in so far as it may be necessary to insure the taking, catching and delivery of the fish or other fishery products in a wholesome and sanitary condition to canning, packing and preserving plants or to any fresh fish dealer, and to prevent deterioration and waste of fish or other fishery products. Any fish and game commissioner or duly appointed assistant or employee of the fish and game commission shall have the authority to enter any canning, packing, preserving or reduction plant, or place of business where fish or other fishery products are packed or preserved, bought or sold, or to board any fishing boat, barge, lighter or tender for the purpose of carrying out the provisions of this act.

Establishment of grades.

§ 2. The fish and game commission may establish grades for different varieties of fish or other fishery products, which said grades must be reached and conformed to by the commercial fishermen who deliver fish or other fishery products to canners, packers or preservers of fish or to fresh fish dealers, or to reduction plants, and every canner, packer or preserver of fish or fish dealer or owner of reduction plant must conform to such grade.

Enforcement.

§ 3. The fish and game commission is hereby vested with full power, authority and jurisdiction to make and enforce such regulations as may be necessary or convenient for carrying out any power, authority or jurisdiction conferred under this act.

Disposal of waste.

§ 4. No person, firm or corporation engaged in the business of catching, buying, selling, canning, packing or preserving fish, shall suffer or permit, or cause any preventable deterioration, or wilfully do any act that might cause deterioration or waste of any fish caught or taken within or without the waters of this state and brought into this state, and no person, firm or corporation engaged in the business of catching, buying, selling, canning, packing or preserving fish or other fishery products shall sell or offer for sale or delivery, or deliver any fish or other fishery products, to any reduction plant or divert fish or other fishery products for reduction purposes without first having written permission from the fish and game commission, and no reduction plant shall accept or receive any fish, other than fish offal, from any person, firm or corporation without such written permission.

Canneries, etc., may not take more fish than can be handled.

§ 5. No person, firm or corporation engaged in the business of taking or catching fish or other fishery products shall take, catch or kill more fish or other fishery products than the boat or boats operated by said person, firm or corporation can handle without preventable deterioration, waste or spoilage, and no person preserving fish or other fishery products shall accept or receive or agree to accept or receive more fish or other fishery products than the canning, packing or preserving plant or plants of such person, firm or corporation can handle without preventable deterioration, waste or spoilage, and no person dealing in fish shall take, catch or kill, accept or receive, or agree to accept or receive, more fish or other fishery products than such person, firm or corporation is able to handle without preventable deterioration, waste or spoilage.

Complaint of violation of act. Hearing.

§ 6. Complaint may be made by any officer charged with the enforcement of the fish and game laws, or any person having knowledge of a violation, against any person, firm or corporation violating any of the provisions of this act or violating any of the rules or regulations made by the fish and game commission under the provisions of this act. Said complaints shall be in writing, setting forth the particular offense charged to have been committed, a copy of which shall be filed with the board of fish and game commissioners and a copy served on said offender, together with a notice setting forth the time and place of hearing, which hearing must be held in the county in which said violation is alleged to have been committed. The person, firm or corporation charged must appear and answer either in person or by attorney, and either orally or in writing, within five days after notice having been served. If the person charged fails to appear or appears and denies the charge, the board of fish and game commissioners or any deputy or employee appointed by said board of fish and game commissioners to take testimony, shall proceed to hear the testimony offered and if the person, firm or corporation so charged is found guilty of the offense charged, the board of fish and game commissioners

may suspend for a period not to exceed ninety days, any license issued by any state board or officer to such person, firm or corporation, to take, catch, kill, buy, sell, can or preserve fish or fishery products, and no license shall be issued during such period of suspension.

Each member of the board of fish and game commissioners or any of the deputies or employees designated to take testimony at the hearing provided herein shall have power to administer oaths, take affidavits and issue subpoenas for the attendance of witnesses at such hearing.

Superior court may compel attendance of witnesses.

The superior court in and for the county, or city and county in which any proceeding may be held under the authority of this section, shall have power to compel the attendance of witnesses, the giving of testimony, and the production of papers, as required by any subpoena issued under authority of this section. The fish and game commission, or representative of the commission before whom the testimony is to be given or produced may in the case of refusal of any witness to attend or testify or produce any papers required by such subpoena, report to the superior court in which the proceeding is pending by petition setting forth that due notice has been given of the time and place of the attendance of said witness or the production of said papers and that the witness has been summoned in the manner prescribed in this act and that the witness has failed and refused to attend or produce the papers required by the subpoena before the commission or its representatives, in the case or proceeding named in the notice of time and place of hearing and subpoena, or has refused to answer questions propounded to him in the course of said proceeding, and ask an order of said court to compel the witness to attend and testify or produce said papers before the commission or its representatives.

Order directing witness to appear.

The court upon the petition of the commission or its representatives, shall enter an order directing the witness to appear before the court at any time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he has not attended and testified or produced said papers before the commission or its representatives. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission or its representatives the court shall thereupon enter an order that said witness shall appear before the commission or its representatives at the time and place entered in said order, and testify or produce the required papers, and upon failure to obey said witness shall be dealt with as for contempt of court.

Taking of depositions of witnesses.

The commission or its representatives, or any party designated by the fish and game commission, may in any investigation or hearing before the commission, or its representatives, cause the deposition of witnesses, residing within or without the state, to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state, and to that end may compel the attendance of witnesses and the production of documents and papers.

"FISH AND GAME PRESERVATION FUND."

ACT 1694—An act to create a fish [and] game preservation fund and to unite the "fish commission fund," and the "game preservation fund" into a common fund to be known as "fish and game preservation fund."

History: Approved March 15, 1909, Stats. 1909, p. 392. Amended April 8, 1911, Stats. 1911, p. 807.

Creation of fund. Where kept. To what applicable.

§ 1. There is hereby created a fund to be known as and called "fish and game preservation fund" which said fund shall be kept in the state treasury, and shall be applicable to the payment of the expense of propagating, protecting, restoring and introducing fish in the public waters of this state, and to the propagation, protection, restoration and transferring of game birds and animals in the state, and to the introduction of game birds and animals into the state, and to the payment of the expenses incurred in the prosecution of offenders against the fish and game, and fish and game license laws of the state, and for the cost of acquisition, construction and maintenance of fish hatcheries in the state, and to all other necessary expenses, approved by the fish and game commissioners. [Amendment approved April 8, 1911. Stats. 1911, p. 807.]

Definition of terms.

§ 2. Wherever the term "fish commission fund," and "game preservation fund" appears in any of the codes or statutes of this state, it shall be deemed and construed to be "fish and game preservation fund" herein created, and all moneys now in said funds shall be transferred to the fish and game preservation fund.

Repeal of conflicting acts.

§ 3. All acts and parts of act[s] so far as they conflict with this act are hereby repealed.

DISPOSITION OF FINES AND FORFEITURES.

ACT 1694a—An act providing for the disposition of fines and forfeitures collected in all prosecutions for violations of the laws of the state referring to wild birds, wild mammals and fishes.

History: Approved May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 685.

Disposition of fines collected for violation of fish and game laws.

§ 1. All fines and forfeitures imposed or collected in any of the courts of this state for violations of any of the laws or acts providing for the protection or preservation of any of the wild birds, wild mammals or fishes, shall be paid by the court imposing or collecting the same into the state treasury to the credit of the fish and game preservation fund.

§ 2. All acts or parts of acts in so far as they conflict with this act are hereby repealed.

FISH AND GAME DISTRICT ACT OF 1917.

ACT 1696—An act to divide the state of California into fish and game districts and to repeal an act entitled "An act to divide the state of California into fish and game districts and to repeal an act entitled 'An act to divide the state of California into six fish and game districts,' approved March 21, 1911, and all acts or parts of acts inconsistent herewith," approved May 15, 1915.

History: Approved May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1047. Amended May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 427. Prior act of March 21, 1911, Stats. 1911, p. 425, amended entirely June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 988. Repealed by the act of May 19, 1915. In effect August 8, 1915. Stats. 1915, p. 589, which was in turn repealed by the present act.

State divided into fish and game districts.

§ 1. The state of California is hereby divided into fish and game districts to be known and designated as: Fish and game district one, fish and game district one and one-half, fish and game district one "a," fish and game district one "b," fish and game district one "c," fish and game district one "d," fish and game district one "e," fish

and game district one "f," fish and game district one "g," fish and game district one "h," fish and game district one "i," fish and game district one "j," fish and game district one "k," fish and game district one "l," fish and game district one "m," fish and game district two, fish and game district two "a," fish and game district three, fish and game district three "a," fish and game district three "b," fish and game district three "c," fish and game district three "d," fish and game district three "e," fish and game district four, fish and game district four and one-half, fish and game district four "a," fish and game district four "b," fish and game district four "c," fish and game district four "d," fish and game district four "e," fish and game district four "f," fish and game district five, fish and game district six, fish and game district seven, fish and game district seven "a," fish and game district eight, fish and game district nine, fish and game district ten, fish and game district eleven, fish and game district twelve, fish and game district twelve "a," fish and game district twelve "b," fish and game district thirteen, fish and game district fourteen, fish and game district fifteen, fish and game district sixteen, fish and game district seventeen, fish and game district eighteen, fish and game district nineteen, fish and game district twenty, fish and game district twenty "a," fish and game district twenty-one, fish and game district twenty-two, fish and game district twenty-three, fish and game district twenty-four, fish and game district twenty-five and fish and game district twenty-six. [Amendment of May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 428.]

District one.

§ 2. Fish and game district one shall consist of and include the following counties: Yuba, Calaveras, Tuolumne, Mariposa, Madera and Kings, and those portions of Modoc county not included in fish and game districts one "b" and one "c"; those portions of Trinity county not included in fish and game district one "d"; those portions of Shasta county not included in fish and game district one "e"; those portions of Lassen county not included in fish and game districts one "f" and twenty-five; those portions of Tehama county not included in fish and game districts one "g" and twelve "a"; those portions of Plumas county not included in fish and game districts one "h" and twenty-five; those portions of Butte county not included in fish and game districts twelve "a" and twelve "b"; those portions of Sutter county not included in fish and game district twelve "b"; those portions of Sierra and Nevada counties not included in fish and game district twenty-three; those portions of Placer county not included in fish and game district twenty-three; those portions of El Dorado county not included in fish and game districts one "i" and twenty-three; those portions of Sacramento county not included in fish and game district twelve "b"; those portions of Amador county not included in fish and game districts one "j" and twenty-four; those portions of Alpine county not included in fish and game districts one "j" and twenty-four; those portions of San Joaquin county lying east and north of the east or right-hand bank of San Joaquin river and not included in fish and game districts three and twelve "b"; those portions of Stanislaus county lying east of the west bank of the San Joaquin river; those portions of Merced county lying east of the west bank of the San Joaquin river; those portions of Fresno county lying east of the west bank of Fresno slough, Fish slough and Summit lake not included in fish and game districts one "k" and twenty-six; those portions of Kern county lying east of the west bank of Bull slough and the west and south banks of Buena Vista lake to the southeast corner of said lake and lying north of a line extended from this point directly east and intersecting the Tejon state highway and lying east of the said state highway from the above-mentioned point of intersection to where the said state highway crosses the northern boundary line of Los Angeles county, not included in fish and game districts one "l" and one "m" and those portions of Tulare county not included in fish and game district one "l" [Amendment of May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 428.]

District one and one-half.

§ 2½. Fish and game district one and a half shall consist of and include those portions of Del Norte county not included in fish and game districts five and six; those portions of Siskiyou county not included in fish and game district one "a"; those portions of Humboldt county not included in fish and game districts six, seven, seven "a," eight, and nine. [New section added May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 432.]

One "A."

§ 3. Fish and game district one "A" shall consist of and include all of sections thirteen to thirty-six, inclusive, township forty-seven north, range nine west; all of sections one to six, inclusive, township forty-six north, range nine west; all those portions of sections seven to thirteen, inclusive, township forty-six north, range nine west; lying north of and including the waters of the Klamath river in the said sections, all lying within the county of Siskiyou.

One "B."

§ 4. Fish and game district one "B" shall consist of and include all lands within the county of Modoc lying within the following boundaries: Starting at a point where Boles creek crosses the national forest boundary in section twenty-nine, township forty-six north, range nine east; thence along said Boles creek to a point where the creek crosses the section line between sections nine and ten, township forty-five north, range nine east; thence due south to where the Deer hill and Canby wagon road crosses the section line between sections thirty-three and thirty-four, township forty-three north, range nine east; thence in a northwesterly direction along said wagon road to where it crosses the national forest boundary; thence along said boundary to place of beginning.

One "C."

§ 5. Fish and game district one "C" shall consist of and include all lands within the county of Modoc within the following boundaries: Beginning at the northwest corner of section three, township forty-one north, range fourteen east; thence in a southeasterly direction along the summit of the main ridge between Shield's creek and Pine creek to the summit of the Warner mountains to the north of Warner peak (Buck Mt.) in section eleven, township forty-one north, range fifteen east; thence in a southerly direction along the summit of the Warner mountains to the first peak south of Pine Creek basin, near the quarter section corner between sections thirty-five and thirty-six, township forty-one north, range fifteen east; thence in a westerly direction along the main ridge south of the north fork of Fitzhugh creek to the national forest boundary in section thirty-three, township forty-one north, range fourteen east; thence along said boundary to place of beginning.

One "D."

§ 6. Fish and game district one "D" shall consist of and include that certain territory embraced in the Trinity national forest, more particularly described as follows, to wit:

(a) Sections nineteen, thirty, thirty-one and thirty-two of township thirty-four north, range eleven west; sections five, six, seven, eight, seventeen, eighteen, nineteen, twenty, thirty, and thirty-one of township thirty-three north, range eleven west; sections one, two, three, four, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, thirty-three, thirty-four, thirty-five, thirty-six of township thirty-four north, range twelve west; sections one, two, three, four, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, nineteen, twenty, twenty-one, twenty-two, twenty-three,

twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six of township thirty-three north, range twelve west; sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-nine and thirty of township thirty-two north, range twelve west; all in Mount Diablo base and meridian in the state of California; and

(b) Sections twenty-eight, thirty-one, thirty-two, thirty-three of township four north, range eight east; and sections four, five, six, seven, eight, nine, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-two, thirty-three, township three north, range eight east, all in Humboldt base and meridian in the state of California.

One "E."

§ 7. Fish and game district one "E" shall consist of and include all lands lying within the county of Shasta within the following boundaries: Beginning at a point on the McCloud river where the township line between townships thirty-six and thirty-seven north, range three west, crosses the McCloud river; thence in a southerly direction following the east bank of said river to the point where the ridge north of Mathless creek meets the McCloud river; thence in an easterly direction along the summit of said ridge and along the summit of the ridge dividing the Salt creek drainage area from the Nasoni creek drainage area; thence along the summit of the ridge dividing the Salt creek drainage area and the north fork of Squaw creek to Squaw creek; thence north-erly along the west bank of said creek to the point where the township line between townships thirty-six and thirty-seven north, range two west, crosses the said creek; thence due west along the said township line and along the township line between townships thirty-six and thirty-seven north, range three west, to the point of beginning.

One "F."

§ 8. Fish and game district one "F" shall consist of and include all lands within the county of Lassen within the following boundaries: Comprising an area including all of townships thirty-two and thirty-three north, range ten east, and all of that portion of township thirty-two north, range eleven east, falling on the west side of Eagle lake.

One "G."

§ 9. Fish and game district one "g" shall consist of and include all lands within the county of Tehama within the following boundaries: Commencing at a point in section eighteen, township twenty-five north, range two east, where Deer creek intersects the range line between ranges one and two east and running thence north along the range line between ranges one and two east, allowing for proper offsets and corrections, to the northeast corner of section thirty-six, township twenty-seven north, range one east; thence west to a point where Mill creek intersects the national forest boundary; thence in a northeasterly direction along the main channel of Mill creek to a point where the said creek crosses the range line between ranges two and three east; thence south along the range line between ranges two and three east, to the southeast corner of section twenty-five, township twenty-seven north, range two east, thence west to the southwest corner of said section twenty-five; thence south to the southeast corner of section thirty-five, township twenty-seven north, range two east; thence east along township line to a point where Deer creek intersects the township line between township twenty-six north and township twenty-seven north, thence in a southwesterly direction along the main channel of Deer creek to the point of beginning. [Amendment of May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 429.]

One "H."

§ 10. Fish and game district one "H" shall consist of and include all lands within the county of Plumas within the following boundaries: Beginning at the confluence of Willow creek with the Feather river below Hartman bar; thence northerly along Willow creek to where the Claremont stock driveway crosses the head of this stream; thence in an easterly direction along the Claremont stock driveway to Claremont peak; thence south along the summit of the ridge to the middle fork of the Feather river; thence southwesterly along the Feather river to the point of beginning.

One "I."

§ 11. Fish and game district one "i" shall consist of and include all lands within the county of Placer, within the following boundaries: Commencing at the junction of the north fork of the middle fork of the American river and the middle fork of the American river; thence northeasterly up the north fork of the middle fork to Grouse creek; thence northeasterly up main Grouse creek to its intersection with the township line between townships fifteen north and fourteen north, range thirteen east; thence easterly along said township line to the township corner of township fifteen north, ranges thirteen and fourteen east; thence south along range line between township fourteen north, ranges thirteen and fourteen east to the corner of sections twelve and thirteen, township fourteen north, range thirteen east, and sections seven and eighteen, township fourteen north, range fourteen east; thence easterly along section line between sections seven and eighteen, sections eight and seventeen to the Big Meadow trail; thence southerly along said Big Meadow trail to the line between sections twenty and twenty-nine, township fourteen north, range fourteen east; thence east along said section line to the Rubicon river; thence southwesterly down the Rubicon river to intersection of the line between sections six and seven, township thirteen north, range fourteen east; thence west along said section line to range line between township thirteen north, ranges thirteen east and fourteen east; thence west along section line between sections one and twelve, township thirteen north, range thirteen east, to Wallace canyon creek; thence southwesterly down Wallace canyon creek to its confluence with Long canyon; thence westerly down Long canyon to its confluence with the Rubicon river; thence westerly down said river to its confluence with the middle fork of the American river; thence down said river to place of beginning. [Amendment of May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 430.]

One "J."

§ 12. Fish and game district one "J" shall consist of and include all lands within the counties of Amador and Alpine within the following boundaries: Commencing at a point between sections thirteen and eighteen, township eight north, range fourteen and fifteen east, where the Alpine state highway enters section eighteen, township eight north, range fifteen east; thence northeasterly along the south side of said Alpine highway right of way to the corner of townships eight and nine north, ranges fifteen and sixteen east; thence east along line between townships eight and nine north, range sixteen east; thence east along line between townships eight and nine north, range seventeen east, to the intersection of Cedar Camp trail; thence southerly along Cedar Camp trail to intersection of said Cedar Camp trail with the Mokelumne river; thence down the north bank of the Mokelumne river in a southwesterly direction to the intersection of range line between township seven north, ranges fourteen and fifteen east; thence north along range line between township eight north, ranges fourteen and fifteen east to the intersection of Alpine state highway to the place of beginning.

One "K."

§ 13. Fish and game district one "K" shall consist of and include all lands in the county of Fresno within the following boundaries: Beginning at the confluence of

the north fork of Kings river and the middle fork of Kings river; thence easterly along the summit of the divide separating the drainage area of the north fork of Kings river from the drainage area of the middle fork of Kings river to Spanish mountain; thence southeasterly along the summit of Tombstone ridge, which separates the drainage area of Crown creek from that of Tombstone creek, to the middle fork of Kings river; thence westerly along the north bank of the middle fork of Kings river to the point of beginning.

One "L."

§ 14. Fish and game district one "L" shall consist of and include the area composing the watershed of Chimney creek north of the Sequoia national forest boundary and all of the watershed of Long valley; all lying within the counties of Tulare and Kern.

One "M."

§ 14½. Fish and game district one "m" shall consist of and include all of that certain territory within the county of Kern, bounded and described as follows: Beginning at the San Joaquin Power Company's plant located on the bank of the Kern river, in section six, township twenty-nine south, range thirty east, Mount Diablo base and meridian, thence running in a northeasterly direction following the south bank of the Kern river to the mouth of Clear creek, thence following Clear creek in a southerly direction to the intersection of the Caliente-Kernville highway, thence following said highway in a southerly direction to the intersection of Basin creek; thence following the northerly bank of Basin creek in a southwesterly direction to the intersection of the national forest boundary line as established January 1, 1919, thence following said national forest boundary north and west to the San Joaquin Power Company's plant at the place of beginning. [New section added May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 432.]

District Two.

§ 15. Fish and game district two shall consist of and include all those portions of Mendocino county not included in fish and game districts ten and two "A"; all those portions of Glenn county not included in fish and game districts two "A" and twelve "A"; all those portions of Lake county not included in fish and game district two "A"; all those portions of Colusa county not included in fish and game districts twelve "A" and twelve "B"; all those portions of Yolo county not included in fish and game district twelve "B"; all those portions of Solano county not included in fish and game districts twelve and twelve "B"; all those portions of Napa county not included in fish and game district twelve; all those portions of Sonoma county not included in fish and game districts ten and twelve; all those portions of Marin county not included in fish and game districts ten, eleven and twelve.

Two "A."

§ 16. Fish and game district two "A" shall consist of and include all lands lying within the following boundaries, located in the counties of Mendocino, Lake and Glenn: Beginning at the summit of Hull mountain in Mendocino county, in the southwest corner of section two, township nineteen north, range ten west; thence in a northeasterly direction down Hull creek (sometimes known as Red Rock creek) to its junction with Sand creek, thence southeasterly down Sand creek to its junction with Corbin creek, thence in an easterly direction up Corbin creek to section thirty-six, township twenty north, range eight west, thence in a southerly direction up a ravine to the Sheetiron-Elk creek road on the summit of the Coast Range mountains in section twelve, township nineteen north, range eight west, thence southwesterly along the road and summit over Sheetiron mountain to Low gap, where the Bloody Rock trail crosses the summit in section twenty-seven, township nineteen north, range eight west, thence in a westerly

direction down the Bloody Rock trail and Cold creek to South Eel river in section twenty-six, township nineteen north, range nine west, thence down the river to the mouth of a ravine in the southeast quarter of section twenty-seven, township nineteen north, range nine west, thence in a northwesterly direction up the ravine through sections twenty-seven and twenty-eight to the summit of Boardman ridge, thence in a northwesterly direction up Boardman ridge to the summit of Hull mountain.

District Three.

§ 17. Fish and game district three shall consist of and include those portions of Contra Costa county not included in fish and game districts twelve and twelve "B"; those portions of San Joaquin county not included in fish and game districts one and twelve "B"; those portions of Alameda county not included in fish and game districts twelve and thirteen; those portions of San Francisco county not included in fish and game districts ten, eleven, twelve and thirteen; those portions of San Mateo county not included in fish and game districts ten and thirteen; those portions of Santa Clara county not included in fish and game district thirteen; those portions of Santa Cruz county not included in fish and game districts three "A," ten, fourteen, fifteen and seventeen; those portions of San Benito county not included in fish and game district three "B"; those portions of Monterey county not included in fish and game districts sixteen, seventeen and eighteen; those portions of San Luis Obispo county not included in fish and game district eighteen; those portions of Santa Barbara county not included in fish and game districts three "C" and nineteen; those portions of Ventura county not included in fish and game districts three "D" and nineteen; those portions of Stanislaus county not included in fish and game district one; those portions of Merced county not included in fish and game district one; those portions of Fresno county not included in fish and game districts one, one "K" and twenty-six; those portions of Kern county not included in fish and game districts one and one "L."

Three "A."

§ 18. Fish and game district three "A" shall consist of and include that certain territory embraced in California Redwood park, Santa Cruz county, commonly known as the "Big Basin," and more particularly described as follows, to wit:

The east half and the east half of the west half of section one, the north half of the northeast quarter and the northeast quarter of the northwest quarter of section twelve, all in township nine south, range four west; the west half of section four, all of sections five and six, the north half of the northwest quarter, the northeast quarter, the east half of the southeast quarter of section seven, the north half, the southwest quarter, the north half of the southeast quarter and the southwest quarter of the southeast quarter of section eight, the north half of the northwest quarter, the southwest quarter of the northwest quarter and the northwest quarter of the southwest quarter of section nine, all in township nine south, range three west; all that portion of the southwest quarter of section twenty-eight lying south and west of the road known as the "China grade," all that portion of the east half of section twenty-nine lying south and west of said "China grade," the east half of section thirty-two, the southwest quarter and that portion of the northwest quarter of section thirty-three lying south of said "China grade," all in township eight south, range three west; all townships and ranges mentioned herein being referred to Mount Diablo base line and meridian.

Three "B."

§ 19. Fish and game district three "B" shall consist of and include those certain lands within the counties of San Benito and Monterey embraced within the Pinnacles national monument, and more particularly described as follows, to wit: All of sections twenty to twenty-nine, inclusive, all of sections thirty-three, thirty-four and thirty-five

and the west half of section thirty-six of township sixteen south, range seven east; the west half of section one, all of sections two and three, the east half of section four, the east half of section nine, all of sections ten and eleven, the west half of section twelve, the west half of section thirteen and all of sections fourteen and fifteen of township seventeen south, range seven east. All townships and ranges mentioned herein being referred to Mount Diablo base and meridian.

Three "C."

§ 20. Fish and game district three "C" shall consist of and include all lands within the county of Santa Barbara within the following boundaries: Beginning at the summit of Mission Pine mountain, running thence northwest to the head of Mazuna creek; thence along the north bank of said creek to its junction with the Sisquoc river; thence in an easterly direction along the south bank of the Sisquoc river to the junction of the south fork of the Sisquoc; thence along the west bank of the south fork of the Sisquoc river to the point of beginning.

Three "D."

§ 21. Fish and game district three "D" shall consist of and include all lands lying within the county of Ventura within the following boundaries: Beginning at the corner common to townships four and five north, ranges nineteen and twenty west, San Bernardino meridian; running thence west with the line of townships four and five north, to the summit of the divide between the watershed of Sespe creek and Santa Paule[a] creek; thence westerly along the summit of the divide south of Sespe river to Ortega hill at the head of upper north fork of Matilija creek and Cherry creek; thence down Cherry creek along the Cuyama trail to Sespe river; thence up the Sespe river and Adobe Springs canyon along the Cuyama trail to the summit of Pine mountain; thence easterly following the summit of the Pine mountain divide to a point on Alamo mountain due north of the point of beginning; thence south to point of beginning.

Three "E."

§ 21½. Fish and game district three "e" shall consist of and include all those portions of township seven south, range three east, Mount Diablo base and meridian, more particularly described as follows: All of sections three, four and nine; the southwest quarter of the southwest quarter of section two; the southeast quarter of section five; the northeast quarter of the northeast quarter of section eight; all of those portions of sections sixteen and seventeen and of the southern three-quarters of section eight lying east of the northeast boundary line of the Rancho Canada del Pala; and all of those portions of sections ten, fifteen and sixteen, and of the west quarter of section eleven, lying to the north of Sulphur creek. [New section added May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 432.]

District Four.

§ 22. Fish and game district four shall consist of and include all those portions of Los Angeles county not included in fish and game districts four "b," four "f," nineteen, twenty and twenty "a"; all those portions of San Bernardino county not included in fish and game districts four "a," four "b" and twenty-two; all those portions of Orange county not included in fish and game districts four "c" and nineteen; all those portions of Riverside county not included in fish and game districts four "c," four "d" and twenty-two; all those portions of San Diego county not included in fish and game districts four "e," nineteen and twenty-one; all those portions of Imperial county not included in fish and game district twenty-two. [Amendment of May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 430.]

District four and one-half.

§ 22½. Fish and game district four and one-half shall consist of and include the counties of Mono and Inyo. [New section added May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 432.]

Four "A."

§ 23. Fish and game district four "A" shall consist of and include a portion of the Angeles national forest lying within the county of San Bernardino and more particularly described as follows, to wit: All of that tract of land situate, lying and being within the following boundary:

Beginning at a point in the Angeles forest reserve in San Bernardino county where the ravine of the Mohave river crosses the north line of township two north range four west, thence due east along the township lines to a point where the ravine of Deep creek crosses such township line; thence easterly following the ravine of said Deep creek to a point marking the confluence of the ravines of Deep creek and Holcomb creek; thence east and north following the ravine of Holcomb creek to Holcomb valley; thence easterly along the public road to the junction thereof with a public road leading southeasterly to the Rose mine; thence following the aforesaid road to Rose mine in a southeasterly direction to a point where it crosses the east line of township two north range two east; thence south along the easterly lines of township two north range two east, township one north range two east and township one south range two east to the southeast quarter of township one south range two east; thence due west along the township line to the southwest corner of township one south range one east; thence due north along the west line of township one south range one east to the ravine of Mill creek; thence west along the ravine of Mill creek to a point where Mill creek crosses the west line township one south range one west; thence north along the west line of township one south range one west and township one north range one west to the southeast corner of section twenty-four, township one north range two west; thence due west along the southerly line of sections twenty-four, twenty-three, twenty-two, twenty-one, twenty and nineteen of township one north range two west and the southerly line of sections twenty-four, twenty-three, twenty-two and twenty-one, township one north range three west to the line of the Angeles forest reserve; thence in a general northwesterly direction to a point where the ravine of Devil's canyon crosses the said Angeles forest reserve line; thence northerly along the ravines of Devil's canyon and Sawpit canyon to the place of beginning, all of said described area being within the boundaries of the Angeles forest reserve.

Four "B."

§ 24. Fish and game district four "B" shall consist of and include a part of the westerly portion of the Angeles national forest lying within the counties of San Bernardino and Los Angeles and more particularly described as follows, to wit: Sections six to ten, inclusive, sections fifteen to twenty-two, inclusive, and sections twenty-seven to thirty-two, inclusive, of township two north, range seven west; sections seven, eighteen, nineteen, thirty and thirty-one of township three north, range seven west; sections one to twenty-two, inclusive, and those portions of sections twenty-three and twenty-four within the Angeles national forest, all in township one north, range eight west; all of township two north, range eight west; sections seven to thirty-six, inclusive, of township three north, range eight west; sections one to twenty-four, inclusive, the west half of section twenty-five and all of sections twenty-six, twenty-seven, and twenty-eight in township one north, range nine west; all of township two north, range nine west; sections seven to thirty-six, inclusive, in township three north, range nine west; sections one to eighteen, inclusive, those portions of sections nineteen, twenty, twenty-one and twenty-two within the Angeles national forest and all of sections twenty-three

and twenty-four of township one north, range ten west; all of township two north, range ten west; sections seven to thirty-six, inclusive, of township three north, range ten west; all of sections one to fourteen, inclusive, and those portions of sections fifteen, sixteen, seventeen, eighteen, twenty-two, twenty-three and twenty-four within the Angeles national forest in township one north, range eleven west; all of township two north, range eleven west; that portion of section two lying south and west of a line drawn from the northwest corner to the southeast corner of said section, all of sections three to thirty-six, inclusive, in township three north, range eleven west; all of sections one and two and those portions of section three, four, five, six, eleven, twelve and thirteen within the Angeles national forest in township one north, range twelve west; all of township two north, range twelve west; all of sections one to five, inclusive, those portions of sections six and seven lying south and east of a line drawn from the northeast corner of section six to the southwest corner of section seven and all of sections eight to thirty-six, inclusive, in township three north, range twelve west; all of sections one to seventeen, inclusive, those portions of sections eighteen, twenty, twenty-one and twenty-two within the Angeles national forest, all of sections twenty-three to twenty-six, inclusive, and those portions of sections twenty-seven, thirty-five and thirty-six within the Angeles national forest in township two north, range thirteen west; all of sections thirteen to thirty-six, inclusive, in township three north, range thirteen west; sections one, two and three and those portions of sections ten, eleven, twelve and thirteen within the Angeles national forest in township two north, range fourteen west. All townships and ranges mentioned herein being referred to San Bernardino base line and meridian.

Four "C."

§ 25. Fish and game district four "C" shall consist of and include that certain territory embraced within the Cleveland national forest, more particularly described as follows, to wit: The east half of township five south, range seven west; all of township five south, range six west, except sections one, two, three, ten, eleven, and twelve; all of township six south, range six west; the west half of township six south, range five west; all of township seven south, range six west; the west one-half of township seven south, range five west; all in San Bernardino base and meridian, in the state of California.

Four "D."

§ 26. Fish and game district four "D" shall consist of and include all of townships six south, range five east; township six south, range six east; and township seven south, range six east, all lying within the county of Riverside.

Four "E."

§ 27. Fish and game district four "e" shall consist of and include all of sections twenty-seven to thirty-four, inclusive, township fifteen south, range five east; all of township fourteen south, range five east; all of sections thirteen, twenty-four, twenty-five, thirty-six, township fifteen south, range four east; all of sections five, six, seven, eight, township sixteen south, range six east; all of sections one to twelve, inclusive, township sixteen south, range five east; all of sections one, two, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, twenty-one, twenty-three, twenty-four and the east half of sections three, seventeen, and twenty and the northeast quarter of section twenty-nine, the north half of sections twenty-five, twenty-six, and twenty-eight and the north half of section twenty-two, township sixteen, south, range four east. The west half of sections eighteen, nineteen and the northwest quarter of section thirty, township sixteen south, range five east, all located within the county of San Diego. [Amendment of May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 431.]

Four "F."

§ 28. Fish and game district four "f" shall consist of and include all of townships eight and nine north, range fourteen west, lying within the counties of Los Angeles and Kern. [Amendment of May 13, 1919. In effect July 22, 1919, Stats. 1919, p. 431.]

Five.

§ 29. Fish and game district five shall consist of and include the ocean water and the tide lands of the state to high water mark lying between the northern boundary of the state and a line extending west from the extreme westerly point of Point St. George in Del Norte county, and shall exclude all sloughs, streams and lagoons in said county, except Smith river from its mouth to Bailey's riffle.

Six.

§ 30. Fish and game district six shall consist of and include the ocean waters and the tide lands of the state to high water mark lying between a line extending west from the extreme westerly point of Point St. George, in Del Norte county, and a line extending due west from the extreme westerly point of Mussel point, in Humboldt county, and shall exclude all sloughs, streams and lagoons in said counties, except the Klamath river from its mouth to the mouth of McGarvey creek.

Seven.

§ 31. Fish and game district seven shall consist of and include the ocean waters and the tide lands of the state to high water mark lying between a line extending due west from the extreme point of Mussel point, in Humboldt county, and the southern boundary of Humboldt county; and shall exclude the ocean waters between the north and the south jetties at the entrance to Humboldt bay from the westerly end of each of said jetties in the Pacific ocean to their respective aprons on the shores of Humboldt bay, and shall also exclude all sloughs, streams and lagoons.

Seven "A."

§ 32. Fish and game district seven "a" shall consist of and include the waters of Eel river from its mouth to the east boundary line of township three north, range two west, Humboldt base and meridian, and the waters of Salt river, a tributary of Eel river, as far up as the high tide line. [Amendment of May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 431.]

Eight.

§ 33. Fish and game district eight shall consist of and include the waters and tide lands to high water mark of Humboldt bay lying north of a straight line running east from the center of apron at the approach of [to] the south jetty at the entrance of Humboldt bay to the east shore line of said bay and shall include the entrance of Humboldt bay not included in fish and game district seven and shall be exclusive of all rivers, streams and sloughs emptying into said bay.

Nine.

§ 34. Fish and game district nine shall consist of and include the waters and tide lands to high water mark of Humboldt bay lying south of a straight line running east from the center of apron at the approach to the south jetty at the entrance of Humboldt bay to the east shore line of said bay, and shall be exclusive of all rivers, streams and sloughs emptying into said bay.

Ten.

§ 35. Fish and game district ten shall consist of and include the ocean waters and the tide lands of the state to high water mark lying between the south boundary of

Humboldt county and a line extending southwest from the extreme westerly point of Point Santa Cruz, in Santa Cruz county; and shall include the waters of Tomales bay, and shall be exclusive of all that portion of Bolinas bay lying inside of Bolinas bar, and of San Francisco bay lying east of a line drawn from Point Bonita to Point Lobos, and of all rivers, streams and lagoons.

Eleven.

§ 36. Fish and game district eleven shall consist of and include the waters and tide lands of San Francisco and Richardson bays to high water mark bounded as follows: Beginning at the extreme westerly point of Point Bonita, thence in a direct line to the extreme westerly point of Point Lobos, thence around the shore line of San Francisco bay to the extreme northly point of Black point in San Francisco county, thence in a direct line to the extreme southerly point of Peninsula point in Marin county, thence westerly around the shore line of Richardson and San Francisco bays to the point of beginning.

Twelve.

§ 37. Fish and game district twelve shall consist of and include all waters and tide lands of San Francisco bay to high water mark not included in fish and game district eleven and thirteen, the waters and tide lands to high water mark of San Leandro bay, Oakland creek or estuary, San Antonio creek in Alameda county, Raccoon straits and San Pablo bay to a line drawn due south from the lighthouse station at the end of the jetty at the south entrance of Mare Island straits and all lands and waters included within the exterior boundaries of said fish and game district and excluding all tributary sloughs, creeks, bays, rivers and overflowed areas not specifically described herein. For the purposes of this act that portion of San Pablo bay lying northerly of a line drawn from the south side of the mouth of Novato creek to Midshipment point, the extreme southwesterly point of Tubbs island, shall be included in fish and game district number two; and that portion of San Pablo bay lying north of a line drawn due east from a point situated on the bay shore of Tubbs island, one and one-half miles measured southwesterly along the levee from the electric power line tower situated on the west bank of Sonoma creek, shall be included in fish and game district number two.

Twelve "A."

§ 38. Fish and game district twelve "A" shall consist of and include all the waters of the Sacramento river flowing within the main channel between the bridge across said river at Colusa and the Vina ferry near the town of Vina, in Tehama county.

Twelve "B."

§ 39. Fish and game district twelve "B" shall consist of and include all waters and tide lands to high water mark of the Mare Island straits from Carquinez straits to the boundary line between Napa and Solano counties, the Carquinez straits not included within fish and game district twelve, the waters and tide lands to high water mark of Suisun bay, all waters of the Sacramento river flowing within the main channel between the mouth thereof and the bridge across said river at Colusa; the waters in the main channel of Steamboat slough and Sutter slough; the waters of New York slough and Broad slough; all waters of the San Joaquin river flowing within the main channel thereof to the south boundary of San Joaquin county; all lands and waters lying between the main channel of San Joaquin river from the place of confluence with Old river and the place of diversion of Middle river and the west and south banks of Old and Middle rivers and all lands and waters lying within the boundaries of said fish and game district and excluding all tributary sloughs, creeks, bays, rivers and overflowed areas not specifically described herein.

Thirteen.

§ 40. Fish and game district thirteen shall consist of and include the waters and tide lands to high water mark of San Francisco bay lying to the south of a line drawn between the ferry building at the foot of Market street in San Francisco and the mouth of the Oakland creek or estuary in Alameda county, exclusive of all streams, sloughs and lagoons. [Amendment of May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 431.]

Fourteen.

§ 41. Fish and game district fourteen shall consist of and include the waters of Scotts creek, in Santa Cruz county, between its mouth and the mouth of Mill creek.

Fifteen.

§ 42. Fish and game district fifteen shall consist of and include the waters and tide lands to high water mark of that portion of Monterey bay lying to the north of a line drawn from the extreme westerly point of Point Santa Cruz to the extreme westerly point of Soquel point; and shall consist of and include the waters of the San Lorenzo river and its tributaries.

Sixteen.

§ 43. Fish and game district sixteen shall consist of and include the waters and tide lands to high water mark of that portion of Monterey bay lying to the south of a line drawn from the extreme northerly point of Point Pinos in a straight line easterly to the eastern shore of Monterey bay to a point north of the town of Seaside, said point being marked by a permanent monument placed by the United States government surveyors, and designated as "Monterey N. O. T. C. and G. S. Sta."

Seventeen.

§ 44. Fish and game district seventeen shall consist of and include the waters and tide lands to high water mark of Monterey bay and Pacific ocean, lying between a line extending southwest from the extreme westerly point of Point Santa Cruz and a line extending due west from the mouth of Carmel river, in Monterey county, and exclusive of the areas included in fish and game districts fifteen and sixteen, and exclusive of all rivers, creeks, sloughs and lagoons, emptying into the Pacific ocean and Monterey bay within the boundaries of this district.

Eighteen.

§ 45. Fish and game district eighteen shall consist of and include the ocean waters and tide lands to high water mark of the state lying between a line extending due west from the mouth of Carmel river and the south boundary of San Luis Obispo county, and shall exclude all rivers, streams, sloughs and lagoons.

Nineteen.

§ 46. Fish and game district nineteen shall consist of and include the ocean waters and tide lands to high water mark of the state lying between the north boundary of Santa Barbara county and the southern boundary of San Diego county, and shall include all islands and adjacent waters belonging to the state of California and lying off the coast of southern California, south of a line extending due west into the Pacific ocean from the north boundary of Santa Barbara county, exclusive of Santa Catalina island and state waters adjacent thereto; exclusive of all rivers, streams, lagoons and bays. [Amendment of May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 431]

Twenty.

§ 47. Fish and game district twenty shall consist of and include Catalina island and that portion of the state waters lying between a line extending south from the south-

easterly shore in line with and intersecting South East rock; thence around the east end to the north side of a line extending west from the extreme west end of said island.

Twenty "A."

§ 48. Fish and game district twenty "A" shall consist of and include that portion of the state waters around Catalina island not included in fish and game district twenty.

Twenty-one.

§ 49. Fish and game district twenty-one shall consist of and include those waters and tide lands to high water mark of San Diego bay lying inside of a straight line drawn from Point Loma to the offshore end of the San Diego breakwater.

Twenty-two.

§ 50. Fish and game district twenty-two shall consist of and include the waters of Salton sea and the waters of the Colorado river.

Twenty-three.

§ 51. Fish and game district twenty-three shall consist of and include the waters of Lake Tahoe and the Truckee river, and all streams flowing into said lake and river, and all lands within the drainage basin of said lake and river, lying within the state of California.

Twenty-four.

§ 52. Fish and game district twenty-four shall consist of and include the waters of Silver lake, Twin lakes, Blue lakes, Meadow lake and Wood lake and all streams flowing into said lakes and all lands lying within the drainage basin of said lakes and streams, all being within the counties of Alpine and Amador.

Twenty-five.

§ 53. Fish and game district twenty-five shall consist of and include the waters of Lake Almanor and all streams flowing into said lake and all lands lying within the drainage basin of said streams and lake, all being within the counties of Plumas and Lassen.

Twenty-six.

§ 54. Fish and game district twenty-six shall consist of and include all waters in that portion of Rae lakes lying south of Fin Dome and all waters flowing into said portion of Rae lakes and all lands lying within the drainage basin of the said portion of Rae lakes; all waters in all lakes lying within the Sixty Lake basin; all waters flowing into said lakes; all waters flowing from the said lakes to the south fork of Woods creek and all lands lying within the Sixty Lake basin, all lying in the county of Fresno.

Repealed.

§ 55. An act entitled "An act to divide the state of California into fish and game districts and to repeal an act entitled 'An act to divide the state of California into six fish and game districts,' approved March 21, 1911, and all acts or parts of acts inconsistent herewith," approved May 15, 1915, and all acts or parts of acts inconsistent herewith are hereby repealed.

1. **Constitutionality—Subject not covered by title.**—The amending act of 1913, purporting to add a new section to the act of 1911, is unconstitutional because, while amending and changing every section in the original act, and dividing the state

into fish and game districts, the title contained nothing to indicate the true character of the amendment.—In re Mascolo, 25 Cal. App. 92, 142 Pac. 903.

2. **Adoption of section 25½, article IV, constitution—Withdrawal of power from**

local authorities.—The adoption of section 25½ of article IV of the constitution, providing for fish protection and fish districts, operated to withdraw whatever power may have been granted to local authorities by section 11, article XI, of the constitution,

and vested it in the legislature, and that body now has exclusive power over the entire subject, by virtue of the first-named section.—In re Cencinino, 31 Cal. App. 238, 160 Pac. 167.

"MOUNT TAMALPAIS GAME REFUGE."

ACT 1696a—An act to further divide the state into fish and game districts by establishing a district specially suited for propagation of game, and to provide for the management and protection thereof.

History: Approved May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 1166. Amended May 13, 1919. In effect July 22, 1919, Stats. 1919, p. 521.

"Mount Tamalpais game refuge" created. Boundaries.

§ 1. For the protection, conservation and propagation of game animals, except fish, there is hereby set apart and established a district to be known as "Mount Tamalpais game refuge," the boundaries of which are hereby determined to be as follows, to wit: All that certain territory within the county of Marin, bounded and described as follows, to wit:

Beginning at the intersection of the easterly shore of inner Bolinas bay with the northwesterly boundary line, extended, of the Stinson ranch conveyed to A. H. Stinson et al., by decree of distribution dated the twenty-eighth day of July, 1911, and recorded in the office of the county recorder of Marin county in book one hundred thirty-seven of deeds at page one hundred two; thence northeasterly along the said northwesterly boundary line to the southwesterly boundary line of the lands of the Marin municipal water district on the top of Bolinas ridge, thence along the exterior boundary of the lands of said district in such a way as to include the same, to a point in the abandoned portion of the Fairfax and Bolinas county road; thence northerly along the said road and along the Fairfax and Bolinas county road, to a point in the southwesterly line of the right of way of the Northwestern Pacific railroad company near Fairfax station; thence along the said last mentioned line in a southerly direction past the railroad stations at San Anselmo, Kentfield and Corte Madera, to its intersection with Humboldt street on the westerly boundary of the lands of the Sausalito land and ferry company, as said street is laid down and delineated on the official map of said lands filed in the office of the county recorder of Marin county in rack number one, pull number nine; thence southerly along the westerly line of said Humboldt street and the westerly line of Tennessee avenue of the same tract, to the corner common to ranches, E, F, and A as said ranches are delineated on the Tamalpais land and water company's map number three, filed in said recorder's office in map book number one, page one hundred four; thence southwesterly along the southeasterly boundary lines of ranches E, L, and K, as shown on said last mentioned map, to the shore of the Pacific ocean; thence northwesterly along the shore of the Pacific ocean and across the easterly end of the Bolinas sandspit, and along the easterly shore of inner Bolinas bay, to the point of beginning, excepting from the area of said Mount Tamalpais game refuge all lands lying within the exterior boundaries of any incorporated town.

No open season.

§ 2. The provisions of law for the protection of fish in the second fish and game district of this state shall be enforced within said Mount Tamalpais game refuge and there shall be no open season therein for any game animals except fish.

Unlawful to kill game birds or animals. Firearms, etc.

§ 3. It shall be unlawful within said territory at any time:

(a) To hunt, pursue, take, kill or destroy any game birds or animals, except to capture the same to be set at liberty elsewhere, as hereinafter specially provided;

(b) To hunt, pursue, take, kill, or destroy any other wild birds or animals except as hereinafter provided;

Game animals defined.

(c) For any person to have in his possession any firearm, trap or other contrivance designed to be used to kill, destroy or capture game animals except fish, without first having obtained a permit so to do from the fish and game commission of this state; provided, that nothing in this act contained shall prohibit the lawful occupant of any privately owned lands within said district, or his employees at the direction of said occupant, from killing ground-squirrels, gophers, owls, hawks, blue jays, skunks and other destructive animals which are not game animals as hereinafter defined that may be on the land of said occupant; and provided further, that nothing in this subdivision "c" contained shall apply to persons traveling upon any public highways within said territory, nor to members of the organized militia while on the state rifle range, nor to members of any high school militia while on the grounds of the high school at which time they may be enrolled. The term game animals used herein is intended to include all birds and animals which are protected or fostered by any of the laws of this state.

Power of fish and game commission.

§ 4. The fish and game commission of the state of California shall have power;

(a) To exercise control over all game animals on all lands within the boundaries of said game refuge.

(b) To accept, on behalf of the state, donations of ownership or leasehold interest of any lands within the boundaries of said game refuge, to be used for the furtherance of the objects of protecting, feeding, or propagating game.

(c) To accept, on behalf of the state, donations of game birds and animals, and of money given or appropriated for protection, feeding, or propagation of game in said district, and to use the same for the said purposes, and as nearly as may be, for any particular purpose indicated by the donor.

(d) To make additional rules and regulations, not in conflict with this act or other statutes of the state, for the protection and propagation of game in said district.

(e) To issue in their discretion, and under such restrictions as they may deem best, permits for carrying, using, or having in possession within said district, firearms, traps, or other instruments or means for killing or taking birds or animals; but no such permits shall allow any person to hunt, kill, destroy or take any game birds or animals; and no hunting, killing or destruction of wild birds or animals, other than game birds or animals, within said Mount Tamalpais game refuge shall be allowed, by game wardens or by persons holding special permits for the purpose; and persons holding such special permits shall be allowed so to hunt, kill, or destroy only when accompanied by a member of the fish and game commission, or by an authorized deputy thereof, or by the sheriff or a deputy sheriff of Marin county, except the lawful occupants of said lands and their employees shall not be required to obtain permits for the purpose of killing ground squirrels, gophers, owls, hawks, blue jays, skunks or other destructive animals which are not game animals as in this act defined.

Penalty.

§ 5. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and shall be punishable by a fine not exceeding five hundred dollars, or

by imprisonment not exceeding one hundred fifty days, or by both such fine and imprisonment. [Amendment of May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 521.]

Duty of officers.

§ 6. It shall be the duty of the fish and game commission of the state of California and of its deputies, and also of the district attorney, and of the sheriff, and of all other peace officers of Marin county to enforce all the provisions of this act, and to institute and assist in prosecutions for violations thereof.

County appropriation.

§ 7. Any county may, in the discretion of its board of supervisors, appropriate and pay to the fish and game commission of the state of California, funds to be used by them, as provided in subdivision "c" of section four hereof.

RAILWAY CAR FOR FISH DISTRIBUTION.

ACT 1697—An act to provide for the acquisition, equipment and use of a railway car for the purpose of distributing live fish and stocking the waters of this state with fish, and making an appropriation therefor. [Approved March 21, 1907. Stats. 1907, p. 777.]

History: Approved March 21, 1907, Stats. 1907, p. 777.

This act appropriated the sum of \$7500 for the purpose indicated.

PURCHASE OF FISH HATCHERIES AT SISSON.

ACT 1698—An act authorizing the fish commissioners to purchase the land on which the state fish hatcheries at Sisson are situated.

History: Approved March 31, 1891, Stats. 1891, p. 253.

The sum of \$500 was appropriated for the purpose.

PURCHASE OF ADDITIONAL LAND FOR FISH HATCHERY AT SISSON.

ACT 1699—An act to provide for purchasing land for the state fish hatchery at Sisson, in Siskiyou county, and for making certain improvements and repairs at said hatchery, and making an appropriation therefor.

History: Approved March 25, 1903, Stats. 1903, p. 434.

The sum of \$10,000 was appropriated for the purpose.

REMOVAL OF OBSTRUCTIONS IN AMERICAN RIVER.

ACT 1700—An act authorizing commissioners to remove obstructions in American river.

History: Approved March 5, 1889, Stats. 1889, p. 66.

SALMON HATCHERY.

ACT 1701—An act authorizing fish commissioners to build and maintain a salmon hatchery.

History: Approved March 9, 1835, Stats. 1885, p. 31.

REMOVAL OF OBSTRUCTIONS IN PITT RIVER.

ACT 1702—An act to provide for removing obstructions in Pitt river, above the mouth of Hat creek, so as to enable salmon to reach the spawning-grounds on the upper waters of said river and its tributaries, and making an appropriation therefor.

History: Approved March 25, 1901, Stats. 1901, p. 808.

DISPOSAL OF HATCHERY AT BATTLE CREEK.

ACT 1703—An act authorizing the board of fish commissioners to dispose of the hatchery located on Battle creek in Tehama county, and to expend the proceeds of the same.

History: Approved March 9, 1897, Stats. 1897, p. 89.

This act authorized the sale for \$2600 to be credited to the fish commission fund.

FISH REPOSITORY ON STANISLAUS RIVER.

ACT 1704—An act to authorize the board of fish commissioners of the state to construct a fish repository on the Stanislaus river in Tuolumne county, and making an appropriation therefor.

History: Approved March 13, 1907, Stats. 1907, p. 249.

AUTHORIZING CONSTRUCTION OF STEAM LAUNCH.

ACT 1705—An act authorizing the board of fish commissioners to construct a steam launch.

History: Approved March 12, 1885, Stats. 1885, p. 124.

The sum of \$4000 was appropriated for the purpose.

PURCHASE OF GASOLINE LAUNCH.

ACT 1706—An act to authorize the board of fish commissioners to purchase or construct a gasoline launch, to aid in carrying out the purposes of said board, and appropriating money therefor.

History: Approved March 31, 1897, Stats. 1897, p. 346.

The act appropriated the sum of \$2600 for the purpose indicated.

DISPOSAL OF STEAM LAUNCH GOVERNOR STONEMAN.

ACT 1707—Authorizing fish commissioners to dispose of the steam launch Governor Stoneman and to replace it by two smaller boats to be used as patrol boats.

History: Approved March 19, 1889, Stats. 1889, p. 350.

IMPORTATION OF GAME BIRDS FOR PROPAGATION.

ACT 1708—An act to authorize state board of fish commissioners to import game birds into the state for propagation.

History: Approved March 16, 1889, Stats. 1889, p. 304.

This act appropriated \$2000 for the importation of game birds, including wild turkeys, prairie chickens, bob white quail, pheasants, grouse, and skylarks, for propagation purposes.

PROTECTION OF GAME IN NEVADA COUNTY.

ACT 1709—An act for the protection of game in Nevada county.

History: Approved February 6, 1874, Stats. 1873-74, p. 80.

Code commissioners' note: "Probably modified and repealed by Penal Code, §§ 626e, 626f, 626h, and 626i."

RESTRICTING HUNTING IN YOLO COUNTY.

ACT 1710—An act to restrict the hunting or shooting of game in the county of Yolo.

History: Approved March 16, 1872, Stats. 1871-72, p. 411.

Code commissioners' note: "Probably superseded by the general laws on the subject.—See Penal Code, §§ 635, 636, 636a."

This act made it a misdemeanor to hunt, pursue, kill or destroy any deer within three miles of the summit of Mount Diablo for a period of four years.

PRESERVATION OF MOCKING BIRDS.

ACT 1712—An act to prevent the capture and destruction of mocking-birds in this state.

History: Approved February 14, 1872, Stats. 1871-72, p. 102.

This act made it a misdemeanor to shoot, injure or destroy their nests or eggs, and snare or trap mocking birds or to take, fixed a penalty therefor.

Mocking birds must enjoy perfect immunity.

§ 1. Any person or persons who shall wilfully and knowingly shoot, wound, trap, snare, or in any other manner catch or capture any mocking-bird in the state of California, or shall knowingly take, injure or destroy the nest of any mocking-bird, or shall take, injure, or destroy any mocking-birds' eggs, in the nest or otherwise, in said state,

shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of the township in which the offense shall have been committed, shall be fined in a sum not less than five dollars nor exceeding ten dollars, and cost of the action for each offense, or may be imprisoned not less than five days nor more than ten days, or by both such fine and imprisonment, as the judge of the court may direct.

Fines. Disposition of.

§ 2. All fines collected under the provisions of this act shall be paid into the county treasury for the benefit of the common school fund.

Act takes effect when.

§ 3. This act shall take effect and be in force from and after its passage.

PREVENTION OF DESTRUCTION OF FISH AND GAME IN LAKE MERRITT.

ACT 1715—An act to prevent destruction of fish and game in the waters of Lake Merritt, or Peralta, in the county of Alameda.

History: Approved March 18, 1870, Stats. 1869-70, p. 325. Continued in force by the codes. See Kerr's Cyc. Political Code, § 19, and Kerr's Cyc. Penal Code, § 23.

PROTECTION OF FISH AND GAME IN NAPA COUNTY.

ACT 1716—An act for the protection of fish and game in certain portions of Napa county.

History: Approved March 26, 1872, Stats. 1871-72, p. 550.

Code commissioners' note: "Probably repealed by the general laws upon the subject.—See Penal Code, §§ 635, 636, 636a."

DESTRUCTION OF FISH PROHIBITED IN ALAMEDA COUNTY.

ACT 1720—An act to prohibit the destruction of fish in Alameda county.

History: Approved March 28, 1878, Stats. 1877-78, p. 598.

Catching fish in Lake Chabot.

§ 1. It shall not be lawful for any person to catch, take, or destroy any fish of any kind in the body of water known as Lake Chabot, in the San Leandro creek, in Alameda county, belonging to the Contra Costa Water Company, without permission of the owner or owners thereof.

Catching fish in San Leandro creek. Time of catching defined.

§ 2. It shall not be lawful to take, kill, or destroy any brook or speckled trout, salmon, or salmon-trout, or any other species of fish in San Leandro creek and its branches or tributaries, or in any of the streams or water-courses of said county, between the first day of October of each year and the first day of April of the following year.

Misdemeanor.

§ 3. Any person violating the provisions of this act shall be guilty of a misdemeanor.

Act takes effect when.

§ 4. This act shall take effect and be in force from and after its passage.

PREVENTION OF DESTRUCTION OF FISH IN BOLINAS BAY.

ACT 1721—An act to prevent destruction of fish in the waters of Bolinas bay in Marin county.

History: Approved March 31, 1866, Stats. 1865-66, p. 637. Continued in force. See Kerr's Cyc. Political Code, § 19, and Kerr's Cyc. Penal Code, § 23.

PROTECTION OF FISH IN BUTTE CREEK.

ACT 1722—An act for the protection of fish in Butte creek, in the county of Butte.

History: Approved February 21, 1872, Stats. 1871-72, p. 138. Amended February 9, 1874, Stats. 1873-74, p. 87.

Code commissioner's note: "Probably superseded by the general laws on the subject."—See Kerr's Cyc. Penal Code, §§ 635, 636, 636a.

REGULATING SALMON FISHERIES ON EEL RIVER.

ACT 1723—An act to regulate salmon fisheries on Eel river in Humboldt county.

History: Approved April 18, 1859, Stats. 1859, p. 298. Continued in force: See Kerr's Cyc. Political Code, § 19, and Kerr's Cyc. Penal Code, § 23.

1. Right of fishery—Riparian owner.—As to the rights of owners of land along the banks of Eel river to the fishing privileges under the act, where, subsequent to the acquisition of title the channel of the river was changed as the result of a freshet, and the owner of one bank has a bar or grade suitable for landing nets or seines or nets, and the owner of the opposite bank has a bold, abrupt shore.—See Heckman v. Swett, 99 Cal. 303, 33 Pac. 1099; Same v. Same, 107 Cal. 276, 40 Pac. 420.

See, also, Heckman v. Swett, 4 Cal. Unrep. 312, 33 Pac. 1099.

2. Same—Same.—The right of fishery under sections 2, 3 and 4, of the act is a right appurtenant to the land, and the ownership of the land is inseparable from the fishing privilege.—Heckman v. Swett, 99 Cal. 303, 33 Pac. 1099; Same v. Same, 107 Cal. 276, 40 Pac. 420.

See, also, Heckman v. Swett, 4 Cal. Unrep. 312, 33 Pac. 1099.

3. Same—Same.—The right of fishery under the act can not be acquired by prescription apart from the ownership of the land to which it is appurtenant, and a finding that defendants have occupied and used the shore for fishing exclusively for

more than five years next before the commencement of the suit, under a claim of title, will not support a judgment in their favor of title by prescription.—Heckman v. Swett, 99 Cal. 303, 33 Pac. 1099; Same v. Same, 107 Cal. 276, 40 Pac. 420.

See, also, Heckman v. Swett, 4 Cal. Unrep. 312, 33 Pac. 1099.

4. Same—Trespasser.—Under section 5 of the act it is made a misdemeanor to exercise the right of fishery in Eel river, he having no such right, and title by prescription can not be acquired by a trespasser.—Heckman v. Swett, 99 Cal. 303, 33 Pac. 1099.

See, also, Heckman v. Swett, 4 Cal. Unrep. 312, 33 Pac. 1099.

5. Act not repealed by code provisions.—The act was not repealed by sections 634 to 636, Penal Code.—Heckman v. Swett, 107 Cal. 276, 40 Pac. 420.

6. Applies to salmon fishing only.—The act deals only with the salmon fishing, and a judgment enjoining one without the right of fishery under the act from casting any nets in the waters fronting plaintiff's lands is too broad and should be limited to enjoining the casting of nets for salmon.—Heckman v. Swett, 107 Cal. 276, 40 Pac. 420.

PRESERVATION OF FISH IN LAKE BIGLER.

ACT 1724—An act for the preservation of fish in the waters of Lake Bigler.

History: Approved March 30, 1878, Stats. 1877-78, p. 746.

Catching fish, except by hook and line, in Lake Bigler.

§ 1. It shall not be lawful for any person or persons to catch or kill any fish in the waters of Lake Bigler, or in any stream leading into or from said Lake Bigler, with any seine, gill-net, spear, wire fence, basket, trap-set net, or dam, or any poisonous, deleterious or stupefying drug or explosive compound, or any other implement or appliance, except by means of a hook and line.

Penalty.

§ 2. Any person or persons who shall violate any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace, in Placer county, El Dorado county, or Nevada county, shall be punished by a fine of not less than one hundred dollars nor more than five hundred, or by imprisonment in the county jail not less than thirty days nor more than four months, or by both such fine and imprisonment, in the discretion of the court, for each and every offense, besides the cost of prosecution.

Fines; how paid.

§ 3. The district attorney, or his deputy, of El Dorado county, or of Placer county, or of Nevada county, whichever the informer may notify as within the district attorney's jurisdiction, shall prosecute such suits, and, upon conviction, all fines, damages, and penalties that may be awarded or collected under this act shall be paid one half to the district attorney and one half to the informer, share and share alike; and it is hereby made the duty of the district attorney, or his appointed deputy, of the counties of Placer, El Dorado, and Nevada, to prosecute all cases arising under this act.

Conflicting acts repealed.

§ 4. All acts, and provisions of any act or parts of acts, conflicting with this act, are hereby repealed.

Act takes effect when.

§ 5. This act shall take effect and be in force from and after its passage.

Prohibited taking fish in Lake Bigler penalty, and divided the fine between the otherwise than by hook and line, made the district attorney and the informer. violation a misdemeanor, prescribed the

PREVENTION OF DESTRUCTION OF FISH IN KING'S RIVER.

ACT 1725—An act to prevent the destruction of fish in King's river.

History: Approved March 28, 1878, Stats. 1877-78, p. 601.

Passage of fish through ditches prevented; how.

§ 1. The proprietors of all water-ditches and flumes, drawing their supply from the waters of King's river, shall place and keep in good repair at the heads of their respective ditches or flumes, through which all the water from the river entering the ditch or flume shall pass, strips of wood or other material, the meshes between which shall not exceed one inch in width, for the prevention of the passage of fish from the river into the flumes or ditches. Any person taking water from King's river in violation of the provisions of this act is guilty of a misdemeanor.

As to screens over mill races, flumes, pipes, etc.—See Kerr's Cyc. Penal Code, § 629.

USE OF SEINES, ETC., IN NAPA RIVER PROHIBITED.

ACT 1727—An act to prohibit the use of nets, seines, traps, or weirs in the Napa river and its tributaries in the counties of Sonoma, Napa and Solano.

History: Approved March 4, 1911, Stats. 1911, p. 273. Prior act of January 29, 1868, Stats. 1867-68, p. 13, to prevent the destruction of fish in Napa river and Sonoma creek, and continued in force by the codes (Kerr's Cyc. Political Code, § 19, and Kerr's Cyc. Penal Code, § 23) contained substantially the same provisions, and is believed to have been superseded by the present act.

Seining in Napa river.

§ 1. Any person who in the waters of Napa river from its source to its mouth or in any of the tributaries of said river shall take fish of any kind, by means of a net, seine, trap, weir or gang hook, or who shall have in his possession, or use, or set any net, seine, trap, weir or gang hook for the purpose of catching any fish in said waters, is guilty of a misdemeanor; provided, that nothing in this act contained shall prohibit any person from taking during the open season therefor any fish with hook and line.

Penalty.

§ 2. Every person found guilty of violating any of the provisions of this act shall be fined not less than one hundred dollars or by imprisonment in the county jail in the county in which the conviction shall be had, not less than fifty days, or by both such

fine and imprisonment, and all such fines imposed or collected for violation of any provision of this act, shall be paid into the state treasury to the credit of the fish and game preservation fund.

Setting of seines or nets for fish.—See Kerr's Cyc. Penal Code, §§636, 636a.

USE OF SEINES, ETC., IN SAN ANTONIO CREEK, PROHIBITED.

ACT 1728—An act to prevent the catching of fish by seines, nets, or weirs, in the San Antonio creek, in the county of Alameda.

History: Approved March 20, 1876, Stats. 1875-76, p. 362.

Setting of seines or nets for fish.—See Kerr's Cyc. Penal Code, §§ 636, 636a.

Use of seines and nets unlawful.

§ 1. It shall not be lawful for any person to catch fish in the waters of the San Antonio creek, in the county of Alameda, by the use of seines, nets, or weirs.

Penalty for violation.

§ 2. Any person violating the provisions of this act shall be subject to a penalty of not less than fifty nor more than one hundred dollars for each offense, or imprisonment in the county jail of the county of Alameda for a term of not less than thirty nor more than sixty days, which penalty may be enforced by any police judge or justice of the peace of said county.

Act takes effect when.

§ 3. This act shall take effect and be in force from and after its passage.

PRESERVATION OF FISH IN SISKIYOU COUNTY.

ACT 1731—An act for the preservation of fish in the waters of Siskiyou county.

History: Approved March 16, 1872, Stats. 1871-72, p. 385.

Code commissioners' note: "Probably superseded by the general laws upon the subject.—See Penal Code, §§ 635, 636, 636a."

PROTECTION OF FISH IN FALSE BAY.

ACT 1733—An act to prevent fishing or the taking of fish by means of weirs, dams, nets, traps or seines in False bay or in the entrance thereto.

History: Approved March 25, 1909, Stats. 1909, p. 751.

Protection of fish in False bay.

§ 1. Any person who, in the waters of False bay, in the county of San Diego, state of California, or in the entrance of said bay, shall use any weir, dam, net, trap or seine of any description for the purpose of catching fish or who shall, in these waters, take any fish from any weir, dam, net, trap or seine, is guilty of a misdemeanor.

Penalty.

§ 2. Any person convicted of the violation of any of the provisions of this act shall be fined not less than ten dollars nor more than fifty dollars, or shall be imprisoned in the county jail of said county not less than five days nor more than twenty-five days, or shall be both fined and imprisoned in the discretion of the court.

Act takes effect when.

§ 3. This act shall take effect immediately.

PROTECTION OF FISH IN MENDOCINO COUNTY.

ACT 1735—An act to prevent the taking of fish by means of weirs, dams, nets, traps or seines, in certain tide-water on the coast of Mendocino county.

History: Approved March 25, 1909, Stats. 1909, p. 753. Amended April 14, 1911, Stats. 1911, p. 915.

Protection of fish in certain tide-waters of Mendocino county.

§ 1. Any person who in the tide-water of the Noyo, Big, Ten-mile, Garcia, Navarro, or Gualala rivers in Mendocino county, shall use any weir, dam, net, trap or seine of any description for the purpose of catching fish, or who shall in any of said tide-water take any fish of any kind from any weir, dam, net, trap, or seine, is guilty of a misdemeanor and is punishable by a fine of not less than ten nor more than fifty dollars, or by imprisonment in the county jail of said county not less than five days nor more than twenty-five days, or by both such fine and imprisonment.

Extent of tide-water.

§ 2. In the construction and meaning of this act the limits of tide-water in the Noyo river shall be deemed to extend from its mouth to the mouth of the South Fork thereof; in the Big river from the mouth thereof to the Laguna; in the Ten-mile river from the mouth thereof to the Soda springs; in the Garcia river from the mouth thereof to the mouth of the North Fork thereof; in the Navarro river from the mouth thereof to Barton gulch; in the Gualala river from the mouth thereof to the mouth of the North Fork thereof.

Act takes effect when.

§ 3. This act shall take effect immediately.

Act subject to Penal Code, section 634.

§ 4. The provisions of this act are subject to section 634 of the Penal Code, and the use of such weir, dam, net, trap or seine for the purpose of catching fish, and the taking of fish from any weir, dam, net, trap or seine in the waters described in this act shall be permitted at the times and in the manner set out in said section 634 of the Penal Code. [Amendment approved April 14, 1911. Stats. 1911, p. 915.]

**PREVENTION OF DESTRUCTION OF WILD GAME IN PINNACLES
FOREST RESERVE.**

ACT 1736—An act to prevent the destruction of wild game within the boundaries of the Pinnacles forest reserve and Pinnacles national monument in the counties of San Benito and Monterey, in the state of California.

History: Approved March 25, 1909, Stats. 1909, p. 750.

USE OF WEIRS, ETC., IN MONTEREY BAY.

ACT 1737—An act to prevent fishing, or the taking of fish by means of weirs, dams, nets, traps or seines in certain portions of the Monterey bay, within the county of Santa Cruz.

History: Approved March 4, 1911, Stats. 1911, p. 272.

Seining in Monterey bay.

§ 1. Any person who, in the waters of Monterey bay in the county of Santa Cruz, state of California, north of an imaginary line from Point Santa Cruz to Point Sauquel, sometimes known as Black Point, shall use any weir, dam, net, trap or seine of any description except gill nets of one and one-half inch mesh for the purpose of catching fish, or who shall, in these waters, take any fish from any weir, dam, net, trap or seine, except gill nets of one and one-half inch mesh is guilty of a misdemeanor.

Penalty.

§ 2. Any person convicted of a violation of any of the provisions of this act shall be fined not less than fifty (\$50) dollars nor more than one hundred (\$100) dollars, or shall be imprisoned in the county jail of the county of Santa Cruz not less than twenty-five (25) nor more than fifty (50) days, or shall be both fined and imprisoned in the discretion of the court.

Setting of seines and nets for fish.—See Kerr's Cyc. Penal Code, §§ 636, 636a.

USE OF NETS, ETC., IN CACHE SLOUGH PROHIBITED.

ACT 1738—An act to prohibit the use of nets, seines, traps, or weirs for the catching of fish in Cache slough and its tributaries in the counties of Solano and Yolo.

History: Approved February 20, 1911, Stats. 1911, p. 66.

Seining in Cache slough.

§ 1. Any person who, in the waters of Cache slough, from its source to its mouth, in the counties of Solano and Yolo, state of California, or in any of the tributaries of said slough in either county, shall take any fish of any kind, by means of a net, seine, trap or weir, or who shall have in his possession, or use, or set any net, seine, trap or weir for the purpose of catching any fish in said waters, is guilty of a misdemeanor; provided, that nothing in this act contained shall prohibit any person from taking, during the open season therefor, any fish with hook and line.

Penalty.

§ 2. Every person found guilty of violating any of the provisions of this act shall be fined not less than one hundred dollars, or by imprisonment in the county jail in the county in which the conviction shall be had, not less than fifty days, or by both such fine and imprisonment, and all fines imposed or collected for violation of any provision of this act shall be paid into the state treasury to the credit of the fish and game preservation fund.

§ 3. This act shall take effect immediately.

Setting of nets and seines for fish.—See Kerr's Cyc. Penal Code, §§ 636, 636a.

RESTRICTION OF FISHING IN DISTRICT 19.

ACT 1738a—An act to restrict fishing within seven hundred fifty feet of any pier, wharf, jetty or breakwater in fish and game district number nineteen of the state of California.

History: Approved May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 463. Prior act of May 21, 1915. In effect August 8, 1915. Stats. 1915, p. 729. Superseded by present act.

Protection of fish near pier, wharf, etc. Smelt excepted.

§ 1. Every person who, in fish and game district number nineteen, takes, catches, or kills any fish, except with hook and line in the manner known as angling and except anchovies, squids and sardines with a hand-net conforming to the following measurements and description; a dip or bait net constructed with a metal ring or hoop, or a square frame not to exceed ten feet in diameter around which a fine mesh net, sack or bag is hung, to this loop or frame, from which the net bag is hung, three or four lines are attached and form a bridle, which is made fast to a hand line, which is used for lowering the net from the pier or bank, within seven hundred fifty feet of the end or sides of any pier, wharf, jetty or breakwater, is guilty of a misdemeanor; provided, that this act shall not apply to the taking or catching of smelt only.

Penalty.

§ 2. Every person found guilty of a violation of the provisions of this act shall be fined not more than five hundred dollars, or be imprisoned not more than one hundred and fifty days; and all fines or forfeitures imposed and collected for any violation of any of the provisions of this act must be paid into the state treasury to the credit of the fish and game preservation fund.

For scientific purposes.

§ 3. Nothing in this act shall prohibit the United States fish and game commission and the fish and game commission of this state from taking, at all times, such fish in such manner as they may deem necessary for the purposes of propagation or for scientific purposes.

EXPENSES AND COSTS OF TRIAL FOR VIOLATION OF FISH AND GAME LAWS.

ACT 1739—An act concerning the payment of the expenses and costs of the trial of persons charged with the violation of the laws for the preservation of fish in the navigable waters of this state.

History: Approved February 28, 1887, Stats. 1887, p. 5. Entire act amended February 12, 1903, Stats. 1903, p. 20.

This act, including the title, was amended by the act of 1903, to read (§ 4 being new) as follows:

An act providing for the payment of the costs and expenses of all trials and proceedings against any person charged with the violation of the laws of this state for the preservation, protection, or restoration of fish.

Trials of offenses against fish laws. Costs.

§ 1. The costs and expenses of all trials and proceedings which shall hereafter be had in any county of this state against any person charged with having violated any of the provisions of any law of this state for the preservation, protection, or restoration of fish, shall be borne and paid by the state.

Claims for costs, where presented.

§ 2. Any claim against the state for the cost and expenses named in this act shall be presented to the state board of fish commissioners, duly verified, and after approval and allowance by said board, shall be acted upon by the state board of examiners, and paid out of the fish commission fund.

§ 3. (Renumbered § 5.)

Repeal of conflicting acts.

§ 4. All acts and parts of acts in conflict with this act are hereby repealed.

Act takes effect when.

§ 5. This act shall take effect immediately.

COUNTY FISH HATCHERIES.

ACT 1740—An act empowering the boards of supervisors of the several counties of the state, in their discretion, to establish and maintain fish hatcheries and provide for the expense of the establishment and maintenance thereof.

History: Approved March 21, 1907, Stats. 1907, p. 757.

CRAB PRESERVE IN EEL RIVER.

ACT 1741—An act to create a preserve for crabs within Eel river and the entrance thereto and Humboldt and Trinidad bays and the waters of the Pacific ocean adjacent thereto, and to regulate the taking of crabs from such preserve for commercial purposes.

History: Approved March 13, 1909, Stats. 1909, p. 298.

§ 1. A preserve for crabs is hereby created which shall consist of Eel river and the entrance thereto and Humboldt bay and Trinidad bay and the waters of the Pacific ocean adjacent to said bays within the limit of two miles from the inside shore line of each of said bays.

§ 2. It shall be unlawful to fish for, catch, take, or remove any crabs for commercial purposes from the preserve hereby created; provided, however, that during the open season for crabs as now or which may be hereafter defined by law, crabs may be taken and removed from the preserve hereby created during the day of Thursday of each and every week, and at no other time.

§ 3. Any person violating the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not exceeding five hundred dollars or imprisonment in the county jail for a term not exceeding ninety days, or by both such fine and imprisonment.

§ 4. This act shall take effect from and after its passage.

SHELLFISH PRESERVE IN MONTEREY BAY.

ACT 1742—An act to create a preserve for shellfish and invertebrate animals within a portion of the bay of Monterey and to prohibit taking the same from such preserve for commercial purposes.

History: Approved March 21, 1907, Stats. 1907, p. 758. Entire act except the title amended June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 980.

This entire act except title, was amended in 1913 (Stats. 1913, p. 980) as follows:

Shellfish preserve in Monterey bay created.

§ 1. A preserve for all kinds of shellfish and invertebrate animals, except squid and devilfish, is hereby created, which shall consist of that portion of the bay of Monterey bounded and described as follows: Commencing at the extreme point of Point Pinos at the southern entrance to Monterey bay and running thence in a straight line easterly to the eastern shore of said bay to a point north of the town of Seaside, said point being marked by a permanent monument placed by the United States government surveyors and designated as "Monterey N. O. T. C. & G. S. Sta."; thence following the shore line on and around the southerly side of said bay to the place of beginning.

Fishing prohibited.

§ 2. No person shall fish for, catch, take or remove any shellfish or invertebrate animals of any kind, other than squid and devilfish, for commercial purposes from the preserve hereby created.

Penalty.

§ 3. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail of the county in which conviction shall be had of not less than ten days nor more than one hundred and fifty days, or by both such fine and imprisonment.

Disposition of fines.

§ 4. All fines and forfeitures imposed and collected for any violation of the provisions of this act shall be paid into the state treasury to the credit of the fish and game preservation fund.

ACT 1743—An act to provide for the transfer to the state of California by owners of patented lands therein of the right to preserve and protect wild game on such patented lands; to define the duties of the state board of fish commissioners in relation to the control of such rights, and to declare the hunting of wild game within the exterior boundaries of the land to which such right attaches, a misdemeanor.

History: Approved March 21, 1907, Stats. 1907, p. 788. Amended March 20, 1909, Stats. 1909, p. 518; June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 992.

Transfer of land for game preserve authorized. Unlawful to take game. Notices.

§ 1. Any person, firm or corporation, owning and in possession of patented lands in the state of California, embracing an area of not less than one hundred and sixty acres, may transfer, by an instrument in writing duly acknowledged before an officer author-

ized under the laws of this state to take acknowledgments, to the state of California, the right to preserve and protect all wild game on the land described therein for a period of not less than ten years. Such instrument shall be filed with the state board of fish commissioners; whereupon such board may in its discretion declare the lands described in such instrument a state game preserve, and thereafter for the period named therein, shall, for all the purposes relating to the preservation and protection of wild game, be under the control of said board. Such preserve shall be numbered in the order of the filing of the instrument of transfer thereof. A copy of the declaration establishing the same shall, under the seal of said board, be issued to such person, firm or corporation, transferring the right therefor. During the period named in such instrument it shall be unlawful for any person to hunt, pursue, shoot, take, kill or destroy any wild game within the exterior boundaries thereof. The state board of fish commissioners shall cause to be prepared suitable notices to be posted under its direction on each state game preserve and such notice shall describe the lands constituting the same, and shall contain a warning to all persons to refrain for the period named therein from violations of the provisions of this act; provided, however, that no provision in this act contained shall be construed as prohibiting or preventing any person or persons from hunting or taking fish and wild game from or on navigable water; and provided, further, that the word "lands," as used in this section, shall not be construed to include any land which is covered and uncovered by the ordinary daily tide of the Pacific ocean. [Amendment of June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 992.]

This section was also amended March 10, 1909, Stats. 1909, p. 518.

Control of state game preserves.

§ 2. All state game preserves established under the provisions of this act shall for all purposes of preservation and protection of wild game thereon, be under the control and management of the state board of fish commissioners, and the said board, its officers and employees, and all game wardens, may at all times enter in and upon such preserves, in the performance of their duties. The said board may establish such regulations as may, in its judgment, be necessary for the preservation and protection of the wild game on such preserves, and for that purpose may direct and authorize game wardens or other officers to execute such regulations. All expenses incurred in carrying out the provisions of this act and the regulations that may be established thereunder, shall be a charge against and paid out of the "game preservation fund" established under an act entitled "An act to regulate and license the hunting of game birds and animals and to provide revenue therefrom, for game preservation and restoration and to make appropriations for the purpose of carrying out the objects of this act."

Penalty for hunting or destroying game within.

§ 3. The hunting, pursuing, shooting, taking, killing or destroying of any wild game within the exterior boundaries of any state game preserve established under the provisions of this act, is hereby declared a misdemeanor, and all fines collected in any prosecution therefor shall be paid into said "game preservation fund."

§ 4. This act shall take effect and be in force from and after its passage.

PROTECTION OF FUR-BEARING ANIMALS.

ACT 1744—An act to provide for the protection of fur-bearing mammals, defining fur-bearing mammals, providing for a license for hunting or trapping such fur-bearing mammals and requiring reports to be filed with the fish and game commission.

History: Approved May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 653. Amended May 13, 1919. In effect July 27, 1917. Stats. 1919, p. 388.

Killing fur-bearing mammal.

§ 1. Every person who, between the last day of February and the fifteenth day of October of any year, traps, hunts, takes or kills any fur-bearing mammal is guilty of a misdemeanor. [Amendment of May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 389.]

Killing otherwise than by trap or gun.

§ 2. Every person who at any time takes, hunts or kills any fur-bearing mammal in any manner other than by trap or gun, or who shall at any time take or kill any skunk by digging or driving them from dens or by use of chemicals is guilty of a misdemeanor.

The title of the amending act of May 13, 1919 (Stats. 1919, p. 388), recites that this section is amended, but no such amendment appears in the body of the act.

Unlawful to use poison.

§ 3. It shall be unlawful for any person to use poison of any kind in the taking or killing of any fur-bearing mammal; provided, however, that the fish and game commission may in its discretion issue to any person a permit to use poison in the taking or killing of any such mammal upon an application therefor, which application shall contain detailed information concerning the kind of poison desired to be used and when and where it is desired to use the same; provided, further, that such fur-bearing mammals injuring any property may be taken or killed at any time in any manner.

Trapping without license.

§ 4. Every person in the state of California over the age of eighteen who traps for profit any fur-bearing mammals without first procuring a license therefor as provided by this act is guilty of a misdemeanor. [Amendment of May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 389.]

Licenses to trap for profit.

§ 5. Licenses granting the privilege to trap for profit any fur-bearing mammals shall be issued by the state board of fish and game commissioners, who shall prepare suitable licenses of convenient size and form and have printed thereon the words "Trapping License No., State of California. Expires June 30, 191....," with registration number and appropriate year printed or stamped thereon, which said license shall be prepared by the state board of fish and game commissioners, which board shall account for same to the controller of the state.

Fees.

§ 6. Licenses herein provided for shall be issued as follows: (1) To any citizen of the United States upon payment of one dollar; (2) to any person not a citizen of the United States upon payment of two dollars; provided, however, that any veteran of the civil war by applying to the state board of fish and game commissioners may obtain a license without the payment of any fee. [Amendment of May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 389.]

Name, address, etc., furnished.

§ 7. Every person applying for and procuring a license as herein provided shall furnish to the state board of fish and game commissioners his name and resident address. Such applicant shall also furnish to the board of fish and game commissioners a written description of himself by age, height, nationality, color of eyes and hair and shall also give information relative to the sections of the state in which he intends to trap.

Term.

§ 8. All licenses issued as herein provided shall be valid and shall authorize the person to whom issued to trap fur-bearing mammals for profit on and from the first day of July of the year in which said license is issued until the date of expiration written or stamped thereon, but no license shall continue in force for a longer period than one year.

Statement of mammals taken.

§ 9. Every person to whom a license is issued, under the provisions of this act, must, before the first day of July following the date issued, send to the fish and game commission a sworn statement showing the number of each kind of fur-bearing mammals taken together with the name and address of the firm or person to whom they were shipped or sold. A new license can not be granted unless this provision is complied with; provided, however, that the provisions of this section shall not apply to persons eighteen years of age or under.

What are fur-bearing mammals.

§ 10. For the purpose of this act, the following shall be considered fur-bearing mammals: Black and brown bear, ring-tailed cat, coon, pine martin, fisher, wolverine, mink, skunk, river otter, grey, cross, silver and red fox.

Moneys credited to game preservation fund.

§ 11. All moneys collected from licenses as provided herein and all fines collected for violations of the provisions hereof shall be paid into the state treasury and credited to the game preservation fund.

No more than one license.

§ 12. Not more than one license shall be issued to any one person for the same fiscal year except upon an affidavit by the applicant that the one issued has been lost or destroyed and no license issued as herein provided shall be transferable or used by any other person than the one to whom it was issued.

Disturbing traps.

§ 13. Every person who shall disturb or remove the traps of any licensed trapper while trapping on the public domain or on lands where he has permission to trap is guilty of a misdemeanor.

Refusal to exhibit license.

§ 14. Every person having a license as provided herein who refuses to exhibit such license or any furs that may be in his possession or control upon the demand of any officer authorized to enforce the game and fish laws of this state or any peace officer of the state shall be guilty of a misdemeanor, and every person lawfully having such license who transfers or disposes of same to another person to be used as a trapping license or who violates any of the laws for the protection of game shall forfeit the same.

Penalty.

§ 15. Every person violating any of the provisions of this act shall, upon conviction thereof, be punished by a fine of not less than ten dollars or more than one hundred dollars or by imprisonment in the county jail for a term of not less than ten or more than one hundred days, or by both such fine and imprisonment.

Propagation in confinement.

§ 16. Nothing in this act shall prohibit the propagation of fur-bearing mammals in confinement in accordance with any rules and regulations that may be specified by the fish and game commission. [New section added May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 389.]

CONTAMINATED SOURCES OF SHELLFISH.

ACT 1745—An act empowering the state board of health to examine sources from which shellfish are taken; making it unlawful to take shellfish from contaminated sources if determined by said board to be a menace to health; making violations of this act misdemeanors and providing for the punishment of same.

History: Approved April 5, 1917. In effect July 27, 1917. Stats. 1917, p. 42.

Taking of oysters, etc., unlawful, when.

§ 1. It shall be unlawful to take oysters, clams, quahaugs, mussels or other shellfish used or intended to be used for human consumption from any tidal waters, flats, areas or sources from which the taking of such shellfish shall be determined to be a menace to health as hereinafter provided.

Examination of tidal waters by state board of health. Posting of notices.

§ 2. The state board of health may and is hereby empowered to examine any tide waters, flats, areas or sources from which oysters, clams, quahaugs, mussels or other shellfish may be taken, and to determine whether such waters, flats, areas or sources are subject to sewage contamination, and to determine whether the taking of such shellfish from such waters, flats, areas or sources does or may constitute a menace to the lives and health of human beings. Upon the determination by said state board of health that such waters, flats, areas or sources are or may be subject to sewage contamination and that the taking of shellfish therefrom does or may constitute a menace to the lives and health of human beings, said board shall ascertain as accurately as may be the bounds of such contamination, and shall cause the posting of notices prohibiting the taking of shellfish from such sources and describing the bounds of the tidal flats, waters, areas or sources from which the taking of shellfish shall be unlawful. The fact of the posting of such notices shall be published once a week for four successive weeks in some newspaper of general circulation, published in the county in which such waters, flats, areas or sources are situated, if there be one, and if there be none, then in a newspaper published in an adjoining county.

Enforcement.

§ 3. It shall be the duty of the state board of health to enforce the provisions of this act and its inspectors and employees are hereby empowered to enter upon public or private property upon which shellfish may be located at all times for the purposes of this act.

Penalty.

§ 4. Any person violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars or by imprisonment for a term of not more than six months, or by both such fine and imprisonment, but such penalties shall not be incurred until the fact of such prohibition shall have been published for four successive weeks, as above provided. Each day's violation shall constitute a separate and distinct offense.

FREE CAMPING GROUND IN PLACER COUNTY.

ACT 1746—An act to authorize the state board of fish and game commissioners to prepare and maintain free camping grounds on land in Placer county belonging to the state of California and to adopt and enforce regulations pertaining thereto.

History: Approved May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 522.

Free camping grounds in Placer county. Rules and regulations. Removal of hatchery.

§ 1. The state board of fish and game commissioners is hereby authorized and directed to prepare as a free camping ground for the people of the state of California that certain property situated in the county of Placer, state of California, and bounded and described as follows, to wit:

Lot seven of Bittencourt tract, as per plat of said tract recorded in book "A" of field notes or town plats, pages eighty-four and eighty-five, Placer county records.

The said commission is directed to prepare such portion of said land for camping purposes for the summer season of the year nineteen hundred nineteen, as shall be suitable for such purposes, and as shall not interfere with the state fish hatchery now on said land or the pollution of waters used to supply said hatchery.

The commission is hereby authorized to establish rules and regulations for the government of such camping ground, to the end that the greatest number of people can avail themselves of the privileges of the ground, and may regulate the time when and for which any person may have the use of any portion of such ground for camping purposes. All expense in maintaining said camping ground shall be paid from the state fish and game preservation fund, and for the purposes of enforcing the rules and regulations by said commission, pursuant to this act, the state fish and game commissioners, their deputies and employees, are hereby vested with the power and authority of peace officers.

As soon as practicable, the fish and game commission shall remove the hatchery now on the above described land to another site, and thereafter such additional portion of such land as is available and suitable for camping purposes, shall be placed in condition for camping purposes.

GAMING.

See Kerr's Cyc. Penal Code, §§ 330, et seq.

CHAPTER 129.**GAS.**

References: Act concerning gas companies, continued in force, see Kerr's Cyc. Political Code, § 19, and Kerr's Cyc. Penal Code, § 23.

Authority of gas company to lay pipes, see Kerr's Cyc. Political Code, §§ 4410, et seq.

Franchise tax of gas corporations, see Kerr's Cyc. Political Code, §§ 3664, et seq.

Gas pipes, injury to, see Kerr's Cyc. Penal Code, § 624.

Gas meter, interfering with, see Kerr's Cyc. Penal Code, § 498.

Gas, stealing, see Kerr's Cyc. Penal Code, § 498.

Inspector of gas meters, appointment, see Kerr's Cyc. Political Code, § 368.

Inspector of gas meters, duties, etc., see Kerr's Cyc. Political Code, §§ 577, et seq.

Natural gas, see tit. "Mines and Mining."

CONTENTS OF CHAPTER.

- ACT 1759. CONCERNING GAS COMPANIES.**
- 1760. REGULATING THE USE OF ILLUMINATING GAS.
- 1761. STANDARD OF ILLUMINATING POWER ACT.
- 1762. PROHIBITING WASTING OF NATURAL GAS.

GRANT OF FRANCHISES BY MUNICIPAL CORPORATIONS.**ACT 1759—An act concerning gas companies.**

History: Approved April 4, 1870, Stats. 1869-70, p. 815. Continued in force, see Kerr's Cyc. Political Code, § 19, and Kerr's Cyc. Penal Code, § 23. Superseded as to contracts with municipal corporations by the act of 1895, Stats. 1895, p. 191, and as to the granting of franchises, as well as the power of contract, it was probably superseded by section 19, article XI, constitution. See notes.

This act was apparently treated as in force in *Dobbins v. Los Angeles*, 139 Cal. 179, 96 Am. St. Rep. 95, 72 Pac. 970.

REGULATING USE OF ILLUMINATING GAS.**ACT 1760—An act to regulate the use of illuminating gas.****History:** Approved March 20, 1903, Stats. 1903, p. 289.**Gas not to be turned off at meter.**

§ 1. Every hotel-keeper, lodging-house keeper, and in-keeper, or keeper of any place where rooms are let to lodgers in which, or any of which such places illuminating-gas is used, who shall turn off, or cause to be turned off at the meter the flow of such illuminating-gas, during the time of the use of any such room or rooms, shall be guilty of a misdemeanor; provided, however, that this act shall not apply to any of the persons herein enumerated, when such person or persons shall have connected every exit orifice upon the gas-fixtures used in such place or places with a practical and safe automatic gas-igniter.

Act takes effect when.

§ 2. This act shall take effect and be in force immediately from and after its passage.

STANDARD OF ILLUMINATING POWER ACT.**ACT 1761—An act to regulate the quality and standard illuminating power and the price of gas in all cities within the state of California having a population of one hundred thousand or more.****History:** Approved March 4, 1878, Stats. 1877-78, p. 167.**Quality and price of gas to be fixed by whom.**

§ 1. That in all cities in the state of California having a population of one hundred thousand or more, the local legislative body thereof, whether known and designated as the board of supervisors, or board of aldermen, or common council, or board of trustees, or otherwise, are hereby authorized and required to fix the standard quality and illuminating power of gas to be furnished, and the rate and price for each one thousand cubic feet to be charged therefor by any person, company, or corporation whose pipes or mains are or shall be laid down in the streets or highways of such city, for the purpose of supplying gas for the use of such city, or for the inhabitants thereof, or for such city and its inhabitants; provided, however, that said board or local authority shall not fix or establish the standard quality and illuminating power of gas in such city at less than sixteen candle-power, or such that five cubic feet of gas per hour so furnished shall give light at least equal to that afforded by the combustion of sixteen standard sperm candles consuming one hundred and twenty grains of sperm each per hour, the burner to be used in making such test to be that best adapted to the economical consumption of gas; and provided, further, that such board of supervisors, or local legislative authority, by whatever name it may be known, shall not fix or establish the rate or price of gas so furnished to such city or its inhabitants at any greater price or rate than three dollars per thousand cubic feet.

Mayor to appoint an inspector.

§ 2. It shall be the duty of the mayor of each city having the population mentioned in section 1 of this act, and such mayor is hereby required, within thirty days after the passage and approval of this act, to appoint, subject to the approval of the board of supervisors, or other local legislative body aforesaid, a person of competent experience and knowledge of and concerning the proper qualities and illuminating power of gas, and who shall not be directly or indirectly interested in or connected with any person, company, or corporation engaged in the manufacture or furnishing of illuminating gas in such city, or elsewhere, either to such city or its inhabitants, or any of them, either as a stockholder or otherwise, who shall be known and designated as gas inspector of such city, who shall hold his said office for the term of two years, or until

his successor shall be appointed and qualified; subject, however, to removal from his said office by the mayor, with the concurrence of a majority of the board of supervisors, or other local legislative board aforesaid, for any one of the following causes, to wit, by reason of any interest in the manufacture or furnishing of gas in such city, whether such interest existed at the date of his appointment or was afterward acquired, or for want of competent knowledge, skill, or experience to enable him properly to discharge the duties of said office, or for any neglect, misconduct, or inefficiency in the discharge of the duties of said office, to the prejudice of such city, or its inhabitants, or any of them. The person so appointed shall, before he enters upon the duties of said office, and within ten days after his appointment and confirmation, take and subscribe an oath or affirmation before the county judge of the county in which such city is situated, that he will faithfully and impartially perform and discharge all the duties required by this act and the ordinances or resolutions of said board passed or adopted under and pursuant to the provisions thereof, as such gas inspector of such city, and shall also, within the same time, give bond to the city in and for which he is appointed, in the sum of ten thousand dollars, with sureties to be approved by said board, conditioned for the faithful performance of the duties of said office, which said oath and bond shall be filed with the clerk of said board. Such gas inspector shall be entitled to a salary to be fixed and allowed by said board, which shall be paid monthly out of the general fund of such city.

Duty of inspector.

§ 3. It shall be the duty of such inspector, immediately upon his appointment and qualification as such officer, as aforesaid, to make a careful examination and inquiry by inspection, letter, or otherwise, as to the quality and illuminating power of the gas furnished and used in the principal cities of the United States, and the prices charged therefor, and also the comparative cost of the manufacture and supply of gas in other cities of the United States, with the cost of the manufacture and supply of the same in the city for which he is such inspector, and report fully the result of such examination and information to said board within six months after his appointment and qualification; and upon receiving such reports, said board shall proceed to fix and establish the quality and standard illuminating power of gas to be used in such city, and the maximum price to be charged therefor; and such standard and price may be changed by said board from time to time, not oftener than once every year, as increased consumption or other circumstances may in their judgment require.

Same.

§ 4. After said board shall have fixed and established the quality and illuminating power, and the price of gas, as hereinbefore, it shall be the duty of such inspector to examine and inspect, from time to time, at least once every week, without notice to the person, company, or corporation furnishing the same, the quality and illuminating power of the gas furnished to such city and the inhabitants thereof, and in case the same shall fall below the standard fixed by said board, the said inspector shall forthwith report the same to said board; and at such other times as he may be requested thereto by the mayor or any committee of said board, he shall report to said board upon any and all matters connected with the manufacture, supply, and consumption of gas coming within the scope of his official duties, and specially upon any subject or subjects, matters or things, connected therewith and specified in such request.

Certain acts declared unlawful.

§ 5. After said board shall have fixed and established the quality and standard illuminating power of the gas, and the price per thousand cubic feet, as in this act provided to be charged therefor, it shall be unlawful for any person, company, or

corporation to furnish to such city, or any inhabitant thereof, or other person therein, for illuminating purposes, gas of a lower standard or quality, or to charge or receive therefor a higher price than is provided by said board, under the authority and subject to the limitations of this act; and for every violation of the provisions of this act, or the provisions of any order, resolution, or ordinance of said board made in pursuance thereof, every such person, company, or corporation shall incur a penalty of not less than one hundred nor more than one thousand dollars, to be recovered in a civil action in the name and for the use of such city, in any court of competent jurisdiction; and each day upon which such person, company, or corporation shall, without reasonable cause of excuse therefor, furnish gas of a lower quality or standard illuminating power than that fixed by said board, shall constitute and be considered and held one violation thereof, and each month or shorter period for which said person, company, or corporation shall take an account of gas consumed, and for which they shall charge or receive a price greater than that fixed by said board, shall be held and regarded as one offense, and any number of such offenses of either class, or both, may be joined in the same action, and the several penalties for the several violations proved or confessed in said action may be united and recovered in the same judgment; and such person, company, or corporation shall also be liable to such city and to any and each person or corporation who shall be injured by any such violation, in double the amount of damages actually sustained.

Actions tried, by whom.

§ 6. All actions for penalties under the provisions of this act shall be tried by the court, unless a jury be demanded by either party; and when such action shall be tried by a jury, the jury shall find, as to each violation charged in the complaint, that "the defendant is guilty," or "the defendant is not guilty"; and upon each charge in respect to which the jury has found the defendant guilty, the court shall fix the penalty, and render judgment for the aggregate amount of such penalties, together with costs of suit.

§ 7. All penalties recovered under this act shall be paid into the general fund of such city.

§ 8. This act shall apply to the city and county of San Francisco, as well as to cities whose municipal government is distinct from the county in which they are located.

§ 9. This act shall take effect immediately.

1. Power of supervisors—Price of gas.—Under this act the board of supervisors had no power to allow more than three dollars per thousand cubic feet for gas furnished the city and county of San Francisco.—*San Francisco Gas Light Co. v. Dunn*, 62 Cal. 580.

2. Demand for payment of gas furnished.—The act furnishes no authority for a demand upon the city and county treasury.—

San Francisco Gas Light Co. v. Dunn, 62 Cal. 580.

3. Salary of gas inspector to be paid monthly.—The salary of gas inspector is to be paid monthly, as the act provides, and unless it is paid or a demand presented within the time provided by the consolidation act, it is barred.—*Ames v. San Francisco*, 76 Cal. 325, 18 Pac. 397.

PROHIBITING WASTING OF NATURAL GAS.

ACT 1762—An act prohibiting the unnecessary wasting of natural gas into the atmosphere; providing for the capping or otherwise closing of wells from which natural gas flows; and providing penalties for violating the provisions of this act.

History: Approved March 25, 1911, Stats. 1911, p. 499.

Waste of gas prohibited.

§ 1. All persons, firms, corporations and associations are hereby prohibited from willfully permitting any natural gas wastefully to escape into the atmosphere.

Wells to be capped.

§ 2. All persons, firms, corporations or associations digging, drilling, excavating, constructing or owning or controlling any well from which natural gas flows shall upon the abandonment of such well, cap or otherwise close the mouth of or entrance to the same in such a manner as to prevent the unnecessary or wasteful escape into the atmosphere of such natural gas. And no person, firm, corporation or association owning or controlling land in which such well or wells are situated shall willfully permit natural gas flowing from such well or wells, wastefully or unnecessarily to escape into the atmosphere.

Penalty.

§ 3. Any person, firm, corporation or association who shall willfully violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Each day a violation.

§ 4. For the purposes of this act each day during which natural gas shall be willfully allowed wastefully or unnecessarily to escape into the atmosphere shall be deemed a separate and distinct violation of this act.

§ 5. All acts or parts of acts in conflict herewith are hereby repealed.

§ 6. This act shall take effect immediately.

CHAPTER 130.**GETTYSBURG.****CONTENTS OF CHAPTER.****ACT 1774. CELEBRATION OF FIFTIETH ANNIVERSARY OF THE BATTLE****CELEBRATION OF FIFTIETH ANNIVERSARY.**

ACT 1774—An act to provide for the celebration of the fiftieth anniversary of the battle of Gettysburg; appointing a commission in connection therewith; and making an appropriation therefor.

History: Approved May 31, 1913. In effect immediately. Stats. 1913, p. 278.

Gettysburg anniversary commission.

§ 1. The governor of the state of California is hereby empowered to appoint a commission consisting of three citizens of this state, which commission shall co-operate with the department commander of the department of California and Nevada, Grand Army of the Republic, for the purpose of aiding in the planning and conducting of a public celebration of the fiftieth anniversary of the battle of Gettysburg in the state of Pennsylvania on and during the first four days of July, 1913.

Transportation of veterans.

§ 2. Said commission shall represent this state at the said anniversary and is hereby authorized to obtain, so far as possible, the names and addresses of all the veterans now residing in the state of California who took part in the battle of Gettysburg, and to make preliminary arrangements for the transportation of such veterans to the battlefield of Gettysburg so that said veterans may attend the memorial exercises and anniversary to be held at said battlefield of Gettysburg, during the first four days of July, 1913.

Veterans eligible.

§ 3. Only such veterans of the civil war who actually took part in the battle of Gettysburg, and who are recommended by the said commission, whether such veterans fought with the Confederate or the Union or northern armies, shall be eligible under this act to receive free transportation to and from the battlefield of Gettysburg.

Appropriation. Report.

§ 4. The sum of fifteen thousand dollars (\$15,000) or so much thereof as may be necessary is hereby appropriated out of any money in the treasury not otherwise appropriated to be used by said commission appointed pursuant to this act, to carry out the provisions of this act. Said sum of money is to be disbursed under the direction and with the approval of said commission. Said commission shall keep an accurate record of all its proceedings and transactions, and shall file with the governor of this state a full, true and complete report thereof. Said commission shall have full power to provide any system or systems for the carrying into effect of this act.

Issuance of warrants.

§ 5. The controller of the state is hereby authorized and directed to draw his warrant or warrants in favor of the commission created pursuant to this act upon itemized requisition of said commission up to the amount of money appropriated by this act and the state treasurer is hereby ordered and directed to pay such warrant or warrants out of said appropriation.

Current expenses.

§ 6. This bill, inasmuch as it provides for the usual current expenses of the state, shall, under the provisions of section 1 of article IV of the constitution of the state of California, take effect immediately.

1. **Act inoperative.**—This act was rendered inoperative by a decision of the district court of appeals declaring that the appropriation was not a current expense, and therefore could not become effective until the expiration of ninety days after

its passage, which would be too late for the participation of the beneficiaries of the act in the celebration.—*McClure v. Nye*, 22 Cal. App. 248, 133 Pac. 1045; *Commission, etc., v. Nye*, 22 Cal. 248, 133 Pac. 1045.

CHAPTER 131.**GIFTS.**

References: Gifts to counties, see Kerr's Cyc. Political Code, §§ 4052a, 4122.

Gifts to counties, see Kerr's Cyc. Civil Code, § 1275.

Gifts to state, disposition of, see Kerr's Cyc. Political Code, § 453a.

San Pasqual battlefield site, see tit. "San Pasqual Battlefield."

CONTENTS OF CHAPTER.**ACT 1781. GIFTS TO COUNTIES FOR PIONEER MONUMENTS.****GIFTS TO COUNTIES FOR PIONEER MONUMENTS.**

ACT 1781—An act authorizing board of supervisors of any county, or city and county, or the trustees or other governing body of any municipality in the state of California to receive devises, bequests, donations and gifts, also to levy taxes, for the purpose of erecting monuments in memory of California pioneers.

History: Approved June 3, 1913. In effect August 10, 1913. *Stats.* 1913, p. 377.

Gifts for pioneer monuments.

§ 1. The board of supervisors of any county, or city and county, or the trustees or other governing body of any municipality, in the state, may receive devises, bequests,

donations and gifts, for the purpose of erecting within such county, or city and county, or city, a monument in memory of California pioneers.

Erection of monuments.

§ 2. When, in the opinion of such board of supervisors or of such trustees or other governing body of a municipality, the devises, bequests, donations and gifts received are sufficient therefor, they may erect such monument.

Question of tax levy for monuments.

§ 3. Such board of supervisors, or trustees, or other governing body of a municipality, may submit to the qualified electors of the county, or city and county, or of the city, as the case may be, whether taxes for the erection of a monument to the California pioneers shall be levied on the taxable property of the county, or city and county, or city, as the case may be. The question of levying such tax for such purpose shall be submitted to the qualified electors of the county, or city and county, or municipality, as the case may be, at a general or other election that may be held in such county, or city and county, or municipality. Twenty days' notice thereof shall be previously given by posting in at least three public places in such county, city and county, or municipality. Such notices shall state specifically the amount to be raised and the purpose. If a majority of all the votes cast at such election are in favor of the proposal, the tax herein provided for shall be considered authorized.

Ballots.

§ 4. The electors voting at such election shall have placed on their ballots the words "Tax for pioneer monument—Yes" or "Tax for pioneer monument—No."

Levy of tax in county.

§ 5. When such tax has been voted in a county, or city and county, the board of supervisors in the next annual levy of taxes, shall levy a tax on the property in such county, or city and county, sufficient to produce the amount voted for for the purpose, and the same shall be assessed and collected in the same manner as other taxes are levied and collected.

Levy of tax in city.

§ 6. When such tax has been voted in a city, the trustee[s] or other governing body thereof in the next annual levy of taxes, shall levy a tax on the property in such city, sufficient to produce the amount voted for for the purpose, and the same shall be assessed and collected in the same manner as other taxes are levied and collected.

Duty of supervisors and trustees.

§ 7. The board of supervisors in case of monuments for a county and the trustees or other governing body of a city, in case of monuments for a city, shall when the taxes so raised and collected are available, proceed to carry out the purpose for which the money was voted by the county, or city and county, or city.

CHAPTER 132.

GILROY.

References: Boundary, see Kerr's Cyc. Political Code, § 3919.

Classification, see Kerr's Cyc. Political Code, §§ 4005c, 4006.

County government, see Kerr's Cyc. Political Code, §§ 4000, et seq.

See, generally, tit. "County Boundaries."

CONTENTS OF CHAPTER.

ACT 1783. INCORPORATING GILROY.

ACT OF INCORPORATION.

ACT 1783—An act to incorporate the city of Gilroy.

History: Approved March 12, 1870, Stats. 1869-70, p. 263. Amended March 13, 1872, Stats. 1871-72, p. 356; April 1, 1876, Stats. 1875-76, p. 724.

GLENDALE.

See Act 3094, note.

GLENDORA.

See Act 3094, note.

CHAPTER 133.

GLENN COUNTY.**ORGANIZATION ACT.****ACT 1786—An act to create the county of Glenn, establish the boundaries thereof, and provide for its organization.**

History: Approved March 11, 1891, Stats. 1891, p. 98. Boundary amended by a supplementary act approved March 11, 1893, Stats. 1893, p. 158.

1. Constitutionality—Special legislation.

—An act creating a new county is not special legislation, and the legislature is not limited as to the means which it may adopt in its preliminary organization.—*People v. County of Glenn*, 100 Cal. 419, 38 Am. St. Rep. 305, 35 Pac. 302.

2. Same—Manner of holding election.

Under the provisions of subdivision 11, section 25, article IV of the constitution, there may be a special law for holding and conducting an election "on the organization of new counties," and there was no objection to the manner in which the election, at which the voters of the proposed new county of Glenn expressed their will, was held.—*People v. County of Glenn*, 100 Cal. 419, 38 Am. St. Rep. 305, 35 Pac. 302.

3. Same—Creation of supervisorial districts.—It is not fatal to the Glenn county bill that it does not itself provide for the division of the proposed county into supervisorial districts, but allows five supervisors to be elected at large, who have the power under the general law to divide the county into districts.—*People v. County of Glenn*, 100 Cal. 419, 38 Am. St. Rep. 305, 35 Pac. 302.

4. Legislative intent as to class of new county.—The legislature did not intend, when it declared in the organization act that Glenn county should be a county of the thirty-seventh class, that it should remain a county of that class, regardless of future changes in the law whereby counties having populations greatly larger or greatly

smaller than when Glenn county was placed therein, and the effect of the act was to fix the population of the county, which, in the absence of subsequent legislation, would, by operation of law, become a county of the thirty-seventh class.—*Sanders v. Sehorn*, 98 Cal. 227, 33 Pac. 58.

5. Division of unpaid taxes.—Taxes on railroad property within the county of Colusa were due and unpaid to that county at the time of its division and the creation of the county of Glenn, and a portion thereof paid to the latter county after such division, are held to have been assets of Colusa county, and no provision having been made at the time of such division for a division of the assets of the old county, the new county had no right to retain the portion of such taxes so paid to it, and is liable therefor as for money had and received upon an implied promise to pay the same to Colusa county.—*Colusa County v. Glenn County*, 117 Cal. 434, 49 Pac. 457.

6. Obiter dicta—Term of superior judge.

—The provision of the act which fixed the term of superior judge, elected at the organization election, at six years, and provided for the election of a successor whose term should begin January 1, 1897, transgressed both the letter and spirit of the constitution, which require an election for superior judge at the first general election following the creation of the county, for the remainder of the constitutional term ending January 1, 1897.—*People v. Markham*, 104 Cal. 232, 37 Pac. 918.

CHAPTER 134.

GOATS.

References: See, generally, *titls. "Animals"; "Livestock"; "Sheep."*
Buck goats running at large, see *Kerr's Cyc. Penal Code*, § 597g.
Goats in particular counties, see particular title.

CONTENTS OF CHAPTER.

ACT 1788. PROTECTION OF GOATS FROM DOGS.

ACT 1788—An act to protect sheep and cashmere and angora goats against the ravages of dogs.

History: Approved March 13, 1866, Stats. 1865-66, p. 225.

Code commissioners' note: "Superseded in part by Civil Code, § 3341, and probably not in force in any particular."

CHAPTER 135.

GOLDEN CITY HOMESTEAD ASSOCIATION.

CONTENTS OF CHAPTER.

ACT 1794. CONVEYANCE OF LANDS TO THE ASSOCIATION.

CONVEYANCE OF LANDS TO THE ASSOCIATION.

ACT 1794—An act to authorize sale and conveyance of lands in San Francisco to Golden City Homestead Association.

History: Approved April 4, 1864, Stats. 1863-64, p. 463.

This act permitted the commissioners of swamp and overflowed lands to sell certain lands to this homestead association.

As to the meaning of "tide lands," "swamp and overflowed lands," and "salt marsh" lands.—People v. Davidson, 30 Cal. 379.

CHAPTER 136.

GOOD TEMPLARS.

References: Religious, social and benevolent corporations, see Kerr's Cyc. Civil Code, §§ 593, et seq.

CONTENTS OF CHAPTER.

ACT 1799. GRANT OF CORPORATE POWERS.

GRANT OF CORPORATE POWERS.

ACT 1799—An act concerning Independent Order of Good Templars.

History: Approved March 26, 1863, Stats. 1863, p. 101.

This act gave authority to acquire property necessary to carry out its charitable purpose.

CHAPTER 137.

GOVERNOR.

References: Appointments by, compensation of, duties, powers, etc., generally, see Kerr's Cyc. Political Code, subject "Governor."

Duties and powers as to particular subjects, see Kerr's Cyc. Political Code, particular subject, and see particular title.

CONTENTS OF CHAPTER.

ACT 1805. RESIDENCE OF GOVERNOR.

1808. EMPLOYMENT OF COUNSEL TO PROSECUTE CLAIMS AGAINST THE UNITED STATES.

RESIDENCE OF GOVERNOR.

ACT 1805—An act providing for the maintenance of a residence for the governor of the state of California, and providing the salaries of the necessary employees and servants selected and employed by the governor therein, and for the appropriation of necessary moneys for such purpose, and directing the state controller to issue warrants upon the general fund, and directing the state treasurer to pay said warrants.

History: Approved March 11, 1907, Stats. 1907, p. 214. Prior acts:
See editor's note.

Editor's note: Out of the state capitol special fund, created by the act of April 4, 1870 (Stats. 1869-70, p. 724), the board of

state capitol commissioners were authorized to expend fifty thousand dollars for the purchase of suitable grounds and the erection

of a mansion or residence for the governor, and for the necessary inclosures, streets, sidewalks and outbuildings on and around the same. The legislature, by the act of March 30, 1874, Stats. 1873-74, p. 903, turned the governor's mansion into a state printing office and state armory; but this act was repealed by the act of 1876 (Stats. and Amendments 1875-76, p. 22). By the act of March 7, 1899 (Stats. 1899, p. 73), the sum of \$50,000 was appropriated "for the erection and furnishing of said residence." This act was amended March 23, 1903 (Stats.

1903, p. 415), authorizing the expenditure of the balance of the \$50,000 unexpended, in either buying a site and building a residence, or buying one already built, and repairing and remodeling it. Ten thousand dollars was expressly fixed as the amount to be expended for furnishing said building.

By the act of March 20, 1899 (Stats. 1899, p. 150), the amount for maintenance and servants was fixed at \$2500 per annum. By the present act this sum was increased to \$3500 per annum.

EMPLOYMENT OF COUNSEL.

ACT 1808—An act to authorize, empower, and direct the governor of the state of California to employ counsel, agents, and attorneys for the purpose of prosecuting, collecting and recovering the claims of the state of California against the United States of America, to prescribe the terms and conditions of the employment, the rate of compensation therefor, and the manner of payment thereof.

History: Approved March 23, 1907, Stats. 1907, p. 938.

This act authorized the governor to employ the firm of Kistston & Siddons of Wash-

ington, D. C., for the purpose indicated and fixed the compensation of the firm.

CHAPTER 138.

GRAND ARMY OF THE REPUBLIC.

References: See, generally, tit. "Woman's Relief Corps."

CONTENTS OF CHAPTER.

- ACT 1815. WEARING BADGE OF G. A. R. WITHOUT RIGHT.
- 1816. PERMANENT HEADQUARTERS IN CAPITOL.
- 1817. NATIONAL ENCAMPMENT OF 1912.
- 1818. G. A. R. MEMORIAL MONUMENT.

WEARING BADGE OF G. A. R., WITHOUT RIGHT.

ACT 1815—An act to prevent persons from unlawfully wearing badge of Grand Army of the Republic.

History: Approved March 10, 1887, Stats. 1887, p. 82. Amended March 1, 1907, Stats. 1907, p. 81.

Army badges, penalty for unlawfully wearing.

§ 1. Any person who shall willfully wear or use the badge or button of the Grand Army of the Republic, or of the United Spanish War Veterans, to obtain aid or assistance thereby within this state, unless he shall be entitled to wear or use the same under the rules and regulations of the department of California, Grand Army of the Republic, or United Spanish War Veterans, respectively, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment for a term not to exceed thirty days in the county jail, or a fine not to exceed twenty dollars, or by both such fine and imprisonment. [Amendment approved March 1, 1907. Stats. 1907, p. 81.]

§ 2. [No section of this number.]

Act takes effect when.

§ 3. This act shall take effect and be in force from and after the date of its passage.

PERMANENT HEADQUARTERS IN CAPITOL.

ACT 1816—An act to provide permanent headquarters in the capitol building for the Grand Army of the Republic, to designate the purposes for which the same shall be used.

History: Approved March 25, 1911, Stats. 1911, p. 488.

Quarters for G. A. R.

§ 1. There shall be set apart a suitable furnished room at the capitol in Sacramento, to be known as headquarters' room of the Grand Army of the Republic. Said room shall be under the charge of the commander of the Grand Army of the Republic for the department of California, to be used as headquarters, and for the care and storage of books and papers relating to the Grand Army of the Republic.

§ 2. This act shall take effect from and after its passage.

NATIONAL ENCAMPMENT OF 1912.

ACT 1817—An act to appropriate money for the purpose of assisting to defray the expenses of a public nature incident to the holding of a national encampment of the Grand Army of the Republic in this state, to be held in nineteen hundred twelve.

History: Approved May 1, 1911, Stats. 1911, p. 1360.

The sum of \$25,000 was appropriated for the purpose indicated.

G. A. R. MEMORIAL MONUMENT.

ACT 1818—An act to provide for the erection of a memorial monument to deceased members of the G. A. R.; appointing a commission therefor; and providing an appropriation to carry this act into effect.

History: Approved June 12, 1915. In effect August 11, 1915. Stats. 1915, p. 1490.

Committee on G. A. R. monument at Long Beach.

§ 1. The governor of this state is hereby empowered to appoint a committee of three citizens of the state of California to act with a like committee, namely: G. W. Wilcox, L. W. Archer and H. C. Russell representing the Long Beach G. A. R. Post No. 181, who shall choose a site and erect a memorial monument in the city of Long Beach to deceased members of the G. A. R.

Appropriation.

§ 2. There is hereby appropriated, out of any money in the state treasury not otherwise appropriated, the sum of one thousand dollars to be expended in accordance with law for the purpose of this act.

When available.

§ 3. None of the moneys herein appropriated shall be available until there shall have been erected upon the site selected, a suitable base for said monument and an additional sum of one thousand dollars (\$1,000.00), or more deposited in the National Bank of Long Beach to be used for the purposes of and in the manner mentioned in this act. The base so erected shall be subject to the approval of the joint committee and proof of payment of the cost of construction thereof shall be made to the satisfaction of the state board of control.

GRASS VALLEY.

See Act 3094, note.

GRIDLEY.

See Act 3094, note.

CHAPTER 139.

GROWING TIMBER.

References: Injury to ornamental trees, see Kerr's Cyc. Penal Code, § 622.

Injury to freehold by cutting down or girdling growing trees, see Kerr's Cyc. Penal Code, § 602.

PROTECTION OF BIG TREE GROVES.

ACT 1830—An act to protect the Big Tree groves of Fresno, Tulare, and Kern counties.

History: Approved March 13, 1874, Stats. 1873-74, p. 347.

Misdemeanor.

§ 1. Any person or persons who shall willfully cut down or strip of its bark, any tree "over sixteen feet in diameter," in the grove of big trees situated in the counties of Fresno, Tulare, or Kern, or shall destroy any of said trees by fire, shall be guilty of a misdemeanor, and shall, on conviction thereof before any justice of the peace in said counties, be fined not less than (\$50) fifty dollars nor more than (\$300) three hundred dollars, or imprisonment in the county jail not less than (25) twenty-five days nor more than (150) one hundred and fifty days, or both such fine and imprisonment, as the court may determine.

Disposition of fines.

§ 2. Upon the arrest and conviction of any person or persons guilty of any of the acts before mentioned, the party informing shall be entitled to one-half of the fines collected.

Act takes effect when.

§ 3. This act shall take effect and be in force from and after its passage.

CONTENTS OF CHAPTER.

ACT 1830. PROTECTION OF BIG TREE GROVES.

GUARDIAN AND WARD.

See Kerr's Cyc. Civil Code, §§ 236, et seq.; and Kerr's Cyc. Code Civil Procedure, §§ 1747, et seq.

CHAPTER 140.

GUIDE POSTS.

References: See, generally, "Highways."

CONTENTS OF CHAPTER.

ACT 1840. GUIDE POSTS IN DESERT SECTIONS.

GUIDE POSTS IN DESERT SECTIONS.

ACT 1840—An act appropriating the sum of five thousand dollars for the purpose of procuring guide-posts to be erected in the desert sections of California, and particularly in the counties of Kern, Ventura, Los Angeles, Inyo, Riverside, San Bernardino and San Diego.

History: Approved March 22, 1905, Stats. 1905, p. 805.

The act appropriated \$5000 for the purpose indicated.

This act placed the purchase and distribution of posts under the department of highways.

GUSTINE.

See Act 3094, note.

HABEAS CORPUS.**See Kerr's Cyc. Penal Code, §§ 1473-1505.****HANFORD.****See Act 3094, note.****CHAPTER 141.****HARBOR COMMISSIONERS.****References.** Commissions on sale of bonds, see tit. "Bonds," Acts 519, 519a.

Eureka Harbor Commissioners, see Kerr's Cyc. Political Code, §§ 2567, et seq.

Ferry depot, see tit. "Ferry Depot."

Leases of water front property, see tit. "Leases."

San Diego Harbor Commissioners, see Kerr's Cyc. Political Code, §§ 2575, et seq.

San Francisco Harbor and State Harbor Commissioners, see Kerr's Cyc. Political Code, §§ 2520, et seq.

CONTENTS OF CHAPTER.

- ACT 1852.** REPAIRS UPON PRIVATE WHARVES.
 1855. JURISDICTION OF COMMISSION—ACT OF 1878.
 1856. WAREHOUSES, ELEVATOR, ETC.
 1857. STATE RAILROAD ACT OF 1913.
 1858. STATE DRYDOCK ACT OF 1913.
 1860. ALIGNMENT OF EAST STREET.
 1861. CONDEMNATION OF CERTAIN PROPERTY.
 1862. INDIA BASIN CONDEMNATION ACT.
 1863. COMPROMISE OF LITIGATION.
 1864. FREE PUBLIC MARKET ON WATERFRONT.
 1865. INSURANCE OF STATE PROPERTY.
 1866. RECONSTRUCTION AND REPAIR OF DAMAGED PROPERTY.
 1866a. RECONSTRUCTION AND REPAIR OF WHARVES, ETC.
 1867. LEASE OF CERTAIN WATERFRONT PROPERTY.
 1869. SAN FRANCISCO HARBOR IMPROVEMENT ACT OF 1909.
 1870. INDIA BASIN ACT.
 1871. SAN FRANCISCO HARBOR IMPROVEMENT ACT OF 1913.
 1871a. SAN FRANCISCO SEAWALL ACT OF 1903.
 1872. ESTABLISHING DISPUTED TITLES OF BAY OF SAN DIEGO.
 1873. SAN DIEGO SEAWALL ACT OF 1909.
 1874. BOARD OF HARBOR COMMISSIONERS OF PORT OF SAN JOSE.
 1875. FALSE RETURNS TO BOARD OF STATE HARBOR COMMISSIONERS.
 1877. COUNTY HARBOR COMMISSION ACT.
 1878. PAYMENT OF CLAIM OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND.
 1879. ACQUISITION OF MISSION ROCK.

REPAIRS UPON PRIVATE WHARVES.**ACT 1852—An act to authorize the board of state harbor commissioners to make repairs upon private wharves in their possession.****History:** Approved March 26, 1874, Stats. 1873-74, p. 663.**Maintenance of wharves.**

§ 1. The board of state harbor commissioners are hereby authorized and empowered, in their discretion, to repair and maintain any wharf or wharves in their possession or under their control, notwithstanding such wharf or wharves may belong to private parties, and to pay the expenses thereof in the same manner as is now provided for the repairs or maintenance of the wharves of the state; provided, however, that such authority to repair and maintain private wharves shall terminate with the termination of the possession or control of the same on the part of said board.

Act takes effect when.

§ 2. This act shall take effect immediately after its passage.

JURISDICTION OF COMMISSION—ACT OF 1878.

ACT 1855—An act concerning the waterfront of the city and county of San Francisco.

History: Approved March 15, 1878, Stats. 1877-78, p. 263. Amended March 17, 1880, Stats. 1880, p. 10; March 19, 1889, Stats. 1889, p. 379; March 31, 1891, Stats. 1891, p. 233; March 26, 1895, Stats. 1895, p. 194; March 23, 1901, Stats. 1901, p. 627; March 18, 1905, Stats. 1905, p. 109; March 19, 1909, Stats. 1909, p. 434; May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 583; April 30, 1919. In effect July 22, 1919, Stats. 1919, p. 252.

The following is probably the only part of the act now in force:

Commissioners to have control of certain blocks.

§ 6. The said commissioners shall have the possession, jurisdiction and control over the blocks and parts of blocks formed by the change of the waterfront and the extensions of the streets to the thoroughfare aforesaid, and remove any obstructions placed thereon in the same manner as provided for the removal of obstructions from the piers, wharves and thoroughfares. The commissioners are authorized to keep and maintain said blocks and parts of blocks as open spaces for the use of the public, or they may, in their discretion, inclose them. The commissioners are also authorized to assign the use of such portion thereof as they may deem expedient for such purposes solely as will be most advantageous to the commerce of the port, and upon such terms and conditions as they may determine. All such assignments shall terminate at the pleasure of the commissioners.

Lease of seawall lots. Term of lease. Lease is canceled if free zone is established.

The commissioners are also authorized to lease such portions or portion of seawall lots, numbered one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, "a," "b," and "c," and such portions of that certain land described as follows, to wit: Commencing at a point formed by the intersection of the southerly line of Islais street and the easterly line of Third (formerly Kentucky) street, and running thence easterly and along said southerly line of Islais street eighteen hundred eighty feet; thence at a right angle southerly to the northeasterly line of Arthur avenue; thence northwesterly along the northeasterly line of Arthur avenue to a point on the easterly line of Third (formerly Kentucky) street two hundred nineteen feet and five inches southerly from the southerly line of Islais street; thence northerly along said line of Third street two hundred nineteen feet and five inches to the southerly line of Islais street and the point of beginning; as they may deem expedient for such purposes solely as will be most advantageous to the commerce of the port, save and excepting, however, such portions of the last-described piece of property as may be within two hundred feet of the southerly line of Islais street, and save and excepting such portions thereof as may be within two hundred feet of any portion of any pier, wharf or slip which may now exist fronting on Islais street or hereafter be constructed on any portion of said land; provided, that before the execution of any lease notice of the letting or leasing of any of the lots or property hereinabove mentioned, or parts thereof, shall be given by publication in three of the daily papers published in the city of San Francisco for at least ten days; such notice shall state the property or lot or portion thereof to be leased and that bids will be received by the commissioners at a place and time designated in such notice; and that said lots and property shall be let to the highest and best bidder; provided, further, that all bids for lease of property or lots or portions thereof, herein mentioned, shall set forth the purposes for which said property or lots or portions thereof shall be used, and that the statement of such bid shall be embodied in the lease given by the board of state harbor commissioners with the condition that the property or lot shall be used for such

purposes only; provided, further, that said board shall have the power to reject any and all bids; and provided, further, that in no event shall any such lease or leases be made for a term exceeding twenty-five years; provided, however, that all leases made and executed within two years preceding February 15, 1901, and on file in the office of the secretary of state, of land belonging to the state less than fifty acres in area, and which lease has been made to any corporation incorporated in this state, or to any person or persons, for terminal facilities, is hereby recognized, approved and ratified, and the conditions, covenants and agreements of the parties thereto are made binding on the said parties and on their successors and assigns and on the state of California; provided, further, that all such leases shall contain a provision providing that in the event of the establishment by the United States of a free zone in the port of San Francisco, and in the event that said leased land is necessary to said free zone that then the state board of harbor commissioners for that purpose, shall have the right to declare such leases cancelled and terminated upon payment to the lessees of the actual physical value of all improvements erected by said lessees on said leased land. [Amendment of April 30, 1919. In effect July 22, 1919. Stats. 1919, p. 252.]

Scope of act.—This act dealt principally with the jurisdiction of the territory along the water front, and provided for the opening of new streets, the extending of old streets to the water front, and the lay off of lots and blocks and the leasing of the same. Other features of the act have probably been superseded or repealed.

1. Channel street.—Jurisdiction of commission over Channel street.—*People v. Williams*, 64 Cal. 498, 2 Pac. 393; *People v. Pa-*

cific Improvement Co., 130 Cal. 442, 62 Pac. 739; *People v. Southern Pacific Co.*, 177 Cal. 555, 171 Pac. 295.

2. Collection of wharfage.—The power to collect wharfage vested in the commission is derived from the legislature, and the commission is the agent of the state with such powers, and no others, as the legislature has conferred.—*People v. Roberts*, 3 Cal. Unrep. 372, 25 Pac. 496.

WAREHOUSES, ELEVATORS, ETC.

ACT 1856—An act concerning the water front of the city and county of San Francisco.

History: Approved April 30, 1919. In effect July 22, 1919. Stats. 1919, p. 254.

Operation of warehouses, grain elevators, etc., by harbor commissioners.

§ 1. The board of state harbor commissioners is hereby authorized and empowered to construct, maintain and operate warehouses, grain elevators, oil tanks and such other facilities as it may from time to time deem expedient and to the advantage of the commerce of the port of San Francisco, and to fix such charges and make such rules and regulations as it may deem expedient for the operation thereof, and said board is further authorized and empowered to construct, maintain and operate conveyors on, above and under the ground from and to and between the docks and wharves and other property of the state of California and to and from the docks and wharves and other property of the state of California and under the jurisdiction of the board and to and from property owned by the state and fronting on the Embarcadero from any property of the state of California under the jurisdiction of said board, as it may from time to time deem expedient and to the advantage of the commerce of the port of San Francisco, and to fix all charges and make such rules and regulations as it may deem expedient in the operation thereof.

STATE RAILROAD ACT OF 1913.

ACT 1857—An act to enlarge the powers of the board of state harbor commissioners, and to authorize said board to locate, construct, maintain, and operate the state railroad and railroad tracks and appurtenances through, over, under and upon state lands, and lands within its jurisdiction or the water front, and city streets, avenues, alleys, lanes, places or property, or lands or property of the United States, or private property, in the city and county of San Francisco, and to obtain licenses, grants, permits or easements or rights of way therefor, and to construct tunnels, bridges, drawbridges and other appurtenances as incident thereto, and to impose tolls or compensation for and upon the use of the same and to regulate the use therefor.

History: Approved June 4, 1913. In effect August 10, 1913. Stats. 1913, p. 383. Prior act of March 19, 1889, Stats. 1889, p. 388, was probably superseded by the code. See Kerr's Cyc. Political Code, § 2524.

Power to build railroads in San Francisco.

§ 1. The board of state harbor commissioners is hereby authorized and empowered (in addition to the powers now granted, or which may hereafter be granted to it by law) to locate, construct, maintain, operate and extend the state railroad, and railroad tracks, through, over, under and upon any state lands, or lands within its jurisdiction, or the water front as defined in section 2524 of the Political Code, or through, over, under and upon any streets, avenues, alleys, lanes, places or property of the city and county of San Francisco, or lands or property of the United States of America, or private property in said city and county of San Francisco, in which and where it may then have a license, permission, easement or right of way therefor, together with all necessary trackage, switches, spurs, turnouts, fills, cuts, tunnels, trestles, bridges, drawbridges, signals and other appliances, appurtenances and incidents necessary to make the same complete and convenient for use.

Rights from Panama-Pacific company.

§ 2. The powers conferred by this act shall include:

1. Power and authority to obtain from Panama-Pacific international exposition company, a corporation, an assignment of its rights under an act of congress approved June 28, 1912, entitled, "An act granting a right of way to the Panama-Pacific international exposition company, or such successors or assigns as may be approved by the secretary of war, across the Fort Mason military reservation in California."

Approval of secretary of war.

2. Power and authority to obtain the approval of the secretary of war to such assignment, and to locate a railroad and tunnel upon and across said reservation and to ordain regulations therefor and for the use thereof and to obtain the approval of the secretary of war thereto.

Tolls and charges.

3. Power and authority to construct such railroad and tunnel upon and across said reservation as a part of and incident to said state railroad and railroad tracks; provided, that said board shall impose such tolls, charges and compensation for passage through said tunnel upon all freight and upon all passenger cars passing there through (which tolls shall be exclusive of and in addition to the ordinary compensation for the use of said railroad and railroad tracks) as shall provide within a limited time for the repayment of the cost of the construction of such tunnel. Such tolls and charges shall be in conformity with the requirements and subject to the approval of the secretary of war in that behalf and shall be so charged, imposed and collected until the cost of the construction of such tunnel shall have been repaid.

Grants from San Francisco.

4. Power and authority to obtain from the city and county of San Francisco proper and necessary grants, license or permission to extend, construct, maintain and operate the said state railroad and railroad tracks along, over and upon such public streets, avenues, alleys or property of said city and county of San Francisco as may be necessary for the extension of said state railroad or railroad tracks.

Acquisition of rights of way.

5. Power and authority to acquire rights of way and lands necessary for such extension from the owners of private property, either by grant or by condemnation proceedings; and in that behalf the provisions of law relating to the exercise of the right of eminent domain shall apply and insure [inure] to the benefit of said board, and to such proceedings.

Use of road and tunnel.

6. Power and authority to permit the passage over and through, and the use of said railroad and tunnel to any corporation or association, person or persons for passenger street cars for such time and under such rules and regulations and at such compensation as said board may determine.

Through Presidio reservation.

7. Power and authority to obtain license and permission from the United States government to extend, locate, construct, operate and maintain the said railroad and railroad tracks in and through the Presidio reservation in said city and county in such location and subject to such regulations as may be prescribed by the United States government.

Enumeration of powers not exclusive.

§ 3. The enumeration of powers contained in section 2 of this act shall not be deemed exclusive or to limit the general powers conferred by section 1 hereof.

STATE DRYDOCK ACT OF 1913.

ACT 1858—An act to enlarge the powers of the board of state harbor commissioners, and to authorize said board to locate, construct, maintain, operate and extend public drydocks and appurtenances thereto, in and about such portion of the bay of San Francisco under its jurisdiction, and to fix, regulate, impose and collect tolls or compensation for and upon the use of the same and to regulate the use therefor.

History: Approved June 3, 1913. In effect August 10, 1913. Stats. 1913, p. 372.

Drydocks in San Francisco bay.

§ 1. The board of state harbor commissioners is hereby authorized and empowered (in addition to the powers now granted, or which may hereafter be granted to it by law) to locate, construct, maintain, operate and extend public drydocks in and about such portion of the bay of San Francisco under the jurisdiction as defined in section two thousand five hundred and twenty-four of the Political Code.

Tolls.

§ 2. The said board shall fix, regulate, impose and collect tolls or compensation for and upon the use of such public drydocks and regulate the use thereof.

Disposition of money collected.

§ 3. All money collected for tolls as compensation for use of such public drydocks and all expenditure made in the maintenance and construction thereof shall be subject to the same provision as other moneys collected and expended by the said board.

ALIGNMENT OF EAST STREET.

ACT 1860—An act authorizing the board of harbor commissioners to rectify the alignment of East street, and employing the board to sell, condemn, and acquire adjacent property.

History: Approved March 31, 1891, Stats. 1891, p. 270.

Alignment of East street to be straightened.

§ 1. The board of state harbor commissioners is hereby authorized and directed to rectify the alignment of East street, between Pacific street and Market street, in the city and county of San Francisco, said rectification to be done so as to straighten the property lines and give as wide and commodious a thoroughfare as the traffic may demand.

Westerly line of East street.

§ 2. In no case shall the alignment of the westerly side of said thoroughfare extend east of the inner line of the thoroughfare as now established and defined by law.

Jurisdiction of board.

§ 3. The jurisdiction of said board shall be westerly to the line as established under this act.

Power of board.

§ 4. The board, in carrying out this law, shall have the power to purchase and sell, and to exchange, upon a legal and equitable basis, any portion or portions of the property adjacent to the westerly line of the thoroughfare herein provided for; and a full record of their proceedings shall be entered upon their minutes, and a sworn statement of all transfers, sales, and purchases, and other transactions, shall be filed with the secretary of state. Said statements shall show in full all payments and receipts, itemized so as to definitely exhibit the price or prices of each parcel of land transferred.

Condemnation proceedings.

§ 5. In case of failure on the part of the interested parties to come to a satisfactory agreement, the board shall have the power to condemn, as in other cases, for public purposes.

Act takes effect when.

§ 6. This act shall take effect from and after its passage.

CONDEMNATION OF CERTAIN PROPERTY.

ACT 1861—An act to authorize and empower the board of state harbor commissioners to institute condemnation proceedings against certain property on the corner of Market, Sacramento and East streets, in the city and county of San Francisco, and extending their jurisdiction over the same.

History: Approved March 26, 1895, Stats. 1895, p. 80.

Harbor commissioners may condemn certain lot.

§ 1. For the purpose of acquiring terminal facilities for the landing of passengers to and from the passenger and ferry depot at the foot of Market street, in the city and county of San Francisco, the board of state harbor commissioners is hereby authorized and empowered to institute condemnation proceedings in the superior court of the city and county of San Francisco, against all parties in interest claiming any title in and to that certain lot, piece, or parcel of land in the city and county of San Francisco, bounded and described as follows, to wit:

Commencing at a point on the westerly line of East street, distant thereon sixty (60) feet and four (4) inches northerly from the northwesterly corner of the intersection of

the northerly line of Market street with said westerly line of East street; thence southerly along said westerly line of East street sixty (60) feet and four (4) inches to the intersection of said line of East street with the northerly line of Market street; thence westerly along the northerly line of Market street eighteen (18) feet and six (6) inches to the intersection of the northerly line of Market street with the north line of Sacramento street; thence west along the north line of Sacramento street seventy-nine (79) feet and eleven (11) inches to a point on said north line of Sacramento street; thence northeasterly to the point of beginning.

Jurisdiction.

§ 2. The inshore limit of the jurisdiction of said board shall be, and is hereby, extended so as to include the lot of land described in section one of this act.

May institute action.

§ 3. The board of state harbor commissioners may institute any action or actions, and prosecute the same to final judgment, for the condemnation of any portion of the premises described in section one of this act; and the purposes herein mentioned are hereby declared to be a public use, in which the right of eminent domain may be exercised by the board of state harbor commissioners in the name of the people of the state, for the estates and rights, and in the manner provided in part three, title seven, of the Code of Civil Procedure of this state.

Payment of judgment.

§ 4. The board of state harbor commissioners is hereby authorized to pay any judgment rendered against them in such condemnation proceedings, by a draft drawn upon the controller of the state, who shall draw his warrant therefor on the state treasury, payable out of any money in said treasury credited to the San Francisco harbor improvement fund.

Act takes effect when.

§ 5. This act shall take effect from and after its passage.

INDIA BASIN ACT.

ACT 1862—An act to authorize and direct the board of state harbor commissioners to institute condemnation proceedings against certain property north of India basin, and extending to Islais creek in the city and county of San Francisco and extending the jurisdiction of said board over the same, and providing for the payment of judgments from the proceeds of bonds issued and sold under the provisions of an act entitled "An act to provide for the issuance and sale of state bonds to create a fund for the acquisition by the board of state harbor commissioners, of a necessary area for a tidal basin, for wharves, docks, piers, harbors and appurtenances, in the city and county of San Francisco; to create a sinking fund for the payment of said bonds; and defining the duties of state officers in relation thereto; making an appropriation of one thousand dollars for the expense of printing said bonds; and providing for the submission of this act to a vote of the people."

History: Approved March 24, 1909, Stats. 1909, p. 711.

1. Act in force.—Section 4 of the act provided that it should take effect upon the ratification of the India Basin act (Act 1870). That act was ratified at the general election of 1910.

COMPROMISE OF LITIGATION.

ACT 1863—An act to authorize the compromise of certain litigation concerning a portion of the water front of the city and county of San Francisco.

History: Approved April 3, 1876, Stats. 1875-76, p. 905.

Scope of act.—This act authorizes the governor, mayor of San Francisco, and board of state harbor commissioners to compromise and settle with claimants for the premises lying between Jackson and Pacific streets, and outside of the water front line as established by the beach and water

lot act of March 26, 1851. The compromise contemplated was to accept deeds of the entire property to the state, and pay therefor such amount as might be determined on out of the San Francisco harbor improvement fund.

FREE PUBLIC MARKET ON WATERFRONT.

ACT 1864—An act to authorize the state board of harbor commissioners to establish and maintain a free public market upon the waterfront of San Francisco, and providing for the expenses and regulations thereof.

History: Approved March 29, 1897, Stats. 1897, p. 238. Entire act amended March 2, 1903, Stats. 1903, p. 76.

The amended act is as follows:

Free public market to be established.

§ 1. The board of state harbor commissioners shall, within one year from the passage of this act, set apart upon some convenient portion of the waterfront of San Francisco a sufficient number of blocks and parts of blocks belonging to the state contiguous to the docks and piers for a free market for the greater portion of all the perishable products of the state of California arriving in San Francisco by land, boat, or other conveyance, including fruit, vegetables, eggs, poultry, grain, dairy products, and fish, and shall permit the sale of such products upon said blocks and portions of blocks of land by or for the account of the producers thereof only, under such regulations as may be prescribed by the said board of harbor commissioners and as the public convenience may require.

Land set apart shall be convenient.

§ 2. The land so set apart for the free public market shall be as convenient as possible to that portion of the city and county of San Francisco in which the principal wholesale trade in perishable products is now carried on, and must be adjacent and contiguous to such piers and docks as are accessible to all water craft ordinarily employed in carrying such products upon the waters of San Francisco bay and the navigable waters contributing thereto, and vessels so loaded shall have the preference at all times at docking at such wharves and piers contiguous to said lands over other vessels not so loaded.

Assignment of docking-room.

§ 3. Docking-room at said piers shall be assigned without partiality to all vessels engaged in the transportation of said products, and the space assigned shall be sufficient to permit such vessels regularly running upon a route to receive and discharge their entire cargoes of such products at the piers aforesaid, if they so desire, subject to the control and direction of the board of state harbor commissioners. And the said board of state harbor commissioners shall construct car-tracks to connect the said docks and piers with the land so set apart for the free public market and with the belt railroad. For the use of these tracks the state harbor commissioners shall prescribe such regulations as public convenience may require, and fix the compensation to be paid by the companies making use of them for this purpose.

Tramways.

§ 4. The harbor commissioners shall suitably inclose said free market and construct suitable tramways and tracks or other devices for the rapid conveyance of perishable products from car or boat or other conveyance to the stalls in the free market, and operate the same.

No rental for space. Penalty for violation of act.

§ 5. The harbor commissioners shall assign space within the free market to all producers of perishable products, under such regulations as the harbor commissioners may prescribe. No rental shall be charged for space in the free market. Any violation of this act, or of the regulations made pursuant thereof, shall exclude the person or firm guilty of such violation from the privilege of selling in the free market, during the pleasure of the harbor commissioners, not exceeding one year, in addition to any other penalty which may be incurred thereby.

Expenses, how provided for.

§ 6. For the payment of the expenses of said free market the said board of state harbor commissioners may, in their judgment, so adjust tolls upon the said perishable products as shall be delivered into said free market as to provide the necessary revenue; provided, however, that no one shall be compelled to enter into said free public market, and no tolls for the purpose of paying the expenses of said free market shall be levied, assessed, or inflicted upon any products not entering into said free public market; and provided, further, that the total of such tolls so levied shall not exceed the total expense of maintaining such free market.

Officers of free market.

§ 7. The officers of said free market shall be a superintendent and assistant superintendent, who shall also be secretary, and such other employees as the state board of harbor commissioners may appoint. The salary of all employees of said free market shall be fixed by the state board of harbor commissioners, and be paid out of the general fund of said harbor commission the same as other employees.

Bonds of officers.

§ 8. All officers and employees of any public market on state property are officers and employees of the state, and shall qualify in the same manner as other employees, and give such bonds as the harbor commissioners may prescribe.

Moneys to carry into effect.

§ 9. There is hereby appropriated out of the San Francisco harbor improvement fund the necessary moneys to enable the harbor commissioners to carry this act into effect, and this appropriation shall have precedence of all other claims on such fund for improvements.

INSURANCE OF STATE PROPERTY.

ACT 1865—An act empowering and authorizing the board of state harbor commissioners to insure against loss or damage by fire or other disaster the property of the state of California located on the waterfront of San Francisco, California.

History: Approved April 30, 1919. In effect July 22, 1919. Stats. 1919, p. 254. Prior act of March 25, 1901, Stats. 1901, p. 809, amended March 20, 1905, Stats. 1905, p. 295; May 21, 1915. In effect August 8, 1915. Stats. 1915, p. 728, superseded by the present act.

Insurance of state water front property.

§ 1. The board of state harbor commissioners is hereby empowered and authorized to insure against loss or damage by fire or other disaster the wharves, docks, piers, slips, bulkheads and structures contained thereon, and improvements located on the inside and outside of the waterfront line, and all property of the state of California under the control and supervision of said board of state harbor commissioners.

Amount and cost.

§ 2. This insurance is to be effected and distributed at the discretion and under the direction of said board of state harbor commissioners; the aggregate amount of such

insurance not to exceed the sum of two million dollars, plus twenty-five per cent, of the actual cost value of improvements made or property acquired by the state through said board or coming under the jurisdiction of said board after this act goes into effect. The cost of said insurance shall not exceed two per cent per hundred in premiums for policies to be written for a three-years' term. Said cost to be defrayed and paid out of the San Francisco harbor improvement fund.

Repealed.

This section was also amended March 20, 1905, Stats. 1905, p. 295.

§ 3. All acts and parts of acts in conflict herewith are hereby repealed.

RECONSTRUCTION AND REPAIR OF DAMAGED PROPERTY.

ACT 1866—An act to provide for the reconstruction and repair by the board of state harbor commissioners of the damaged property of the state of California situated on the waterfront of the city and county of San Francisco, and making an appropriation therefor.

History: Approved June 14, 1906, Stats. 1906 (ex. sess.), p. 38.

One hundred thousand dollars was appropriated for the purpose indicated. See, also, Act 1866a.

RECONSTRUCTION AND REPAIR OF WHARVES, ETC.

ACT 1866a—An act to provide for the reconstruction and repair by the board of state harbor commissioners, of wharves, piers, docks, bulkheads, sheds, streets and seawall, the property of the state of California situated on the waterfront of the city and county of San Francisco and making an appropriation therefor.

History: Approved March 13, 1907, Stats. 1907, p. 244.

This act appropriated the sum of \$250,000 for the purpose indicated. See, also, Act 1866.

LEASE OF CERTAIN WATERFRONT BLOCKS.

ACT 1867—An act authorizing harbor commissioners of San Francisco to lease portion of waterfront.

History: Approved April 2, 1866, Stats. 1865-66, p. 853.

Editor's note: This act authorized the lease of a portion of South Beach.

See, also, the following acts: Act approved March 27, 1868, Stats. 1867-68, p. 408, authorizing a lease to the California, Oregon & Mexico Steamship Co.; act approved March 27, 1868, Stats. 1867-68, p. 373, authorizing a lease to the Merchants' Floating Dry Dock Co.; act approved March 27, 1868, Stats. 1867-68, p. 409, changing the terms of the lease to the Pacific Mail Steamship Co.; act approved April 4, 1870, Stats.

1869-70, p. 799, authorizing a lease to the Western Pacific Railroad Company. See, also Act 2843, ratifying the lease of China Basin to the San Joaquin Valley Railroad Co.

Constitutionality of certain tide land leases upheld, and "leases" held not to be included in the meaning of the word "grant" in section 3, article XV, of the constitution. —San Pedro, etc., Co. v. Hamilton, 161 Cal. 610, 119 Pac. 1073.

SAN FRANCISCO HARBOR IMPROVEMENT ACT OF 1909.

ACT 1869—An act to provide for the issuance and sale of state bonds to create a fund for the improvement of San Francisco harbor by the construction by the board of state harbor commissioners of wharves, piers, state railroad, spurs, betterments, and appurtenances and necessary dredging and filling in connection therewith in the city and county of San Francisco; to create a sinking fund for the payment of said bonds; to define the duties of state officers in relation thereto; to make an appropriation of five thousand dollars for the expense of printing said bonds; and to provide for the submission of this act to a vote of the people.

History: Approved March 20, 1909, Stats. 1909, p. 522. Submitted to the people at the general election of 1910 and ratified. Stats. 1911 (Part II) p. 1.

This act provided for the submission to the people of a bond issue of \$9,000,000 for the purposes indicated.

INDIA BASIN ACT.

ACT 1870—An act to provide for the issuance and sale of state bonds to create a fund for the acquisition by the board of state harbor commissioners, of a necessary area for a tidal basin, for wharves, docks, piers, harbors and appurtenances, in the city and county of San Francisco; to create a sinking fund for the payment of said bonds; and defining the duties of state officers in relation thereto; making an appropriation of one thousand dollars for the expense of printing said bonds; and providing for the submission of this act to a vote of the people.

History: Approved March 24, 1909, Stats. 1909, p. 713. Submitted to the people at the general election of 1910 and ratified. Stats. 1911 (Part II), p. 12.

This act provided for the submission to the people of a bond issue for \$1,000,000 for acquiring India Basin. **See India Basin condemnation act, Act 1862.**

SAN FRANCISCO HARBOR IMPROVEMENT ACT OF 1913.

ACT 1871—An act to provide for the issuance and sale of state bonds to create a fund for the improvement of San Francisco harbor by the construction by the board of state harbor commissioners of wharves, piers, state railroad, spurs, betterments, and appurtenances, and necessary dredging and filling in connection therewith in the city and county of San Francisco; to create a sinking fund for the payment of said bonds; to define the duties of state officers in relation thereto; to make an appropriation of five thousand dollars for the expense of printing said bonds; and to provide for the submission of this act to a vote of the people.

History: Approved June 16, 1913, Stats. 1913, p. 1122. Submitted to the people at the general election of 1914 and ratified. In force December 31, 1914.

Bonds for San Francisco harbor improvement. Interest. Life of bonds. Paid from third sinking fund. Redemption by lot.

§ 1. For the purpose of providing a fund for the payment of the indebtedness hereby authorized to be incurred by the board of state harbor commissioners for the erection of wharves, piers, seawall, state railroad, spurs, betterments and appurtenances and necessary dredging and filling in connection therewith in the city and county of San Francisco, at a cost not to exceed ten million dollars (which said wharves, piers, seawall, state railroad, spurs, betterments and appurtenances and necessary dredging and filling in connection therewith the board of state harbor commissioners are hereby empowered to construct and do in the manner authorized by law, and at a cost not to exceed ten million dollars), the state treasurer shall, immediately after the issuance of the proclamation of the governor, provided for in section ten hereof, prepare ten thousand suitable bonds of the state of California, in the denomination of one thousand dollars each. The whole issue of said bonds shall not exceed the sum of ten million dollars, and said bonds shall bear interest at the rate of four per centum per annum, from the date of issuance thereof, and both principal and interest shall be payable in gold coin of the present standard value, and they shall be payable at such place in the United States as may be designated in the bonds (full authority to designate such place being hereby conferred on the governor who shall sign said bonds), at the expiration of seventy-four years from their date, subject, however, to redemption by lot as in this act hereinafter provided. Said bonds shall bear date the second day of July, A. D. nineteen hundred and fifteen, and shall be made payable on the second day of July, nineteen hundred and eighty-nine. The interest accruing on such of said bonds as are sold, shall be due and payable at the place designated in said bonds as aforesaid, on the second day of January, and on the second day of July, of each year after the sale of the same; provided, that the first payment of interest shall be made on the second

day of July, nineteen hundred and sixteen, on so many of said bonds as may have been theretofore sold. At the expiration of seventy-four years from the date of said bonds, all bonds sold shall cease to bear interest and likewise all bonds redeemed by lot shall cease to bear interest as in this act provided, and the said state treasurer shall call in, forthwith pay and cancel the same, out of the moneys in the third San Francisco seawall sinking fund provided for in this act, and, he shall on the first Monday of July, nineteen hundred and eighty-nine, also cancel and destroy all bonds not theretofore sold. All bonds issued shall be signed by the governor, and countersigned by the controller, and shall be indorsed by the state treasurer and the said bonds shall be so signed, countersigned and indorsed by the officers who are in office on the second day of July, 1915, and each of said bonds shall have the seal of the state stamped thereon. The said bonds signed, countersigned and indorsed and sealed as herein provided when sold shall be and constitute a valid and binding obligation upon the state of California, though the sale thereof be made at a date or dates after the person signing, countersigning and indorsing, or any or either of them, shall have ceased to be the incumbent of such office or offices. Each bond shall contain a clause that it is subject to redemption by lot after the year nineteen hundred and fifty-four.

Interest coupons.

§ 2. Interest coupons shall be attached to each of said bonds so that such coupons may be removed without injury to, or mutilation of the bond. Said coupons shall be consecutively numbered, and shall bear the lithographed signature of the state treasurer who shall be in office on the second day of July, 1915. But no interest on any of said bonds shall be paid for any time which may intervene between the date of any of said bonds and the issue and sale thereof to a purchaser, unless such accrued interest shall have been, by the purchaser of said bond, paid to the state at the time of such sale.

Appropriation.

§ 3. The sum of five thousand dollars is hereby appropriated to pay the expense that may be incurred by the state treasurer in having said bonds prepared. Said amount shall be paid out of the San Francisco harbor improvement fund on controller's warrants, duly drawn for that purpose.

Sale of bonds. Approval. Matured coupons detached. Disposition of proceeds.

§ 4. When the bonds authorized to be issued under this act shall be duly executed, they shall be by the state treasurer sold at public auction to the highest bidder for cash, in such parcels and numbers as said treasurer shall be directed by the governor of the state, under seal thereof, after a resolution requesting such sale shall have been adopted by the board of state harbor commissioners, and approved by either the governor of the state or mayor of the city and county of San Francisco, who shall only approve the same when in their judgment the actual harbor receipts, and those reasonably anticipated, will justify such sale of bonds and the consequent increased burden on harbor receipts; but said treasurer must reject any and all bids for said bonds, or for any of them, which shall be below the par value of said bonds so offered plus the interest which has accrued thereon between the date of sale and the last preceding interest maturity date; and he may, by public announcement at the place and time fixed for the sale, continue such sale, as to the whole of the bonds offered, or any part thereof, offered, to such time and place as he may select. Before offering any of said bonds for sale the said treasurer shall detach therefrom all coupons which have matured or will mature before the date fixed for such sale. Due notice of the time and place of sale of all bonds must be given by said treasurer by publication in two newspapers published in the city and county of San Francisco, and also by publication in one newspaper published in the city of Oakland, and by publication in one newspaper

published in the city of Los Angeles, and by publication in one newspaper published in the city of Sacramento, once a week during four weeks prior to such sale. In addition to the notice last above provided for, the state treasurer may give such further notice as he may deem advisable, but the expenses and cost of such additional notice shall not exceed the sum of five hundred dollars for each sale so advertised. The cost of such publication shall be paid out of the San Francisco harbor improvement fund, on controller's warrants duly drawn for the purpose. The proceeds of the sale of such bonds except such amount as may have been paid as accrued interest thereon shall be forthwith paid over by said treasurer into the treasury, and must be by him kept in a separate fund to be known and designated as the "third San Francisco seawall fund" and must be used exclusively for the construction of wharves, piers, seawall, state railroad, spurs, betterments and appurtenances and necessary dredging and filling in connection therewith on the waterfront of the city and county of San Francisco. Drafts and warrants upon said fund shall be drawn upon and shall be paid out of said fund in the same manner as drafts and warrants are drawn upon and paid out of the San Francisco harbor improvement fund. The amount that shall have been paid at the sale of said bonds as accrued interest on the bonds sold shall be, by the state treasurer, immediately after such sale, paid into the treasury of the state and placed in the "third San Francisco seawall sinking fund."

Third San Francisco seawall sinking fund created. Investment of funds. Collections. Payment by lot after 1955. Bonds purchased by state. Sale of bonds in sinking fund.

§ 5. For the payment of the principal and interest of said bonds a sinking fund, to be known and designated as the "third San Francisco seawall sinking fund," shall be, and the same is hereby created, as follows, to wit: The state treasurer, after the second day of July, nineteen hundred and thirty-three, shall on the first day of each and every month thereafter, after the sale of such bonds, take from the San Francisco harbor improvement fund such sum as, multiplied by the time in months, the bonds then sold and outstanding have to run, will equal the principal of the bonds sold and outstanding at the time said treasurer shall so take said sum from said San Francisco harbor improvement fund, less the amount theretofore taken therefrom for said purpose; and he shall place the sum in the third San Francisco seawall sinking fund created by this act. Said state treasurer shall, on controller's warrants duly drawn for that purpose, employ the moneys in said sinking fund in the purchase of the bonds of the United States, or of the state of California, including any bonds authorized, issued and theretofore sold under authority of this act or of the several counties or municipalities of the state of California, which said bonds shall be kept in a proper receptacle, appropriately labeled; but he must keep always on hand a sufficient amount of money in said sinking fund with which to pay the interest on such of the state bonds herein provided to be issued as may have theretofore been sold. The state treasurer may only purchase such bonds authorized and issued under authority of this act with moneys in said sinking fund as have been theretofore sold. And to provide means for the payment of interest on the bonds that may be sold and outstanding, said treasurer shall monthly take from the San Francisco harbor improvement fund, and pay into said seawall sinking fund, an amount equal to the monthly interest then due on all bonds then sold, delivered and outstanding. The board of state harbor commissioners are hereby authorized and directed by the collection of dockage, tolls, rents, wharfage and crange to collect a sum of money sufficient for the purposes of this act, over and above the amount limited by section two thousand five hundred and twenty-six of the Political Code of the state of California. Between the first and tenth day of May, in the year nineteen hundred and fifty-five and between the first and tenth day of May of each year thereafter until the maturity of said bonds, the said treasurer shall, in the

presence of the governor, proceed to draw by lot such an amount of bonds as shall be requisite to exhaust as nearly as may be the amount in said sinking fund at that time, and shall thereupon and before the tenth day of June following, give notice by public advertisement to be inserted twice a week for two weeks in two newspapers published in the city and county of San Francisco, and also in one newspaper published in the city of Oakland, and also in one newspaper published in the city of Los Angeles, and also in one newspaper published in the city of Sacramento, stating the number of bonds so drawn and that the principal of said bonds will be paid on presentation to the treasurer on or before the second day of July, following, and that from and after such last named date, all interest upon bonds thus drawn shall cease, and it shall be the duty of the treasurer as soon as said bonds so drawn by lot are surrendered to him and paid to cancel the same, and the interest coupons thereon, and each year beginning with the year nineteen hundred and fifty-five, the said treasurer shall in the manner aforesaid, proceed to draw by lot such an amount of bonds as shall be requisite to exhaust as nearly as may be the amount in said sinking fund, and proceed in the manner hereinabove stated. In the event that the state treasurer employs moneys in said sinking fund in the purchase of any bonds authorized, issued and theretofore sold under authority of this act, than at the time in this section provided for the drawing of bonds by lot, and immediately preceding such drawing the state treasurer shall retire and cancel any bonds in said sinking fund authorized, issued and sold under authority of this act, and the amount in said sinking fund remaining at the time shall constitute the amount for the purposes of such drawing. After the payment of all said bonds, the surplus or balance remaining in said sinking fund, if any there be, shall forthwith be paid into the San Francisco harbor improvement fund. At the time of the respective drawings by lot, as aforesaid, and also at the maturity of said state bonds, said treasurer shall sell the United States or other bonds then in said sinking fund, except bonds authorized, issued and sold under authority of this act, at governing market rates, after advertising the sale thereof in the manner hereinbefore provided for the sale of bonds hereby authorized to be issued, and shall use the proceeds for the payment of such bonds as may be drawn by lot, and at the maturity of said bonds outstanding shall pay and redeem said matured outstanding bonds out of said moneys in said fund in extinguishment of said bonds on controller's warrants duly drawn for that purpose.

Record of proceedings.

§ 6. The state controller and the state treasurer shall keep full and particular account and record of all their proceedings under this act, and they shall transmit to the governor an abstract of all such proceedings thereunder, with an annual report, to be by the governor laid before the legislature biennially; and all books and papers pertaining to the matter provided for in this act shall at all times be open to the inspection of any party interested, or the governor, or the attorney general, or a committee of either branch of the legislature, or a joint committee of both, or any citizen of the state.

Duty of treasurer to pay interest.

§ 7. It shall be the duty of the state treasurer to pay the interest of said bonds, when the same falls due, out of the sinking fund provided for in this act, on controller's warrants duly drawn for that purpose.

In effect December 31, 1914.

§ 8. This act, if adopted by the people, shall take effect on the thirty-first day of December, nineteen hundred and fourteen, as to all its provisions except those relating to and necessary for its submission to the people, and for returning, canvassing, and proclaiming the votes, and as to said excepted provisions this act shall take effect ninety days after the final adjournment of the session of the legislature passing this act.

Submitted to people.

§ 9. This act shall be submitted to the people of the state of California for their ratification at the next general election, to be holden in the month of November, nineteen hundred and fourteen, and all ballots at said election shall have printed thereon and at the end thereof, the words, "For the San Francisco harbor improvement act of 1913," and in the same square under said words the following, in brevier type: "This act provides for the improvement of San Francisco harbor and for the payment of all costs thereof out of San Francisco harbor improvement fund." In the square immediately below the square containing said words, there shall be printed on said ballot the words: "Against the San Francisco harbor improvement act of 1913," and immediately below said words "Against the San Francisco harbor improvement act of 1913" in brevier type shall be printed "This act provides for the improvement of San Francisco harbor and for the payment of all costs thereof out of the San Francisco harbor improvement fund." Opposite the words, "For the San Francisco harbor improvement act of 1913" and "Against the San Francisco harbor improvement act of 1913" there shall be left spaces in which the voters may make or stamp a cross to indicate whether they vote for or against said act, and those voting for said act shall do so by placing a cross opposite the words "For the San Francisco harbor improvement act of 1913," and all those voting against the said act shall do so by placing a cross opposite the words "Against the San Francisco harbor improvement act of 1913." The governor of this state shall include the submission of this act to the people, as aforesaid, in his proclamation calling for said general election.

Canvass of votes.

§ 10. The votes cast for or against this act shall be counted, returned and canvassed and declared in the same manner and subject to the same rules as votes cast for state officers; and if it appear that said act shall have received a majority of all the votes cast for and against it at said election as aforesaid, then the same shall have effect as hereinbefore provided, and shall be irrepealable until the principal and interest of the liabilities herein created shall be paid and discharged, and the governor shall make proclamation thereof; but if a majority of the votes cast as aforesaid are against this act then the same shall be and become void.

Act published in each county.

§ 11. It shall be the duty of the secretary of state to have this act published in at least one newspaper in each county, or city and county, if one be published therein, throughout this state, for three months next preceding the general election to be holden in the month of November, nineteen hundred and fourteen, the costs of publication shall be paid out of the San Francisco harbor improvement fund, on controller's warrants duly drawn for that purpose.

Title of act.

§ 12. This act may be known and cited as the "San Francisco harbor improvement act of 1913."

§ 13. All acts and part of acts in conflict with the provisions of this act are hereby repealed.

SAN FRANCISCO SEAWALL ACT.

ACT 1871a—An act to provide for the issuance and sale of state bonds to create a fund for the construction by the board of state harbor commissioners of a seawall and appurtenances in the city and county of San Francisco; to create a sinking fund for the payment of said bonds; and providing for the submission of this act to a vote of the people. [Approved March 20, 1903. Stats. 1903, p. 247.]

History: Approved March 20, 1903, Stats. 1903, p. 247. Submitted to the people at the general election of 1904 and ratified.

This act provided for an issue of bonds to the amount of \$2,000,000 for the purpose indicated.

The "San Francisco Harbor Improvement Act of 1909," provided for an issue of \$9,000,000 bonds for the "second San Francisco seawall fund." See Act 1869; and the act of 1913, provided for a third San Francisco seawall fund." See Act 1871.

1. **Constitutionality—Publication.** — The failure of the act to provide for publication did not render it invalid under article XVI of the constitution, in view of the fact that that article required publication, since under section 7, article V, it was the duty of the governor to see that it was pub-

lished.—Spear v. Reeves, 148 Cal. 501, 83 Pac. 432.

2. **Right of prospective bidder.**—A mere prospective bidder on the San Francisco seawall bonds has not the present status to entitle him to maintain a writ of mandate to compel the signing of the bonds.—Graham v. Gillett, 156 Cal. 113, 103 Pac. 195.

3. **Rights of successful bidder.**—A successful bidder for San Francisco seawall bonds is entitled to have valid securities, and if the bonds are not properly executed he may compel the issuance of valid bonds.—Graham v. Gillett, 156 Cal. 113, 103 Pac. 195.

ESTABLISHING DISPUTED TITLES ON BAY OF SAN DIEGO.

ACT 1872—An act making an appropriation to pay for the settlement of disputed titles to or boundaries of land claimed by the state of California fronting on the bay of San Diego.

History: Approved March 11, 1907, Stats. 1907, p. 238.

This act appropriated \$10,000 to pay the expenses incurred by the harbor commissioners of San Diego in settling or estab-

lishing disputed titles to lands on San Diego bay.

SAN DIEGO SEAWALL ACT OF 1909.

ACT 1873—An act to provide for the issuance and sale of state bonds to create a fund for the construction by the board of state harbor commissioners for the bay of San Diego of harbor improvements consisting of a seawall, wharves, piers, state railroad, spurs, betterments and appurtenances in the county of San Diego; to create a sinking fund for the payment of said bonds; to define the duties of state officers in relation thereto; to make an appropriation of one thousand five hundred dollars for the expense of printing said bonds, and to provide for the submission of this act to a vote of the people.

History: Approved April 16, 1909, Stats. 1909, p. 942. Submitted to the people at the general election of 1910 and ratified. Stats. 1911 (Part II), p. 17.

This act provided for the submission to the people of a bond issue of \$1,500,000 for the improvement of San Diego harbor.

BOARD OF HARBOR COMMISSIONERS OF PORT OF SAN JOSE.

ACT 1874—An act to create a board of harbor commissioners for the port of San Jose on the southerly arm of San Francisco bay, and to prescribe their powers and duties and to fix their compensation and the compensation of their employees and to appropriate money to carry this act into effect.

History: Approved June 14, 1913. In effect August 10, 1913. Stats. 1913, p. 1128.

San Jose harbor commission created. No compensation. Organization of board.

§ 1. The board of harbor commissioners for the port of San Jose on the southerly arm of the bay of San Francisco, to consist of three persons, is hereby constituted with such powers and duties as are prescribed by law and the provisions of this act. Within thirty days after this act takes effect the governor shall appoint one of said commissioners to hold office for two years, one of said commissioners to hold office for three years, and one of said commissioners to hold office for four years from the dates of their respective commissions and until their successors are appointed and qualified; and thereafter the said three officers shall be thereafter appointed by the governor for a term of four years from the dates of their respective commission and until their suc-

cessors are appointed and qualified. All persons appointed commissioners by virtue of this act, must be qualified electors or freeholders of the city of San Jose and shall serve without compensation. If a vacancy occurs from any cause in the office of a commissioner appointed under the provisions of this act before the expiration of his term, his successor shall be appointed and hold office only for the unexpired portion of said term. Within thirty days after the appointment of said commissioners, the said board shall meet and organize by electing one of its members president and executive officer of said board. It shall be the duty of the president to preside at the meetings of the board, and to supervise the official conduct of all of its employees and officers, especially in the collection, custody and disbursement of the revenues, and to require that all the books, papers and accounts be accurately kept and in proper form, and all the provisions of law and the regulations of the board be enforced and observed. He may administer official oaths to the officers and employees of the board, except the other commissioners, and to all persons in relation to the business of the board.

Officers. Secretary, etc. Salaries.

§ 2. The said board, upon entering upon the duties of their office, may, as soon as they deem it necessary for the performance of the duties required by this act, and have funds at their disposal to pay the salaries or compensation for services rendered, appoint the following officers, to wit: A secretary, an attorney, a chief wharfinger, and such assistant wharfingers and collectors as they may deem necessary. Such persons shall hold office at the pleasure of said board, and shall receive such salaries as said board may fix therefor, not to exceed, however, the following sums: Said secretary, the sum of twelve hundred dollars per annum; said attorney, one thousand dollars per annum; said chief wharfinger, the sum of one thousand dollars per annum; and said assistant wharfingers and collectors, nine hundred dollars per annum each. Said board shall require of said officers, official bonds in such sums as they may deem necessary and proper, and may, at any time, increase the amounts thereof.

Secretary's duties.

§ 3. The secretary must keep the office of the board open every day, legal holidays excepted, and shall safely keep all books and papers of the board; attend their meetings; keep a perfect record of their proceedings, and proper books of account of all moneys received and paid, and send to the state controller on the 15th day of each month, a statement of such receipts and expenditures under oath for the preceding month, showing in detail the sources from which such moneys were received and the purposes for which they were expended, and the disposition of all moneys received by said board. He shall keep a record of all contracts and agreements made by the board and also all bonds executed by the officers of the board, and a record of all personal property purchased, and its cost, and the disposition of the same.

Attorney's duties. Wharfinger's duties.

§ 4. The attorney for the board shall attend the prosecution and defense of all suits and render all legal services which may be required of him by the board. The chief wharfinger must station, berth and regulate position of vessels in docks and harbors, and cause them to remove from time to time and from place to place as general business, safety and good order may require; he shall supervise the wharfingers and collectors, and require all vessels to conform to the regulations of the board, and have general charge and supervision over all wharves, docks, slips, piers and other premises under the jurisdiction of the board, and make due report to the board of all of his acts, and of all vessels coming into the harbors, or using the docks under the supervision of said board; and perform such other duties as may be required by the board from time to time.

Collector's duties.

§ 5. The collectors must collect the revenues in such manner as the board may direct, and shall daily account for and pay in to the secretary of said board all moneys so collected by them.

Jurisdiction of commissioners. Rules of navigation. Wharves. Condemnation proceedings. Seawall.

§ 6. The board of harbor commissioners for the port of San Jose, shall have possession and control of, and jurisdiction over, all those portions of Alviso slough, sometimes called Steamboat slough, Guadalupe slough or river, Coyote river and Devil's slough, as are now or may hereafter be declared to be navigable waters and public ways, and all of that portion of the bay of San Francisco lying within three miles of the mouths of said sloughs, and the shores along the same, together with all of the improvements, rights, privileges, easements and appurtenances connected therewith, or in any wise appertaining thereto, for the purposes in this act provided, excepting that nothing herein shall interfere with any private rights already secured in any of the said premises, other than by due process of law, or in the exercise of the right of eminent domain. Said board are authorized and empowered to make rules and regulations, and take such action as may be necessary and proper for the said protection and encouragement of navigation within their jurisdiction, and may regulate the erection and extension of wharves and piers, and regulate the tolls, wharfage or dockage to be charged thereon. They may prescribe and regulate the manner in which rafts, boats, or vessels may enter or depart from, or lie at anchor in, any harbor within their jurisdiction, or be moved to any wharf or pier, and may prevent and remove obstructions to the regular ebb and flow of the tides, and the deposit and escape into the waters of the bay, or said sloughs, of substances likely to injure, interfere with, or impede navigation, or to create shoals or shallows in, or lessen the depth of the water thereof, and may regulate the speed of vessels moving in said waters. They shall construct such number of wharves, piers and docks as the wants of commerce shall require and locate them at such points upon said lands as the board may deem most suitable and for the best interest of commerce, and shall repair and maintain all wharves, piers, landings and thoroughfares as the wants of commerce may require, and generally erect all such improvements as may be necessary for the safe landing, loading and unloading, and protection of all classes of merchandise, and for the safety and convenience of passengers. The commissioners may institute and prosecute to final judgment, actions in the name of the people of the state of California for the possession of any portion of the shores or lands lying, contiguous thereto, in the exercise of eminent domain, and for the uses and purposes in this act specified; and may so sue for the collection of any money due, or which may become due, by virtue of this act, and may also institute and prosecute to final judgment, actions for the removal of all obstructions in or upon said premises. They may construct such harbor embankment or sea wall as may be necessary to protect the commerce in the waters within their jurisdiction, and may dredge such number of slips and docks as such commerce may require.

Tolls lien on goods.

§ 7. The charge for the wharfage and tolls which may be fixed by said board shall be a lien upon all goods, wares and merchandise landed upon any of said wharves or docks and said lien may be enforced in the same manner as other liens.

Embankments, etc., for public use.

§ 8. The embankments, sea walls, thoroughfares, streets, wharves and other public places provided for in this act, are hereby declared to be for public use, and the laying out and construction of which the right of eminent domain may be exercised by the

said board of harbor commissioners in the name of the people of the state, and in the manner provided in part 3, title VIII of the Code of Civil Procedure of the State of California. The said board are authorized to pay out of any moneys coming into their hands, any compensations, and damages assessed in such proceedings.

Limit of rent, etc.

§ 9. No greater amount of money in rent shall be collected for dockage, wharfage, tolls and rents by the said board than shall be necessary to construct and keep in repair such number of wharves, piers, landings, thoroughfares, and to dredge such number of slips and docks, and to construct and keep in repair such sea walls and harbor embankments as are necessary for the convenience of commerce, and to pay the salaries and incidental expenses authorized by this act.

Appropriation.

§ 10. The sum of two thousand five hundred dollars is hereby appropriated out of any money in the state treasury, not otherwise appropriated, to be used in putting into effect the provisions of this act; and the money hereby appropriated shall become available on the first day of October, 1913, and shall be set aside in a separate fund to the credit of said board of harbor commissioners for the port of San Jose and paid out upon warrants drawn therefor by the controller as directed by the said board; and the said controller is hereby authorized and directed to draw his warrants in favor of such persons and in such amounts as may be designated by said board, and the said treasurer is hereby directed to pay such warrants.

FALSE RETURNS TO BOARDS.

ACT 1875—An act to provide penalties for failure to pay tolls, by false returns or otherwise, to any board of state harbor commissioners.

History: Approved March 10, 1891, Stats. 1891, p. 27.

False returns to harbor commissioners. Penalty.

§ 1. Any person, corporation, firm, or association who shall, by false returns, or in any manner, avoid the payment of all or any portion of any tolls that may be due to any board of state harbor commissioners of the state of California, from any source or cause, as provided for by law and the rules and regulations of said board, shall be liable for and shall pay to said board twice the amount of such tolls, and in addition thereto the sum of ten dollars over and above such amount.

Act takes effect when.

§ 2. This act shall take effect from and after its passage.

Collecting tolls without authority of board.—See Kerr's Cyc. Penal Code, § 642.

1. Proceedings—Construction of act.—The construction of a highway under this act is not, strictly speaking a proceeding in invitum, and the rule of strict construction is not applicable to contracts made thereunder.—City, etc., Co. v. Kroh, 158 Cal. 308, 110 Pac. 933.

2. Same — Preliminary investigation, purpose of.—The preliminary investigation, statement of improvements to be made and estimate of the cost, are intended to be general in terms, the purpose being merely to give information to the supervisors and the voters as to the general character of the work for which bonds were supposed to be necessary.—City, etc., Co. v. Kroh, 158 Cal. 308, 110 Pac. 933.

2a. Same—Same.—The act never in-

tended that the report referred to in sections 4 and 6 should go into detail, or that a slight or reasonable departure therefrom in the final specifications for doing the work, not destructive of the general plan proposed, should render the contract void.—City, etc., Co. v. Kroh, 158 Cal. 308, 110 Pac. 933.

3. Contract—Interest of public official.—A contract for the acquisition of land for a highway under this act approved by the highway commissioners and by the supervisors can not be avoided by the county on the ground that the assistant district attorney was interested as a stockholder in the corporation owning the land, and that the price agreed to be paid was excessive.—County of San Diego v. Utt, 173 Cal. 554, 160 Pac. 657.

4. Same—Changes.—Where a contract

for work under this act authorizes the supervisors to make such changes as would materially diminish the contractor's work without authorizing at the same time a corresponding diminution of the contract price, it is not for that reason invalid, since, even in the absence of such a provision for a diminution of the contract price, in the event of such a change the contractor would not be entitled to the full contract price.—City, etc., Co. v. Kroh, 158 Cal. 308, 110 Pac. 933.

5. **Same—Same.**—Where a contract for work done under this act provided that certain parts of the work should be done according to elevations shown upon the plans "or to elevations which may be given by the engineer," and also that power is reserved to the supervisors to change plans in certain particulars, the engineer is not given the authority to change the elevations of his own motion, but the contractor is required to take the engineer's elevations so far as they apply to the changes made by the supervisors under the reservation.—City, etc., Co. v. Kroh, 158 Cal. 308, 110 Pac. 933.

6. **Same—Plans and specifications—Necessity, purpose and sufficiency.**—It is a general principle of law applying to the letting of contracts for public work to the lowest bidder, upon plans and specifications previously adopted, that they must be sufficiently certain and definite upon all the details of the work which materially affect its cost, to apprise the bidders of all the essential and substantial parts of the work and enable them to know with reasonable accuracy the outlay they will have to make in performing the work.—City, etc., Co. v. Kroh, 158 Cal. 308, 110 Pac. 933.

7. **Same—Same—Same.**—The reason of the rule as to the sufficiency and certainty of the plans and specifications of public work, is, partly, because the uncertainty would deprive property owners of the knowledge necessary to enable them to undertake the work, and partly because it deprives the bidders of a like knowledge, and thereby tends to prevent fair competition, and one reason is as persuasive as the other, whether the cost is already raised or

to be raised, by the sale of bonds, or by assessment.—City, etc., Co. v. Kroh, 158 Cal. 308, 110 Pac. 933.

8. **Same—Same—Same.**—Where details of construction do not appear nor could be ascertained with reasonable diligence in advance, or any other contingency which reasonable care and consideration would not foresee, the matter must be left to be adjusted in accordance with the general provisions of the contract, or by the discretion of the person or board supervising its performance.—City, etc., Co. v. Kroh, 158 Cal. 308, 110 Pac. 933.

9. **Same—Same—Same.**—It would require a radical departure from the general plan described in the report to invalidate a contract made in good faith.—City, etc., Co. v. Kroh, 158 Cal. 308, 110 Pac. 933.

10. **Plans, profiles and specifications—Effect of failure to adopt—Purchase of cement.**—Where, in the purchase of cement for road building the board of supervisors failed to adopt plans, profiles and specifications for the work as required by the Savage act, under which they proceeded, the seller can not recover the price of the cement furnished.—Henry Cowell, etc., Co. v. Williams, 34 Cal. App. 92, 166 Pacific. 1018, (Cal.) 189 Pac. 838.

11. **Width of pavement and width of highway.**—The width of the pavement is limited to sixteen feet for the sole purpose of a way for public travel, and the requirement that public roads must be at least forty feet wide is substantially complied with if the portion of the highway not covered by the pavement was fit for use as a passage way.—City, etc., Co. v. Kroh, 158 Cal. 308, 110 Pac. 933.

12. **Employment of unnaturalized alien.**—A provision in a contract for work done under this act that no unnaturalized alien shall be employed in the work, except with the consent of the highway commission is invalid and unenforceable, and its violation by the contractor would not defeat his right of recovery.—City, etc., Co. v. Kroh, 158 Cal. 308, 110 Pac. 933.

13. **Maintenance and repair of highways built under this act.**—See Kerr's Cyc. Political Code, § 2646.

COUNTY HARBOR COMMISSION ACT.

ACT 1877—An act providing for the improvement, development or protection of any harbor, bay, inlet, or other arm of the sea, existing within any county of this state, providing for the appointment of a harbor commission by the board of supervisors of any such county to have charge and control of the improvement, development, or protection thereof, and the voting, issuance and sale of the bonds of such county to pay the cost thereof.

History: Approved June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1459.

Appointment of county harbor commission.

§ 1. In any county of this state where there exists any harbor, bay, inlet, or other arm of the sea, the board of supervisors of any such county, upon receiving a petition signed by persons who are both freeholders and electors in such county, equal in num-

ber to at least fifteen per cent of the vote cast for the office of governor of this state at the last preceding election held in any such county for governor, asking that the matter of issuing bonds of the county for the purpose of improving, developing, or protecting such harbor, (naming it by the name by which it is commonly called,) be submitted to the electors of the county, may appoint a harbor commission for such county, who shall perform the duties and exercise the powers hereinafter specified.

Membership. Expense of improvement too great.

§ 2. The harbor commission shall consist of five members, each of whom shall, at the time of his or her appointment, be and have been for two years a bona fide resident, elector and freeholder of such county. The harbor commission shall be appointed to serve for the term of four (4) years, and until their successors are appointed and qualified, and any vacancy in the harbor commission shall be filled by appointment by the board of supervisors; provided, however, that if, after a careful survey, investigation and examination, the harbor commission shall report to the board of supervisors that the improvement, development or protection of any such harbor is not practicable, or would involve too great an expense, and such report shall be approved by the board of supervisors, the said harbor commission shall thenceforth cease to exist; or if the proposition for the issuance of the bonds of the county for the improvement, development or protection of such harbor shall, when submitted to the electors, fail to carry by the requisite number of votes, or when any proposed improvement, development or protection of such harbor shall have been completed, and that fact established by a finding of the board of supervisors, the said harbor commission shall cease to exist, Thereafter, however, another commission may be appointed with like duties and powers, as provided for in section one hereof.

Oath of office.

§ 3. Each commissioner shall, within twenty days after he shall receive notice of his appointment, qualify by taking and subscribing the constitutional oath of office and by executing and filing with the clerk of the county wherein he is appointed, a bond in a sum to be fixed by the board of supervisors, with two sureties, which bond, when approved by the judge or judges of the superior court of such county, shall be recorded in the office of the county recorder, as other official bonds are recorded at any time subsequent to twenty days after the appointment of the commission. The said commissioners, or a majority of them having qualified, shall meet at some convenient place in the county and organize by electing one of their number chairman of the harbor commission.

Surveys, etc. Clerks.

§ 4. The commission shall with all diligence proceed to cause proper surveys to be made of any harbor designed to be improved, developed or protected, and shall collect, compile and preserve all proper data and information concerning the said harbor, and as to the necessity, advantage and benefit to be derived by its improvement, development or protection, and shall carefully investigate and examine the condition of such harbor and shall ascertain the best, most feasible and practical plan and system of improvement, development or protection to be used and employed, and of the cost thereof; and shall have power, with the consent and approval of the board of supervisors, to appoint and fix the compensation of a clerk, and his or her necessary office assistants; also employ and appoint an engineer or engineers and other experts, and, if in their judgment it is necessary, employ an attorney. All employees and appointees shall hold office only during the pleasure of the harbor commission.

If expense too great. Plans for improving.

§ 5. If the harbor commission shall, after a careful survey, investigation and examination, find and report to the board of supervisors, that the improvement, development or protection of the harbor is not practicable, or would involve too great an expense, their report shall be filed, and if approved by the board of supervisors, the harbor commission shall cease, as provided for in section two hereof; but if the harbor commission shall find that the harbor can be improved, developed or protected, and that the public will be benefited by such improvement, development or protection, and that the cost thereof will not be disproportionate to the benefits to be derived, the harbor commission shall provide, detailed plans and specifications for the best and most feasible plan of improvement, development or protection of such harbor, and shall estimate the cost thereof and the amount necessary to be raised by the issuance and sale of bonds to do the work, and shall make a complete, full and comprehensive report of their investigation and examination and file the same with the board of supervisors.

Hearing. Resolution of adoption. Election.

The board of supervisors shall then fix a date for hearing said report not more than thirty nor less than twenty days after the filing thereof, and shall cause notice of the fact that said report has been filed, and the date fixed for the hearing thereof to be published in one or more newspapers published in the county, by at least two publications thereof. On the day fixed the board of supervisors shall proceed to hear the said report, and may adjourn such hearing from time to time not exceeding four weeks in all, and shall finally pass upon the same, and may in their discretion refer the same back to the harbor commission for further examination and investigation, or for correction or amendment. When the plans and specifications and report shall finally be accepted and approved by the board of supervisors, they shall pass and adopt a resolution to that effect setting forth the harbor to be improved, developed or protected, designating it by the name by which it is commonly called, the plan or system of improvement, development or protection to be employed and used therein, the estimated cost thereof, and the amount to be raised by the sale of bonds to carry out the plan or system of improvement, development or protection thereof; and shall without delay call an election to determine whether or not the bonds of such county shall be issued and sold in the amount estimated by the harbor commission in their report and set forth in the resolution of the board of supervisors adopting the report. The said election shall be called, held, conducted and carried on, and the said bonds issued and sold and paid for under and in accordance with all the provisions of law now or hereafter existing, concerning and regarding the issuance, sale and payment of county bonds, and all proceedings had in regard to such bonds shall be in accordance with such provisions of law; provided, that every election held for the purpose of submitting the question of the issuance and sale of bonds under this act shall be a special election and no other question except the proposition of the issuance and sale of bonds shall be submitted; provided, that the proposition of the issuance and sale of bonds for more than one purpose may be submitted to the electors at any such election; and provided, further, that for the holding of such special election the board may form bond election precincts by adopting the precincts established for general election purposes, or by consolidating such precincts inside of incorporated cities and towns, to a number not exceeding six in each bond election precinct, and shall appoint only one inspector, two judges and one clerk for each bond election precinct; and provided, further, that it shall be sufficient to set forth the purpose for which such bonds are to be issued and sold, to state that the same are for the improvement, development or protection of.....harbor, (naming the said harbor by the name by which it is commonly called) and any defect or irregularity in the proceedings prior to the calling of such election shall not affect the validity of the bonds.

Special fund.

§ 6. All bonds sold for any purpose contemplated by this act shall be sold for not less than the par value and accrued interest of such bonds, and the proceeds thereof shall be deposited in the treasury of the county and placed to the credit of a special fund designated.....harbor fund, created by order of the harbor commission for that purpose, and the said proceeds of the sale of such bonds shall be used solely and exclusively, and for no other purpose, than that for which the bonds were issued.

May receive donations.

The harbor commission may receive and place to the credit of said fund any and all donations which shall be used for the purpose for which it was donated. No moneys shall be paid out of said fund except upon warrant of the county auditor issued upon the written order of the harbor commission, duly allowed and approved by the board of supervisors.

Management of work.

§ 7. All improvement, development or protection of any harbor, and all work, labor or service employed therein, shall be built, constructed and done under the power, control, management and authority of the harbor commission; provided, however, that the provisions of this act shall not apply to any harbor, bay, inlet, or other arm of the sea, or any portion thereof, now maintained or operated by the state of California or any municipality thereof or to any harbor, bay, inlet, or other arm of the sea, in which the state of California has, since the present state constitution was adopted, ceded or granted to any municipality of the state the whole or any portion of the salt marsh or tide lands.

Whenever the funds necessary for the doing of any improvement, development or protection for which bonds have been voted, or raised by donation, shall be in the county treasury, the harbor commission shall proceed to carry into effect the said improvement, development or protection of such harbor; provided, that the board of supervisors may sell only such portion of any bonds voted as shall provide funds as the same shall be needed to carry on the work.

One or more contracts.

The harbor commission shall have power to do all of the work of improvement, development, or protection under one contract, or may segregate the same into separate parts or divisions, and let contracts for any one or more separate parts or divisions. Every contract for doing any part of said work shall be let after advertisement for bids by publishing notice thereof for at least ten days in one or more daily newspapers published in the county; provided, that, if there be no daily paper published in the county, then by three publications in a weekly paper published therein. Every contract shall be let to the lowest responsible bidder, who shall give such security as the harbor commission shall require for the full and faithful performance of said contract, and the amount and kind of security required shall be stated in the advertisement for bids; provided, however, that the board of supervisors may authorize the harbor commission to make contracts without advertising for bids for any part of the work the cost of which does not exceed five hundred (\$500) dollars; and provided, further, that the harbor commission may reject any and all bids, and re-advertise for bids for doing the whole or any part of said work, or the harbor commission, in its discretion, may, with the approval of the board of supervisors, purchase material, hire or purchase machinery, apparatus or appliances and employ labor and do the work or any part thereof without re-advertising for bids.

Character of improvements.

§ 8. All improvement, development, or protection of any harbor done under this act shall be of a substantial and permanent character.

Statement of proceedings.

§ 9. The harbor commission shall, once in each six months, make out and verify under their oath, and file with the board of supervisors, a detailed statement of their proceedings, showing the amount of money in the harbor fund at the time of their last report and the amount of all donation since received, and the purpose for which said donations were made, the amount since expended, with the purpose for which it was expended, and the balance remaining on hand in the said fund; provided, that the board of supervisors may at any time require a report of the progress of any work being done and of the condition of the harbor being improved, developed or protected, and such other information as the board of supervisors may deem necessary.

Compensation of commission.

§ 10. Each member of the harbor commission shall receive a per diem of five dollars for each day actually and necessarily spent in the discharge of his or her duties under this act, together with his or her necessary traveling expenses to be allowed by the board of supervisors upon verified demands presented by each commissioner and paid monthly. Prior to the voting of bonds, in any and all work under this act, the board of supervisors shall have power to incur, permit to accrue, audit, approve and pay any demand, debt or obligation against the county in a sum not to exceed five thousand dollars in the aggregate; provided, that the board of supervisors may, by a four-fifths vote of said board of supervisors, permit the expenditure of an additional five thousand dollars, but said additional five thousand dollars shall be upon a showing of necessity by the harbor commission and not exceeding one thousand dollars shall be appropriated at any one time.

Money out of general fund.

All of said money shall be paid out of the general fund of the county until there shall be money in the harbor fund sufficient to reimburse the general fund of the county, when the same shall be reimbursed, and thereafter all sums shall be paid out of the said harbor fund.

Use of money in conjunction with U. S. or state.

§ 11. Anything in this act to the contrary notwithstanding, there is hereby vested in the board of supervisors the power on recommendation of the harbor commission to use any and all moneys in said harbor fund in conjunction with the government of the United States or the state of California in any harbor improvement, development or protection undertaken by said government or state, or to place all or any moneys in such fund at the disposal of the government of the United States or of the state of California for use in the improvement, development or protection of any such harbor.

Final report of commission.

§ 12. Whenever the harbor commission under the terms of this act shall cease to exist, it shall make a final report to the board of supervisors and file all books, records and papers appurtenant to the commission and of all work done under it with the board of supervisors, and, if the same shall be approved by the board of supervisors, the harbor commission shall be discharged from their duty and their bonds from that date exonerated.

PAYMENT OF CLAIM OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

ACT 1878—An act to authorize the board of state harbor commissioners of San Francisco harbor to pay the claim of the Fidelity and Deposit Company of Maryland.

History: Approved May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1514.

Claim of Fidelity and Deposit Company of Maryland.

§ 1. The board of state harbor commissioners of San Francisco harbor is hereby authorized to pay the claim of the Fidelity and Deposit Company of Maryland in the sum of one thousand two hundred eighteen dollars and ninety-one cents.

ACQUISITION OF MISSION ROCK.

ACT 1879—An act to authorize the board of state harbor commissioners to acquire by purchase, condemnation, gift, grant or cession, certain property in the city and county of San Francisco, including Mission rock, and extending the jurisdiction of said board over the same, and providing for the payment for the same.

History: Approved May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 625.

Board of state harbor commissioners authorized to acquire certain property.

§ 1. For the purpose of acquiring additional area for the construction of docks, wharves, slips and piers and increasing the harbor facilities on the water front of the city and county of San Francisco, the board of state harbor commissioners is hereby authorized and empowered to acquire, when in its discretion it is deemed for the best interests of the harbor, by purchase, condemnation, gift, grant or cession, for and on behalf of the state of California, all that certain tract or parcel of land situated in the city and county of San Francisco, state of California, and particularly described as follows, to wit: Commencing at a point in the bay of San Francisco, distant three thousand five hundred seventy feet southeasterly from the southerly corner of Brannan and Second streets, as the same are laid down on the official map of said city, said distance being measured along the extension southeasterly of the southwesterly line of Second street; thence in a southwesterly direction, at right angles with said line of Second street extended, five hundred feet; thence at right angles southeasterly eight hundred feet; thence at right angles northeasterly eight hundred feet; thence at right angles northwesterly eight hundred feet; and thence at right angles southwesterly three hundred feet, to the point of commencement; said tract of land being a square, including the rock known as Mission rock, together with the wharves and other improvements thereupon and the appurtenances thereunto belonging.

Jurisdiction extended.

§ 2. The jurisdiction of said board shall be and it is hereby extended so as to include all of the land described in section one of this act.

How acquired.

§ 3. The portion of said tract that is held in private ownership may be separately acquired by said board, and the portions that are owned by the United States of America may be separately acquired by said board, and said board is hereby authorized to accept from the United States a cession or gift or grant of said last named portions, if the same can be obtained, or to acquire the same by purchase or condemnation, in its discretion.

Action for condemnation.

§ 4. The board of state harbor commissioners may institute any action or actions that may be necessary, and prosecute the same to final judgment, for the condemnation

of any portion, or portions, of the said tract of land, and the purposes herein mentioned are hereby declared to be a public use, in behalf of which the right of eminent domain may be exercised by the board of state harbor commissioners for and in the name of the people of the state of California, for the estates and rights specified in, and in the manner provided in part three, title seven of the Code of Civil Procedure of the state of California.

Price payable from what funds.

§ 5. The board of state harbor commissioners is hereby authorized to pay the purchase price thereof, or any judgment rendered in pursuance hereof in such condemnation proceedings, by drafts drawn upon the controller of the state, who shall draw his warrant or warrants therefor on the state treasurer, payable out of any money in the state treasury to the credit of the "San Francisco harbor improvement fund" or of the "Third San Francisco seawall fund," or partly from one and partly from the other of said funds, in the discretion of said board of state harbor commissioners.

HASTINGS COLLEGE OF LAW.

See Kerr's Cyc. Political Code, §§ 1478, et seq.

CHAPTER 142.

HAY.

CONTENTS OF CHAPTER.

ACT 1882. STANDARD HAY BALING ACT.

STANDARD HAY BALING ACT.

ACT 1882—An act relating to baling of hay; defining hay-baler; providing regulations governing the baling of hay; providing for the sale of hay by net weight; providing penalties for any violation of the provisions of this act.

History: Approved May 18, 1919. In effect July 22, 1919. Stats. 1919, p. 750.

"Baler" and "presser" defined.

§ 1. The term "baler" or "presser" as referred to in this act shall mean the person, firm, association, or corporation owning or having possession of or operating a hay press.

Scales to be tested and sealed.

§ 2. Any person baling hay for compensation shall employ scales that have been tested and sealed by the sealer of weights and measures and any record of weight forming the basis in settlement for baling hay shall be the true net weight of the baled hay; and any record of weight forming the basis of settlement in the sale or purchase of baled hay shall be the true net weight of such baled hay.

Falsely increasing weight.

§ 3. No baler or presser of hay shall put or conceal in any such bale of hay anything whatever for the purpose of increasing the weight of such bale with intent to defraud.

Standard weight.

§ 4. Hay when sold, offered, or exposed for sale shall be sold by avoirdupois weight and a ton shall consist of two thousand pounds net weight; providing, however, that hay may be sold by the bale in which case the net weight of the bale shall be indicated on a tag securely fastened to the bale.

Broken bales.

§ 5. When any hay is shipped by a common carrier in bales and where such bales become broken, the approximate weight of such broken bales shall be included in the total weight of the hay shipped.

Penalty.

§ 6. Any person, firm or corporation, violating any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars, or more than one hundred dollars.

HAYWARD.

See Act 3094, note.

HEALDSBURG.

See Act 3094, note.

HEALTH.

See "Public Health."

HEMET.

See Act 3094, note.

HERCULES.

See Act 3094, note.

CHAPTER 143.**HERMOSA BEACH**

Reference: Incorporation, see Act 3094, note.

CONTENTS OF CHAPTER.

ACT 1894. TIDE LAND GRANT.

TIDE LAND GRANT.

ACT 1894—An act granting to the city of Hermosa beach the tidelands and submerged lands of the state of California within the boundaries of the said city.

History: Approved May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 941.

Tidelands granted to Hermosa beach.

§ 1. There is hereby granted to the city of Hermosa beach, a municipal corporation of the state of California, and to its successors, all the right, title and interest of the state of California, held by said state by virtue of its sovereignty, in and to all the tidelands and submerged lands, whether within the present boundaries of said city, and situated below the line of mean high tide of the Pacific ocean, to be forever held by said city, and by its successors, in trust for the uses and purposes, and upon the express conditions following, to wit:

Use of lands.

(a) Said lands shall be used by said city and by its successors, solely for the establishment, improvement and conduct of a harbor and for the establishment and construction of bulkheads or breakwaters for the protection of lands within its boundaries, or for the protection of its harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion or accommodation of commerce and navigation, and the protection of the lands within said city, and said city,

or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purpose whatsoever; provided, that said city, or its successors, may grant franchises thereon, for a period not exceeding forty years, for wharves and other public uses and purposes, and may lease said lands, or any part thereof for a period not exceeding forty years, for purposes consistent with the trusts upon which said lands are held by the state of California and with the requirements of commerce or navigation at said harbor;

Improvement of harbor.

(b) Said harbor shall be improved by said city without expense to the state, and shall always remain a public harbor for all purposes of commerce and navigation, and the state of California, shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays, and other improvements constructed on said lands, or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the state of California;

Rates, tolls, etc.

(c) In the management, conduct or operation of said harbor, or of any of the utilities or appliances mentioned in paragraph (a), no discrimination in rates, tolls, or charges, or in facilities, for any use or service in connection therewith shall ever be made, authorized or permitted by said city or by its successors. The absolute right to fish in the waters of said harbor, with the right of convenient access to said waters over said lands for said purpose, is hereby reserved to the people of the state of California.

CHAPTER 144.

HIGHWAYS.

References: See, generally, Kerr's Cyc. Political Code, tit. VI, chap. II, articles I to IX, §§ 2618, et seq.

Also, see tits. "Motor Vehicles"; "Streets."

CONTENTS OF CHAPTER.

ACT 1900. "Good Roads Law" of 1907.

1900a. COUNTY JOINT HIGHWAY DISTRICTS.

1900b. COUNTY JOINT HIGHWAYS—NATIONAL MILITARY HIGHWAYS—STATE CO-OPERATION.

1900c. NATIONAL RURAL POST ROADS—STATE CO-OPERATION.

1902. BOULEVARD DISTRICT ACT OF 1911.

1903. HIGHWAY PROTECTION ACT OF 1915.

1910. ROAD DISTRICT IMPROVEMENT ACT OF 1907.

1910a. WORK ON STATE HIGHWAYS BY LOCAL AUTHORITIES.

1911. HIGHWAY LIGHTING DISTRICTS.

1911a. LIGHTING DISTRICT VALIDATION ACT OF 1915.

1912. SHADE AND ORNAMENTAL TREE ACT OF 1913.

1913. COUNTY HIGHWAY MAINTENANCE ACT OF 1911.

1914. PAYMENT BY COUNTIES OF INTEREST ON STATE HIGHWAY BONDS.

1915. RIGHT OF WAY FOR HIGHWAYS AND ROADS OVER PUBLIC LANDS.

1916. STATE HIGHWAYS ACT.

1916a. STATE HIGHWAYS ACT OF 1915.

1916b. SPECIAL ELECTION ON HIGHWAY AMENDMENT TO CONSTITUTION.

1917. ACQUISITION OF RIGHTS OF WAY AND ROCK QUARRIES BY COUNTIES.

1917a. OPENINGS AND OBSTRUCTIONS IN STATE HIGHWAYS.

1917b. ABANDONMENT ACT OF 1915.

1917c. CONVICT LABOR ON STATE HIGHWAYS.

1917d. ROAD DIVISION VALIDATION ACT OF 1917.

1918. STATE AID HIGHWAYS IN COUNTIES AND TOWNS.

1919. PURCHASE OF "BIG OAK FLAT" AND "YOSEMITE AND WAWONA" ROADS.

1920. LAKE TAHOE WAGON ROAD.

1920a. BRIDGE ON LAKE TAHOE WAGON ROAD.

- 1920b. PLACERVILLE AND LAKE TAHOE WAGON ROAD.
- 1921. STATE HIGHWAY FROM MEYERS' STATION TO MCKINNEYS.
- 1922. ALPINE STATE HIGHWAY.
- 1923. STATE HIGHWAY FROM EMIGRANT GAP TO DONNER LAKE—CONSTRUCTION.
- 1924. STATE HIGHWAY FROM EMIGRANT GAP TO DONNER LAKE—MAINTENANCE.
- 1925. EMIGRANT GAP STATE ROAD—CHANGE OF GRADE.
- 1926. LASSEN COUNTY STATE HIGHWAY.
- 1927. ALTURAS TO CEDARVILLE COUNTY ROAD.
- 1928. STATE HIGHWAY FROM SACRAMENTO TO FOLSOM.
- 1929. STATE HIGHWAY FROM MOUNT PLEASANT RANCH TO DOWNIEVILLE.
- 1930. DECLARING PART OF SONORA AND MONO WAGON ROAD A STATE HIGHWAY.
- 1931. SONORA AND MONO STATE HIGHWAY.
- 1932. TRINITY-HUMBOLDT STATE HIGHWAY.
- 1933. FREE WAGON ROAD FROM MONO LAKE BASIN TO THE "TIOGA ROAD."
- 1934. MONO LAKE BASIN STATE ROAD—EXTENSION OF.
- 1935. TRINITY-TEHAMA-SHASTA-HUMBOLDT STATE HIGHWAY.
- 1936. TRINITY-TEHAMA-SHASTA-HUMBOLDT STATE HIGHWAY—COMPLETION.
- 1937. TRINITY-TEHAMA-SHASTA-HUMBOLDT STATE HIGHWAY—SURVEY OF EXTENSION.
- 1939. KINGS RIVER STATE HIGHWAY.
- 1940. BAKERSFIELD, MARICOPA AND VENTURA STATE HIGHWAY.
- 1941. WAGON ROAD FROM MCKINNEYS TO DONNER LAKE DECLARED A STATE HIGHWAY.
- 1941a. PURCHASE OF PORTION OF GREAT SIERRA WAGON ROAD, OR "TIOGA ROAD."
- 1942. BIG OAK FLAT AND YOSEMITE ROAD, A STATE HIGHWAY.
- 1942a. "YOLO AND LAKE HIGHWAY."
- 1943. TAHOE CITY AND CRYSTAL BAY STATE HIGHWAY.
- 1943a. STATE HIGHWAY FROM KERN COUNTY TO NORDHOFF.
- 1943b. HIGHWAY FROM SURPRISE VALLEY TO THE NEVADA LINE.
- 1943c. HIGHWAY FROM PESCADERO TO CALIFORNIA REDWOOD PARK.
- 1943d. PASADENA STATE HIGHWAY.
- 1943e. STATE HIGHWAY FROM SARATOGA GAP TO CALIFORNIA REDWOOD PARK.
- 1944. STATE HIGHWAY FROM SAN BERNARDINO TO REDLANDS.
- 1944a. TAKING OVER ROAD IN BOULDER CREEK TOWNSHIP, SANTA CRUZ COUNTY.
- 1944b. HIGHWAY BETWEEN SUSANVILLE AND THE NEVADA LINE.
- 1945. HIGHWAY FROM TRUCKEE TO THE NEVADA LINE.
- 1945a. HIGHWAY FROM BUTTE COUNTY HIGHWAY TO WILLOWS.
- 1945b. DECLARING THE PUBLIC HIGHWAY FROM LONG BARN TO SONORA A PUBLIC STATE HIGHWAY.
- 1946. REPORT ON ROAD LAWS.

"GOOD ROADS LAW" OF 1907.

ACT 1900—An act providing for the laying out, constructing, straightening, improvement and repair of main public highways in any county, providing for the voting, issuing, and selling of county bonds and the acceptance of donations to pay for such work and improvements, providing for a highway commission to have charge of such work and improvements, and authorizing cities and towns to improve the portions of such highways within their corporate limits and to issue and sell bonds therefor.

History: Approved March 19, 1907, Stats. 1907, p. 666. Amended March 6, 1909, Stats. 1909, p. 154; March 28, 1911, Stats. 1911, p. 505; April 3, 1911, Stats. 1911, p. 589; December 24, 1911, Stats. 1911 (ex. sess.), p. 65; May 26, 1913. In effect August 10, 1913, Stats. 1913, p. 327; April 20, 1917. In effect July 27, 1917. Stats. 1917, p. 154.

Bonds for county highways, appointment of commission.

§ 1. The board of supervisors of any county in the state, upon receiving a petition signed by freeholders electors of the county equal in number to at least ten per cent of the vote cast for governor in said county at the last election, praying that the matter of issuing bonds of the county for highway purposes be submitted to the electors of the county, may appoint a highway commission for such county, who shall perform the duties hereinafter specified.

County highway commission, how constituted, and terms of members.

§ 2. Said highway commission shall consist of three members, who shall be, and have been for two years, bona fide residents and freeholders of such county, and shall be especially qualified to have charge of the improvement of highways. Said commissioners shall be appointed to serve for the term of two years and until their successors are appointed and qualified, and any vacancy in the commission shall be filled by appointment for the unexpired term; provided, however, that when the proposition for the issuance of bonds fails to carry at the election held under section seven of this act, or when all the highway improvements for which bonds are voted under said section seven are completed, or, if there is a surplus in the highway improvement fund after completion thereof, when said surplus has been expended on other highways, the existence of said highway commission shall cease. Thereafter another commission may be appointed under section one hereof. Each commissioner shall give a bond for the faithful performance of his duties, to be approved by the board of supervisors, in such amount as said board may require. No member of the board of supervisors can act or be appointed as a commissioner under this act. [Amendment approved Dec. 24, 1911, Stats. 1911, p. 65 (extra session).]

This section was also amended March 27, 1911, Stats. 1911, p. 505.

Main highway defined.

§ 3. For the purpose of this act a main public highway is defined to be a highway connecting different cities and towns in the same or different counties, or connecting any city or town in one county with the public highway system of another county. Provision may be made under this act for the improvement of any number of such highways jointly, to be paid for with the proceeds of one bond issue.

Duty of commissioners. New highways.

§ 4. Immediately upon their appointment said commission shall proceed with all diligence to investigate carefully the main public highways of the county and the condition thereof, and to have made a map showing said main public highways, their connections, and such other information in regard thereto as the commission may deem necessary for carrying out the purposes of this act, and to ascertain which of said main public highways should be improved by the issuance of bonds, and the kind of improvements to be made thereon, and to estimate the cost of such improvements. And also to investigate carefully the question of laying out and constructing any new public highways which said commission may deem necessary to be laid out and constructed in the county, and to have made a map showing said proposed new public highways, their connections, and such other information in regard thereto as the commission may deem necessary for carrying out the purposes of this act, and to ascertain whether any of said new public highways should be laid out and constructed by the issuance of bonds, and the kind of improvements to be made thereon, and to estimate the cost of such improvements. [Amendment approved March 6, 1909. Stats. 1909, p. 154. In effect immediately.]

Employment of engineer.

§ 5. With the consent of the board of supervisors they may employ a competent engineer or engineers and other experts, at the cost of the county, to make any necessary surveys and prepare said map, and to assist the commission in determining the best material to be used and the best manner of making such improvements and the cost thereof. All surveys made for the purpose of determining the location of highways shall be approved by the county surveyor before the same as [are] adopted by the commission.

Report of board of supervisors.

§ 6. After having ascertained what improvements should be made, and the estimated cost thereof proposed to be covered by a bond issue, the commission shall make and file with the board of supervisors a report setting forth the main public highway or highways proposed to be improved, by their termini, describing generally the kind of improvements to be made thereon, and stating the estimated cost of the work to be done, and the amount to be raised by bonds therefor, and praying the said board of supervisors to call an election for the issuance of bonds of the county therefor, for the estimated amount.

Election to determine whether bonds shall be issued.

§ 7. If said report is not approved by the board of supervisors they may refer it back to said commission for further consideration. If the board approve the report they shall adopt the same, and shall without delay call an election to determine whether bonds of the county shall be issued in the amount recommended by the commission, for the purposes stated in their report. Said election shall be called and held and said bonds issued, sold and paid under and in accordance with all the provisions of law now or hereafter existing in regard to the issuance, sale and payment of county bonds, and all proceedings had in regard to such bonds shall be in accordance with such provisions of law; provided however, that the board may form bond election precincts by consolidating the precincts established for general election purposes to a number not exceeding six for each bond election precinct, and shall appoint only one inspector, two judges and one clerk for each bond election precinct, and provided further, that it shall be sufficient to set forth the purpose of the bond issue in said proceedings by describing the highways to be improved as the same are described in said report of the highway commission. Any defect or irregularity in the proceedings prior to the calling of such election shall not affect the validity of the bonds.

Sale of bonds. Surplus of funds. Donations.

§ 8. Said bonds shall not be sold for less than par, and the proceeds thereof shall be paid into the treasury of the county and placed in a special fund to be denominated the "highway improvement fund"; and shall be used solely for the purposes set forth in said report of the highway commission, or such other purposes as are authorized by this act; provided that if there shall be any surplus of funds voted for the improvement of any road or roads after the completion thereof, such surplus may be used for the improvement of other main public highways, under the control and direction of the highway commission. The highway commission may receive and accept donations from any person for any work which they are authorized to have done, and the same shall also be paid into the said fund. No moneys shall be paid out of said fund except upon the warrant of the auditor of said county issued upon the order of the highway commission, duly allowed by the board of supervisors thereof.

Supervision of work. Plans and profiles. Contracts for.

§ 9. The doing of the work for which said bonds are issued shall be under the supervision and direction of the highway commission; provided, that the final acceptance thereof shall be by the board of supervisors. As soon as the funds raised by the sale of said bonds are in the treasury the commission shall proceed to prepare detailed specifications, plans and profiles for the work to be done, or for such parts of it as they deem it advisable to have done separately, if they have not already done so, and for this purpose they may hire assistants, with the consent of the board of supervisors; and they shall then present said specifications, plans and profiles, with their recommendations in regard to the doing of the work and letting of contracts to the board of supervisors, who shall either adopt or reject the same as presented. If the board adopt the

same they shall thereupon advertise for bids for doing the said work, or any part thereof which the highway commission recommend should be done separately, in accordance with said plans, profiles, and specifications, by publishing a notice for ten days in a daily newspaper or two weeks in a weekly newspaper published at the county seat. Every contract for doing any part of said work shall be let, after advertisement as above provided, to the lowest responsible bidder who will give security for the faithful performance of his contract, with sureties satisfactory to the board of supervisors, in such amount as they may fix, which shall be stated in said advertisement; provided, however, that the board may authorize the highway commission to make contracts, without advertisement, for any part of said work the cost of which does not exceed one thousand dollars; and provided, further that the board may reject all bids and may thereupon readvertise for bids for doing any part or the whole of said work, or in their discretion authorize the highway commission to purchase the necessary material, purchase or hire tools and appliances, and hire laborers, and to do the work or any part thereof without letting any contract therefor. In such case all contracts for materials, tools or appliances, amounting to more than one thousand dollars in value shall be let by the commission to the lowest responsible bidder, after advertisement as above provided. Said commission may, with the consent of the board of supervisors, hire all necessary engineers, inspectors and superintendents to supervise the performance of said contract, or to have charge of the doing of said work without contract.

Improvements must be durable. Highway shall not be used by railroad. Use of highway by railroad in incorporated city.

§ 10. All improvements constructed under this act shall be of a durable and lasting character; provided, that said commission shall have the power to determine how said highways shall be improved and constructed, and the character of the materials to be used in the improvement and construction thereof. If said commission shall determine that said highways, or any of them, shall be macadamized or paved, then the macadamized or paved portion of the roadbed constructed or any highway portion thereof improved under this act, shall not exceed eighteen feet in width, unless donations are made to the highway commission for that purpose, in which case such donations may be used to defray the increased cost of constructing such macadamized or paved roadbed more than eighteen feet wide on any part of such highway specified by the donors; but no part of the proceeds of any bond issue shall be expended for such purpose. No railroad, electric road, or street railroad shall be constructed along or upon any highway, or any portion thereof, improved under the provision of this act, except for crossings duly authorized by the board of supervisors, nor shall any board of supervisors have power to grant any franchise for the construction of any railroad, electric road, or street railroad along or upon any such highway or portion thereof, except for crossings; provided, that when any such highway or portion thereof shall, after the improvement of the same under the provisions of this act, be included within the boundaries of any incorporated city, city and county or town the foregoing provisions of this section shall not prohibit the granting of any such franchise by the proper municipal authorities along, upon or across any such highway, or portion thereof so included within the boundaries of any such incorporated city, city and county, or town. Any such franchise shall be granted only upon the express condition that the grantee thereof will pay to the county for the benefit of the general fund thereof an amount equal to the cost of the improvement or construction of such portion of the roadbed or highway constructed or improved under the provisions of this act as shall be occupied by the track or tracks of such railroad, electric road or street railroad. [Amendment of April 20, 1917. In effect July 27, 1917. Stats. 1917, p. 154.]

This section was also amended in 1909, Stats. 1909, p. 155; in 1911, Stats. 1911, p. 589; May 26, 1913, Stats. 1913, p. 327.

Eminent domain.

§ 11. Whenever the said highway commission shall deem it necessary, the board of supervisors may, on its recommendation, cause any highway it proposes to improve to be widened, straightened, or altered, and cause new highways to be laid out and constructed, and for that purpose they may acquire land in the name of the county by donation or purchase; and may order the condemnation of such land and direct the district attorney to bring an action in the name of the county for that purpose under the provisions of the Code of Civil Procedure in relation to eminent domain. In such action the order of the board of supervisors shall be conclusive evidence of the regularity of all prior proceedings. The cost of purchasing or condemning such land shall be paid out of the highway improvement fund. [Amendment approved March 6, 1909. Stats. 1909, p. 155. In effect immediately.]

Incorporated city may improve portion of highway.

§ 12. No part of any highway lying within the corporate limits of any incorporated city or town shall be improved under the provisions of this act; but, when any highway which is being so improved shall pass through any incorporated city or town, said city or town is hereby authorized to improve the portion of such highway lying within its corporate limits, and for the purpose of raising the necessary funds therefor, to issue bonds in such manner as may be provided by law for the issuing of bonds by such city or town for public improvements.

Repairs.

§ 13. All necessary repairs to any highway improved under this act shall be made by the same officers who may be charged with the duty of repairing other highways of the county, and the cost of such repairs shall be paid out of the general fund of the county.

Highway commission to file statement, when.

§ 14. Said highway commission shall, at least once in every six months, make and file with the board of supervisors a detailed statement of their proceedings, showing the amount of money in the highway improvement fund at the time of their last statement, the amount of all donations since received, and the purposes for which said donations were made, the amount since expended, with the purposes for which it was expended and the balance remaining, the contracts entered into or other obligations incurred by them and still outstanding, the highways in course of improvement or completed since their last statement, and the condition of the work on each, together with any other information that they may consider of interest to the public.

Per diem of commissioners. From what fund paid.

§ 15. Each member of said highway commission shall receive a per diem of five dollars for each day actually and necessarily spent in the discharge of his duties, together with his actual necessary traveling expenses, to be allowed by the board of supervisors and paid monthly. Said per diem and expenses and all other demands against the county which said highway commission are authorized to incur shall be paid out of the general fund of the county until there shall be money in the highway improvement fund derived from the sale of bonds, whereupon the general fund shall be reimbursed from the highway improvement fund for the amounts so expended, and thereafter said per diem and expenses and other demands shall be paid out of said highway improvement fund; provided however, that after the preparation and filing of their report and recommendation for the issuance of bonds the members of said highway commission shall not receive any per diem or expenses unless there is money in said highway improvement fund to pay the same.

§ 16. This act shall take effect immediately.

JOINT HIGHWAY DISTRICTS.

ACT 1900a—An act providing for the creation, organization and government of joint highway districts composed of two or more counties of the state of California.

History: Approved April 5, 1917. In effect July 27, 1917. Stats. 1917, p. 46. Act of April 6, 1917, Stats. 1917, p. 88, providing for permits for the construction and maintenance of highways and boulevards connecting with its highways and boulevards by one county in adjoining counties, was repealed May 5, 1919, Stats. 1919, p. 323.

Joint highway district may be created.

§ 1. A joint highway district, to be composed of two or more counties may be created, organized and governed for the purpose of constructing public highways therein as in this act provided. The word "county" as used in this act shall include any "city and county," but such city and county is herein regarded solely as a political subdivision of the state, and not as a municipality.

Resolution initiating proceedings.

§ 2. The board of supervisors of any county may initiate proceedings for the creation of a joint highway district to be composed of two or more counties of the state by the adoption of a resolution reciting:

(a) That the public interest requires the construction of a public highway, stating generally the location and course thereof, and naming the counties in or through which such highway will pass.

(b) The names of the counties interested in and which will be benefited by such highway construction.

(c) That it is proposed to create a joint highway district composed of the counties so named.

When adopted, certified copies of the same shall be transmitted to the advisory board of the state engineering department of the state of California, and to the clerks of the boards of supervisors of the counties named in the resolution.

§ 3. Immediately upon receipt of a copy of the resolution adopted as aforesaid, the said advisory board, either at a regular or special meeting, shall fix a time and place in the county adopting the resolution at which the matter of the creation of a joint highway district will be heard and determined. Notice of such hearing shall be published five days in one daily newspaper published in each of the counties named in said resolution, or two times in a newspaper published less than six days a week or if no newspaper be published in any county then such notice shall be posted in three public places in such county for a period of ten days. The time fixed for such hearing shall be not less than thirty nor more than forty days from the date of meeting at which the said advisory board caused such notice to be given.

Proof of publication.

§ 4. Proof of the publication shall be made by the affidavit of the publisher, manager or principal clerk of the newspaper making such publication, or person posting the notice, and such notice, the publication, or posting thereof and proof thereof shall be sufficient to vest said advisory board of the state engineering department with jurisdiction and power to hear, determine and order the creation of the proposed joint highway district. A copy of such notice shall be mailed to the clerk of the board of supervisors of each of the counties named in the initiatory resolution.

Board of directors named.

§ 5. Upon the receipt of such notice it shall be the duty of each of the boards of supervisors to name and appoint either one of its members or some other suitable person

and each of the persons so appointed shall constitute a member of the board of directors of the joint highway district when created. It shall be the duty of each of the persons so appointed to attend the hearing fixed by the said advisory board. The said directors so appointed, may meet from time to time in advance of the time fixed for said hearing and may make and enter into an agreement limiting the amount to be assessed upon each of the counties to comprise the district when formed, and such limitation so agreed upon shall not thereafter be changed except by the unanimous vote of all the directors.

Objections to creating district.

§ 6. At the time and place fixed for said hearing any person may appear and offer objections to the creation of the joint highway district, and the said advisory board shall hear such objections and may continue such hearing from time to time and all parties shall be deemed to have notice of any such continuance.

Order creating district.

§ 7. At the conclusion of such hearing the said advisory board shall determine all matters relating to the creation of such joint highway district and may sustain or overrule any objection offered. The objections offered need not be specifically set forth, but may be sustained or overruled in general terms. An objection made by any person appointed a member of the proposed board of directors shall prevent the creation of the district. If no objections are made or if all objections shall be overruled, then the said advisory board shall make and enter in its minutes an order creating such joint highway district. The order shall contain the names of the several counties composing the district and the names of the persons constituting its board of directors. Districts shall be numbered in the order of their creation. A certified copy of such order shall be filed with the secretary of state and transmitted to the clerks of the several boards of supervisors of the counties composing the district. Upon the filing of the said order with the secretary of state said joint highway district shall be deemed created and organized, and shall exercise all of the powers granted by this act, and shall be a public corporation under the designation of "joint highway district No. of the state of California."

Purpose of districts.

§ 8. The purpose for which the joint districts may be created is to provide the necessary authority and means to construct and maintain the highway described in the initiatory resolution in and through the several counties constituting the district; such highway to be continuous and afford adequate intercommunication for vehicular traffic. This act shall be so construed as to facilitate the accomplishment of this purpose.

Board of directors to manage district.

§ 9. Said joint highway districts shall be managed, and the powers herein conferred thereon, shall be exercised by a board of directors. Said directors shall be chosen and appointed as follows: One by the board of supervisors of each of the counties composing said district either from its members or other suitable person. Said directors shall serve during the pleasure of the appointing power. They shall receive no compensation for their services, but may be allowed actual expenses incurred by them in connection with the discharge of their duties under this act.

Place of business. Secretary. President. Vice president.

§ 10. Said board shall fix a place within the district for the transaction of its business, but may hold its meetings from time to time in any place in said district that will best serve the convenience of the public. A majority of the members shall be necessary to constitute a quorum for the transaction of business. It may make all rules

necessary to the orderly transaction of such business. It shall appoint a secretary; may employ such additional clerical, or legal or engineering service as may be required from time to time and fix the compensation to be paid therefor. Said board shall organize within thirty days from the date of the creation of the district and the time and place of meeting for purposes of organization shall be fixed by the director chosen by the supervisors of the county adopting the initiatory resolution. It shall choose one of its members as president of the board, who shall preside at its meetings. A vice president shall be appointed who shall act in the absence or disability of the president. The president shall perform such duties as the board may designate.

Powers. Construct highways. Accept gifts, etc. Acquire lands. Eminent domain. Personal property. Labor. Keep funds. Sue. Seal.

§ 11. Said joint highway district through its board of directors shall have power—

To lay out, construct and maintain a highway as specified in section three of this act.

To accept in the name of the district all gifts, donations or contributions from any source whatsoever made to further the purpose of this act, and the counties composing the district may convey such public highways as may be utilized as a part of the highway herein authorized to be constructed.

To acquire necessary lands, or rights of way for purposes of such highway.

To exercise the right of eminent domain necessary to acquire lands or rights of way for highway purposes.

To acquire and use such personal property as may be necessary in the exercise of the powers herein granted.

To employ such labor and service as may be necessary.

To arrange for the safe keeping of all funds belonging to the district and to this end may appoint a treasurer or depository, and exact from him such bonds or other security as may be proper.

To sue and be sued.

To adopt a seal.

Contingent fund.

§ 12. For the purpose of providing a contingent fund for the district and to meet the incidental expenses thereof, the boards of supervisors of the several counties comprising the district are hereby authorized and directed to appropriate from any money received by such counties under the provisions of the "vehicle act," in effect January 1, 1916, or any act in continuance thereof or supplemental thereto, such percentage thereof as may be determined by the board of directors of the joint district by a resolution adopted by a vote of all of its members. Such sums so appropriated shall be paid by a warrant drawn in the name of the joint highway district, and shall be deposited with the treasurer or depository of the district.

Survey of highway. Report by engineer.

§ 13. As soon as practicable after the organization of the board of directors of the district, said board shall cause to be surveyed and located the highway authorized by this act to be constructed or such portion thereof as may be deemed expedient, and for that purpose may employ an engineer and necessary assistants. Upon the completion of such survey the engineer shall file a report thereof with the board of directors together with all necessary maps, drawings and plans of construction, other than detailed drawings and specifications, also an estimate covering the cost of the completion of said highway, including rights of way therefor and interest to be paid during construction.

Hearing on report.

§ 14. Upon filing said report the board of directors shall fix a time and place for considering the same. The hearing thereon may be continued from time to time or from place to place in the different counties, if so desired.

Assessment covering estimated cost.

Upon such hearing being had said board of directors shall make an assessment covering such estimated cost, upon the state of California, and the several counties comprising the district according to the benefits that may result from the construction of such highway to said state and counties and the people residing therein, or may assess not to exceed one-fourth of such estimated cost upon such land in private ownership as may be benefited thereby in the manner provided by this act.

Order determining benefits.

§ 15. Upon the conclusion of such hearing such board of directors shall make an order determining the amount of the benefits to accrue to the state and to each county comprising the district and to the people residing therein and shall make an assessment against the state and said counties in proportion to the benefits so to accrue, in a sum equal to said estimated cost, or as much thereof as may be necessary, but said estimated cost if deemed excessive may be reduced to such an amount as the board of directors shall seem proper. The amount of such assessment shall be certified to and transmitted to the state board of control and to the boards of supervisors of the counties constituting the district.

Appeal to advisory board.

§ 16. In case the state board of control or the board of supervisors deem that the assessment imposed upon the state or such county be excessive or that it has been inequitably treated, the state board of control or such board of supervisors, within forty days from the receipt of the certificate referred to in the preceding section, may appeal from the order of the board of directors of the district to the advisory board of the state engineering department. Such appeal shall be in writing and set forth the nature of the objection and a copy thereof shall be filed with the board of directors of the district, with the advisory board of the state engineering department and with the boards of supervisors of the counties constituting the district.

Hearing. Judgment.

§ 17. Upon filing such appeal, the said advisory board shall have jurisdiction to hear and determine the same. It may take testimony and hear all parties interested. It may change or modify any of the plans of the engineer, and may reduce the estimate of cost or change or modify any assessment or make a new assessment. Its judgment shall be final and conclusive, and a copy thereof shall be filed with the state board of control and with the boards of supervisors of the counties composing the district.

Assessment charge on state and counties. Installments. Time for payment of first installment.

§ 18. The amount of the assessment imposed by the board of directors of the district, or by the said advisory board, shall be a charge, respectively, upon the state and the counties composing the district to the amount determined as herein provided, and shall be payable in five annual installments; provided, that should any installment exceed a sum equal to that which could be raised by a tax of five cents upon each one hundred dollars of assessed valuation as the same appears upon the assessment roll of a county, then in the case of such county the number of annual installments may be increased to such a number that the amount of each installment will be less than that which would result from the levy of such tax. The first installment shall be payable on or

before the first day of January following the filing of the assessment with the state board of control and boards of supervisors; provided, said assessment shall have been so filed prior to the first day of September preceding; otherwise it shall be payable on the first day of the second January succeeding such filing. The remaining installment shall be payable on the same day in each succeeding year.

Payment of installments.

§ 19. On or before the time fixed by law for levying taxes for county purposes, the boards of supervisors of each county composing the district shall make provision for the payment of the amount of the installment of the assessment, either by the payment of the same from the moneys received from the state as herein stated or from a tax levied for that purpose, which tax shall be in addition to all taxes levied for county purposes. The amount assessed against the state in the discretion of the state board of control may be paid in one installment and from any fund now available, or which may hereafter be made available for the purpose, or out of special appropriations for the purpose made by the legislature. Moneys shall be paid by the state treasurer upon warrants duly drawn by the controller of the state, upon demands made by the state engineering department and audited by the state board of control.

"Construction fund."

§ 20. All moneys received by the joint highway district, unless otherwise provided herein, shall be kept in a fund to be named "construction fund" and shall be paid out upon the order of the board of directors only for the construction of the highway herein provided.

"Revenue bonds." Maturity.

§ 21. At any time after the assessment, either against the state, the several counties or the land within an assessment district has been made, the board of directors of the district may anticipate the payment thereof and may issue "revenue bonds" against the fund into which shall be paid all sums paid on account of the assessments imposed. The maturity of any bonds issued shall be subsequent to the date upon which any installment of assessment is due and the amount to become due shall not exceed the amount of such installment of assessment available to pay the same. The intent of the foregoing provision is that there shall be available for the payment of the principal and interest of all bonds issued a sum sufficient to pay the same at the time such interest and principal become due, and it shall be the duty of the board of directors to make provision for the payment of all bonds issued and interest thereon prior to their sale and delivery.

Board of directors determine form, etc. Interest rate.

The bonds shall be issued at such times and in such amounts as may be required to meet the payment of the demands of the district, as may be determined by the board of directors. The form, denomination, rate of interest, time, place and manner of payment and all matters relating to such issuance shall be determined by the board of directors of the district; provided, that the rate of interest shall not exceed five per centum per annum.

Purchase by state board of control.

The bonds so issued shall be sold in such amounts as the board of directors may determine. The state board of control is hereby authorized to purchase such bonds and pay for them out of any surplus money in the state treasury which, in its judgment, shall not be required for governmental purposes prior to the maturity of such bonds. The boards of supervisors of the several counties shall likewise have authority to purchase such bonds with any surplus funds under their control.

Highway assessment district.

§ 22. Whenever it shall appear to the satisfaction of the board of directors that any land under private ownership will be benefited by the construction of the highway herein provided for, said board of directors, after the receipt of the report and estimates of costs herein required to be made and filed, may adopt a resolution of intention substantially in the following form:

Resolution of intention.

RESOLUTION OF INTENTION.

Whereas, It appears to the satisfaction of the board of directors of joint highway district number.....of the state of California, that land under private ownership will be benefited by the construction of a highway provided for in an act entitled: "An act providing for the creation, organization and government of joint highway districts composed of two or more counties of the state of California," therefore be it

Resolved, That it is the intention of the board of directors of said joint highway district to create a highway assessment district to comprise all the land under private ownership within the following boundaries to wit: (Here set forth the boundaries of the proposed district).

Further resolved, That it is the intention to assess the sum of \$....., being a..... part of the estimated cost of said highway construction as appears upon the report of the district engineer filed in the office of the board of directors of said district, upon the land within the boundaries of said proposed district as herein described in the manner provided in said act.

Further resolved, That.....the....day of.....19....at the hour of..... at (meeting place of the board of directors) is hereby fixed as the time and place for hearing all objections that may be made to the creation of said district or the amount of benefits to be assessed as aforesaid; also to hear and determine all claims for damages that may result from the construction of the highway aforesaid.

Reference to the aforesaid report of the district engineer for further particulars is here made.

Adopted by the board of directors of joint highway district number....of the state of California, this.....day of.....19....

Attest.....
Secretary.

Directors.

Time for hearing.

The time of hearing shall be not less than thirty nor more than forty days from the date of the adoption of the above resolution.

Notice of resolution. Proof of publication.

§ 23. The board of directors shall cause a notice of the passage of such resolution including a copy of the same to be published five times in a daily newspaper of general circulation published in each of the counties composing the district or two times in a newspaper published less than six days a week, or if no newspaper be published in any county then such notice shall be posted in three public places in such county for a period of ten days. The first publication in each of said counties shall be within five days after the adoption of said resolution of intention. Such notice shall be headed by the words "notice of intention to create highway assessment district." Proof of the publication of such notice shall be made by affidavit filed in the office of the secretary of the board of directors and such publication and proof shall be held sufficient to vest jurisdiction in the board of directors to hear and determine all matters authorized by this act to be so heard at the time and place of hearing fixed by the said resolution of intention.

Posting of notices.

The board of directors shall also cause to be conspicuously posted within fifty feet of all points where the highway proposed to be constructed shall intersect existing public highways two copies of the notice herein required to be published. Said notice shall be headed as herein specified and the words of said heading shall be in type at least two inches in height and the body of said notice shall be set in what is known as twelve-point or pica type. Said notices shall be posted within ten days from the date of the adoption of the resolution of intention.

District engineer to prepare map.

§ 24. The district engineer shall be directed to prepare a map showing the exterior boundaries of the proposed district, the line of the proposed highway, intersecting highways, boundary lines of the counties, the separate parcels of land within the district and names of the owners thereof as nearly as the same may be ascertained from the records of the assessor's office in the several counties. Said map shall be completed before the date set for the hearing.

Objections.

§ 25. Any person who may be affected by the creation of the proposed assessment district may make objection thereto. Objections shall be in writing by the objector or his agent and filed prior to the day fixed for the hearing. Objections may be made to the boundaries of the district or to the amount of the assessment proposed to be imposed. Claims for damages to result from the construction of the highway or the grade thereof as delineated upon the map or profile drawings of the district made by district engineer shall also be presented prior to the day of hearing and a failure to present such claims shall be deemed to be an express waiver thereof.

Hearing of objections.

§ 26. At the time fixed in the resolution of intention for hearing objections, or at such time as such hearing may be continued, and all parties shall be deemed to have notice of such continuance, the board of directors shall hear and determine all objections that may be made and it shall be competent for said board to hear and determine any or all objections of every kind or nature even though such objections shall not be expressly authorized by this act, and also may pass upon, compromise or determine any claim for damages presented as herein provided.

Changing boundaries, etc. Claims for damages. Order by board of directors.

§ 27. At the conclusion of the hearing the board of directors may change the boundaries of the proposed district, but may not include any territory outside thereof, may reduce the total amount of the assessment proposed to be imposed, change or modify any grades of a proposed highway and may sustain or overrule any other objections or generally overrule all objections that may have been made. It may also reject or approve in whole or in part any claim for damages. The total amount of all claims for damages that may be allowed shall be added to the estimate of the cost of the proposed highway and one-fourth of such amount of claims may be added to the amount of assessment proposed to be imposed unless such estimate shall already have provided for such damages.

All matters pertaining to the hearing having been heard and determined, the board of directors shall cause an order to be entered in its minutes ordering the construction of the proposed highway, creating a highway assessment district for the purposes of this act and describing the boundaries of the highway assessment district in accordance with this determination, declare the amount of the assessment to be imposed and assessing the same upon the land within the district, which shall be deemed to be the benefits thereto accruing from such proposed highway construction, and the same to be

distributed to and imposed upon the several parcels of land within the district and to be paid as in this act provided, and fix the number of annual installments in which such assessment may be paid. All objections not specifically set forth in said order shall be deemed to have been disallowed and overruled. The order shall also approve the map of the district made as herein provided.

Order sent to assessors and recorders.

§ 28. Copies of said order and the map so approved shall be forthwith transmitted to the assessor and recorder of the several counties comprising the joint highway district. The recorder shall record said order and map as provided by law without charge therefor. The assessor shall preserve said map and in making any assessment roll shall cause all parcels of land within the assessment districts to be separately valued so that the value of all the land therein shall be definitely ascertained.

Statement of total assessed value.

§ 29. On or before the fifteenth day of August in each year the auditor of each of the counties composing the district shall certify and transmit to the secretary of the joint highway district a statement showing the total assessed value of the land within his county included in the assessment district created as herein provided.

Secretary to determine amount of installment.

§ 30. Immediately upon receipt of the statements required by the preceding section, the secretary of said joint highway district shall ascertain the amount of the installment of the assessment due and to be paid within the year thereafter. The sum so ascertained shall be the amount to be raised by taxation upon all the property within the assessment district. He shall apportion the said amount to the several counties composing the district according to the assessed value of the land therein as certified and shall transmit to the clerk of the board of supervisors of each of said counties a statement showing the total assessed value of the land within these counties included in the assessment district and the amount of money required to be raised by a tax imposed thereon.

Levy of special tax in district.

§ 31. At the time and in the manner provided by law for the levying of taxes by board of supervisors, the board of supervisors in each of the counties composing the joint highway district shall levy a special tax upon all the land within the highway assessment district and within the county, sufficient to raise the sum of money required by this act and as certified by the secretary of the joint highway district.

Collected at time of county tax.

§ 32. The tax so levied shall be computed and collected in the time and manner required by law for the computation and collection of taxes for county purposes and the land subject to such tax shall be subject to the same penalties for delinquencies, and the same provisions of law relating to the sale and redemption of land for non-payment of county taxes, shall apply to the tax herein authorized.

Moneys paid to treasurer.

§ 33. All money collected as the proceeds of a tax levied as herein provided shall be paid by the tax collector to the treasurer of the joint highway district and placed to the credit of the funds of the district as herein provided.

Additional reports.

§ 34. It is hereby expressly provided that the entire highway originally described need not be provided for in the report of the engineer made as provided in section thirteen of this act. Additional reports may be made from time to time as the same shall be deemed expedient and provide for the construction of other sections of such highway. The cost of such additional portions shall be provided for in the same

manner as herein provided for in the case of the first report and additional assessments may be made in like manner. Additional assessments may be imposed in case the cost of construction exceeds the estimate made or in case any assessment shall be held invalid for any reason.

Contract let to lowest bidder. Construction by board of directors. Eight-hour day.

§ 35. The work of construction shall be done by contract let to the lowest responsible bidder after advertisement for bids therefor shall have been made by publication in a newspaper of general circulation published within the district for a period of ten days prior to the receipt of such bids. Bonds for the faithful performance of the contract and for the payment of claims for labor and material shall be required of the successful bidder. However, if it should appear to the satisfaction of the board of directors that the bids were excessive or that collusion existed among bidders so as to prevent proper competition then the board of directors are authorized to purchase the necessary material, machinery and equipment and employ labor to perform the work of construction. The board of directors may acquire rock quarries or deposits of road material or if it is to the advantage of the district may purchase material and furnish the same to contractors. A maximum of eight hours shall constitute a day's labor and three dollars shall be the minimum charge paid for such day's labor performed upon the work of construction.

Advisory board to control expenditure of state funds.

§ 36. In case it shall be determined that any sum of money authorized to be expended from the state treasury shall be expended as required by section twenty-two of article IV of the constitution, then the advisory board of the state engineering department shall have the exclusive management and control of such expenditure, but such advisory board may, in its discretion, delegate its powers to the board of directors of the joint highway district and said joint highway district is hereby declared to be a state institution within the meaning of said constitution. The board of directors of the district may vest in the state engineering department authority to supervise the work of construction.

Necessary repairs.

§ 37. Until the completion of said highway, all necessary repairs thereto shall be held to be a necessary part of the construction thereof and may be made either by contract or by the board of directors and the cost thereof paid from the construction fund.

Negotiations with United States.

§ 38. In case the governmental authorities of the United States should desire to include such highway in any scheme of national defense and use or assume the use of the same for military or other purposes, the board of directors of the joint highway district either directly or through the state engineering department may enter into negotiations respecting the same and enter into such agreements as may be mutually satisfactory.

Regulations by board of directors.

§ 39. The board of directors may make such regulations respecting the use of such highway as shall not conflict with general laws and may exclude from such highway such class of the vehicular traffic as may be dangerous to public safety or which may result in a permanent injury to the roadway. All laws regulating state highways and inflicting penalties for a violation thereof shall apply to the highways constructed under the provisions of this act.

Certificates of completion. Interest and rights of way conveyed.

§ 40. Upon the completion of the highway or any section thereof, the fact of such completion shall be certified to the advisory board of the state engineering depart-

ment and such advisory board shall cause inspection to be made of such highway. If such advisory board shall find that the same has been properly constructed and is in good repair throughout, it shall issue a certificate of completion. Thereupon said advisory board shall, after due hearing, apportion said highway to the several counties constituting the district, or may accept the whole or any portion thereof as a state highway. The decree of distribution shall be transmitted to the board of directors of the joint highway district. Thereupon the said board of directors shall convey to the several counties composing the district, or to the state as the case may be, all interest and rights of way that the district may have in and to the highway so constructed and accepted in accordance with the terms of said decree of distribution. The highway or portions conveyed shall become a part of the system of county roads, or state highway as the case may be, and shall be maintained by said counties from the general or district road funds or by the state as provided by law.

Employees discharged.

§ 41. Upon the receipt of the decree of distribution of the entire highway all employees of the board of directors shall be forthwith discharged excepting the secretary who shall continue to perform the duties required of him by this act.

District dissolved when.

§ 42. When all the bonds that may have been issued in pursuance with the provisions of this act shall have been paid, all property of the district shall be converted into money and all such moneys shall be distributed to the counties composing the district in proportion to the amount contributed by them under the provisions of this act. Thereupon, all books, documents, maps and other records shall be deposited with the state engineering department and thereupon said joint highway district shall be dissolved.

COUNTY JOINT HIGHWAYS, STATE CO-OPERATION, NATURAL MILITARY HIGHWAYS.

ACT 1900b—An act making an appropriation to pay any assessment that may be imposed against the state of California under the provisions of an act entitled "An act providing for the creation, organization and government of joint highway districts composed of two or more counties of the state of California," approved April 5, 1917; to pay the share of the state of California under any agreement or agreements with the United States government for co-operative work in the construction, improvement or maintenance of highways useful for military purposes and authorizing the state department of engineering to enter into any such agreements; and to pay the cost of making surveys and preparing plans and estimates for the following highways: An extension of the Trinity-Humboldt state road, from its westerly end, in a westerly direction, and to the town of Bridgeville, in Humboldt county; a highway beginning at or near Oxnard in Ventura county, California, and extending to a point near San Juan in Orange county, California; a highway from Jackson's Ranch near Pescadero in San Mateo county, California, to Governor's Camp in the California Redwood Park, Santa Cruz county, California; a highway beginning at Carmel in Monterey county, California, and running thence in a southerly direction to San Simeon in San Luis Obispo county, California, and a lateral highway from a point most feasible thereon to a point at or near Jolon in said Monterey county; a bridge to span San Francisco bay at or near Dumbarton Point; and a highway from the western boundary line of Kern county, California, to the state highway near the city of Santa Maria, Santa Barbara county, California.

History: Approved June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1519.

Appropriation.

§ 1. The sum of two hundred fifty thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury not otherwise appropriated for the following uses and purposes:

Joint highway district assessment.

a. To pay any assessment that may be imposed against the state of California under the provisions of an act entitled "An act providing for the creation, organization and government of joint highway districts composed of two or more counties of the state of California," approved April 5, 1917.

Co-operative highway work with U. S. government.

b. To pay the share of the state of California under any agreement or agreements made with the United States government for co-operative work in the construction, improvement or maintenance of highways useful for military purposes, and the state department of engineering is hereby authorized to enter into any such co-operative agreements on such terms as it may deem for the best interests of the state.

Highway surveys and estimates.

c. To pay the cost of making surveys and preparing plans and estimates for highways as follows: An extension of the Trinity-Humboldt state road, from its westerly end, in a westerly direction, to the town of Bridgeville, in Humboldt county; a highway beginning at or near Oxnard in Ventura county, California, and extending to a point near San Juan in Orange county, California; a highway from Jackson's Ranch near Pescadero in San Mateo county, California, to Governor's Camp in the California Redwood Park, Santa Cruz county, California; a highway beginning at Carmel in Monterey county, California, and running thence in a southerly direction to San Simeon in San Luis Obispo county, California, and a lateral highway from a point most feasible thereon to a point at or near Jolon in said Monterey county; a bridge to span San Francisco bay at or near Dumbarton Point; and a highway from the western boundary line of Kern county, California, to the state highway near the city of Santa Maria, Santa Barbara county, California.

Control by state department of engineering.

§ 2. All the work contemplated by this act is hereby placed under the complete management and control of the state department of engineering, and the state controller is hereby directed to draw his warrants in such sums and at such times as the state department of engineering may present claims therefor, and the state treasurer is directed to pay the same to carry out the purposes of this act.

NATIONAL RURAL POST ROADS, STATE CO-OPERATION.

ACT 1900c—An act expressing assent of the state of California to the provisions of the act of congress approved July 11, 1916, entitled "An act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes."

History: Approved March 21, 1917. In effect July 27, 1917, Stats. 1917, p. 20.

Assent to act of congress approved July 11, 1916.

§ 1. The state of California hereby assents to the provisions of the act of congress approved July 11, 1916, entitled "An act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes."

BOULEVARD DISTRICT ACT OF 1911.

ACT 1902—An act to provide for the formation and establishment of boulevard districts; the construction, acquisition, maintenance, control and use of boulevards; defining the term boulevard; providing for the voting, issuing and selling of bonds, and the levying of taxes to pay for the acquisition, construction, maintenance and repair of such boulevard; providing for a boulevard commission to have charge of the affairs of boulevard districts, and the construction, maintenance and repair of boulevards, within such districts; providing for the election of such commission, their terms of office, and of elections to be held in such districts; and repealing an act entitled "An act to provide for the formation of boulevard districts, and the construction, maintenance, and use of boulevards, and defining the term boulevard," approved March 22, 1905, and the act amendatory thereof, approved April 15, 1909.

History: Approved May 1, 1911, Stats. 1911, p. 1425. Amended (1) January 12, 1912, Stats. 1912 (ex sess.), p. 223; (2) June 5, 1913. In effect August 10, 1913, Stats. 1913, p. 394. (3) May 29, 1917. In effect July 28, 1917, Stats. 1917, p. 1299. (4) May 7, 1919. In effect July 22, 1919. Stats. 1919, p. 351. Prior acts of March 22, 1905, Stats. 1905, p. 754. Amended April 15, 1909, Stats. 1909, p. 923, repealed by the present act.

Boulevard district formed.

§ 1. Any portion of a county not contained in a boulevard district under the provisions of this act, may be formed into a boulevard district, and when so formed shall be known and designated by the name and style of.....boulevard district (using the name of the district) of.....county (using the name of the county in which said district is located), and shall have the rights herein enumerated, and such as may hereafter be conferred by law. [Amendment of May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1300.]

Petition to board of supervisors. Bond filed.

§ 2. A petition for the formation of such boulevard district (naming it) may be presented to the board of supervisors of the county wherein the district is proposed to be formed, which said petition shall be signed by not less than ten freeholders, owning land within the proposed district and shall contain:

(1) The boundaries of the proposed district and an estimate of the number of inhabitants residing therein:

(2) An estimate of the number of acres contained therein and the assessed value thereof and of the improvements thereon;

(3) A request that an election be called within said district for the purpose of determining the question of the formation of said boulevard district, for the construction and maintenance of a boulevard or boulevards therein under the provisions of this act.

There shall be filed with said board of supervisors at the time of the filing of the petition for the organization of said boulevard district with said board, a bond in the sum of not more than three hundred dollars, with two sufficient sureties, to be approved by said board, who shall each qualify in double the amount of said bond, conditioned that they will pay the expense and cost of said election in an amount not exceeding the amount mentioned in said bond, in case the proposition to organize said district shall be defeated at said election. [Amendment of May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1300.]

Hearing on petition.

§ 3. Such petition must be presented at a regular meeting of said board of supervisors and they shall thereupon fix a time for hearing said petition, not less than twenty,

nor more than sixty days after the date of presentation thereof, and shall publish a notice of the fact that such petition has been filed (referring to the same on file with the clerk of the board of supervisors for further particulars) and giving the time and place at which said petition will be heard, and directing all parties interested to appear at said time and place, and show cause, if any they have, why said petition should not be granted, which said notice shall be published at least once a week for two consecutive weeks in some newspaper published and circulated in said proposed district; provided, that if no newspaper be so published in said district, then said notice shall be so published in some newspaper published and circulated at the county seat of the county in which said proposed district is located. [Amendment of May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1301.]

Lands excluded. Lands included.

§ 4. Upon the day named for the hearing of said petition, the board of supervisors shall hear the same and any objections thereto and may adjourn such hearing from time to time, not more than sixty days in all. If the board find that lands have been improperly included, it may in fixing the final boundaries exclude from such district any lands which may have been so included, or the board may, as it deems for the best interests of such district, include any adjacent lands outside the boundaries described in said petition, either on petition of the owners of such lands, or upon notice of its intention to include such adjacent lands by publication once a week for two successive weeks in a newspaper of general circulation published either in said district or at the county seat, which notice shall refer to the petition for the formation of the district on file with the board of supervisors, shall describe the adjacent territory intended to be included within the proposed district and shall direct all persons interested therein to appear at a specified time and place and show cause if any there be why said adjacent lands should not be so included. Upon the petition and evidence produced at such hearings the board shall determine and fix the boundaries of such district and must thereupon, by order, define and establish such boundaries. [Amendment of May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1301.]

Election. Notice.

§ 5. The board of supervisors thereupon, and not later than thirty days after the establishment of said boundaries, as hereinbefore provided, shall by order, call an election to be held in such proposed boulevard district for the purpose of determining whether such district shall be formed. The order must fix the day of such election, which must be within sixty days from the date of the order, and must show the boundaries of the proposed district, and must state that at such election one member of the boulevard commission will be voted for. This order shall be entered in the minutes of the board, and shall be conclusive evidence of the due presentation of a proper petition, and of the fact that each of the petitioners was, at the time of the signing and presentation of such petition, a freeholder owning land within the proposed district and that all other steps and actions requisite to and pertaining to the making of said order, including the hearing of said petition and establishment of the boundaries of said district, have been properly taken; notice of such election shall be given by posting a copy of such order for three successive weeks prior to the election, in three public places within the proposed district, and by publication of a copy of such order at least once a week for three successive weeks prior to the election in some newspaper published in the proposed district, if there be one, and if not, in some newspaper published at the county seat. [Amendment of May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1302.]

Polling places. Election officers. Ballots. Election of member of boulevard commission. Canvass of returns.

§ 6. The board of supervisors, at least fifteen days prior to the election, shall select one, and may select two, or more polling places within the proposed district, and make all suitable arrangements for the holding of such election. They must select and appoint, from among the qualified electors of the proposed boulevard district, one inspector and two judges of election in each polling place, who shall constitute the officers of said election and the election board; if none are so appointed or if any officer appointed does not attend at the opening of the polls on the morning of election, the electors present may appoint substitutes to fill the election board. The ballot shall contain the words "boulevard district—yes," and "boulevard district—no," and shall also make provision for voting for one member of the boulevard commission of said district. At such election there shall be elected one member of the boulevard commission, whose term of office shall be for four years and until the election, or appointment, and qualification of his successor. Such election, and all subsequent, or other, elections in said district shall, except as herein otherwise expressly provided, be conducted as nearly as practicable in accordance with the general election laws of the state, except that the provisions of said laws as to the form of ballots and the making of nominations and the selection or appointment of officers of election, shall not apply, and that no irregularity or informality in conducting any election under this act, not substantially affecting adversely the legal rights of any elector, as herein defined, shall invalidate or affect such election. At each election pursuant to this act, every qualified elector, resident within the district as proposed or established, and who would be entitled on the date of the respective election to vote in said district at a general election, shall be entitled to vote at such election. The said officers of election must make return of the election to the board of supervisors of said county, which shall canvass said returns as by law provided, and if a majority of the votes cast at such election shall be in favor of a boulevard district the board of supervisors shall make and cause to be entered in the minutes of said board an order that the boulevard district of the name, and with the boundaries theretofore established by said board (setting forth such boundaries), has been duly established, and shall declare the person receiving the highest number of votes for member of the boulevard commission, duly elected as such commissioner; and said order shall be conclusive evidence of the fact and regularity of all prior proceedings of every kind and nature provided for by this act or by law, and of the existence and validity of the boulevard district. If a majority of the votes cast shall be against a boulevard district the board shall by order entered in its minutes so declare, and no other proceedings shall be taken in relation thereto until the expiration of one year from the date of the presentation of the petition to said board. [Amendment of May 7, 1919. In effect July 22, 1919. Stats. 1919, p. 352.]

This section was also amended May 29, 1917, Stats. 1917, p. 1302.

Officers. Vacancy. Appointment of member by state highway commission. Term. Bond. No compensation.

§ 7. The officers of the district shall be three members of the boulevard commission, who shall be designated as commissioners, and shall be, except as hereinafter provided, the chairman of the board of supervisors and the county surveyor, or the county engineer, as the case may be, of the county in which the district is situated, who shall be ex officio commissioners, and a third commissioner elected as herein provided who must have been a bona fide resident and freeholder within the boundaries of the district for at least one year prior to his election. Any vacancy in the office of commissioner shall, except as hereinafter provided, be filled by appointment for the unexpired term by the board of supervisors from among the bona fide resident freeholders within said district who shall have been such resident freeholders for at least one year prior to such appoint-

ment, but no member of the said board of supervisors, except the chairman thereof, shall be eligible to hold office on said commission or to hold any position in connection therewith. At any time, upon petition in writing signed by at least twenty-five per cent in number of the number of qualified electors, residing within the district and named upon the great register of the county in which the district is situated, and presented to the state highway commission, the said state highway commission shall, and it is hereby empowered to, declare the office of boulevard commissioner theretofore held by the said county surveyor, or county engineer, as the case may be, vacant, and nominate and appoint as commissioner to fill such vacancy a person who shall be a civil engineer, qualified in the opinion of the state highway commission to act as such commissioner. The commissioner so appointed shall hold office for the term of four years from and after his appointment, and until the appointment and qualification of his successor, and all appointments to fill any vacancy in the office of such commissioner either during or at the expiration of his term of office shall be made by the state highway commission upon the receipt of written notice from the boulevard commission of such vacancy or expiration, but no petition shall be necessary therefor. Each commissioner shall give a bond to the boulevard district for the faithful performance of his duties in the sum of five thousand dollars, to be approved by a judge of the superior court of the county in which the district is located. The commissioners shall receive no compensation whatever either for general or special services. [New section added May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1304.]

Original section of this number repealed May 29, 1917, Stats. 1917, p. 1303, and a new section added with the same number.

Election every fourth year. Notice of election. Polling places and election officers. Canvass of returns.

§ 8. An election shall be held in each boulevard district on the first Monday after the first Tuesday in March in the fourth year after the formation of the district, and in every fourth year thereafter, at which shall be elected a commissioner in place of the elected commissioner whose term shall expire during such year. Not less than twenty days before the day of each such election the boulevard commission must give notice of said election by posting notice thereof in three public places in the boulevard district, which notice must specify the time and place of election, the hours during which the polls will be kept open, and the officer to be elected. They shall select one, and may select two or more, polling places within the district; shall appoint one inspector and two judges of election in each polling place, and make all necessary and proper arrangements for holding the election. Said election officers shall constitute the election board. If no election officers are so appointed, or if any of those appointed are not present at the time of the opening of the polls, the electors present may appoint all, or any, of them so absent or not appointed and they shall conduct the election as if so appointed by said commission and present. The officers of the election must publicly canvass the votes immediately after the closing of the polls, and must make return of the election within twenty-four hours after the closing of the polls to the board of supervisors. Said board of supervisors at its first meeting after receiving said returns shall canvas the same and shall make, sign and deliver a certificate of election to the person elected. [Amendment of May 7, 1919. In effect July 22, 1919. Stats. 1919, p. 353.]

This section was also amended January 12, 1912, Stats. 1911 (ex. sess.), p. 223.

Original section repealed and a new section with the same number added May 29, 1917, Stats. 1917, pp. 1303, 1304.

President and secretary.

§ 9. The boulevard commission shall be the governing body of the district, and shall exercise all the powers thereof. At its first meeting or as soon thereafter as may be practicable, the commission shall choose one of its members as president, and another of

its members as secretary. All contracts, deeds, warrants, releases, receipts and documents of every kind shall be signed in the name of the district by its president, and shall be countersigned by its secretary. The commission may hold such meetings, either in the day or in the evening, as may be convenient, all such meetings of the commission must be held in the district at an appointed place. In case of the absence or inability to act of the president or secretary, the commission shall, by order entered upon its minutes, choose from its members a president pro tempore, or secretary pro tempore, as the case may be. A majority of the members of the commission is a sufficient number to form a commission for the transaction of business, and every decision of a majority of the members forming such commission made when duly assembled, is valid as an act of said commission. [New section added May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1305.]

Original section repealed and a new section with the same number added, May 29, 1917, Stats. 1917, p. 1303.

Powers of district.

§ 10. Every boulevard district formed under the provisions of this act shall have power to have and use a common seal, alterable at the pleasure of the boulevard commission; to sue and be sued by its name; to lay out, establish, construct, acquire and maintain one or more boulevards within the district, and for this purpose to acquire by purchase, gift, devise, condemnation proceedings or otherwise real and personal property and rights of way within the district, and to pay for and hold the same; provided, however, that if any boulevard or boulevards are constructed with moneys raised by taxation and not from the sale of bonds as herein provided, such boulevard or boulevards shall be constructed only after an election to be had in the manner herein provided for elections in said district, for the purpose of determining whether such boulevard or boulevards shall be constructed and at which election a majority of the votes cast are in favor of the construction of such boulevard or boulevards; to make and accept any and all contracts, deeds, releases and documents of any kind which shall be necessary or proper to the exercise of any of the powers of the district, and to direct the payment of all lawful claims and demands against it; to issue bonds as hereinafter provided, and to provide for the payment of the same and the interest thereon; and to cause to be levied taxes sufficient when directed by a vote of the people of the district for the construction, maintenance or repair of said boulevard, or boulevards, and all indebtedness of such district, and the running expenses of the district; to employ all necessary engineers, surveyors, agents and workmen to do the work on or in connection with the boulevard or boulevards in said district; and generally to do and perform any and all acts necessary or proper to the complete exercise and effect of any of its powers or the purposes for which it was formed. [New section added May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1305.]

Original section repealed and a new section with the same number added, May 29, 1917, Stats. 1917, p. 1303.

"Boulevard."

§ 11. By the term "boulevard" as used herein is meant a highway not less than thirty and not more than one hundred feet in width, and upon, along, and over the portion or portions of which where the same is less than sixty feet in width no railroad, electric road, or street railroad shall, except upon a permit granted therefor by the board or body in control of such boulevard evidenced by an order entered in its minutes, be constructed or operated; and any easements granted or condemned for the building of said boulevard shall be so granted or condemned; provided, that nothing herein shall be deemed to apply to or as preventing or limiting the use of vehicles across said boulevard. Any boulevard constructed under this act may be constructed, in whole or in part, over, along, or upon any county road or public highway, or any part thereof,

and the moneys belonging to such boulevard district may be expended in the improvement of such road or highway to conform to the width and general character of the balance of the boulevard, and for the purposes of this act the boulevard district is hereby expressly authorized and empowered to take over, control, operate and use in whole or in part any such county road or public highway. [New section added May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1306.]

Original section repealed and a new section with the same number added, May 29, 1917. Stats. 1917, p. 1303.

Survey, etc., of proposed boulevards.

§ 12. The boulevard commission shall, before the construction of any boulevard and before the calling of any election for the issuance of bonds, employ an engineer or engineers who shall make all necessary surveys, prepare a map or maps showing the location of the said proposed boulevard or boulevards, also showing a cross-section and profile of said proposed boulevard or boulevards, together with specifications for the construction thereof and estimates of the cost of acquiring rights of way therefor, and of the cost of the construction thereof, which said surveys, maps, specifications and estimates, shall, upon the approval of the same by said commission, by order entered upon its minutes, be formally adopted by said commission and filed with its secretary and constitute the plan of said district for such proposed boulevard or boulevards; provided, that the said boulevard commission may, at its option, and it is hereby empowered to, direct the county surveyor, or county engineer, as the case may be, to do any or all of said work herein provided to be done by an engineer or engineers.

The expense of making such preliminary survey or surveys may be allowed by the board of supervisors out of the general fund or the general county road fund upon claims regularly presented and allowed in the manner provided by law. [Amendment of May 7, 1919. In effect July 22, 1919. Stats. 1919, p. 353.]

This section was also amended June 5, 1913, Stats. 1913, p. 394.

Original section repealed and a new section with the same number added May 29, 1917. In effect July 28, 1917. Stats. 1917, pp. 1303, 1307.

Bids for construction of boulevards.

§ 12a. The boulevard commission shall, pursuant to an order entered in its minutes, advertise for bids for the construction of such boulevard or boulevards, either as a whole or in such sections as it may see fit, in accordance with the plan theretofore adopted and filed, as hereinabove provided, by said commission, by publishing a notice calling for such bids, at least once a week for two successive weeks in a weekly newspaper published within the boulevard district if such newspaper is published therein, otherwise in a newspaper published at the county seat of the county in which such district is located. Such notice shall refer to said order and said plan for further particulars. If the commission shall elect to receive separate bids for the construction of sections of said boulevard or boulevards, the said order shall describe the separate sections for which such separate bids are desired. The commission may also, in its discretion, advertise at the same time and in the same notice both for bids for the construction of such boulevard or boulevards as a whole and for bids for the construction of separate sections thereof. Every contract for doing any part of said work shall be let, after advertisement as herein provided, to the lowest responsible bidder, who shall, before the making of said contract, give a bond to the boulevard district for the faithful performance of his contract, with sureties satisfactory to said commission in an amount equal to at least fifty per cent of the amount of the contract price.

Conditions of contract.

Said contract shall be executed on behalf of the boulevard district by the boulevard commission, subject to approval or rejection by the electors of the district, expressed

at an election called for the purpose of issuing bonds for the payment of such contract. If the electors at such election fail to approve such bond issue, the contract shall be void and the boulevard commission shall immediately return to the contractor his bond given for the faithful performance of the contract; provided, however, that the commission may make contracts, without advertisement, for any construction work on said boulevard the cost of which does not exceed one thousand dollars; and provided, further, that the commission may reject any or all bids and may thereupon readvertise for bids for doing any part or the whole of said work; or may do said work without letting any contract therefor when the amount of the work is less than one thousand dollars. Said commission may hire all necessary engineers, inspectors and superintendents to supervise the performance of contracts entered into by said commission, or to have charge of the doing of all work done without contract. [New section added May 7, 1919. In effect July 22, 1919. Stats. 1919, p. 354.]

Bond election. Notice of election.

§ 13. At any time, and from time to time, after the adoption of a plan for a boulevard or boulevards, or the letting of a contract for the construction of the whole or any portion of any boulevard, the boulevard commission may, by order entered in its minutes, call an election for the purpose of determining whether bonds shall be issued for the acquisition of rights of way for, and the construction of such boulevard or boulevards, or for the payment of such contract. Such order shall fix the day of the election and shall specify the amount of such bond issue, and shall state in general terms the purposes for which the money to be raised from the sale of such bonds shall be used, which purposes shall be confined to the acquisition of rights of way for, and the construction of, a boulevard or boulevards in said district; provided, that if such election is called for a payment of a contract already entered into by the boulevard commission, such order shall state the terms of such contract in such manner as will advise the electors of the contents thereof; provided, however, that any moneys so raised which shall remain on hand after such acquisition of rights of way and construction have been completed, may and shall be expended in the betterment and maintenance of such boulevard or boulevards. Notice of such election shall be given by posting a copy of such order for three successive weeks prior to the election in at least three public places within the district, and by publication of a copy thereof for at least once a week for three successive weeks prior to the election in some newspaper published within the district, if there be one, and if not, in some newspaper published at the county seat of the county in which such district is located. [Amendment of May 7, 1919. In effect July 22, 1919. Stats. 1919, p. 355.]

Original section repealed and a new section of the same number added, May 29, 1917, Stats. 1917, pp. 1303, 1307.

Polling places and election officers. Ballots. Canvass of returns.

§ 14. At any time prior to the day fixed for the election the commission shall select one, and may select two or more, polling places within the district, and select and appoint from among the qualified electors within the district, one inspector, and two judges for each polling place to conduct the same, and shall make all necessary and proper arrangements for holding the election. The ballots shall contain the words "bonds, yes" and "bonds, no." After the vote shall have been counted and the result announced by the election officers the ballots shall be sealed up and delivered to the secretary of the boulevard commission, with the election returns, and said commission shall, at its first meeting thereafter, canvass said returns and shall enter the result upon its minutes. Such entry shall be conclusive evidence of the fact and regularity of all prior proceedings of every kind and nature provided by this act or by law, and of the facts stated in such entry. If, at such election, not less than two-thirds of the votes cast

be in favor of the issuance of bonds, the said commission shall have full power and authority to issue and sell said bonds as proposed in the order calling the election and as hereinafter provided. If the result of the election be against the issuance of bonds no other election upon the question shall be called or held for one year after such election. [Amendment of May 7, 1919. In effect July 22, 1919. Stats. 1919, p. 355.]

Original section repealed and a new section of the same number added, May 29, 1917. Stats. 1917, pp. 1303, 1307.

Denomination. Payment. Sale.

§ 15. All bonds issued under the provisions of this act shall be of such denomination as the boulevard commission may determine, except that no bonds shall be of less denomination than one hundred dollars nor of a greater denomination than one thousand dollars. Said bonds shall be payable in gold coin of the United States at the office of the county treasurer of the county wherein said district is situated, and shall bear interest at a rate not exceeding six per centum per annum; which interest shall be payable semiannually in like gold coin. Not less than one-thirtieth part of the total issue of bonds shall be payable each year, commencing not more than five years after the date of said bonds. Each bond shall be signed by the president and countersigned by the secretary of the boulevard commission, and said bonds shall be numbered consecutively, in the order of their maturity, and shall have coupons for interest attached, attested by the facsimile signature of the secretary of said commission. The bonds may be sold by the boulevard commission in such manner and in such quantities as it may determine, but no bond may be sold for less than its face value. The proceeds of such sale shall be deposited with the county treasurer and shall be by him placed in the fund to be called the boulevard fund of boulevard district (naming it). the money in such fund shall be used for the purposes indicated in the order calling the election upon the question of the issuance of bonds. [New section added May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1308.]

Original section repealed and a new section with the same number added, May 29, 1917. Stats. 1917, p. 1303.

Estimate of amount needed.

§ 16. The commission must at or before the first meeting of the board of supervisors in September of each year, furnish the supervisors and the auditor of the county wherein the district is situated, an estimate in writing of the amount of money needed for the purposes of the district for the ensuing fiscal year. The amount must be sufficient to pay all interest and principal of outstanding bonds of the district maturing during the ensuing fiscal year, and to pay the estimated cost of repairs and maintenance of the boulevard, or boulevards, and the running expenses of the district. [New section added May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1308.]

Original section repealed and a new section with the same number added, May 29, 1917. Stats. 1917, p. 1303.

Levy of tax. Collection. Moneys from general fund. Constitutionality.

§ 17. The board of supervisors of any county wherein is situated a boulevard district, must annually at the time of levying county taxes levy a tax to be known as the "..... (name of district) boulevard district tax," sufficient to raise the amount reported to them as herein, in section sixteen hereof, provided by the boulevard commission. The supervisors must determine the rate of such tax by deducting fifteen per cent for anticipated delinquencies from the total assessed value of the real property of the district within the county, as it appears on the assessment roll of the county, and dividing the sum reported by the boulevard commission as required to be raised by the remainder of such total assessed value. The tax so levied shall be computed and entered on the assessment roll by the county auditor, and if the supervisors fail to levy

the tax as provided in the preceding section, then the auditor must do so. Such tax shall be collected at the same time and in the same manner as county taxes, and when collected shall be paid into the county treasury for the use of said district, and the purposes herein specified. The provisions of the Political Code of this state prescribing the manner of levying and collecting taxes and the duties of the several county officers with respect thereto are, so far as they are applicable and not in conflict with the specific provisions of this act, hereby adopted and made a part hereof. Such officers shall be liable upon their several official bonds for the faithful discharge of the duties imposed upon them by this act. All moneys raised by taxation as herein provided shall belong to said district. Anything in this act to the contrary notwithstanding the board of supervisors shall set apart and turn over to the boulevard commission out of the general fund of the county twenty-five per cent of the cost of acquisition of rights of way for, and of construction of, said boulevard or boulevards and also twenty-five per cent of the cost of maintenance and repair of said boulevard or boulevards, all such moneys to be used by the boulevard commission for such purposes respectively, and the board of supervisors shall set apart and use for road work in the boulevard district all moneys raised in such district by the county for road purposes; provided, however, that if for any reason the provisions, or any thereof, of this sentence are unconstitutional or affect the constitutionality of this act or any of the provisions thereof, then this sentence, or such provisions thereof, only, shall be void and the remainder of this act shall stand as if this sentence, or such provisions thereof, as the case may be, had not been included in this act, the same being hereby declared to be separable. [New section added May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1309.]

Original section repealed and a new section with the same number added, May 29, 1917, Stats. 1917, p. 1303.

Funds kept by county treasurer.

§ 18. The treasury of the county wherein the district is situated shall be the repository of all the funds of the district. The treasurer of the county shall receive and receipt for the same, and shall place the same to the credit of the boulevard district. He shall be responsible upon his official bond for their safekeeping and disbursement in the manner herein provided. [New section added May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1310.]

Original section repealed and a new section with the same number added, May 29, 1917, Stats. 1917, p. 1303.

Funds established.

§ 19. The following funds are hereby established to which the money belonging to the district, and raised by taxation as herein provided, shall be apportioned by the treasurer, to wit: bond fund, construction and maintenance fund, and district expense fund. The treasurer shall pay out the same only upon warrants of the boulevard commission, signed by the president and attested by the secretary, except that all bonds and coupons shall be paid on presentation by the county treasurer out of the bond fund without such warrant. The treasurer shall report in writing to the commissioners whenever requested by them or the secretary the amount of money in the various funds, the amounts of receipts since his last report and the amounts paid out. [New section added May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1310.]

Original section repealed and a new section with the same number added, May 29, 1917, Stats. 1917, p. 1303.

Maintenance and repair.

§ 20. The commission may do any or all work of maintenance or repair upon such boulevard, or boulevards, either with or without contract therefor, and with or without

advertising for bids for contracts for such work of maintenance and repair, at its discretion; provided, however, that if the cost of any such work of maintenance or repair shall exceed the sum of one thousand dollars, then such work shall be done under contract pursuant to bids for such work after advertising in the same manner herein provided for advertising for bids and letting contracts for construction work. [Amendment of May 7, 1909. In effect July 22, 1919. Stats. 1919, p. 356.]

Original section repealed and new section of the same number added, May 29, 1917, Stats. 1917, pp. 1303, 1310.

Application to state department of engineering for exercise of powers.

§ 21. Anything in this act to the contrary notwithstanding, the boulevard commission shall have and is hereby given power and authority, at its option, to make application to the department of engineering of the state of California, or to the proper subdivision of said department, for the exercise by said department, or proper subdivision thereof, as the case may be, of any or all powers, duties or authority which said department or proper subdivision thereof, as the case may be, may now, or at any time hereafter, exercise or enjoy with respect to the ownership, construction, maintenance or improvement of any boulevard or boulevards or proposed boulevard or boulevards, constructed or to be constructed pursuant to the provisions of this act, including the preparation of plans, specifications and estimates for, and the handling and expenditure of boulevard district moneys for, such construction, maintenance or improvement: any such application to said department of engineering, or subdivision thereof, shall be made in accordance with the provisions of the law as it now is or may hereafter exist defining the powers, duties or privileges of such department of engineering or subdivision thereof in relation to such matters, and upon the granting of any such application by said department of engineering or subdivision thereof, the boulevard commission shall have full power to carry out the terms of such application on its part. [New section added May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1311.]

Original section repealed and a new section with the same number added, May 29, 1917, Stats. 1917, p. 1303.

Transfer boulevard to county.

§ 22. Anything in this act to the contrary notwithstanding, the boulevard commission shall have, and it is hereby given, full power and authority at its option to transfer and convey all the right, title and interest of the boulevard district in and to any boulevard or boulevards in such district after complete construction thereof, to the county within which such district is situated, provided that the board of supervisors of such county consent to and accept such transfer and conveyance and agree thereafter to maintain such boulevard or boulevards as boulevards and as part of the county highway system of such county, any and all such boulevards so transferred and conveyed to be thereafter held and owned by such county as county boulevards without any further liability or responsibility therefor on the part of such district. But no such transfer or conveyance shall affect any bond or bonds theretofore issued by such district or the liability of such district thereunder. [New section added May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1312.]

Original section repealed and a new section with the same number added, May 29, 1917, Stats. 1917, p. 1303.

Dissolution of district.

§ 23. The district may at any time be dissolved upon the vote of two-thirds of the qualified electors thereof at an election called by the boulevard commission upon the question of dissolution. Whenever it shall deem it advisable, the boulevard commission shall, by resolution, order that an election be held in the said district upon the

question of dissolution of the district. Such election shall be called and conducted in the same manner as other elections of the district. Upon such dissolution, any property which may have been acquired by such boulevard district shall vest in the county, except that any such property lying within the boundaries of an incorporated city shall vest in such city; provided, however, that if at the time of the election to dissolve such district there be any outstanding bonded indebtedness of such district, then, in such event, the vote to dissolve such district shall dissolve the same for all purposes excepting only the levy and collection of taxes for the payment of such outstanding indebtedness of such district; and from the time such district is thus dissolved until such bonded indebtedness with the interest thereon is fully paid, satisfied and discharged, the board of supervisors of the county shall constitute ex officio the boulevard commission of such district. And it is hereby made obligatory upon such board to levy such taxes and perform such other acts as may be necessary in order to raise money for the payment of such indebtedness, and the interest thereon, as herein provided. [New section added May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1312.]

Original section repealed and a new section with the same number added, May 29, 1917. Stats. 1917, p. 1303.

Repealed.

§ 24. That certain act entitled "An act to provide for the formation of boulevard districts, and the construction, maintenance, and use of boulevards, and defining the term boulevard," approved March 22, 1905, and the act amendatory thereof, approved April 15, 1909, are hereby repealed.

Established districts validated.

§ 25. Any and all boulevard districts heretofore established by order entered by any county board of supervisors under this act, and all amendments thereof or of any section or sections thereof, are hereby declared to be legally organized and existing and all the proceedings on the organization and formation of any and all such boulevard districts are hereby approved and in all respects declared valid, and all boulevard districts are subject to the provisions of this act so far as applicable. [New section added May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1313.]

Proceeding to determine legality of district.

§ 26. Any district formed hereunder, in order to determine the legality of its existence, may institute a proceeding therefor in the superior court of the county in which it was organized by filing with the clerk of said county a complaint setting forth the name of the district, its exterior boundaries, the date of its organization and a prayer that it be adjudged a legal boulevard district formed under the provisions of this act. The summons in such proceeding shall be addressed generally to all persons interested in said district or in any of the lands therein contained, and shall be served by publishing a copy thereof once a week for four weeks in some newspaper of general circulation published in the said county. Within thirty days after the last publication thereof any person interested may appear and answer said complaint, in which case said answer shall set forth the facts relied upon to show the invalidity of the district. If no answer shall be filed within said time the court must render judgment as prayed for in the complaint. If an answer be filed the court shall proceed as in other civil cases. Said proceeding is hereby declared to be a proceeding in rem and the judgment rendered therein shall be conclusive against all persons whomsoever and against the state of California. [New section added May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1313.]

HIGHWAY CARE, MANAGEMENT AND PROTECTION ACT OF 1915.

ACT 1903—An act to provide for the care, management and protection of state highways and providing penalties for violations of the provisions of the act.

History: Approved May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 642. Prior act of March 24, 1903, Stats. 1903, p. 400, repealed by present act.

Removal of fences encroaching on highways.

§ 1. If any state road or highway is encroached upon by fences, structures or otherwise the state department of engineering, its appropriate officers or employees may require the removal of the encroachment. Notice must be given to the occupant or the owner of the land or the person causing or owning the encroachment, if such owner, occupant or person, or, in the case of a non-resident, his agent, be known, by personal delivery to him, by leaving at his place of residence or by registered mail; if such owner, occupant, person or agent be unknown such notice must be posted upon the encroachment. Such notice must describe the encroachment to be removed.

Penalty for not removing encroachment.

§ 2. If the encroachment is not removed, or commenced to be removed and diligently prosecuted prior to the expiration of five days from the service, mailing or posting of the notice, the one who caused, owns or controls the encroachment shall forfeit ten dollars for each day the same continues unremoved. If the encroachment is such as to effectually obstruct and prevent the use of the road for ordinary travel, or consists of refuse, or is an advertising sign of any description (except as in section 6 of this act provided) the department of engineering, its officers, or employees may forthwith remove, or cause to be removed, such encroachment.

Action to abate.

§ 3. If the encroachment is disputed and denied and the owner, occupant or person controlling the matter or thing charged as being an encroachment refuses to remove or permit the removal thereof, the department of engineering, in the name of the people of the state of California, must commence in the proper court an action to abate the same as a nuisance. If such department recovers judgment it may, in addition to having the nuisance abated, recover ten dollars for every day such nuisance remains after such notice and also its costs in its said action.

Department may remove.

§ 4. If the encroachment is not denied but is not removed for five days after the notice given, as provided in section one of this act, the department of engineering, its officers or employees may remove the same at the expense of the owner, occupant or person controlling the same, and such department, in the name of the people of the state of California, may recover its costs and expenses therefor, and also ten dollars for each day the same remains after said five days' notice in an action for that purpose.

Penalty for injury to highway. Bridges over irrigation ditches. Dead animals on highway.

§ 5. Whoever obstructs or injures any state road or highway or diverts any water course thereon, or drains water from his land on any such highway, to the injury thereof, by means of ditches or dams, is liable to a penalty of ten dollars for each day such obstruction or injury remains and must be punished as provided in section five hundred eighty-eight of the Penal Code. Any person, persons or corporations, who shall, by storing or distributing water for any purpose, permit the water to overflow, or saturate of seepage, any state road or highway, to the injury thereof, shall, upon notification of the department of engineering, its officers or employees, discontinue

and repair the damage occasioned by such overflow or seepage; and should such repair not forthwith be made by such person, persons or corporations, said department of engineering, its officers or employees shall make such repairs and, if necessary, divert the flow or seepage, and such department, in the name of the people of the state of California, may recover the expense thereof from such person, persons or corporations in an action by law. All persons excavating irrigation, mining or draining ditches across any state road or highway shall be required to bridge such ditches under the direction of the department of engineering, its officers or employees, and upon neglect to do so, such department shall construct the same and recover, in the name of the people of the state of California, the cost of constructing said bridge or bridges of such person by action; and whoever willfully injures any bridge on a state road or highway is hereby declared to be guilty of a misdemeanor and is also liable for actual damages for such injury, to be recovered by such department of engineering in the name of the people of the state of California in a civil action; provided, further, that every person who knowingly allows the carcass of any dead animal, which animal belongs to him at the time of its death, to be put or to remain within one hundred feet of any state road or highway, and every person who puts the carcass of any dead animal on or within one hundred feet of any state road or highway shall be guilty of a misdemeanor.

Advertisements on highways.

§ 6. No sign, picture, transparency, advertisement or mechanical advertising device shall be placed upon or over any state road or highway without a permit from the department of engineering or its appropriate officers, and, if so placed, shall be a public nuisance and may be forthwith removed from any such road or highway by the department of engineering, its officers or employees, and any person who shall so place the same shall be guilty of a misdemeanor; provided, further, that nothing herein shall be so construed as to prevent the posting of any notice provided by law or order of any court to be posted.

Penalty for cutting down trees.

§ 7. Any person who digs up, cuts down, injures or destroys any trees on any state road or highway, unless the same is deemed an obstruction by the department of engineering, its officers or employees and removed under their direction, unless such person has received a permit therefor from such department or its appropriate officers, or is otherwise lawfully entitled to dig up, cut down, injure or destroy such trees, shall be guilty of a misdemeanor.

Disposition of fines.

§ 8. All penalties or forfeitures and other recoveries provided by this act and not otherwise provided for may be recovered by the department of engineering by suit in the name of the people of the state of California and paid into the state treasury.

Repealed.

§ 9. An act entitled "An act to provide for the care, management, and protection of state highways," approved March 24, 1903, is hereby repealed.

§ 10. All acts, or parts of acts in conflict with the provisions of this act, are hereby repealed.

ROAD DISTRICT IMPROVEMENT ACT OF 1907.

ACT 1910—An act to provide for work upon public roads, streets, avenues, boulevards, lanes and alleys not within the territory of incorporated cities or towns; for the incidental establishment of grades thereof; for the construction therein or thereon of sidewalks, sewers, manholes, bridges, cesspools, gutters, tunnels, curbing and crosswalks; for the issue of bonds representing the costs and expenses thereof; for a special fund derived in part from the county road fund and in part by special assessment upon a district, and for the establishment of such districts.

History: Approved March 21, 1907, Stats. 1907, p. 806. Amended (1) March 28, 1911, Stats. 1911, p. 506; (2) June 10, 1915. In effect August 9, 1915. Stats. 1915, p. 1394. (3) May 31, 1917. In effect July 30, 1917, Stats. 1917, p. 1369; (4) May 10, 1919. In effect July 22, 1919. Stats. 1919, p. 516. (5) May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 558. (6) May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1336.

Powers of boards of supervisors to do road work.

§ 1. Power is hereby vested in the board of supervisors of every county in this state, by and under the procedure prescribed in this act, to grade or regrade to the official grade, plank or replank, pave or repave, macadamize or remacadamize, gravel or regravell, pile or repile, cap or recap, oil or recoil the whole or any portion of roads, streets, avenues, boulevards lanes or alleys so far as not within the territory of any incorporated city or town, and so far as by dedication or otherwise, public and open to public use, and to do so for any length or width of the same, one of the same or any number of the same in combination, and to construct therein or thereon sidewalks, sewers, manholes, culverts, bridges, cesspools, gutters, tunnels curbing and crosswalks, and to do the aforesaid things singly or in any combination of the same, and the various items of the said work and constructions need not be conterminous; and to issue bonds representing the costs and expenses of any said work or constructions as in this act hereafter provided; and to constitute a fund for the payment of such bonds as in this act hereafter provided; and to constitute a special fund for the payment of such bonds as in this act hereafter provided; and to levy special assessment taxes upon a district as in this act hereafter provided; and to establish said district and determine its boundaries as in this act hereafter provided; and, as incidental to the exercise of the powers aforesaid, to establish official grades within said district and such districts; and to transfer from county road funds to such special funds as in this act hereafter provided; and to purchase material and furnish the same to be used in the doing of any of the works above named.

Prohibited work.

But said board of supervisors are hereby prohibited from doing, under the provisions of this act, any work, except sewer or drain work, within the roadway of any railroad or within any area which by law is required to be kept in order or repair by any person or company having railroad tracks thereon, and this prohibition shall have the effect of excepting the prohibited work from that described in any resolution of intention in any proceeding under this act, and of charging all persons with notice of such exception or exclusion, and such exception of said prohibited work need not be made in any such resolution of intention. [Amendment of May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1370.]

Specifications for work.

§ 2. Before any resolution of intention is passed under this act, specifications for work substantially the same as that described in the resolution of intention and for a district to be benefited by said work substantially the same as that described in the resolution of intention, shall be furnished by some competent person who shall have

been designated by the board of supervisors for that purpose, by a resolution to be entered by the clerk upon the minutes of said board. Except where there is already an official grade established in as a part of such specifications grades shall be specified for all roads, streets, avenues, boulevards, lanes and alleys or portions thereof, proposed in said resolution of intention to be improved, so far as the same are so proposed to be improved. If any official grade has already been adopted or established for any of said roads, streets, avenues, boulevards, lanes or alleys proposed to be improved, it shall be lawful in said specifications to provide for new or different grades therefor from those already established or adopted.

Description of work and district.

Neither the work nor the district need be described in the resolution appointing such person except so far as may be sufficient to identify the work and district for which the specifications are prepared, and for such purpose it shall suffice to designate the same as "In the matter of road district improvement No. and resolution of intention No." (inserting the same number of both blanks).

Estimate of cost.

Such specifications shall include an estimate of the aggregate amount of the cost of the work inclusive of incidental expenses and of the procedure. Such specifications shall be signed by the person designated to furnish them and be filed with the clerk of the board of supervisors. [Amendment of June 10, 1915. In effect August 9, 1915, Stats. 1915, p. 1394.]

Resolution of intention.

§ 3. Before ordering any work to be done under this act, the board of supervisors shall pass a resolution of intention so to do. Such resolution may, in form, and shall, in substance, be (filling all blanks) as indicated following, to wit:

Form of resolution.

In the matter of road district improvement No. Resolution of intention No. (the same number for both blanks).

Resolved, That it is the intention of the board of supervisors of the county of, State of California, proceeding under and by virtue of the road district improvement act of 1907, and in the matter of road improvement district No. on the day of, 191., at the hour of in. of that day or as soon thereafter as the matter can be heard, at the chambers of said board, to order work to be done, as follows: (Here insert a description of the work, stating the territorial extent thereof with all reasonable exactness, and in other particulars generally, yet so as to indicate fairly and approximately its probable cost), the said work to be done in accordance with the specifications therefor filed with the clerk of said board on the day of, 191., except as the boundaries of the district and grades therein specified may be changed at the hearing of the matter hereinafter mentioned, which specifications are made part hereof, and to which all persons are referred for further particulars as to said work. For the costs and expenses of the work and the proceeding bonds will be issued to the amount of the same, bearing interest at the rate of per cent per annum, payable semi-annually, and one part of the principal annually, all in gold coin and the aggregate principal of said bonds shall be paid and discharged within "....." years from the issue thereof.

A special fund for the payment of said bonds is to be constituted by the levy of special assessment taxes upon all land within a district to be known as "road improvement district No. of the county of, " (and it may be added, "and partly by transfer of moneys from county road funds").

Such district (as proposed) being all that territory in the county of, State of California, within exterior boundaries as follows, to wit: (the blank to be filled with a careful statement of the exterior boundaries of the district).

Notice is hereby given that at the time specified hereinbefore for ordering the work, the matter of said road district improvement No. will come up for hearing, and all objections, which are, under the provisions of said road district improvement act of 1907, entitled to be heard or determined, will then be heard and determined, and the boundaries of said district and grades therein be finally determined and established.

The (here insert name and character of newspaper), is hereby designated as the newspaper for making publication of this resolution and for making all other publications in the proceeding.

....., a competent person, is hereby appointed superintendent of work with compensation at the rate of dollars per diem for days actually spent in the performance of duty under this appointment, (or, in lieu of the paragraph last preceding, it may appear, "....., a county officer is hereby appointed superintendent of work without compensation").

The foregoing resolution was, on the day of, 191., passed by the board of supervisors of the county of, State of California.

Attest
 Clerk of the board of supervisors of said
 county of
 By
 Deputy Clerk.

Principal and interest.

The principal and interest of the bonds representing the cost of work done under the provisions of this act, shall be payable in gold coin of the United States of America, and the board of supervisors is authorized to determine the time, not to exceed twenty years, in which bonds issued to represent the cost of the work shall be paid, and to determine the rate, not to exceed seven per cent per annum, of the interest to be paid thereon, which interest shall be payable semi-annually, and to make such bonds in all respects as indicated by the form therefor, in this act hereafter provided. [Amendment of May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1370.]

Publication of resolution. Copies posted.

§ 4. Such resolution of intention shall be filed, and be published by at least two insertions in the newspaper therein designated, which shall be a newspaper published and circulated in the county, or, if there be no such newspaper, then in any newspaper designated by said board of supervisors in such resolution. Printed copies of such resolution, headed, "notice of road district improvement," such heading to be in letters not less than one inch in length, shall be, by the superintendent of work, or by some person appointed by him for the purpose, posted along the line of the work described in said resolution, at not more than one hundred feet in distance apart, but not less than three in all.

Power to proceed.

Affidavits in proof of such publication and posting shall be filed with the clerk of the board of supervisors. When, before the day of the hearing specified in the resolution of intention, twenty days have elapsed since the posting and the first publication (they need not be simultaneous) of the resolution of intention, the board of supervisors shall have acquired power to proceed with such hearing and to take all other action in the proceeding as is in this act authorized.

Evidence of facts.

The determination of the board of supervisors to proceed with such hearing, whether evidenced by an express declaration or by its proceedings to make other determinations at such hearing, shall be presumptive evidence, at least, of the existence of all the facts upon which the power of the board to proceed depends, except such as are required to appear of the record in the proceeding, and except, also, in so far as such presumption is rebutted by the record in the proceeding. [Amendment of May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1372.]

Objections to work.

§ 5. At any time before the day in the resolution of intention specified for ordering the work and the hearing of the matter, any owner of land within the boundaries of the district as set forth in said resolution, may, severally or with other such owners, file with the clerk of the board of supervisors written objection to the ordering of the work, as an entirety and not merely to some part thereof, as described in the resolution of intention.

If upon said hearing it appears that a majority of the owners of land within the district, as set forth in the resolution of intention, have so in writing made objection going to the entirety of the work described in the resolution of intention and to the ordering of the same, the board of supervisors shall, by a resolution, to be entered in its minutes, so find; and thereupon such board shall have no power to proceed further under said resolution of intention, or to pass any resolution of intention for doing the same work, during a period of one year, next after the time of such finding; and the accrued costs of the proceedings shall be a charge upon the county. But if the fact be that a majority of the owners of land lying within the district, as set forth in said resolution of intention, have not so in writing made objection going to the ordering of the work, as an entirety, the board of supervisors shall so find, and thereupon proceed with the hearing; but such finding need not then be in writing and may, for the purpose of proceeding with the hearing, be a mere announcement of the board, to be noted in the minutes by the clerk.

At the conclusion of the hearing, however, the said finding shall, severally or with other determinations of the board, be made in writing to be filed and entered upon the minutes of the board.

Owners of land within the meaning of this section are those and those only, who appear to be such upon the records in the recorder's office of the county in which the district is situated, on the day before the day for said hearing, and an executor or administrator shall be deemed representative of his decedent, and a trustee of an express trust in land other than as security for the payment of money, of the land held in such trust, and a trustee in bankruptcy, of the bankrupt.

Next after in order of hearing, the board shall proceed to hear such objections as may be made to the grades specified in the specifications.

Thereafter, in the order of the hearing shall be heard such objections as shall be made to the boundaries of the district as set forth in the resolution of intention. Objection to the grades or to the boundaries of the district may be made by an owner of land lying within the district upon the hearing without any written statement of the same.

The hearing may be continued from time to time by the board of supervisors by an order to be entered in the minutes of the board.

Declaration of findings.

§ 6. Unless the power to proceed shall have ceased, as hereinbefore provided, the board of supervisors shall in conclusion of the aforementioned hearing, and as a sufficient determination of all questions arising thereat, by resolution or resolutions to be

entered upon its minutes, declare its finding that a majority of the owners of land within the district described in the resolution of intention have not before the day of the hearing filed written objection, going to the ordering of the work to be done, and determining the boundaries of the district to be benefited by the improvement, and the grades thereon. If no changes be made in the boundaries of the district as the same are set forth in the resolution of intention, it shall be sufficient to state that the boundaries of the district are those set forth in the resolution of intention, but if any change of such boundaries is made, the boundaries of the district, as finally determined, shall be fully set forth.

Grades and boundaries determined.

If no change be made as to the grades, as set forth in the specifications on file, it shall be sufficient to state that the grades of the same, as finally determined, are those set forth in such specifications. In either case, the boundaries of the district so determined shall be the boundaries of the district for all purpose[s] of the proceeding and until any bonds to be issued for the cost of the work shall have been fully paid and discharged; and the grades so determined shall be the grades of the district for all the purposes of the proceeding and the "official grade" within the meaning of section one of this act; provided, however, that the boundaries of the district, as the same are set forth in the resolution of intention, shall not be so changed as to include within the district any territory not within its boundaries as set forth in that resolution, nor so that the place or locality of any work described in such resolution of intention shall be excluded from the boundaries of the district as so finally determined.

Time for receiving bids.

In like manner the board of supervisors may order the work to be done, and if it so do, shall fix a time for receiving proposals or bids for doing the work, and direct the clerk to give notice accordingly, inviting sealed proposals or bids. Such notice shall include a statement that the work is to be done "under the provisions of the Road District Improvement Act of 1907," and according to the specifications on file therefor, except in so far as the grades specified therein shall have been fixed otherwise by the board of supervisors in conclusion of the hearing in said act provided; to which said act, to the resolution of intention and all proceedings had thereunder the intention of bidders is hereby directed, and by this reference made a part of this notice. [Amendment of June 10, 1915. In effect August 9, 1915. Stats. 1915, p. 1395.]

Publication of notice inviting bids.

§ 7. The notice inviting sealed proposals or bids shall be published by at least two insertions in the newspapers designated in the resolution of intention and, not necessarily simultaneously, a copy or copies of the same be posted and kept posted for five days, at or near the chamber door of the board of supervisors. All proposals or bids shall be accompanied by a check, payable to the order of the presiding officer of the board of supervisors, certified by a responsible bank for an amount not less than ten per cent of the aggregate of the proposal or bid, or by a bond for said amount running to the presiding officer of the board of supervisors, signed by the bidder, with two sureties qualifying each in said amount over and above all statutory exemptions before an officer competent to administer an oath.

Consideration of bids.

Said proposals or bids shall be delivered to the clerk of said board, and said board shall, in open session, examine and declare the same, but no proposal or bid shall be considered unless accompanied by said check or such bond in terms satisfactory to the board. The board may reject any and all proposals or bids should it deem this for the

public good, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work to the lowest responsible bidder at the price named in his bid.

Notice of award to be published.

A notice of such award, attested by the clerk of the board of supervisors, shall be published two days and posted for five days in the same manner as hereinbefore provided with respect to the notice inviting proposals or bids.

Bonds accompanying bids.

The check or bonds accompanying such accepted proposals or bids shall be kept by the clerk of said board until the contract for doing said work, as hereinafter provided, has been entered into. If said bidder fails, neglects or refuses to enter into the contract for said work, as hereinafter provided, then the certified check accompanying his bid, and the amount therein mentioned, shall be declared forfeited to the county, and may be collected by it and paid into its road fund, and any bond forfeited may be prosecuted, and the amount thereof collected and paid into said fund.

Successful bidder to pay for advertising.

Before being entitled to a contract the bidder to whom the award thereof has been made must advance and pay to the clerk of the board of supervisors, for payment by him the costs and expenses of publishing and posting resolutions, notices and orders required under this act to be made, which have been made, given, posted or published in the proceeding. [Amendment of May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1373.]

Owners may file notice of irregularity.

§ 8. At any time within ten days from the date of the first publication of the notice of award of contract any owner of, or other person having any interest in any lot or land within the boundaries of the assessment district who claims that any of the previous acts or proceedings relating to said improvement are irregular, defective, erroneous or faulty may file with the clerk of the board of supervisors a written notice specifying in what respect said acts and proceedings are irregular, defective, erroneous or faulty. All objections to any act or proceedings prior to the first day of publication of the aforesaid notice of award in relation to said improvement not made in writing, and in the manner and at the time aforesaid, shall be waived. It is the intent of this section that any person failing to file such notice within the time specified shall be deemed to have intentionally waived every objection to the regularity or validity of such acts or proceedings. If, for fifteen days after the first publication of said notice of award, the bidder to whom the contract was awarded, fails, neglects or refused to enter into the contract, the board of supervisors may direct the clerk of the board to give notice inviting sealed proposals and bids and thereupon the board shall proceed as in the first instance, and as in the case of the default of the first awardee, so also in the event of the second. [Amendment of June 10, 1915 In effect August 9, 1915. Stats. 1915, p. 1396.]

Terms of contract. Bond of contractor.

§ 9. The presiding officer of the board of supervisors is hereby authorized, in the name of the county to execute the contract with the awardee of the same, and to receive and approve all bonds by this act required on the part of such awardee, and shall, by the terms of said contract, fix the time for the beginning of the work, which shall not be more than twenty days from the date thereof, and the contract shall provide that the work be prosecuted with diligence until completed, and a time for such completion shall be in the contract fixed, but such time of completion may be extended from time

to time by the board of supervisors, in its discretion, and by resolution, which shall be entered by the clerk in the minutes of said board, a copy of which shall be by said clerk indorsed upon or annexed to the contract.

Before entering upon such contract, a bond shall be executed and filed, running to the county, in an amount not less than one-half of the contract price of the work, signed by the contractor and two or more sureties, who shall aggregately, unless surety companies, qualify before an officer entitled to administer the oath in a sum equal to the amount of the bond, each surety in the amount for which he becomes surety. Such bond shall be conditioned for the faithful execution of the contract by the party contracting to do the work, and the payment by him for all labor and materials furnished for or in the doing of the work. The form and sufficiency of said bond shall be passed upon by some member of the board of supervisors, and such bond shall inure as well to the benefit of any and all persons furnishing labor or materials for the work as to the county.

Said contract shall undertake on behalf of the county that the board of supervisors will, upon the fulfillment and performance of the contract on the part of the contractor, and under the provisions of the "Road District Improvement Act of 1907," take all steps, in or by said act authorized to be taken, to effect the issuing by the county treasurer of the bonds in said act authorized to be issued, and provide a fund for the payment of the same, as in or by said act prescribed; and it shall be in such contract stated that in no case shall the county be liable under the contract, nor any officer thereof be thereunder holden except for the discharge of official duty under the law.

If contractor fails to carry out contract.

§ 9a. If the contractor shall fail to begin in good faith the work provided for in said contract within the time in said contract set forth, or shall fail thereafter to prosecute said work in a workmanlike and diligent manner, or shall fail in any other respect to carry out the terms of said contract, then the board of supervisors shall cause written notice to be served upon said contractor, specifying the particular or particulars in which he fails to fulfill the requirements of said contract and if for a period of three days thereafter said contractor shall fail to remedy the defects set forth in said notice, and to prosecute said work thereafter with diligence and in a workmanlike manner, then the board of supervisors shall either take over said contract and complete said work, or shall relet said contract, without the necessity of advertising for bids, and cause the work to be completed, and shall declare the bond given by said contractor forfeited and order suit brought thereon, and all moneys collected therefrom shall be paid into the general road fund of the county.

Action to recover on bond.

If the contractor shall fail to pay for any labor or material furnished for, or in the doing of said work, by any person, such person shall have and hold a lien against the bonds to be issued to cover the cost and expenses of said work. Such person may at any time prior to the issuance of said bonds file with the county treasurer a verified statement of the fact that he has not been paid for such labor or material. The county treasurer shall withhold from the contractor or any one claiming under him as assignee or otherwise, sufficient of said bonds to satisfy such claim, and costs which can reasonably be anticipated. Such claimant, if he so elects, and if he has not received the said bonds, may as an alternative, at any time within six months after the filing of such statement bring an action on the bond of the sureties in his own name, or if he has assigned his claim, the action may be brought in the name of the assignee; provided, however, that the right of the county to recover on said bond shall be superior to the rights of such claimant to recover thereon. [Amendment of May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 558.]

This section was added May 31, 1917, Stats. 1917, p. 1373.

When work is completed, declaration to be filed. Notice of hearing whether work shall be accepted. Hearing.

§ 10. As soon as may be done in good faith, there shall be filed with the clerk of the board of supervisors a declaration that the work has been completed according to the contract, together with an itemized statement of all the incidental costs and expenses of the work and the proceeding inclusive of the estimated cost of publishing the notice of final hearing hereinafter mentioned.

The aggregate of such items shall be stated, and, also, the amount due as of the contract price; and also the gross sum for a bond issue representing the entire amount thereof, as claimed by the contractor. The said declaration and statements shall be signed and verified by the superintendent of work, and by the contractor or some person cognizant of the facts, signing on behalf of the contractor, and stating why he, instead of the contractor, so signs and verifies. Either signer may except from his signature and verification any amount or item to which he does not assent.

The presiding officer of the board of supervisors is hereby authorized to fix a time and give notice for a hearing for the purpose of determining whether the work shall be accepted as being completed according to the contract, and for determining the aggregate amounts for which bonds shall be issued representing the total cost of the work, and the amount of the incidental costs and expenses of the work, and the proceedings which is to be charged to and paid by the contractor.

Such hearing shall be known as the final hearing. The notice of such hearing may, in form, and shall, in substance be (filling the blanks) as follows:

Notice of Final Hearing.
In the Matter of Road District
Improvement No. —

Notice is hereby given that a final hearing of the above named matter will be had at the hour of — m. on the — day of —, 19—, at the chamber of the board of supervisors of the county of —, State of California, for the purpose of determining whether the work done under the contract made with — under Resolution of Intention No. — in Road Improvement District No. — of the county of — shall be accepted as being performed according to the contract, and for determining the aggregate amount for which bonds shall issue representing the cost of such work, inclusive of the incidental costs and expenses of the work and the proceeding, of which a statement has been filed with the clerk of said board of supervisors of the county of —, to which statement the attention of all persons interested is hereby directed.

— of the Board of Supervisors
of the county of —

Attest: —

Clerk of said Board of Supervision

By —

Deputy Clerk

(If so the fact be.)

Such notice shall be signed by the presiding officer of the board of supervisors and attested by the clerk of the board of supervisors and published by at least two insertions in the newspaper designated in the resolution of intention, and copy or copies thereof, posted and kept posted for two days at or near the chamber door of the board of supervisors, the first day of such publication and that of such posting (they need not be simultaneous) to be not less than five days before the day in said notice specified for the hearing.

Proof of such publication shall be made by affidavit or affidavits, and the same shall be filed. If a quorum be not present at the time in the notice specified for the hearing,

a member or members of the board then present may continue the hearing from day to day, and at all stages thereof the hearing may, by resolution, to be entered in the minutes, be continued from time to time.

At any time before the day in said notice specified for the hearing, any owner of property not exempt from taxation within the district, as finally established, may solely or with any other such owner or owners, file written objection to the acceptance of the work on the ground that the work has not been completed or done according to the contract, specifying in ordinary language the particulars in which the contract has not been so completed or done.

Any person interested in the proceeding, as of the interest of the contractor, shall be presumed to take issue with such objection, and be heard accordingly.

Questions going to the incidental costs or expenses of the work or the proceedings may be raised orally by any owner of property not exempt from taxation, situated within the district.

Evidence may be adduced going to any of the matters to be determined, and in such order as the board may summarily direct.

If, when the matter has been fully heard, whether under or in the absence of objections, the board of supervisors is of the opinion that the work has not been completed or done according to the contract, it shall in writing, specify what must be done in order to complete the work, and shall, by an order or resolution to be entered in its minutes, continue the further hearing of the whole matter to a specified day, expressly stating that such continuance is for the purpose of enabling the contractor to complete his contract.

On said continued hearing the objections filed before the day of the first hearing shall continue in force as against the work, and evidence be received, if offered, as to what has been done by way of completing the contract in the particulars specified in the order of the board on the said continuance of the hearing.

If, upon such continued hearing, it is the opinion of the board that the work is still uncompleted, in the particulars as to which it was ordered to be completed, it shall be discretionary with said board to order or refuse a second continuance of the hearing. If the board do order such second continuance, it shall be ordered in the same manner and with like effect as provided aforesaid, upon the first continuance.

And as provided aforesaid for a second continuance so of any other or further continuance.

Objections to any item of incidental costs and expenses, shall pend and be heard on said day, or at any continued hearing had, as in this section aforesaid provided.

Every continuance of said hearing for the purposes of enabling the contractor to complete his contract or the work shall continue or revive such powers of the board to supervisors had, under the provisions of this act, in the proceeding, at the time of the filing of the contractor's declaration that the work was completed, as provided aforesaid, and also operate to extend the time for the completion of said contract in such manner that its completion within the time to which the hearing is continued, shall be as valid performance of such contract as if completed at the time of filing such declaration or statement.

Resolution of acceptance. Decision final.

§ 11. Whenever upon the hearing in section 10 aforesaid provided, whether at the first or any continued hearing, it shall be the opinion of the board of supervisors that the work has been completed and done according to the contract, said board shall by resolution to be entered upon its minutes so declare, and that the work is accepted, and shall in said resolution state the amount of the contract price for the doing of the

work specified and performed, and the amount of the incidental costs and expenses of the work and proceedings which are to be charged against and to be paid by the contractor and the aggregate amount for which bonds are to be issued as hereinafter provided, inclusive of said contract price and said incidental costs and expenses. The decision and determination of said board of supervisors at the hearing provided for in section 10 hereof shall be final and conclusive as to all matters determined at said hearing, and as to all errors, informalities, irregularities, or omissions which said board of supervisors might have avoided or remedied during the progress of the proceedings, or which it can at that time remedy, upon all persons entitled to be heard before said board on said matters, and no assessment or tax thereafter levied for the payment of the bonds to be issued for said work and expenses shall be held invalid by any court for any error, informality, omission or other defect in the proceedings where the resolution of intention has been actually published as in this act provided, before the said board shall have ordered the work to be done. [Amendment of June 10, 1915. In effect August 9, 1915. Stats. 1915, p. 1396.]

Bonds to be issued in road districts.

§ 12. Upon the expiration of twenty days from the making of the final order mentioned in section eleven of this act, the clerk of the board of supervisors shall transmit to the county treasurer of the county an attested copy of said final order, and upon receipt of the same the treasurer shall proceed to issue bonds amounting in the aggregate to the principal sum for which bonds are to be issued as the same is stated in said final order. Said bonds, when issued, shall be dated as of the day when said final order of the board of supervisors was made. A bond may be issued in any amount, provided that the aggregate of the bond or bonds made payable in any one year is the proper part of the whole principal of the bond issue as specified in said final order, and that the interest thereon shall be payable as hereinafter provided. The said bonds may in form and shall in substance be as indicated following, to wit:

Road district improvement bond.

ROAD DISTRICT IMPROVEMENT BOND.

County of....., State of California.
Road Improvement District No.....

\$..... Bond No.....

Under and by virtue of an act of the legislature of the State of California, known as the "road district improvement act of 1907" (here may be inserted a further designation of the act, if desired) the county of....., State of California, will pay to the bearer, out of the fund hereinafter designated, at the office of the treasurer of the said county, on the.....day of....., 19....., the sum of.....dollars in gold coin of the United States of America, with interest thereon, in like gold coin at the rate of.....per cent per annum, payable semiannually on the second day of January and the second day of July of each year from the date hereof (except the last installment thereof, which shall be payable at maturity of this bond) upon presentation and surrender, as they respectively become due, of the proper interest coupons hereto attached, the first of which is for interest from date hereof to the next date of interest payment, and the last for interest to maturity hereof from the last preceding date of interest payment.

This bond is issued under and in conformity to the provisions of the above mentioned "road district improvement act of 1907" and the amendments thereof, and is one of a series of bonds of like date and effect numbered from one to.....consecutively, amounting in the aggregate to.....dollars, issued in behalf of road improvement district number.....of said county, which constitute the only indebtedness of said district. It is hereby certified, recited and declared that all pro-

ceedings, acts and things required by law precedent to or in the issuance of this bond have been regularly had, done and performed, and this bond is by law made conclusive evidence thereof.

This bond is payable out of road district improvement fund number..... exclusively, as the same appears on the books of the treasurer of said county, and neither said county nor any officer thereof shall be holden for its payment otherwise; but in accordance with said act the board of supervisors of said county will annually, at the time of levying other taxes, levy upon all the land in said road improvement district a special assessment tax in an amount clearly sufficient to pay the principal and interest of said bonds as the same shall become payable.

In witness whereof said county has caused this bond to be signed by the chairman of its board of supervisors and countersigned by its treasurer and the seal of said board to be hereto affixed and said interest coupons to be signed by the said treasurer thisday of....., 19.....

.....
Chairman of the board of supervisors of the county of

[Seal of board of supervisors.]

Countersigned:

Treasurer of the county of.....

Signatures on bonds.

Said bonds shall be signed by the chairman of the board of supervisors and countersigned by the treasurer of the county, and shall have the seal of said board of supervisors thereto affixed, and when so signed shall be binding according to the terms thereof as prescribed in said form. The interest coupons attached to said bonds shall be in such form as the said treasurer may determine, subject to the provisions of this act and the determination made by the board of supervisors, and their signature by said treasurer alone, by either written or lithographed or printed facsimile signature, shall be sufficient. Said bonds shall be delivered by the said treasurer to said contractor or to his order, assignee, or lawful representative.

Life of bonds. Interest.

The board of supervisors is hereby vested with power to determine the number of years, not to exceed twenty, within which the aggregate principal of bonds to be issued under this act shall be paid and discharged, and to fix the rate of interest, not to exceed seven per cent per annum, to be paid thereon, and it shall be a sufficient determination and fixing of the same to set forth in the resolution of intention that bonds will issue for the work, in any terms that will fairly indicate such time and such rate and the fractional part of the principal to be paid each year, which part shall be the same for each of the years covered by the bond issued.

Interest payments.

The interest payments on said bonds shall be payable semi-annually on the second days of January and July of each year (except the last installment, which shall be payable at maturity of the bonds) in the manner indicated in said form of bond, and the interest and principal shall be payable at the office of the county treasurer in gold coin of the United States of America; but it shall not be necessary, either in the resolution of intention or otherwise, to set forth or determine the days of the month on which payments of interest are to be made, nor that payments shall be made in such gold coin, nor that payments shall be made at such treasurer's office, but all persons are charged with notice of the contents of this section, especially in the aforesaid particulars. [Amendment of May 10, 1919. In effect July 22, 1919. Stats. 1919, p. 516.]

This section was also amended June 10, 1915, Stats. 1915, p. 1397.

Evidence of regularity.

§ 13. Said bonds by their issuance shall be conclusive evidence of the regularity of all proceedings prior thereto under this act, and after the same are issued, no tax levied or collected for the purpose of paying the principal or interest on said bonds shall be held to be illegal or set aside or refunded by reason of any informality, irregularity, omission or defect in any of the proceedings prior to the issuance of said bonds, nor shall any action be maintained to cancel or set aside said bonds, or to prevent the payment thereof, or the levy or the collection of a tax for such payment.

Special fund.

A special fund to be named "road district improvement fund No....." (the number to be that of the district) for the discharge and payment of such bonds and the interest thereon, shall be constituted as follows, to wit: There shall each year at the time of the general tax levy for state and county taxes, be levied against and upon all of the land (not including improvements) within said road improvement district No....., (being the district established and bounded in the order ordering the work to be done) a special assessment tax, in an amount clearly sufficient, together with any moneys which are or may be in said fund to pay all the principal which has become or will become due, and all interest which has become or will become payable on said bonds, before the proceeds of another tax levy made at the time of the general tax levy for state and county purposes, can be made available for the payment of such bonds.

Transfer from general fund. Levy of special tax.

The board of supervisors shall annually, at the time of making the said tax levy, transfer from the general road fund of the county to said road district improvement fund No....., such amount as in the judgment of said board is a fair proportion of the said general road fund.

In any event it shall be the duty of said board of supervisors to levy a special assessment tax upon all lands within said road district, sufficient to pay the principal and interest of said bonds as the same shall become payable, and the board of supervisors is hereby vested with power to do all and singular the things which in this section aforesaid it is declared shall be done. Whenever any of said bonds or any interest thereon shall become due and there shall not be sufficient money in said road district improvement fund to pay same, the board of supervisors may, pending the levy and collection of a tax therefor, order the amount of money necessary to pay the bonds or interest so falling due, to be transferred from the general fund to said road district improvement fund, and the amount of money so transferred shall be deemed a loan to said road district improvement fund, and shall be repaid to the general fund from the first money coming into said road district improvement fund thereafter. The special assessment taxes provided for herein shall be levied and collected in the same mode and manner and by the same officers as the ordinary county taxes, and all laws applicable to the levy, collection and enforcement of such county taxes, are hereby made applicable to said special taxes. [Amendment of June 10, 1915. In effect August 9, 1915. Stats. 1915, p. 1399.]

Materials furnished to contractor.

§ 13a. The board of supervisors, by a four-fifths vote, may adopt a resolution setting forth that the improvement to be made is of more than local importance, and that all or a portion of the materials needed for the improvement are to be purchased and furnished to the contractor and paid for out of the general road fund or out of the fund of the road district in which the improvement lies, or if it lies in two or more road districts, out of the funds of such districts in a proportion to be determined by the

board of supervisors, and may thereupon purchase and furnish to the contractor such materials, and pay for the same in the manner set forth in said resolution; provided, however, that no material shall be furnished the contractor unless the specifications contain a statement of the kind and amount of the material to be furnished, and only in the amount and of the kind set forth in said specifications. [New section added May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1374.]

§ 14. The board of supervisors is hereby vested with power as follows, to wit:

Engineer of work.

1. To appoint, at any stage of the proceeding before calling for proposals or bids, any competent engineer, to be designated "engineer of work," for the purpose of doing and furnishing all the civil engineering work or services, surveying and similar work and services necessary to the proper doing of the work. His compensation or at least the rate or some basis for computing the same shall be fixed and stated in the order of his appointment, which said order shall be entered in the minutes of the board; provided, any county officer may be appointed as such engineer without compensation.

Superintendent of work.

2. To appoint, in and as a part of the resolution of intention, any competent person to be designated "superintendent of work," whose duty it shall be to perform the services for him in this act prescribed or indicated, and to have the general actual supervision of the work. His compensation shall be fixed at the time and in the resolution of his appointment at a per diem not to exceed five dollars for all time actually devoted to the work; provided, any county officer may be appointed as such superintendent without compensation.

Specifications.

3. To designate any competent person for the purpose of preparing and furnishing the specifications required by section two of this act, and with such designation to fix his compensation, or some basis for computing the same, or to appoint any county officer of the county without compensation.

4. To appoint and designate other competent persons in the places respectively of the persons so originally appointed, with compensation, so far as practicable, proportionately the same as fixed for the original appointee, and to appoint such additional persons as may be needed to carry on said work; and to fix their compensation which shall be a charge against the district.

Not charge against county.

No part of such or any compensation for said officers or employees, or for services rendered by any of them shall be a charge against the county or any officer thereof; except that for furnishing specifications and posting the resolution of intention the county shall be liable in case the proceedings cease or are abandoned, before the award of the contract; provided, however, that whenever any county officer is appointed to any of the positions hereinabove mentioned without compensation, the actual and necessary expenses incurred under his supervision, including the compensation of other persons, made necessary by the duties of such positions shall be a charge against the county but shall be repaid to the county by the contractor as in the following section provided.

Supervisors ineligible.

No member of the board of supervisors shall be eligible to appointment to any office, position or employment under this act, except as county officer without pay. [Amendment of May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1375.]

This section was also amended March 28, 1911, Stats. 1911, p. 506.

Costs paid by contractor.

§ 15. All the costs and expenses of the proceeding, inclusive especially of the compensation of the person appointed to furnish the specifications, of the superintendent of work, of the engineer of work, of the cost of all publications under this act required to be made, shall be chargeable to and paid by the contractor, and they shall have been paid before delivery of the bonds shall be made by the county treasurer; provided, however, that if said costs and expenses are not paid within ten days after notice given that said bonds, excepting such number thereof as may be withheld to satisfy claims filed as hereinabove provided are ready for delivery, a sufficient number of said bonds may be sold at not less than ninety-five per cent of their face value to fully satisfy said costs and expenses, any surplus over said costs and expenses obtained by such sale to be paid to said contractor; provided, further, that the county treasurer may make delivery of such bonds, if there be deposited with him, subject to the order of the board of supervisors, money to the amount of the costs and expenses chargeable to the contractor as the same is stated in the attested order of the board of supervisors, provided for in section twelve of this act. The contractor and all persons claiming under him any interest in said bonds, whether of ownership, lien or otherwise, shall be deemed to have notice of the contents of this section. [Amendment of May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1376.]

Adjustments with contractor.

§ 15½. Whenever a contractor pays into the county treasury an amount larger or smaller than that actually due for incidental or preliminary expenses, the difference thus arising shall be adjusted by transfers from or to the interest and sinking fund of the district for which the payment was made, to or from the proper fund of the county. [New section added May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1336.]

Place of publication may be changed how.

§ 16. If publication in the newspaper designated in the resolution of intention become impossible for the reason that such newspaper has ceased to be published or for any like reason, which renders publication therein impossible, the board of supervisors may, by a resolution to be entered in its minutes, and stating the facts, designate another newspaper for each required publication as occasion therefor arises.

All papers to be filed with county clerk.

§ 17. All papers in a proceeding under this act (save such as thereunder may be returnable to owners) shall be filed with the clerk of the board of supervisors, and by him kept together in a package appropriately labeled. Whenever in this act the term "clerk of the board of supervisors" is employed, it shall be deemed to include one who is, ex officio; such, and it shall be immaterial that he designate himself as county clerk where the county clerk is ex officio clerk of the board of supervisors, nor shall it be material that his act be by deputy.

Name of act.

§ 18. This act shall be known as the "Road District Improvement Act of 1907," and by such designation shall be sufficiently identified in any proceeding thereunder, and whenever in the resolution of intention it shall be set forth or recited that the proceeding is under the "Road District Improvement Act of 1907," this act shall be construed as the paramount statute for such proceeding, independently of, and alternatively for, other statutes for the improvement of public ways not within incorporated cities and towns.

1. **Constitutionality.**—As to constitutionality of act.—See Barber, etc., Co. v. Bancroft, 167 Cal. 185, 138 Pac. 742.

2. **Same—Ad valorem assessments.**—The road district improvement act of 1907 is constitutional, notwithstanding it provides for ad valorem assessments to pay for the improvement rather than an assessment based on benefits.—Thomas v. Pridham, 171 Cal. 98, 106, 153 Pac. 933.

3. **Same—Same.**—The fact that the assessments under the act are based on the value of the property rather than benefits conferred does not render the act unconstitutional.—Swall v. Los Angeles County (Cal. App.), 784 Pac. 406.

4. **Same—Failure to make provision for determining benefits.**—The act is not unconstitutional for failing to make express provision for determining benefits as a condition for including territory in the district.—Swall v. Los Angeles County (Cal. App.), 184 Pac. 406.

5. **Same—Publication of notice of hearing.**—Section 5 of the road district improvement act of 1907, provides for a hearing after due notice by publication to all parties concerned.—Thomas v. Pridham, 171 Cal. 98, 107, 153 Pac. 933.

6. **Same—Same.**—Section 5 of the act provides an opportunity for the property owner to make objections, and the act is not unconstitutional for a failure to allow the property owner a hearing.—Swall v. Los Angeles County (Cal. App.) 184 Pac. 406.

7. **Same—Title—Subject of oiling and paving streets.**—The matter of oiling and paving streets is strictly germane to the general subject of the act as expressed in the title.—Hunt v. Manning, 24 Cal. App. 44, 140 Pac. 39.

8. **Same—Same.**—The title of the act sufficiently expresses the subject of the legislation and embraces but one subject.—Hunt v. Manning, 24 Cal. App. 44, 140 Pac. 39; McCray v. Manning, 22 Cal. App. 25, 133 Pac. 17.

9a. **Construed and applied.**—Section 1184, Code of Civil Procedure.—Section 1184, Code of Civil Procedure, is not applicable to public work on public highways performed under the road district improvement act.—Slayden v. O'Dea (Cal.), 189 Pac. 1066.

9. **Act provides an alternative plan.**—Article VII of the charter of Los Angeles, based upon section 7½, article XI, of the constitution, does not repeal the road district improvement act of 1907 (806), in its application to that county, it being clearly the intention of the charter to provide an alternative plan for road improvement.—Thomas v. Pridham, 171 Cal. 98, 102, 153 Pac. 933.

10. **No denial of hearing to landowners.**—Where it does not appear in a suit to enforce collection of a special assessment to pay bonds issued under the road district improvement act, that the plaintiff landowners were denied a hearing by the board of supervisors, as the act provides, the court will not interfere with the action of

the board.—Dillingham v. Welch, 179 Cal. 656, 178 Pac. 512.

11. **Jurisdiction of supervisors—Adoption of system of road improvement.**—If the supervisors of a county are not foreclosed by the county charter framed under section 7½, article XI, of the constitution, from resort to the general law in road district improvement, it makes no difference how diverse the two systems of road improvement within districts may be.—Thomas v. Pridham, 171 Cal. 98, 103, 153 Pac. 933.

12. **Same—Inclusion of farm lands.**—Where owners of farm lands filed no written protest, or made any objection to the inclusion of their lands in a road improvement district, they are deemed to have submitted themselves to the jurisdiction of the board of supervisors in the determination of the question of the necessity for the improvement.—Swall v. Los Angeles County (Cal. App.), 184 Pac. 406.

13. **Same—Same.**—It is not an obvious abuse of discretion on the part of the supervisors to include farm lands in a road improvement district.—Swall v. Los Angeles County (Cal. App.), 184 Pac. 406.

14. **Same—Abuse of discretion.**—When jurisdiction is given a board to pass on the question of benefits, the courts will not disturb their finding, unless there appears a clear and palpable abuse of discretion.—Swall v. Los Angeles County (Cal. App.), 184 Pac. 406.

15. **Same—Presumption as to benefits.**—It will be presumed that the board of supervisors determined that all the land included in the district would be benefited.—Swall v. Los Angeles County (Cal. App.), 184 Pac. 406.

16. **Procedure—Resolution of intention.**—The resolution of intention not defective because of indefiniteness in describing work to be done, in view of the fact that it referred to the specifications on file, which were not subject to the same objection.—Dillingham v. Welch, 179 Cal. 656, 178 Pac. 512.

17. **Same—Specifications of the work.**—As a general rule specifications must definitely and with certainty, describe the manner and extent of the work to be done, but the rule has an important exception, that where the details of construction and cost are ascertainable only by doing the work, the matter must be left to be adjusted by the person or board supervising construction.—Dillingham v. Welch, 179 Cal. 656, 178 Pac. 512.

18. **Same—Establishment of grades.**—The establishment of grades of streets not to be improved under proceedings provided in this act would not be a part of the "work," and the failure to provide such grades is not fatal to the jurisdiction of the supervisors, under section 2, to pass the resolution of intention.—Dillingham v. Welch, 179 Cal. 656, 178 Pac. 512.

19. **Same—Declaration of completion, verification of.**—The failure to verify the declaration of completion of the work was a mere irregularity, not affecting the juris-

diction of the board of supervisors to levy the tax to meet the bonds issued.—*Dillingham v. Welch*, 179 Cal. 656, 178 Pac. 512.

20. Determination of benefits.—The benefits from street improvements are not necessarily confined to property fronting on the street, and the boundaries of a district or locality benefited by such improvement is a matter for the determination of the board of supervisors under this act, and it will be presumed, in the absence of anything to the contrary to have been correctly determined.—*McCray v. Manning*, 22 Cal. App. 25, 133 Pac. 17.

21. Contract—Indefiniteness of specifications.—A provision in a contract under the

district improvement act of 1907, that "contractors must grade connections with intersecting roads to the satisfaction of the engineer employed by the commission," is not invalid because of indefiniteness of specifications.—*Dillingham v. Welch*, 179 Cal. 656, 178 Pac. 512.

22. Lien for supplies.—Hay and feed for horses and mules used by a contractor on road work under the district improvement act are covered by the bond given under the provisions of section 9 of the act, without regard to the presence or absence of the word "supplies" in the bond.—*Pacific etc., Co. v. Oswald*, 179 Cal. 712, 173 Pac. 854.

WORK ON STATE HIGHWAYS BY LOCAL AUTHORITIES.

ACT 1910a—An act authorizing counties and municipalities to perform street work upon highways under the control of the state.

History: Approved May 3, 1919. In effect July 22, 1919. Stats. 1919, p. 138.

Local improvements on state highway.

§ 1. The several counties, municipalities and road divisions of this state, within the limits of which may exist a state highway or highways under the jurisdiction and control of the state engineering department, are hereby empowered to do or order to be done on such highways any paving, curbing, street work or sewer work authorized by law; provided, however, that permission to do any such work shall first be obtained from the state department of engineering and all grades, elevations or curb lines sought to be established or pavement proposed to be constructed by any county, municipality or road division shall first be approved by said engineering department of the state; and provided, further, that in case any existing pavement should be injured as a result of such work, such pavement shall be restored to the satisfaction of said engineering department.

HIGHWAY LIGHTING DISTRICTS.

ACT 1911—An act to allow unincorporated towns and villages to establish, equip and maintain systems of street lights on public highways; to provide for the formation, government and operation of highway lighting districts; the calling and holding of elections in such districts; the assessment, collection, custody and disbursement of taxes therein; and the creation of ex-officio boards of supervisors.

History: Approved March 20, 1909, Stats. 1909, p. 551. Amended (1) March 23, 1911, Stats. 1911, p. 439; (2) June 4, 1913. In effect August 10, 1913. Stats. 1913, p. 447. (3) May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 943. (4) June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1521.

Certain words defined.

§ 1. The words and phrases used in this act, shall, for the purposes of this act, unless the same be contrary to or inconsistent with the context, be construed as follows:

(1) "Public highways," shall include any highway, county road, state road, public street, avenue, alley, park, parkway, driveway, or public place, in any county, or unincorporated town or village dedicated to the public and generally used for traffic by the public.

(2) "Street lights," or "street illumination," shall include any system of illumination by means of street lights using gas, electricity, or other means of illuminant deemed feasible; such lights to be set upon poles, or suspended in the air.

Street lights.

§ 2. Any unincorporated town or village of this state may establish a highway lighting district for the purpose of installing and maintaining a system of street lights on public highways, for the better protection of its residents, in accordance with the provisions of this act.

Petition for public highway lighting district. Notice of hearing. Publication. Objections.

§ 3. Upon the application, by petition, of twenty-five or more taxpayers and residents of said town or village presented at a regular meeting of the board of supervisors of the county in which the said town or village is situated, praying for the formation of a public highway lighting district, and setting forth the name and boundaries of the said proposed district, the board of supervisors shall fix a day and hour for hearing the same, and protests of interested parties, not less than twenty-five nor more than thirty days after the date of presentation thereof. The clerk of the board shall thereupon cause notices of the filing and hearing of such petition to be posted in three of the most public places in said district. Said notice shall be headed "Notice of the proposed formation of.....lighting district" (stating name of the proposed lighting district) in letters not less than one inch in length, and shall, in legible characters, state the fact and date of the filing of such petition, the date and hour set for hearing such petition and protests of interested parties, specify the boundaries of the proposed district and refer to said petition for further particulars. The said clerk shall also cause a notice, similar in substance, to be published at least once a week for two consecutive weeks in a newspaper of general circulation printed and published in the county in which the proposed district is located, and designated by said board for that purpose. Said notice must be posted and published, as above provided, at least seven days before the date set for the hearing of said petition. Any person interested, objecting to the formation of said district, or to the extent of said district, or to the proposed improvement, or to the inclusion of his property in said district, may file a written protest, setting forth such objections, with the clerk of said board at or before the time set for the hearing of said petition.

Hearing. Changes in boundaries.

The clerk of said board shall endorse on each such protest the date of its reception by him, and, at the time appointed for the hearing above provided for, shall present to said board all protests so filed with him. Said board shall hear said petition and protests at the time appointed, or at any time to which the hearing thereof may be adjourned, and pass upon the same, and its decision thereon shall be final and conclusive. If any of such protests be against the extent of said district, or against the inclusion of property in said district, then the board shall have power to make such changes in the boundaries of the proposed district as it shall find to be proper and advisable, and shall define and establish such boundaries, but said board shall not extend the boundaries of said district, nor shall said board modify such boundaries so as to exclude from such proposed district any territory which will be benefited by said improvement, nor shall any territory which will not, in the judgment of said board be benefited by said improvement be included within such proposed district. At the expiration of the time within which protests may be filed, if none be filed, or if protests be filed and, after hearing be denied or the boundaries of the proposed district be defined and established with modifications, as above provided, then said board shall be deemed to have acquired jurisdiction to further proceed in accordance with the provisions of this act.

Order for election.

The said board of supervisors must, within thirty days after acquiring jurisdiction to proceed as provided above, by resolution, order that an election be held in the said proposed district for the determination of the question, and shall appoint three qualified electors thereof to conduct said election; which must be held within forty days from the date of the order. [Amendment of May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 944.]

Election to determine proposition.

§ 4. Said election shall be called by posting notice thereof in three of the most public places in said proposed lighting district, and by publication in a daily or weekly paper therein, if there be one, at least once a week for not less than fifteen days. Said notices must specify the time, place and purposes of said election, give the boundaries of the said proposed lighting district; and the hours during which the polls will be kept open; provided that in districts with a population of ten thousand or over, the polls must be opened at 8 o'clock A. M., and kept open until 7 o'clock P. M., and in districts where the population is less than ten thousand, the polls must not be opened before 1 o'clock P. M., and must be kept open not less than six hours.

Conduct of election.

§ 5. Said election shall be conducted in accordance with the general election laws of this state, where applicable, without reference to form of ballot or manner of voting, except that the ballots shall contain the words, "For Lighting District," and the voter shall write or print after said words on his ballot, the word "Yes" or the word "No."

Who entitled to vote.

§ 6. Every qualified elector, resident within the proposed district for the period requisite to enable him to vote at a general election, shall be entitled to vote at the election above provided for.

Canvass of vote.

§ 7. It shall be the duty of the election officers to publicly canvass the votes immediately after the close of the election, and to report the result of said election to the board of supervisors within five days subsequent to the holding thereof.

Duty of supervisors.

§ 8. If a majority of the votes cast at said election shall be in favor of a lighting district, the said board of supervisors may, by resolution, establish said lighting district.

Same.

§ 9. If a majority of the votes cast shall be against the lighting district, the board of supervisors, shall by order, so declare; no other proceedings shall be taken in relation thereto until the expiration of one year from the date of presentation of the petition.

Evidence of validity.

§ 10. The fact of the presentation of the petition, and the order establishing the lighting district, shall be entered in the minutes of the board of supervisors and shall be conclusive evidence of the due presentation of a proper petition, and that each of the petitioners was, at the time of signature and presentation of the petition, a taxpayer and resident of the proposed district, and of the fact and regularity of all prior proceedings of every kind and nature provided for by this act, and of the existence and validity of the district.

Supervisors to act for lighting districts. Powers and duties. Advertising for bids, etc.

§ 11. The board of supervisors of the county wherein lighting districts have been established under the provisions of this act, shall be and they are hereby designated as and empowered to act as ex officio the board of supervisors of each and all of such lighting districts which may hereafter be established within such county under the provisions of this act; serving without compensation; and said boards of supervisors shall be authorized and they are hereby empowered, and it shall be their duty:

First—To make all rules, regulations and laws necessary for the administration, operation and maintenance of the lighting districts situated within their county.

Second—To supervise, and plan a system of street illumination for any and all lighting districts within their county, and to determine and decide upon the kind and manner of illuminant most feasible for the district; but nothing herein shall prevent the board of supervisors from installing and maintaining electric lights on highways in such districts, and to pay for the same out of the general road fund of the county or district road fund.

Third—To indicate the placing and installation of the lights and any and all subsequent additional lights.

Fourth—To receive bids, award and make contracts with lighting companies to the very best advantage of the district, for the installation and maintenance of poles, wires, lights and other accessories; and for the supplying of electric current, gas, or such other illuminant as may be determined upon; and for any and all other things that may be necessary to carry out the full meaning and provisions of this act.

Fifth—To determine the number of employees, if any, necessary to properly care for and maintain the lights; to prescribe their duties and fix their compensation, which said employees shall hold their positions at the pleasure of the board.

Sixth—Upon the application, by petition, of twenty-five or more taxpayers and residents of such lighting district, asking for the installation and maintenance of additional lights, which said petition must be filed on or before the first day of September in any year; to immediately estimate the cost of installing and maintaining such additional lights, and to include in the tax levy for the ensuing fiscal year a tax upon the taxable property within such lighting district, at the equalized value thereof for that year, sufficient to pay the cost of installing and maintaining such additional lights; after which to proceed with the installation of such additional lights.

Seventh—To designate the hours for lighting such districts.

Eighth—To perform any and all other acts and things necessary or proper to carry out the provisions of this act.

Ninth—To, within ten days after the establishment of such district, proceed with carrying out the provisions of this act by advertising for bids for installing, caring for and maintaining the lights determined upon; and for supplying the district with all the gas, electricity or such other illuminant as has been determined upon, necessary for operating and maintaining any and all of the lights which have been already installed or which are to be installed within such district. The contract to be awarded to the lowest responsible bidder; provided, however, that the rates to be paid therefor must not exceed in any event the rates paid at that time by said county for highway lighting in other portions of said county. The rates to be paid must not be fixed for a term exceeding five years, and the board of supervisors must reserve the right to abrogate such contract whenever gas or electric current is offered to be supplied at two-thirds of such fixed contract price. [Amendment approved June 4, 1913. Stats. 1913, p. 447.]

Prior light, maintenance.

§ 12. If prior to the formation of a lighting district any lights have been maintained, by public subscription or paid for out of the district road funds, within any territory

which subsequently forms itself into a lighting district under the provisions of this act; at the time of the establishment of such lighting district, or else at the time of expiration of any then existing contract for the maintenance of such lights; such lights and the future cost of maintaining and operating them shall be included in the estimate of the board of supervisors and shall thenceforth be maintained as a part of the lighting system of such lighting district.

Authority to erect poles.

§ 13. In granting authority to lay down pipes or to erect poles and string wires, and in contracting for gas or electric current, the board of supervisors must impose such restrictions and conditions, and provide for such locations of the various wires and lights, so as to work the least possible public or private inconvenience.

Estimate for tax levy.

§ 14. On or before the first day of September in each and every year, the board of supervisors of any county wherein a lighting district has been established, shall make an estimate of the cost of conducting and maintaining such lighting district for the ensuing fiscal year, together with the cost of installing and maintaining such additional lights as may have already been petitioned for by the residents of such lighting districts, and for the cost of any other things which may be necessary for carrying out the purposes of this act.

Lighting district tax levy.

§ 15. When such estimate shall have been made, the board of supervisors of any county wherein a lighting district has been established, must, at the time of levying county taxes, levy a special tax upon all of the taxable property within the limits of such lighting district at the equalized value thereof, sufficient in amount to maintain the said lighting system, and to install any additional lights, or for any or all of the purposes of this act. When a lighting district is organized subsequent to the time of levying county taxes in any year, the board of supervisors may authorize the immediate installation of said lighting system in such district, and shall include in the levy of taxes for said lighting district for the ensuing fiscal year, a sum sufficient to pay the cost of the installation and maintenance of said lighting system in said district for that portion of the preceding fiscal year for which no levy of taxes was made in such year, for said purpose. [Amendment approved March 23, 1911. Stats. 1911, p. 439.]

Disposition of funds. Remainder transferred to city treasurer.

§ 16. The revenue derived from said tax, together with all other moneys acquired in any manner whatsoever by the lighting district shall be paid into the county treasury to the credit of the lighting fund of the district wherein said tax was collected, subject only to the order of the board of supervisors of said district, and to be by them expended only for and on behalf of the district wherein such money was collected; provided, however, that any funds arising from assessments made under the provisions of this act, and remaining in said county treasury after the payment of all outstanding legal obligations incurred by the district, shall be ordered transferred, by the board of supervisors of the county in which such district is situated, to the city treasurer of the city, if any there be, that has been incorporated since the formation of said district, and which includes within its corporate limits such district or any considerable portion thereof. If such incorporation has not taken place, then said funds so remaining in said county treasury shall be transferred to a separate fund and, upon the order of the board of supervisors of the county, shall be repaid pro rata to the persons by whom the assessments were originally paid. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1521.]

Designation of district.

§ 17. Every lighting district formed or established under the provisions of this act, must be designated by the name and under the style of — lighting district, (using the name of the district), of — county, (using the name of the county in which such district is situated), and in that name the board of supervisors may make and award contracts, and may sue and be sued.

District may be dissolved. Order for election. Disposition of property. Outstanding indebtedness.

§ 18. The district may at any time be dissolved upon the vote of two-thirds of the qualified electors voting thereon, at an election called by the board of supervisors, upon the question of dissolution. Upon a petition signed by fifty or more property owners and residents of such lighting district, asking for the dissolution of said district, the board of supervisors shall within thirty days after receiving said petition, by resolution, order that an election be held in the said district, for the determination of the question, and appoint three qualified electors thereof to conduct said election. Such election shall be called and conducted in the same manner as other elections of the district. Upon such dissolution, any property which may have been acquired by such lighting district shall vest in any incorporated town or city that may at such time be in occupation of a considerable portion of the territory of such lighting district; and if there be no such incorporated town or city, then such property shall be vested in the board of supervisors of the county wherein such lighting district is situated until the formation of such incorporated town or city; provided, however, that if at the time of the election to dissolve such district there be any outstanding indebtedness of such district, then, in such event, the vote to dissolve such district shall dissolve the same for all purposes excepting only the levy and collection of taxes for the payment of such outstanding indebtedness; and from the time such district is thus dissolved until such indebtedness is fully paid, satisfied and discharged, the legislative authority of such incorporated town or city, or the board of supervisors, if there be no such incorporated town or city, is hereby constituted ex officio the board of supervisors of such district. And it is hereby made obligatory upon such board to levy such taxes and perform such other acts as may be necessary in order to raise money for the payment of such indebtedness, as herein provided. [Amendment of May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 945.]

This section was also amended June 4, 1913, Stats. 1913, p. 449.

Annexation of territory. Petition.

§ 18a. The boundaries of any such highway lighting district may be altered and outlying contiguous territory in the same county in which a lighting district is situated annexed thereto in the following manner: A petition signed by the owners representing at least one-fourth in number of the total owners of real property, and at least one-fourth of the assessed valuation, as shown by the last equalized assessment book of the county in which such lighting district is situated, of the real property, in such contiguous territory proposed to be annexed, designating the boundaries of such contiguous territory proposed to be annexed and the number of owners of real property in such territory and the assessed valuation thereof, as shown by said last equalized assessment book, and stating that such proposed territory is not within the limits of any other lighting district, and asking that such territory be annexed to said lighting district, shall be presented to the board of supervisors of the county in which said lighting district is situated.

Notice. Hearing.

At their first regular meeting after the presentation of said petition, said board of supervisors shall cause notice of said petition to be published in a newspaper published

and circulated in the county in which said lighting district is situated, if there be such a newspaper, otherwise by posting copies of said notice in three of the most conspicuous places in said territory proposed to be annexed, for three weeks prior to the date to be fixed by said board of supervisors for hearing said petition. Upon the date fixed for said hearing, or to which it may be continued, said board of supervisors shall take up and consider said petition, and any objections thereto which may be filed or to the inclusion of any property in said district.

Order granting petition.

Said board of supervisors shall have the power, by order entered on its minutes, to grant said petition either in whole or in part, and by order entered on its minutes to alter the boundaries of said lighting district, and annex thereto all, or such portion of said contiguous territory, described in said petition, as will be benefited by inclusion in said lighting district. No territory which will not be so benefited, or which is not contiguous to said lighting district, or which is not described in said petition shall be included in said district.

Such order shall be conclusive evidence of the validity of all prior proceedings leading to the annexation or recited in said order, and from and after the making of said order, such territory shall become and be a part of such lighting district and shall be taxed, together with the remainder of said district, for all taxes to be thereafter levied by said board of supervisors, for the maintenance of said lighting district. [New section added June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1522.]

If district annexed to city. If part of district annexed.

§ 18b. Upon the annexation of all or of any portion of the territory embraced in any such lighting district to an incorporated city or city and county, all funds paid into the county treasury to the credit of the lighting fund of such district, if the whole of such district shall be so annexed, shall be turned over by the board of supervisors of such district to the treasurer of said incorporated city, or city and county, and administered by the legislative body of said incorporated city, or city and county; said legislative body shall have all of the powers and perform all of the duties granted to or imposed upon the board of supervisors of the county in which such district is located and of the board of supervisors of said district, and shall carry out the provisions of this act as to such district to the same purpose and extent as if originally constituted, under the provisions of this act, the governing body thereof. Upon the expenditure of the funds and the discharge of the obligations and liabilities of any such lighting district, the whole of which has been annexed to an incorporated city, or city and county, such district shall ipso facto be dissolved with the same force and effect as if dissolved under the provisions of section eighteen of this act. In the event of the annexation of a portion of the territory embraced in any such lighting district to an incorporated city, or city and county, such proportionate part of the funds collected for the benefit of such district and remaining unexpended as the area of the territory so annexed bears to the total area of said district, shall be paid over to the treasurer of such incorporated city, or city and county, in the manner hereinabove provided, and administered by the legislative body of such city, or city and county, until the same are expended, for the benefit of the portion of such district so annexed. Upon the expenditure of such funds in the manner required in this act the territory of such district so annexed shall be deemed to be withdrawn from said lighting district and thereafter the remaining territory embraced in said district and not so annexed shall, upon a resolution adopted by the board of supervisors of the county in which such territory is located, be and become a lighting district within the meaning of this act and so remain until dissolved as provided in this act. [New section added June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1522.]

Repeal of conflicting acts.

§ 19. All acts or parts of acts in conflict with this act are hereby repealed.

§ 20. This act shall take effect immediately.

See curative act, Act 1911a.

1. **Scope of act.**—The act of March 20, 1909 (Stats. 1909, p. 551), authorizes the formation of lighting districts within the limits of an unincorporated town or village, and excludes from the territory of such districts large areas of land devoted to agricultural purposes.—*People v. Van Nuys Lighting District*, 173 Cal. 792, 793, Ann. Cas. 1918D, 255, 162 Pac. 97.

2. **Not validated by curative act.**—An attempt to form a lighting district under the act of 1909, which makes no provision for an inquiry and a hearing as to benefits, or as to any change of boundaries to exclude lands not benefited is without legality and void; and its formation is not validated by the curative act of 1915.—*People v. Van Nuys Lighting District*, 173 Cal. 792, 799, Ann. Cas. 1918D, 255, 162 Pac. 97.

3. **Hearing on benefits.**—**Act of local board judicial.**—A local board or tribunal acts judicially in fixing the boundaries of a local taxing district, and those whose

lands are to be included are entitled to a hearing on the question of benefits before the boundaries are fixed, and lands not benefited should be excluded.—*People v. Van Nuys Lighting District*, 173 Cal. 792, 799, Ann. Cas. 1918D, 255, 162 Pac. 97.

4. **Inclusion of agricultural void under the act.**—A lighting district organized to include a large area of land devoted to agricultural purposes is void as to such land, and the managing board has no authority to exercise the powers given by the act and the 1913 amendments, as to such land.—*People v. Van Nuys Lighting District*, 173 Cal. 792, 796, Ann. Cas. 1918D, 255, 162 Pac. 97.

5. **"Town."**—A "town" is defined as any large collection of houses or buildings, public and private, constituting a distinct place with a name and not incorporated as a city; and a village is smaller than a town.—*People v. Van Nuys Lighting District*, 173 Cal. 792, 795, Ann. Cas. 1918D, 255, 162 Pac. 97.

LIGHTING DISTRICT VALIDATION ACT OF 1915.

ACT 1911a—An act validating and confirming the organization of lighting districts.

History: Approved May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 939.

Lighting districts validated.

§ 1. Every lighting district formed and established under the provisions of an act approved March 20, 1909, entitled "An act to allow unincorporated towns and villages to establish, equip and maintain systems of street lights on public highways; to provide for the formation, government and operation of highway lighting districts; the calling and holding of elections in such districts; the assessment, collection, custody and disbursement of taxes therein; and the creation of ex officio boards of supervisors"; or any act or acts amendatory thereof, the formation and establishment of which have been authenticated by a resolution adopted by the board of supervisors of the county in which said district is situated and entered in the minutes of said board, declaring said lighting district formed and established under the provisions of said act and amendments thereto, which has not been dissolved under the provisions of said act, is hereby declared to have been a valid lighting district from the date of adoption by the said board of supervisors of the order establishing the same and said districts and each of them are hereby declared to be and to have been from said date a valid lighting district and all proceedings or actions of any such lighting district, heretofore had or performed, in pursuance of the provisions of the law under which said district is organized, are hereby validated, ratified, confirmed and declared to have been and to be legal.

See Act 1911.

1. **Operation of curative act.**—A curative act or a conclusive evidence clause in an act, operates to cure defects caused by failure to comply with merely directory provisions, but where the defect or omission goes to jurisdictional matters they make the action void and can not be cured by such curative act or clause.—*People v. Van*

Nuys Lighting District, 173 Cal. 792, 797, Ann. Cas. 1918D, 255, 162 Pac. 97.

2. **Same—Validation of illegal, denial of "due process."**—The validation of an illegal tax by the legislature, if effective, would be the imposition by statute of an obligation without due process of law.—*People v. Van Nuys Lighting District*, 173 Cal. 792, 800, Ann. Cas. 1918D, 255, 162 Pac. 97.

SHADE AND ORNAMENTAL TREE ACT OF 1913.

ACT 1912—An act to provide for the protection and preservation of shade and ornamental trees growing and to be grown upon the roads, highways, grounds and property within the state of California; and for the planting, care, protection and preservation of shade and ornamental trees, hedges, lawns, shrubs and flowers growing and to be grown in and upon such roads, highways, grounds and property; and to create county boards of forestry for such purposes; and to prescribe the duties and powers of such boards; and to authorize such boards to appoint county foresters; and to prescribe the duties and fix the compensation of county forester, and to empower such boards to enforce all laws and adopt and enforce any and all lawful and reasonable rules for the protection, planting, regulation, preservation, care and control of such shade and ornamental trees, hedges, lawns, shrubs and flowers.

History: Approved April 28, 1909, Stats. 1909, p. 1129. Entire act amended and re-enacted April 22, 1913. In effect August 10, 1913. Stats. 1913, p. 52.

County boards of forestry.

§ 1. The board of supervisors in each and every county or city and county of the state of California may, in its discretion, appoint a county board of forestry, consisting of five persons, one from each supervisorial district, who shall serve without compensation, and who shall have exclusive charge and control of all shade and ornamental trees, hedges, lawns, shrubs and flowers growing or to be grown upon the public roads, highways, grounds and property within its respective county.

Appointment of members. Pay of county forester.

§ 2. Whenever the board of supervisors of any county or city and county in this state shall, by resolution or ordinance, elect to avail itself of the provisions of this act, such board shall, within two months thereafter, appoint five suitable and competent persons, one from each supervisorial district of such county or city and county, as a county board of forestry in and for such county, who shall serve as such without compensation; and may also fix the compensation of a county forester, to be appointed as herein-after provided at a sum not to exceed \$150.00 per month.

Term of office.

§ 3. The term of office of such county board of forestry shall be four years, provided, however, that the persons first appointed shall so classify themselves by lot that two of their number shall retire from office at the end of two years, two at the end of three years and one at the end of four years. If any vacancy occurs in the office, such vacancy shall be filled, for the unexpired term, by the board of supervisors.

Organization of board.

§ 4. Within ten days after notice of their appointment, the members of said county board of forestry shall organize by the election of one of their members as chairman and adopt suitable rules for their government.

Appointment of forester.

§ 5. When organized, said county board of forestry, may employ a suitable and competent person as county forester to serve as such during the pleasure of the board and to prescribe the duties of such employee.

Bond and duties.

§ 6. Such forester, when appointed shall execute a bond to said board, in the sum of \$1,000.00, for the faithful performance of his duties. He shall be the secretary of said board and shall perform such other duties as said board shall prescribe. Said forester

shall have power and it shall be his duty to enforce the provisions of this act and all lawful orders of said board.

Powers of board.

§ 7. Every county board of forestry appointed under the provisions of this act shall, within its respective county, have power over and jurisdiction to decide upon the variety, kind and character of trees, hedges, shrubs, lawns and flowers that shall be planted upon said roads, highways, grounds and property; and to determine all questions respecting the pruning, cutting and removal of any trees or hedges now growing and to grow thereon and the necessity therefor and the extent of and the manner in which said work shall be done; and, under the authority of the board of supervisors of its respective county, to plant and properly care for such trees, hedges, shrubs, lawns and flowers; and to enforce, carry out and effectuate the provisions of this act; provided, however, that said board, in the exercise of its powers and the performance of its duties hereunder, shall not interfere with the jurisdiction of the board of supervisors over the roads, highways, grounds and property in the improvement, care and general control thereof.

Trimming trees, etc. Fruit trees excepted.

§ 8. It shall be unlawful for any person or corporation (except said board of forestry or its employees) in any county or city and county where a county board of forestry has been created and appointed under the provisions of this act, to trim, prune, cut, deface, destroy or remove any shade or ornamental tree or hedge growing or to grow upon any such road, highway, ground or property or to paint, place, attach to or put upon any such trees, hedges, shrubs, lawns or flowers, any sign, notice, advertisement or advertising device without the consent in writing of said board first obtained, or to plant any tree or hedge, on any such road, highway, ground or property without such written consent; provided, however, that nothing in this act shall give such county board of forestry any jurisdiction over any fruit or nut trees now growing along said roads, highways, grounds or property, except that such trees may not be removed without the consent of the said board of forestry.

Penalty.

§ 9. Every person who shall violate any of the provisions of section 8 of this act, shall be guilty of a misdemeanor.

Disposition of penalties.

§ 10. All moneys received as penalties for the violation of the provisions of this act, shall be paid into the county treasury to the credit of the county board of forestry fund; which fund is hereby created, and the moneys thereof hereby appropriated for the expenses of said board in the carrying out of the provisions of this act and the policy and purposes herein provided.

Appropriations by supervisors.

§ 11. County boards of supervisors, whenever the provisions of this act are availed of, shall appropriate money for the use of said county board of forestry sufficient to pay the compensation of said county forester and for the necessary expenses of said county board of forestry.

§ 12. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

1. **Removal of trees on highway.**—Trees growing upon the public highway, and subserving useful as well as ornamental purposes, can not be removed or destroyed at the will of the owner of the fee of the high-

way (Stats. 1909, p. 1129); and the state in depriving the owner of such right, does not take his property without due process of law.—*Santa Barbara v. More*, 175 Cal. 6, 11, L. R. A. 1917F, 385, 164 Pac. 895.

COUNTY HIGHWAY MAINTENANCE ACT OF 1911.

ACT 1913—An act to provide for maintenance of county highways improved under bond issues in the counties of the state and empowering the boards of supervisors to levy taxes therefor.

History: Approved May 1, 1911, Stats. 1911, p. 1391. Amended June 16, 1913, Stats. 1913, p. 1147; May 7, 1919. In effect July 22, 1919. Stats. 1919, p. 342.

Maintenance of highways.

§ 1. Whenever any county highway is improved under a county bond issue, which bond issue covers all property of the county, and is accepted by the board of supervisors, it becomes their duty to provide for a continuous system of maintenance from the fund hereinafter created.

County highway maintenance fund.

§ 2. The board of supervisors must annually, for each fiscal year, levy a tax not to exceed ten cents on each one hundred dollars of value of taxable property of the county for each one hundred miles or fraction thereof of improved county highways under a bond issue therefor. This tax shall be collectible by the several officers charged with the collection of other county taxes in the same manner, and at the same time as other county treasury, and by the county treasurer converted into a separate fund hereby created and known as the county highway maintenance fund. The money derived from such tax must be applied solely to the maintenance of county highways improved under a bond issue to cover the whole county. [Amendment of May 7, 1919. In effect July 22, 1919. Stats. 1919, p. 342.]

This section was also amended June 16, 1913, Stats. 1913, p. 1147.

Expenditure of fund.

§ 3. The board of supervisors must expend money from the "county highway maintenance fund" for the maintenance of highways described in section 1 of this act, on a continuous basis of repair, and the highways shall be improved uninterruptedly after their acceptance.

PAYMENT BY COUNTIES OF INTEREST ON STATE HIGHWAY BONDS.

ACT 1914—An act to authorize and require the payment by the counties of interest on state highway bonds.

History: Approved March 10, 1911, Stats. 1911, p. 339.

Interest on state highway bonds.

§ 1. For the purpose of carrying into effect the provisions relative to the payment of bond interest which are contained in "An act authorizing the construction, acquisition, maintenance and control of a system of state highways in the state of California; specifying the work, fixing the payments to be made by counties for moneys expended therein; providing for the issuance and sale of state bonds to create a fund for the construction and acquisition of such system; creating a sinking fund for the payment of said bonds; and providing for the submission of this act to a vote of the people," approved March 22, 1909, it is hereby made the duty of the state controller to keep an accurate account showing the amount of said bond money expended in each county. In connection with such account he shall annually, at the beginning of the fiscal year, charge up to each and every county such sum as shall equal the interest of four per cent per annum on the total amount of state highway bond money which has been expended in each such county.

Tax levy in each county.

§ 2. The controller shall notify the county auditor and the clerk of the board of supervisors of each county of the amount of such interest charge, in order that there may be included in the county tax levy such rate as will raise the sum needed to meet such interest charge. It is hereby made the duty of the board of supervisors when making the annual levy of county taxes to include therein the necessary provision for payment of interest on state highway bonds, as in this act provided, but no failure of any board of supervisors to make the tax levy herein provided for shall be held to exempt such county from the collection by the state, in the manner provided for in the next section of this act, of the amount of interest due from such county.

Semi-annual settlement.

§ 3. In the regular semi-annual settlements between the state and the counties, the controller shall charge to, and collect from, each county one-half of the amount of interest with which such county has been charged for that fiscal year; provided, that as soon as any of the state highway bonds shall have matured and been paid, the controller shall credit each county with its proportionate part of the diminution of the total interest charge thereby occasioned.

Engineering department to furnish data.

§ 4. The controller is authorized to require from the state engineering department, and it is hereby made the duty of said department to furnish all necessary data to show the amount of state highway bond money expended in each county.

Editor's note: While not expressly repealed, as was similar provisions in other acts, this act was no doubt repealed by im-

plication by section 3 of article XVI of the constitution, adopted November 2, 1920.

RIGHT OF WAY OVER PUBLIC LANDS.

ACT 1915—An act granting to roads and highways a right of way over the public lands of this state.

History: Approved April 2, 1866, Stats. 1865-66, p. 855.

Right of way granted.

§ 1. Whenever any corporation, company, or individual shall, in accordance with the general laws of this state lay out and construct any road or highway over any unoccupied public lands of this state, or over any lands that the state by donation of congress or otherwise may hereafter acquire, such corporation, company or individual, and their respective assigns, are hereby granted the right of way for such roads or highways over such public lands. This act shall apply to roads heretofore as well as hereafter laid out and constructed.

STATE HIGHWAYS ACT.

ACT 1916—An act authorizing the construction, acquisition, maintenance and control of a system of state highways in the state of California; specifying the work, fixing the payments to be made by counties for moneys expended therein; providing for the issuance and sale of state bonds to create a fund for the construction and acquisition of such system; creating a sinking fund for the payment of said bonds; and providing for the submission of this act to a vote of the people.

History: Approved March 22, 1909, Stats. 1909, p. 647. Submitted to the people at the general election of November, 1910, and ratified and adopted. Stats. 1911, Part II, p. 6. An amendment approved May 19, 1915. Stats. 1915, p. 686, was submitted to the people at the general election of November, 1916, and ratified and adopted, Stats. 1917 (ex. sess.), p. 54.

State highway system.

§ 1. A system of state highways in and for the state of California shall be constructed and acquired as and in the manner provided by law by the department of engineering of said state at a cost not to exceed eighteen million dollars. For the purpose of providing for the payment of the cost of the construction or acquisition of said system of said highways, the state of California is hereby authorized to incur an indebtedness in the manner provided by this act in the sum of eighteen million dollars.

Bonds for payment of cost of construction.

Immediately after the issuance of the proclamation of the governor, as provided in section 11 of this act, the treasurer of the state shall prepare eighteen thousand suitable bonds of the state of California in the denomination of one thousand dollars each to be numbered from 1 to 18,000 inclusive, and to bear the date of the third day of July, 1911. The total issue of said bonds shall not exceed the sum of eighteen million dollars and they shall bear interest at the rate of four per cent per annum from the date of issuance thereof. The said bonds and the interest thereon shall be payable in gold coin of the United States of the present standard of value at the office of the treasurer of said state at the times and in the manner following, to wit: The first four hundred of said bonds shall be due and payable on the third day of July, 1917, and four hundred of said bonds in consecutive numerical order shall be due and payable on the third day of July in each and every year thereafter until and including the third day of July, 1961. The interest accruing on all of said bonds that shall be sold shall be payable at the office of the treasurer of the state on the third day of January and the third day of July of each and every year after the sale of the same. The interest on all bonds issued and sold shall cease on the day of their maturity and the said bonds so issued and sold shall on the day of their maturity be paid as herein provided and canceled by the treasurer of said state. All bonds remaining unsold shall, at the date of the maturity thereof be by the treasurer of the state canceled and destroyed. All bonds issued pursuant to the provisions of this act shall be signed by the governor of this state, countersigned by the state controller and endorsed by the state treasurer, and the said bonds shall be so signed, countersigned and endorsed by the officers who are in office on the third day of July, 1911, and each of said bonds shall have the great seal of the state of California impressed thereon. The said bonds signed, countersigned, endorsed and sealed as herein provided, when sold, shall be and constitute a valid and binding obligation upon the state of California, though the sale thereof be made at a date or dates after the person so signing, countersigning and endorsing, or either of them, shall have ceased to be the incumbents of said office or offices.

Interest coupons.

§ 2. Appended to each of said bonds there shall be interest coupons so attached that the same may be detached without injury to or mutilation of said bond. The said coupons shall be consecutively numbered and shall bear the lithographed signature of the state treasurer who shall be in office on the third day of July, 1911. No interest shall be paid on any of said bonds for such time as may intervene between the date of said bond and the day of sale thereof, unless such accrued interest shall have been, by the purchaser of said bond, paid to the state at the time of such sale.

Expenses preliminary to issue.

§ 3. There shall be provided in the general appropriation bill sufficient money to defray all expenses that shall be incurred by the state treasurer in the preparation of said bonds and in the advertising of the sale thereof, as in this act provided.

Sale of bonds, manner of.

§ 4. When the bonds authorized by this act to be issued shall have been signed, countersigned, endorsed and sealed as in section one provided, the state treasurer shall sell the same in such parcels and numbers as the governor of the state shall direct, to the highest bidder for cash. The governor of the state shall issue to the state treasurer such direction immediately after being requested so to do, through and by a resolution duly adopted and passed by a majority vote of the advisory board of the department of engineering. Said resolution shall specify the amount of money which, in the judgment of said advisory board shall be required at such time and the governor of the state shall direct the state treasurer to sell such number of said bonds as may be required to raise said amount of money and that said bonds shall be sold in consecutive numerical order commencing with the first four hundred thereof. The state treasurer shall not accept any bid which is less than the par value of the bond plus the interest which has accrued thereon between the date of sale and the last preceding interest maturity date. The state treasurer may at the time and place fixed by him for said sale continue such sale as to the whole or any part of the bonds offered to such time and place as he may at the time of such continuance designate. Before offering any of said bonds for sale, the said treasurer shall detach therefrom all coupons which have matured or will mature before the date fixed for such sale. The state treasurer shall give notice of the time and place of sale by publication in two newspapers published in the city and county of San Francisco and in one newspaper published in the city of Oakland, and in one newspaper published in the city of Los Angeles and in one newspaper published in the city of Sacramento once a week for four weeks next preceding the date fixed for such sale. In addition to the notice last above provided for, the state treasurer may give such further notice as he may deem advisable, but the expenses and costs of such additional notice shall not exceed the sum of five hundred dollars for each sale so advertised.

"State highway fund" created.

There is hereby created in and for the state treasury a fund to be known and designated as the "State Highway Fund," and immediately after such sale of bonds the treasurer of the state shall pay into the state treasury and cause to be placed in said state highway fund the total amount received for said bonds, except such amount as may have been paid as accrued interest thereon. The amount that shall have been paid at such sale as accrued interest on the bond sold shall be by the treasurer of the state, immediately after such sale, paid into the treasury of the state and placed in the interest and sinking fund.

Use of moneys in fund.

The moneys placed in the state highway fund, pursuant to the provisions of this section, shall be used exclusively for the acquisition of rights of way for and the acquisition and construction of said system of state highways. The route or routes of said state highways shall be selected by the department of engineering and said route shall be so selected and said highways so laid out and constructed or acquired as to constitute a continuous and connected state highway system running north and south through the state traversing the Sacramento and San Joaquin valleys and along the Pacific coast by the most direct and practicable routes, connecting the county seats of the several counties through which it passes and joining the centers of population, together with such branch roads as may be necessary to connect therewith the several county seats lying east and west of such state highway.

Moneys shall be drawn from said state highway fund for the purposes of this act upon warrants duly drawn by the controller of the state upon demands made by the department of engineering and audited by the state board of examiners.

Appropriation.

§ 5. There is hereby appropriated from the general fund in the state treasury such sum annually as will be necessary to pay the principal of and the interest on the bonds, issued and sold pursuant to the provisions of this act, as said principal and interest becomes due and payable.

Tax levy to secure bondholders.

There shall be collected annually in the same manner and at the same time as other state revenue is collected such a sum, in addition to the ordinary revenues of the state as shall be required to pay the principal and interest on said bonds as herein provided, and it is hereby made the duty of all officers charged by law with any duty in regard to the collection of said revenue, to do and perform each and every act which shall be necessary to collect such additional sum.

The treasurer of the state shall, on the first day of January, 1912, and on the first day of each July and the first day of each January thereafter transfer from the general fund of the state treasury to the interest and sinking fund such an amount of the money by this act appropriated as shall be required to pay the interest on the bonds theretofore sold, until the interest on all of said bonds so sold shall have been paid or shall have become due in accordance with the provisions of this act.

Sinking fund created.

There is hereby created in the state treasury a fund to be known and designated as the "state highway sinking fund." The treasurer of the state shall on the first day of July of the year 1917, and on the first day of July, of each and every year thereafter in which a parcel of the bonds sold pursuant to the provisions of this act shall become due, transfer from the general fund of the state treasury to the said state highway sinking fund such an amount of the moneys appropriated by this act as may be required to pay the principal of the bonds so becoming due and payable in such years.

Bonds, how payable.

§ 6. The principal of all of said bonds sold shall be paid at the time the same becomes due, from the state highway sinking fund, and the interest on all bonds sold shall be paid at the time said interest becomes due, from the interest and sinking fund. Both principal and interest shall be so paid upon warrants duly drawn by the controller of the state upon demands audited by the state board of examiners, and the faith of the state of California is hereby pledged for the payment of the principal of said bonds so sold, and the interest accruing thereon.

Reports of controller and treasurer.

§ 7. The state controller and state treasurer shall keep full and particular account and record of all their proceedings under this act and they shall transmit to the governor in triplicate an abstract of all such proceedings thereunder with an annual report in triplicate, one copy of each to be by the governor, laid before each house of the legislature biennially. All books and papers pertaining to the matter provided for in this act shall, at all times, be open to the inspection of any party interested, or the governor, or the attorney-general, or a committee of either branch of the legislature or a joint committee of both or any citizen of the state.

Highway permanent in character. Department of engineering may acquire rights of way, quarries, etc.

§ 8. The highway constructed or acquired under the provisions of this act shall be permanent in character and be finished with oil or macadam or a combination of both, or of such other material as in the judgment of the said department of engineering shall be most suitable and best adapted to the particular locality traversed. The state

department of engineering, in the name of the people of the state of California, may purchase, receive by donation or dedication, or lease any right of way, rock quarry or land necessary or proper for the construction, use or maintenance of said state highway and shall proceed, if necessary, to condemn under the provisions of the Code of Civil Procedure relating to such proceedings any necessary or proper right of way, rock quarry or land. The department of engineering shall have full power and authority to purchase all supplies, material, machinery and to do all other things necessary or proper in the construction and maintenance of said state highway.

Certain highways become right of way of state highway. Counties to pay interest.

With the exception of those public highways which have been permanently improved under county or permanent road division bond issues within three years prior to the adoption of this act, all public highways within this state lying within the right of way of said state highways as determined and adopted by the department of engineering shall be and the same shall become a part of the right of way of said state highway, without compensation being paid therefor; provided, nothing herein contained shall require the state to maintain any highway along or on said right of way, prior to the completion or acquisition of the permanent improvements contemplated by this act. Whenever any money received from the sale of bonds, under the provisions of this act, shall be expended in any county in this state, such county must pay into the state treasury such sum each year as shall equal the interest, at the rate of four per cent per annum, upon the entire sum of money expended within such county in the construction of said state highway, less such portion of said amount expended as the bonds matured under the provisions of this act, shall bear to the total number of bonds sold and outstanding; provided, however, that in all cases where, by reason of physical difficulties to be overcome, or other good and sufficient cause, the state department of engineering shall determine that the cost of construction of any portion of such state highway in any county, or counties, is so great as to entail an unjust and inequitable burden upon any such county, or counties, in refunding to the state the sums so paid for interest upon the bonds sold and the proceeds thereof applied as aforesaid, such county, or counties, shall not be required to refund the whole amount of such interest, but only such proportion thereof as the state department of engineering shall adjudge to be fair and reasonable. All highways constructed or acquired under the provisions of this act shall be permanently maintained and controlled by the state of California. [Amendment of May 19, 1915. In effect —. See sections 2, 3, 4, of amending act. Stats. 1915, p. 686.]

This section was partially repealed by section 3, article XVI, of the constitution, adopted at the general election of November 2, 1920.

When act to take effect.

§ 9. This act, if adopted by the people, shall take effect on the thirty-first day of December, 1910, as to all its provisions except those relating to, and necessary for, its submission to the people and for returning, canvassing and proclaiming the votes, and to such accepted provisions this act shall take effect immediately.

Submission of act to the people.

§ 10. This act shall be submitted to the people of the state of California for their ratification at the next general election to be holden in the month of November, 1910, A. D., and all ballots at said election shall have printed thereon, and at the end thereof, the words "For the State Highway Act"; and in a separate line, under the same, the words "Against the State Highway Act." Opposite said lines there shall be left spaces in which the voters may make or stamp a cross to indicate whether they vote for or against said act, and those voting for said act shall do so by placing a cross oppo-

site the words "For the State Highway Act," and all those voting against the said act shall do so by placing a cross opposite the words "Against the State Highway Act." The governor of this state shall include the submission of this act to the people, as aforesaid, in his proclamation calling for said general election.

Canvass of returns.

§ 11. The votes cast for or against this act shall be counted, returned and canvassed and declared in the same manner and subject to the same rules as votes cast for state officers, and if it appears that said act shall have received a majority of all the votes cast for and against it at such election, as aforesaid, then the same shall have effect as hereinbefore provided and shall be irrevocable until the principal and interest of the liabilities herein created shall be paid and discharged, and the governor shall make proclamation thereof. But if a majority of the votes cast, as aforesaid, are against this act then the same shall be and become void.

Publication of act.

§ 12. It shall be the duty of the secretary of state to have this act published in at least one newspaper in each county, or city and county, if one be published therein, throughout this state, for three months next preceding the general election to be holden in the month of November, A. D. nineteen hundred and ten; the cost of publication shall be paid out of the general fund, on controller's warrants duly drawn for the purpose.

Name of act.

§ 13. This act shall be known and cited as the "State Highways Act."

§ 14. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

The amending act of 1915, contained the following sections:

In effect when.

§ 2. This act, if adopted by the people, shall take effect on the thirty-first day of December, 1916, as to all its provisions except those relating to, and necessary for, its submission to the people and for returning, canvassing and proclaiming the votes, and as to such excepted provisions this act shall take effect ninety days after the final adjournment of the present session of the legislature.

Act to be submitted to people.

§ 3. This act shall be submitted to the people of the state of California for their ratification at the next general election to be holden in the month of November, 1916, A. D., and all ballots at said election shall have printed thereon, and at the end thereof, the words "For the amendment to the state highway act"; and in a separate line, under the same, the words "Against the amendment to the state highway act." Opposite said lines there shall be left spaces in which the voters may make or stamp a cross to indicate whether they vote for or against said act and those voting for said act shall do so by placing a cross opposite the words "For the amendment to the state highway act," and all those voting against the said act shall do so by placing a cross opposite the words "Against the amendment to the state highway act." The governor of this state shall include the submission of this act to the people, as aforesaid, in his proclamation calling for said general election.

Results of election.

§ 4. The votes cast for or against this act shall be counted, returned and canvassed and declared in the same manner and subject to the same rules as votes cast for state officers, and if it appears that said act shall have received a majority of all the votes cast for and against it at such election, as aforesaid, then the same shall have effect

as hereinbefore provided and shall be irrevocable until the principal and interest of the liabilities created under the provisions of said state highway act, approved March 22, 1909, shall be paid and discharged, and the governor shall make proclamation thereof. But if a majority of the votes cast, as aforesaid, are against this act then the same shall be and become void.

Publication of act before election.

§ 5. It shall be the duty of the secretary of state to have this act published in at least one newspaper in each county, or city and county, if one be published therein, throughout this state, for three months next preceding the general election to be holden in the month of November, A. D. nineteen hundred and sixteen; the cost of publication shall be paid out of the general fund, on controller's warrants duly drawn for the purpose.

See sections 2 and 3, article XVI, constitution.

See tit. "State Engineering," Act 4847.

The intention of the motor vehicle act was to supplement the present act.—In re Smith, 26 Cal. App. 116, 146 Pac. 82.

STATE HIGHWAYS ACT OF 1915.

ACT 1916a—An act authorizing the acquisition, construction, improvement, maintenance and control of the uncompleted portions of the system of state highways prescribed and contemplated by an act entitled "An act authorizing the construction, acquisition, maintenance and control of a system of state highways in the state of California; specifying the work, fixing the payments to be made by counties for moneys expended therein; providing for the issuance and sale of state bonds to create a fund for the construction and acquisition of such system; creating a sinking fund for the payment of said bonds; and providing for the submission of this act to a vote of the people," approved March 22, 1909, and approved, ratified and adopted by the people of the state of California at the general election held in the month of November, A. D. 1910, and known and cited as the "State Highways Act," and certain extensions therefrom; specifying the work, fixing the payments to be made by counties for moneys expended therein; providing for the issuance and sale of state bonds to create a fund for the construction, improvement and acquisition of the uncompleted portions of said system and certain extensions therefrom; creating a revolving fund to be used by the state department of engineering for the purposes of this act; creating a sinking fund for the payment of said bonds; and providing for the submission of this act to a vote of the people.

History: Approved May 20, 1915. In effect—see section 9. Stats. 1915, p. 650. Submitted to the people at the general election of November 7, 1916, and adopted. Stats. 1917, p. 54.

Fund for completing state highways insufficient. Indebtedness authorized.

§ 1. The fund created for the construction and acquisition of a system of state highways by an act entitled "An act authorizing the construction, acquisition, maintenance and control of a system of state highways in the state of California; specifying the work, fixing the payments to be made by counties for moneys expended therein; providing for the issuance and sale of state bonds to create a fund for the construction and acquisition of such system; creating a sinking fund for the payment of said bonds; and providing for the submission of this act to a vote of the people," approved March 22, 1909, and approved, ratified and adopted by the people of the state of California at the general election held in the month of November, A. D. 1910, and known and cited as the "State Highways Act," being inadequate to fully carry out the objects of said act, the uncompleted portions of said system prescribed by said "State Highways Act" and certain extensions therefrom hereinafter specified shall be constructed, improved and acquired as and in the manner provided by law by the department of engineering of said state at a cost not to exceed fifteen million dollars. For the pur-

pose of providing for the payment of the cost of the construction, improvement or acquisition necessary for and in completing said system of said highways and supplementing the fund created by said "State Highways Act," the state of California is hereby authorized to incur an indebtedness in the manner provided by this act in the sum of fifteen million dollars.

Preparation of bonds.

Immediately after the issuance of the proclamation of the governor, as provided in section eleven of this act, the treasurer of the state shall prepare fifteen thousand suitable bonds of the state of California in the denomination of one thousand dollars each, to be numbered from 1 to 15,000 inclusive, and to bear the date of the third day of July, 1917. The total issue of said bonds shall not exceed the sum of fifteen million dollars and they shall bear interest at the rate of four and one-half per cent per annum from the date of issuance thereof.

Payment. Interest. Unsold bonds. Signing and endorsement. Valid obligation.

The said bonds and the interest thereon shall be payable in gold coin of the United States of the present standard of value either at the office of the treasurer of said state or, at the option of the holder, at the fiscal agency for the state of California in the city of New York in the state of New York, at the times and in the manner following, to wit: The first three hundred seventy-five of said bonds shall be due and payable on the third day of July, 1923, and three hundred seventy-five of said bonds in consecutive numerical order shall be due and payable on the third day of July in each and every year thereafter until and including the third day of July, 1962. The interest accruing on all of said bonds that shall be sold shall be payable either at the office of the treasurer of the state or at said fiscal agency, as the holder may elect, on the third day of January and the third day of July of each and every year after the sale of the same. The interest on all bonds issued and sold shall cease on the day of their maturity and the said bonds so issued and sold shall on the day of their maturity be paid as herein provided and canceled by the treasurer of said state. All bonds remaining unsold shall, at the date of the maturity thereof be by the treasurer of the state canceled and destroyed. All bonds issued pursuant to the provisions of this act shall be signed by the governor of this state, countersigned by the state controller and endorsed by the state treasurer, and the said bonds shall be so signed, countersigned and endorsed by the officers who are in office on the third day of July, 1917, and each of said bonds shall have the great seal of the state of California impressed thereon. The said bonds signed, countersigned, endorsed and sealed as herein provided, when sold, shall be and constitute a valid and binding obligation upon the state of California, though the sale thereof be made at a date or dates after the person so signing, countersigning and endorsing, or either of them, shall have ceased to be the incumbents of said office or offices.

Interest coupons.

§ 2. Appended to each of said bonds there shall be interest coupons so attached that the same may be detached without injury to or mutilation of said bond. The said coupons shall be consecutively numbered and shall bear the lithographed signature of the state treasurer who shall be in office on the third day of July, 1917. No interest shall be paid on any of said bonds for such time as may intervene between the date of said bond and the date of sale thereof, unless such accrued interest shall have been, by the purchaser of said bond, paid to the state at the time of such sale.

Payment of expenses incurred in preparation of bonds.

§ 3. The legislature shall provide by appropriation sufficient money to defray all expenses that shall be incurred by the state treasurer in the preparation of said bonds and in the advertising of the sale thereof, as in this act provided.

Sale of bonds. No bid accepted less than par value plus interest. Announcement of sale.

§ 4. When the bonds authorized by this act to be issued shall have been signed, countersigned, endorsed and sealed as in section one provided, the state treasurer shall sell the same in such parcels and numbers as the governor of the state shall direct, to the highest bidder for cash. The governor of the state shall issue to the state treasurer such direction immediately after being requested so to do, through and by a resolution duly adopted and passed by a majority vote of the advisory board of the department of engineering. Said resolution shall specify the amount of money which, in the judgment of said advisory board, shall be required at such time, and the governor of the state shall direct the state treasurer to sell such number of said bonds as may be required to raise said amount of money and that said bonds shall be sold in consecutive numerical order commencing with the first three hundred seventy-five thereof. The state treasurer shall not accept any bid which is less than the par value of the bond plus the interest which has accrued thereon between the date of sale and the last preceding interest maturity date. The state treasurer may at the time and place fixed by him for said sale continue such sale as to the whole or any part of the bonds offered to such time and place as he may at the time of such continuance designate. Before offering any of said bonds for sale, the said treasurer shall detach therefrom all coupons which have matured or will mature before the date fixed for such sale. The state treasurer shall give notice of the time and place of sale by publication in two newspapers published in the city and county of San Francisco and in one newspaper published in the city of Oakland, and in one newspaper published in the city of Los Angeles and in one newspaper published in the city of Sacramento once a week for four weeks next preceding the date fixed for such sale. In addition to the notice last above provided for, the state treasurer may give such further notice as he may deem advisable, but the expenses and cost of such additional notice shall not exceed the sum of five hundred dollars for each sale so advertised.

“Second state highway fund” created.

There is hereby created in and for the state treasury a fund to be known and designated as the “Second State Highway Fund,” and immediately after such sale of bonds the treasurer of the state shall pay into the state treasury and cause to be placed in said second state highway fund the total amount received for said bonds, except such amount as may have been paid as accrued interest thereon. The amount that shall have been paid at such sale as accrued interest on the bonds sold shall be by the treasurer of the state, immediately after such sale, paid into the treasury of the state and placed in the “Second State Highway Interest and Sinking Fund,” which is hereby created.

Fund available for what purposes.

Of the moneys placed in the said second state highway fund, pursuant to the provisions of this section, the sum of twelve million dollars, or so much thereof as may be necessary, is hereby made available, and shall be used exclusively for the acquisition of rights of way for and the acquisition, construction and improvement of the uncompleted portions of the system of state highways prescribed by said “State Highways Act.” And of said moneys so placed in said second state highway fund, the sum of three million dollars, or so much thereof as may be necessary, is hereby made available and shall be used exclusively for the acquisition of rights of way for, and the acquisition, construction and improvement of certain extensions from said system of state highways prescribed by said “State Highways Act” as follows: An extension connecting the interior and coast trunk lines in northern California through Trinity and Humboldt counties by the most direct and practical route; an extension connecting the San Joaquin valley trunk line at a point between the city of Merced in Merced

county, and the city of Madera, in Madera county, with the coast trunk line at or near the city of Gilroy in Santa Clara county, through Pacheco pass, by the most direct and practical route; an extension of the Mariposa county state highway lateral to or near the railway station El Portal, in Mariposa county; an extension connecting the San Joaquin valley trunk line in Tulare county with the coast trunk line in Monterey county, by the continuation of the lateral between the cities of Visalia and Hanford through Coalinga by the most direct and practical route; an extension connecting the San Joaquin valley trunk line at or near Bakersfield with the coast trunk line in San Luis Obispo county, through Cholame pass, by the most direct and practical route; an extension of the San Bernardino county state highway lateral to Barstow, in San Bernardino county, by the most direct and practical route; an extension connecting Antelope valley, in the county of Los Angeles, with the city of Los Angeles, by the most direct and practical route; and an extension of the San Bernardino county state highway lateral to the Arizona state line near the town of Yuma, Arizona, via the cities of Brawley and El Centro in Imperial county, by the most direct and practical route; provided, however, that expenses of the acquisition, construction and improvement of the extensions above enumerated and the acquisition of rights of way therefor, shall be partly borne by the county or counties in which such extensions lie, the extent and character of such division of expenses between the state and county shall rest for final determination with the state department of engineering and said department is hereby authorized to enter into such agreements and undertakings as are necessary to properly carry out the intent of this section.

Routes selected by department of engineering.

The route or routes of said state highways to be acquired, constructed or improved under the provisions of this act shall be selected by the department of engineering in the manner provided by and to carry out the objects of said "State Highways Act" and in the manner provided by and to carry out the objects of this act.

Controller's warrants. "State highway revolving fund." Statement showing expenditures.

Moneys shall be drawn from said second state highway fund for the purposes of this act upon warrants duly drawn by the controller of the state upon demands made by the department of engineering and allowed and audited by the state board of control; provided, however, that out of the proceeds of the first sale of bonds made hereunder the state controller and the state treasurer shall transfer upon their respective books the sum of one hundred thousand dollars to the credit of the "State Highway Revolving Fund," which fund is hereby created in the state treasury. The moneys in said state highway revolving fund, or such part thereof as the advisory board of the department of engineering shall deem necessary, may be expended, from time to time, upon the demands of the department of engineering, approved by the state board of control, for the purpose of making cash payments in advance for such expenditures as are necessary and proper to carry out the provisions of this act. Upon receipt of such demands, so approved, it shall be the duty of the state controller to draw his warrant upon said "State Highway Revolving Fund" in favor of the person or persons therein named, and the state treasurer shall pay the same. On or before the tenth day of each month thereafter, the department of engineering shall submit to the state board of control a verified, itemized statement, showing all expenditures during the preceding calendar month of the moneys so withdrawn from said "State Highway Revolving Fund," accompanied by proper vouchers and receipts therefor. Such statements shall be audited by the state board of control in the same manner that claims against the state are audited, and, if found to be correct, shall be approved by the state board of control and transmitted to the state controller with such approval endorsed thereon.

The state controller shall thereupon draw his warrant upon the "Second State Highway Fund" in favor of the department of engineering for the aggregate amount of such expenditures, and upon the surrender of such warrant properly endorsed, the state treasurer shall transfer the amount thereof upon the books of his office from the said "Second State Highway Fund" to the said "State Highway Revolving Fund," to be expended as aforesaid.

Appropriation for bonds, principal and interest.

§ 5. There is hereby appropriated from the general fund in the state treasury such sum annually as will be necessary to pay the principal of and the interest on the bonds, issued and sold pursuant to the provisions of this act, as said principal and interest becomes due and payable.

Collection.

There shall be collected annually in the same manner and at the same time as other state revenue is collected such a sum, in addition to the ordinary revenues of the state as shall be required to pay the principal and interest on said bonds as herein provided, and it is hereby made the duty of all officers charged by law with any duty in regard to the collection of said revenue, to do and perform each and every act which shall be necessary to collect such additional sum.

Transfer by treasurer.

The treasurer of the state shall, on the first day of January, 1918, and on the first day of each July and the first day of each January thereafter transfer from the general fund of the state treasury to the "Second State Highway Interest and Sinking Fund" such an amount of the money by this act appropriated as shall be required to pay the interest on the bonds theretofore sold, until the interest on all of said bonds so sold shall have been paid or shall have become due in accordance with the provisions of this act.

"Second state highway sinking fund" created.

There is hereby created in the state treasury a fund to be known and designated as the "Second State Highway Sinking Fund." The treasurer of the state shall on the first day of July of the year 1923, and on the first day of July, of each, any and every year thereafter in which a parcel of the bonds sold pursuant to the provisions of this act shall become due, transfer from the general fund of the state treasury to the said second state highway sinking fund such an amount of the moneys appropriated by this act as may be required to pay the principal of the bonds so becoming due and payable in such years.

Principal and interest paid from sinking fund.

§ 6. The principal of all of said bonds sold shall be paid at the time the same becomes due, from the second state highway sinking fund, and the interest on all bonds sold shall be paid at the time said interest becomes due, from the second state highway interest and sinking fund. Both principal and interest shall be so paid upon warrants duly drawn by the controller of the state upon demands audited by the state board of control, and the faith of the state of California is hereby pledged for the payment of the principal of said bonds so sold, and the interest accruing thereon.

Records. Annual report. Books open to inspection.

§ 7. The state controller and state treasurer shall keep full and particular account and record of all their proceedings under this act and they shall transmit to the governor in triplicate an abstract of all such proceedings thereunder with an annual report in triplicate, one copy of each to be by the governor, laid before each house of the legis-

lature biennially. All books and papers pertaining to the matter provided for in this act shall, at all times, be open to the inspection of any party interested, or the governor, or the attorney general, or a committee of either branch of the legislature or a joint committee of both or any citizen of the state.

Highway permanent in character. Department of engineering may acquire rights of way, quarries, etc. **Certain highways become right of way of state highway.**
Counties to pay interest.

§ 8. The highway constructed or acquired under the provisions of this act shall be permanent in character and be finished with oil or macadam or a combination of both, or of such other material as in the judgment of the said department of engineering shall be most suitable and best adapted to the particular locality traversed. The state department of engineering, in the name of the people of the state of California, may purchase, or receive by donation or dedication from counties, or from public or private persons, or it may lease, any right of way, rock quarry or land necessary or proper for the construction, use, improvement or maintenance of said state highway and shall proceed, if necessary, to condemn under the provisions of the Code of Civil Procedure relating to such proceedings any necessary or proper right of way, rock quarry or land. The department of engineering in accordance with law shall have power and authority to purchase, sell, exchange, lease or otherwise acquire or dispose of all supplies, stock, material, machinery and implements and do all other things necessary or proper in the construction, improvement or maintenance of said state highway. The department of engineering in accordance with law shall have power and authority to purchase, lease, or erect plants for manufacture of cement, crushed rock and other materials used in road or highway work, and also the power to dispose of said plants when no longer required for such purposes. With the exception of those public highways which have been permanently improved under county or permanent road division bond issues within nine years prior to the adoption of this act, all public highways within this state lying within the right of way of said state highway as determined and adopted by the department of engineering shall be and the same shall become a part of the right of way of said state highway, without compensation being paid therefor; provided, nothing herein contained shall require the state to maintain any highway along or on said right of way, prior to the completion or acquisition of the permanent improvements contemplated by this act. Whenever any money received from the sale of bonds, under the provisions of this act, shall be expended in any county in this state, such county must pay into the state treasury such sum each year as shall equal the interest, at the rate of four and one-half per cent per annum, upon the entire sum of money expended from the proceeds of the bonds issued under this act within such county in the construction of said state highway, less such portion of said amount expended as the bonds matured under the provisions of this act shall bear to the total number of bonds sold and outstanding; provided, however, that in all cases where, by reason of physical difficulties to be overcome, or other good and sufficient cause, the state department of engineering shall determine that the cost of construction of any portion of such state highway in any county, or counties, is so great as to entail an unjust and inequitable burden upon any such county, or counties, in refunding to the state the sums so paid for interest upon the bonds sold and the proceeds thereof applied as aforesaid, such county, or counties, shall not be required to refund the whole amount of such interest, but only such proportion thereof as the state department of engineering shall adjudge to be fair and reasonable. All highways constructed or acquired under the provisions of this act shall be permanently maintained and controlled by the state of California.

This section was partly repealed by section 3, article XVI, of the constitution, adopted at the general election of November 2, 1920.

In effect when.

§ 9. This act, if adopted by the people, shall take effect on the thirty-first day of December, 1916, as to all its provisions except those relating to, and necessary for, its submission to the people and for returning, canvassing and proclaiming the votes, and as to said excepted provisions this act shall take effect ninety days after the final adjournment of the present session of the legislature.

Act to be submitted to people.

§ 10. This act shall be submitted to the people of the state of California for their ratification at the next general election to be holden in the month of November, nineteen hundred and sixteen, and all ballots at such election shall have printed thereon the words "For the State Highway Act of 1915" and such other designation as may be necessary to properly identify this act. In a square immediately below the square containing said words there shall be printed on said ballot the words "Against the State Highway Act of 1915." Opposite the words "For the State Highway Act of 1915" and "Against the State Highway Act of 1915," there shall be left spaces in which the voters may make or stamp a cross to indicate whether they vote for or against this act, and those voting for said act shall do so by placing a cross opposite the words "For the State Highway Act of 1915" and those voting against said act shall do so by placing a cross opposite the words "Against the State Highway Act of 1915." The governor of this state shall include the submission of this act to the people as aforesaid, in his proclamation calling for said general election.

Results of election.

§ 11. The votes cast for or against this act shall be counted, returned and canvassed and declared in the same manner and subject to the same rules as votes cast for state officers, and if it appears that said act shall have received a majority of all the votes cast for and against it at such election, as aforesaid, then the same shall have effect as hereinbefore provided and shall be irrevocable until the principal and interest of the liabilities herein created shall be paid and discharged, and the governor shall make proclamation thereof. But if a majority of the votes cast, as aforesaid, are against this act then the same shall be and become void.

Publication to act before election.

§ 12. It shall be the duty of the secretary of state to have this act published in at least one newspaper in each county, or city and county, if one be published therein, throughout this state, for three months next preceding the general election to be holden in the month of November, A. D. nineteen hundred and sixteen; the cost of publication shall be paid out of the general fund, on controller's warrants duly drawn for the purpose.

Title of act.

§ 13. This act shall be known and cited as the "State Highways Act of 1915."

Repealed.

§ 14. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

See sections 2 and 3, article XVI, constitution.

See tit. "State Engineering," Act 1917.

SPECIAL ELECTION ON HIGHWAY AMENDMENT TO CONSTITUTION.

ACT 1916b—An act calling a special election to be held on Tuesday, July 1, 1919, and providing for the submission thereat to the qualified electors of the state of an amendment to the constitution of the state of California known as Senate Constitutional Amendment Number 27, proposed by the legislature of said state at its forty-third session, providing for the issuance of bonds to the amount of forty million dollars for the completion of the state highway system and the acquisition and construction of other state highways by the state department of engineering, and making an appropriation for the purposes of this act.

History: Approved April 24, 1919. In effect immediately. Stats. 1919, p. 136.

Election for state highway bonds.

§ 1. A special election is hereby called for and shall be held throughout the state of California on Tuesday, the first day of July, 1919, and at such special election there shall be submitted to the qualified electors of said state, for adoption or rejection, in accordance with the provisions of section one of article eighteen of the constitution of said state, the amendment to said constitution known as Senate Constitutional Amendment No. 27 proposed by the legislature of said state at its forty-third regular session commencing on the sixth day of January, 1919, providing for the issuance of bonds to the amount of forty million dollars for the completion of the state highway system and the acquisition and construction of other state highways by the state department of engineering.

Conduct of election.

§ 2. Except as otherwise expressly provided by this act, said election shall be proclaimed, held and conducted and the ballots shall be prepared, marked, voted, counted, canvassed, and the results shall be ascertained and the returns thereof made in all respects in accordance with the provisions of the constitution applicable thereto and the laws governing elections in so far as the provisions thereof are applicable to the election called by this act.

Arguments to be filed.

§ 3. The arguments provided for by section one thousand one hundred ninety-five of the Political Code must be delivered to the secretary of state within ten days following the adjournment of the legislature. Amendments thereof or changes therein may be made within ten days from such delivery, but not later. It shall be the duty of the attorney general to prepare and deliver to the secretary of state the ballot title provided for in section one thousand one hundred ninety-seven of the Political Code within ten days following the adjournment of the legislature. Written objection thereto may be filed with the secretary of state within ten days from such delivery, but not later.

Publication of proposed amendment.

§ 4. It shall be the duty of the board of control to have the said proposed amendment published in at least one newspaper in each county, or city and county, if one be published therein, throughout the state, once a week for four successive weeks preceding the election hereby called. The arguments provided for by section one thousand one hundred ninety-five of the Political Code shall be similarly published, in conjunction with the publication of such proposed amendment, and shall be printed with the latter, in immediate sequence, in each newspaper in which such publication is made. The publication of such proposed amendment and of such arguments shall be in lieu of that prescribed by the provisions of sections one thousand one hundred ninety-five a and one thousand one hundred ninety-five b of the Political Code, and no other publication shall be necessary or authorized.

Appropriation.

§ 5. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of fifteen thousand dollars, or so much thereof as may be necessary, to defray the cost of publication hereby required. The state controller is hereby authorized and directed to draw his warrants, not exceeding said sum, in favor of the board of control for such purpose, and the state treasurer is hereby authorized and directed to pay the same.

In effect when.

§ 6. This act, being an act calling an election, shall take effect immediately.

ACQUISITION OF RIGHTS OF WAY AND ROCK QUARRIES BY COUNTIES.

ACT 1917—An act to permit counties to acquire rights of way for state highways and to pay part of the expense of constructing state highways and bridges within their limits and authorizing the state to accept the same.

History: Approved June 3, 1913. In effect August 10, 1913. Stats. 1913, p. 445.

Acquisition of rights of way and rock quarries for state highways authorized.

§ 1. Whenever it is determined by a four-fifths vote of the board of supervisors of any county that the interests of the county would be promoted thereby, the board of supervisors, upon the recommendation of the advisory board of the department of engineering of the state of California, may, by resolution passed by a four-fifths vote of said county board, determine to acquire by purchase, donation or dedication, or lease any right of way, rock quarry or land needed for state highway purposes and described in such recommendation, and shall proceed, if necessary, to condemn under the provisions of the Code of Civil Procedure relating to such proceedings any right of way, rock quarry or land recommended to be acquired as aforesaid. The title to such property may be taken in the name of the state or the county. The order of the board of supervisors shall be the only preliminary procedure required prior to the acquisition of such property or the commencement of such condemnation action or actions.

Counties may contribute bridges, etc.

§ 2. Whenever it is determined by a four-fifths vote of the board of supervisors of any county that the interests of the county would be promoted thereby, the board of supervisors may, upon the written request of the advisory board of the department of engineering of the state of California, by resolution passed by a four-fifths vote of said county board, determine to contribute bridges, fencing, money, labor, materials and other appurtenances toward the expenses of constructing state highways within their limits.

Cost charged to general fund.

§ 3. The cost of such acquisition of property mentioned in section 1 of this act and the contributing of bridges, fencing, money, labor, materials, or other appurtenances mentioned in section 2 of this act may be charged to the general county fund, the general road fund or the district fund of the district or districts benefited.

State authorized to receive.

§ 4. The state is hereby authorized to receive and use the benefits provided under this act, and any money contributed by a county shall be paid into the state fund designated by the board of supervisors in the resolution determining such donation.

OPENINGS AND OBSTRUCTIONS IN STATE HIGHWAYS.

ACT 1917a—An act regulating the making of openings or the placing of structures or the change or renewal of any structure and the planting or removal of trees or shrubs or the placing of obstructions in or on state roads and highways; providing for the issuance of permits by the state department of engineering relative thereto, and for the laying or placing pipes, conduits, sewers, poles, wires, railways, obstructions and other objects, and for the planting, trimming or removal of trees or shrubs in or on state roads and highways; providing for the requirement of bonds from applicants before the issuance of such permits; and prescribing the penalty for violations of the provisions of this act.

History: Approved April 23, 1915. In effect August 8, 1915. Stats. 1915, p. 179.

Permits from department of engineering for openings, etc., on highways. Work under supervision of department of engineering.

§ 1. No opening shall be made in any state road or highway nor shall any structure be placed thereon, nor shall any structure which has been placed thereon be changed or renewed except in accordance with a permit from the state department of engineering or its duly authorized officers who shall exercise complete and permanent control over such roads or highways. No state road or highway shall be dug up for laying or placing pipes, conduits, sewers, wires, railways or other objects, and no tree or shrub in or on any state road or highway shall be planted, trimmed or removed, and no obstruction placed thereon, without a written permit as hereinbefore provided, and then only in accordance with the regulations of such department of engineering or its duly authorized officers or employees; and the work shall be done under the supervision and to the satisfaction of the department of engineering or its appropriate officers or employees, and the entire expense of replacing the highway in as good condition as before shall be paid by the persons to whom the permit is given or by whom the work is done; but a city or town may, within its corporate limits, dig up a state road or highway without such approval or permit in case of immediate necessity; but in such cases it shall be forthwith replaced in as good condition as before at the expense of the city or town.

Bond of applicant.

The department of engineering, or its duly authorized officers, may, in its discretion, before granting a permit under the provisions of this act, require the applicant to file a satisfactory bond to the people of the state of California in such an amount as may be deemed sufficient by the department of engineering or its duly authorized officers, conditioned for the proper compliance with the requirements of this act by the person granted such permit.

Work without permit, misdemeanor.

Any person convicted of making any opening in a state road or highway or placing any structure thereon, or changing or renewing any structure thereon without obtaining a permit as herein provided, or not in compliance with the terms of such a permit, or otherwise violating the provisions of this act, shall be guilty of a misdemeanor.

Power of railroad commission not limited.

§ 2. This act is not intended nor is it to be construed as limiting the powers and duties vested by law in the railroad commission of the state of California, and in the event of any conflict of jurisdiction, that of such railroad commission shall prevail.

ABANDONMENT ACT OF 1915.

ACT 1917b—An act to provide for the abandonment of portions of routes of state roads and highways by the advisory board of state department of engineering, and for consent thereto in certain cases by county boards of supervisors.

History: Approved May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 640.

Abandonment of state roads.

§ 1. The advisory board of the state department of engineering shall have the power to abandon portions of routes of state roads and highways under its jurisdiction, when, in its opinion, such abandonment shall be necessary by reason of alterations or revisions in alignment of portions of routes of state roads and highways by said advisory board and shall be for the best interests of the state. It may abandon any lands or parts thereof or rights in lands which have been taken or acquired by the state for such state road or highway purposes and forming part of portions of routes of state roads and highways as aforesaid by resolution adopted by the advisory board of such department of engineering, and a copy of such resolution may be recorded in the county where such land or part of land to be abandoned is located, without acknowledgment, certificate of acknowledgment, or further proof, and no fee shall be charged for such recording by the county recorder of such county; provided, however, that nothing contained in this act shall authorize and empower said state department of engineering to abandon any portion or portions of any state road or highway where such abandonment will operate to vest or revest the control and maintenance of such portion or portions of state road or highway or state bridge in the board or boards of supervisors of any county or counties wherein such portion or portions proposed to be abandoned are located, without the consent, by formal resolution, of such board or boards of supervisors affected by such abandonment having been first obtained.

CONVICT LABOR ON STATE HIGHWAYS.

ACT 1917c—An act authorizing the use of convict labor on state highways; regulating the handling of such labor; authorizing extra good time allowance; and providing penalties for interference.

History: Approved April 27, 1915. In effect August 8, 1915. Stats. 1915, p. 218.

Convicts for state highway work.

§ 1. The department of engineering of the state of California may employ, or cause to be employed, convicts confined in the state prisons in the construction, improvement and maintenance of the state highway system provided for in the "State Highways Act," approved March 22, 1909, and in the construction, improvement and maintenance of any other state roads in California.

Upon the requisition of the department of engineering the state board of prison directors shall send to the place and at the time designated the number of convicts requisitioned, or such portion thereof as are in the judgment of the warden available.

Department of engineering to supervise work.

§ 2. The department of engineering shall designate and supervise all road work done under the provisions of this act. It shall provide, supervise and maintain necessary camps and commissariat.

Prison directors shall discipline.

§ 3. The state board of prison directors shall have full jurisdiction at all times over the discipline and control of convicts employed on state roads.

Expenses.

§ 4. The expense of transportation of labor, necessary guarding, commissariat, camps, and all other expense incidental to such work shall be borne by the respective funds provided for such state road or highway work in the manner provided by law.

Convicts not to build bridges.

§ 4½. Said convicts when employed under the provisions of this act shall not be used for the purpose of building any bridge or structure of like character which requires the employment of skilled labor.

Good time allowance for work.

§ 5. The state board of prison directors is hereby empowered and directed to adopt a special rule applicable solely to convicts employed as herein authorized and contemplated, whereby convicts so employed shall be granted additional good time allowance conditioned upon their loyal, obedient and efficient co-operation with the state, but such additional good time allowance shall not exceed one day for each two calendar days that the convict is absent from the prison.

Interference with convicts, felony. Penalty.

§ 6. Any person who, without authority, interferes with or in any way interrupts the work of any convict employed pursuant to this act, and any person not authorized by law, who gives or attempts to give to any state prison convict so employed any opium, cocaine, or other narcotic, or any intoxicating liquors of any kind whatever, or firearms, weapons or explosives of any kind, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for a term not less than one year nor more than five years, and shall be disqualified from holding any state office or position in the employ of this state. Any officer or guard of any state prison, or any superintendent of such road work, having in charge the convicts employed upon such highways, may arrest without a warrant any person violating any provision of this section.

Repealed.

§ 7. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

ROAD DIVISION VALIDATION ACT OF 1917.

ACT 1917d—An act to legalize the organization of permanent road divisions and validate all proceedings for the issuance of bonds of said divisions where authority for issuance of said bonds, has already been given by a vote of at least two-thirds of the electors of any permanent road division.

History: Approved April 19, 1917. In effect July 27, 1917. Stats. 1917, p. 141.

Organization of permanent road-divisions validated. Time for instituting suit.

§ 1. In all cases where the board of supervisors of any county of this state, purporting to act under and by virtue of the provisions of the Political Code applicable thereto, has organized a permanent road division, all proceedings for the organization of any such road division and the organization thereof are hereby validated and declared legal and no proceedings to test the validity of any such road division shall be maintained unless instituted within ninety days from the effective date of this act. Whenever the board of supervisors of any county has ordered the issuance of bonds of any such road division, after an election of the qualified electors thereof has been held to determine whether such indebtedness shall be incurred, at which election not less than two-thirds of all qualified electors voting at such election have voted in favor of incurring such indebtedness, all the proceedings preceding and including the issuance and the proposed

issuance of such bonds are hereby validated, ratified and confirmed; and all such bonds sold or to be sold for not less than par and accrued interest are hereby declared to be valid and legal obligations of such road divisions in accordance with their terms, and no suit shall be maintained to prevent the issuance, sale or delivery of any such bonds or to prevent the payment of principal or of the interest accruing thereon when such principal and interest, respectively, become due in accordance with the terms of such bonds, unless such suit is instituted within ninety days from the effective date of this act.

STATE AID HIGHWAYS IN COUNTIES AND TOWNS.

ACT 1918—An act providing for the construction and maintenance by the state of state aid highways in counties and towns.

History: Approved June 5, 1913. In effect August 10, 1913. Stats. 1913, p. 461.

Supervisors may petition that highway be improved by department of engineering.

§ 1. The board of supervisors of any county may on a not less than four-fifths vote of such board or governing body, petition the state department of engineering, hereinafter in this act called department, upon forms prepared by said department, or under its direction to have any main public highway in the said county, or town improved and maintained under the provisions of this act. Such petition shall contain a detailed description of the highway petitioned to be improved, a statement as to whether or not the rights of way for the said highway have been secured by the public; a statement of the kind of construction work with which it is sought to have the highway improved, and such other information and data as the department may prescribe.

Consideration of petition. Surveys, estimates, etc. State highway.

§ 2. Upon receipt of such a petition the department shall give careful consideration to the matters contained therein, and may authorize the body filing the petition to file an amended or modified petition conforming to such regulations and conditions as in the discretion of the department may be deemed just and proper.

If said department determine that public necessity and convenience require that such highway should be laid out and be taken charge of by the state, it shall cause the engineer or surveyor of the county in which the road to be improved is located to make adequate surveys, plans, specifications and estimates thereof subject to the approval and acceptance of the department. Upon approval by the department, a copy of the petition, resolution or undertaking, plans, specifications and estimate shall be filed with the department and also in the office of the recorder of the county in which the highway is situated and thereafter it shall be a state highway, and shall be constructed and kept in good repair as the department shall direct, under the supervision of the engineer or surveyor of the said county, the expense for construction and repair of same to be proportioned and paid as hereafter provided. Such highways shall be known as state aid highways.

Bridges and culverts constructed by county.

§ 3. The department shall not grant the prayer of any petition for the improvement of a highway under the provisions of this act unless all necessary bridges and culverts shall have first been constructed by the county, or town in which the highway is situated, in a manner satisfactory to the department, nor unless all necessary rights of way have been secured by the public. All expenditures under the provisions of this act shall be distributed equitably throughout the state.

Advertising and letting contract. Bids may be rejected.

§ 4. When the department is prepared for construction it shall so notify the governing body of the town or county in which the highway is located and furnish them a veri-

fied copy of the approved plans and specifications and the said governing body shall proceed to advertise for bids and let the contract for construction in the manner provided for by the statutes for advertising and letting contracts for work on public highways by counties.

Should the bids for constructing the highways exceed the figure mutually agreed upon between the department and the county engineer as a reasonable compensation for the work the bids shall be rejected and the work be done as the department shall direct. In either case the county surveyor shall represent the department in the supervision of the construction. Whenever the department deems it necessary, it may appoint an inspector.

Payments. Two-thirds cost paid by county. Monthly statement of expenditures. Payable from any available fund.

§ 5. Payment for the work shall be made by the local governing body in the manner provided by law for the payments of claims against the county for work of this class, on presentation of bills verified by the supervising engineer and approved by the department. The cost of construction shall include therein the cost of the surveys, drafting, engineering, inspection and other necessary expenses as well as the cost of the actual work of construction. Two-thirds of the cost of construction as shown by the bills approved by the department shall be paid by the county in which the highway is located and one-third by the state. The cost of maintenance thereafter shall be equally divided between the state and the county, the work to be done as the department shall direct under the supervision of the county engineer. All bills for maintenance shall be approved and paid in the same manner as the cost of construction.

On the 10th of each month following the month in which work of any kind has been done, or expenses of any sort have been incurred in connection with the construction or maintenance of a state aid highway, the treasurer of the county where the highway is situated shall present to the department a verified statement of the amounts paid for work performed during the previous month and a demand for a payment of the amount due from the state. Upon verification and approval of this demand the state treasurer shall forward the amount to the county treasurer. The amount to be paid by a county may be paid out of the proceeds of a bond issue, the general fund, the general road district fund or out of the district funds of the road district in which the said highway is located.

The proportion of expense borne by the state shall be paid out of any fund now available, or which may hereafter be made available for the purpose, or out of special appropriations for the purpose made by the legislature.

Moneys shall be paid by the state treasurer upon warrants duly drawn by the controller of the state, upon demands made by the department and audited by the state board of control.

Limit of cost. Bonds.

§ 6. The board of supervisors of any county may not, under the provisions of this act, petition for the improvement of any highway the estimated cost of which by the county surveyor or engineer of said county shall exceed the sum of fifty thousand dollars, unless the same shall have been submitted to the electors of the county and approved. The board of supervisors is hereby authorized to issue bonds under the laws of this state for the construction of such highways and the approval of such bond issue by the electors shall authorize the board of supervisors to proceed with the construction of such highway under the provisions of this act.

Provisions of law applicable.

§ 7. All of the provisions of law relating to state highways and to the department shall apply so far as they are applicable to all work done and to all methods employed under this act.

Title of act.

§ 8. This act shall be known and cited as the "State Aid Highway Act."

PURCHASE OF "BIG OAK FLAT" AND "YOSEMITE AND WAWONA" ROADS.**ACT 1919—An act to appropriate money to purchase certain roads within Yosemite grant.**

History: Approved March 14, 1889, Stats. 1889, p. 142.

1. Constitutionality—Gift of state property.—The act is constitutional and the appropriation for the purchase of the unexpired lease of Yosemite and Wawona road does not constitute a gift.—Yosemite, etc., Co. v. Dunn, 83 Cal. 264, 23 Pac. 369.

2. Yosemite grant not subject to general road laws.—No portion of the Yosemite grant is subject to the general road laws of the state, and a turnpike road therein, constructed and operated under a ten-year lease, did not become, under the provisions

of section 2619, of the Political Code, a free public highway.—Yosemite, etc., Co. v. Dunn, 83 Cal. 264, 23 Pac. 369.

3. Roads in Yosemite grant property of state.—Roads laid out under a lease by commissioners under the congressional grant of the Yosemite Valley and Mariposa big tree grove are the property of the state, and under the control of such commissioners, and not the board of supervisors.—Yosemite, etc., Co. v. Dunn, 83 Cal. 264, 23 Pac. 369.

LAKE TAHOE WAGON ROAD.**ACT 1920—An act for the general improvement of Lake Tahoe wagon road.**

History: Approved March 31, 1911, Stats. 1911, p. 529.

This act appropriated \$15,000 for the purpose indicated.

Appropriations were made to improve and complete the Lake Tahoe wagon road by the act of March 8, 1907, Stats. 1907, p. 140, \$5000; April 12, 1909, Stats. 1909, p. 853, \$20,000; March 31, 1911, Stats. 1911, p. 529, \$15,000.

Editor's note: The act of March 25, 1895, Stats. 1895, p. 1895, authorizes the state to secure a right of way for the Lake Tahoe wagon road and provided for a "Lake Tahoe wagon road commissioner." This act was superseded by the act of April 1, 1897, Stats. 1897, p. 388.

BRIDGE ON LAKE TAHOE WAGON ROAD.**ACT 1920a—An act to provide for the construction of permanent bridge work on the Lake Tahoe wagon road, a state highway, and making an appropriation therefor.**

History: Approved March 22, 1905, Stats. 1905, p. 796.

PLACERVILLE AND LAKE TAHOE WAGON ROAD.**ACT 1920b—An act declaring the wagon road extending from the western end of the Lake Tahoe state wagon road to the eastern limits of the city of Placerville to be a state highway.**

History: Approved April 10, 1915. In effect August 8, 1915, Stats. 1915, p. 41.

Road from Lake Tahoe to Placerville declared state highway.

§ 1. The wagon road extending from the western end of the Lake Tahoe state wagon road to the eastern limits of the city of Placerville is hereby declared to be a state highway and placed under the management and control of the department of engineering, and it shall be the duty of the said department to locate, survey, construct and reconstruct the same with such variations as will in the opinion of the said department be advisable.

§ 2. The said department is authorized and directed to take such steps as may be necessary to acquire for the state all rights of way, roads, culverts, bridges, quarries, timber and tools, machinery and appliances necessary to the construction and improve-

ment of the said highway; provided, however, that no public corporation or political subdivision of the state shall receive any compensation on account of the said road.

STATE HIGHWAY FROM MEYER'S STATION TO McKINNEY'S.

ACT 1921—An act to provide a state highway from Meyer's station in El Dorado county, California, to McKinney's in Placer county, California, and making an appropriation therefor.

History: Approved March 9, 1911, Stats. 1911, p. 324.

This act appropriated \$25,000 for the purpose indicated, and placed the work under the control of the department of engineering.

An additional appropriation of \$23,000 was made by the act of June 7, 1913, Stats. 1913, p. 869, and by the same act the construction was placed in the department of engineering.

ALPINE STATE HIGHWAY.

ACT 1922—An act to establish the Alpine state highway; to define its course; to provide for its supervision, construction, repair and maintenance, and to make an appropriation therefor.

History: Approved April 15, 1911, Stats. 1911, p. 931.

The following is the description of the highway as given in the act:

That certain road commencing at the Calaveras big tree grove, located in Calaveras County, thence running to Dorrington in said county; thence easterly following what is known as the Big Tree and Carson Valley turnpike, to Mount Bullion, in Alpine County; thence along county road to Markleeville, in Alpine County; thence along that certain road via Kirkwood, Silver Lake, Pine Grove and Irishtown to Jackson, in Amador County, including therewith the road from Pickett's in Hope Valley

connecting with the Lake Tahoe wagon road, a state highway, at Osgood's place in El Dorado County, and the road from Mount Bullion via Loupe, in Alpine County, to Junction in Mono County, connecting with the Sonora and Mono state highway, is hereby declared and established a state highway and shall be designated and known as the "Alpine State Highway."

The act appropriated \$35,000 for the purpose indicated. The work was placed under the control of the department of engineering.

STATE HIGHWAY FROM EMIGRANT GAP TO DONNER LAKE— CONSTRUCTION.

ACT 1923—An act to make an appropriation for the location, survey and construction of a state highway from Emigrant Gap, Placer county, in an easterly direction through what is known as the Truckee Pass, to the west end of Donner Lake in Nevada county.

History: Approved March 13, 1909, Stats. 1909, p. 352.

This act appropriated \$15,000 for the purpose indicated.

STATE HIGHWAY FROM EMIGRANT GAP TO DONNER LAKE— MAINTENANCE.

ACT 1924—An act providing for the maintenance of the state highway from Emigrant Gap, Placer county, to the west end of Donner Lake, Nevada County.

History: Approved April 21, 1911, Stats. 1911, p. 1044.

This act appropriated \$5,000 for the purpose indicated.

EMIGRANT GAP STATE ROAD—CHANGE OF GRADE.

ACT 1925—An act to make an appropriation for changing the state road known as Emigrant Gap so as to eliminate the grade crossing over the railroad track near Summit station.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 1152.

Appropriation: elimination of grade crossing, Emigrant Gap road.

§ 1. There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated the sum of four thousand dollars for making a change in the location of the Emigrant Gap state road so as to eliminate the grade crossing of said road over the railroad track near Summit station; provided, that the Southern Pacific Company shall contribute not less than three thousand five hundred dollars for the same purpose.

Controller directed to draw warrants.

§ 2. The state controller is hereby directed to draw his warrants in such sums, and at such times as claims therefor, approved by the board of control, may be presented by the department of engineering, and the state treasurer is hereby directed to pay the same.

LASSEN COUNTY STATE HIGHWAY.

ACT 1926—An act declaring a state highway from the Shasta county line through Lassen county to the Modoc county line, and making an appropriation for its improvement and maintenance.

History: Approved April 22, 1911, Stats. 1911, p. 1036.

This act appropriated \$5,000 for the purpose indicated.

ALTURAS TO CEDARVILLE COUNTY ROAD.

ACT 1927—An act to aid the county of Modoc in the construction of permanent work on the county road between Alturas and Cedarville, and making an appropriation therefor.

History: Approved March 22, 1905, Stats. 1905, p. 790.

This act appropriated \$7,000 for the purpose indicated.

STATE HIGHWAY FROM SACRAMENTO TO FOLSOM.

ACT 1928—An act to provide for the construction of a state highway or wagon road from Sacramento city to Folsom, in Sacramento county, and appropriating crushed rock and granite or stone blocks for drains and culverts for same.

History: Approved March 29, 1897, Stats. 1897, p. 239.

This act made no other appropriation than that of crushed rock, stone, etc., from Folsom Prison. The purpose was to make a model road for the inspection of the next legislature. The county of Sacramento at-

tempted to issue bonds to cover the cost of construction, but this attempt was held to be unauthorized.—See *Devine v. Board Supervisors*, 121 Cal. 671, 54 Pac. 262.

STATE HIGHWAY FROM MOUNT PLEASANT RANCH TO DOWNIEVILLE.

ACT 1929—An act to make an appropriation for the location, survey and construction of state highway from a point known as the Mount Pleasant ranch on the road between Quincy and Marysville thence in a southeasterly direction by Eureka to Downieville, Sierra county.

History: Approved March 8, 1907, Stats. 1907, p. 133.

This act appropriated \$12,000 for the purpose indicated.

DECLARING PART OF SONORA AND MONO WAGON ROAD, A STATE HIGHWAY.

ACT 1930—An act to declare a part of the Sonora and Mono wagon road, commencing east of Sonora, at a point known as Long Barn, in Tuolumne county and running thence across the summit of the Sierra Nevada mountains to Bridgeport, in Mono county, a state highway.

History: Became a law under constitutional provision without governor's approval March 12, 1901, Stats. 1901, p. 272.

SONORA AND MONO STATE HIGHWAY.

ACT 1931—An act to appropriate the sum of twenty thousand dollars for the purpose of erecting and constructing bridges, culverts, and grading upon the Sonora and Mono road, a state highway.

History: Approved March 18, 1905, Stats. 1905, p. 146.

TRINITY—HUMBOLDT STATE HIGHWAY.

ACT 1932—An act to provide for locating and surveying a proposed highway from a point on the Trinity river, in Trinity county, near the town of North Fork, thence westerly down said river about forty miles to connect with an existing road in Humboldt county, and making an appropriation therefor.

History: Approved March 26, 1903, Stats. 1903, p. 515.

This act appropriated \$1,800 for the purpose indicated.

FREE WAGON ROAD FROM MONO LAKE BASIN TO THE "TIOGA ROAD."

ACT 1933—An act providing for the construction of a free wagon road from Mono Lake basin to the Tioga road.

History: Approved February 23, 1899, Stats. 1899, p. 26. A later act of March 26, 1903, Stats. 1903, p. 523, made in appropriation of \$25,000 for the completion of the road provided for by this act.

This act appropriated \$25,000 for the purpose indicated.

MONO LAKE BASIN STATE ROAD—EXTENSION.

ACT 1934—An act extending the Mono Lake basin state road easterly to a junction with the county road from Mono Lake postoffice to Mono Mills.

History: Approved May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1326.

Extension of Mono Lake basin state road.

§ 1. The state department of engineering is hereby authorized and directed to extend the Mono Lake basin state road easterly to a junction with the county road from Mono Lake postoffice to Mono Mills, which said extension is hereby declared and established as a portion of the Mono Lake basin state road.

TRINITY-TEHAMA-SHASTA-HUMBOLDT STATE HIGHWAY.

ACT 1935—An act to provide for the survey, location and construction of a state highway connecting the present county road systems of any one or all the counties of Trinity, Tehama and Shasta with the road system of Humboldt county, which will most conveniently accommodate the citizens of said counties and making an appropriation therefor.

History: Approved March 8, 1907, Stats. 1907, p. 139.

This act appropriated \$50,000 for the purpose indicated.

TRINITY-TEHAMA-SHASTA-HUMBOLDT STATE HIGHWAY—
COMPLETION.

ACT 1936—An act for the construction and completion of a state highway connecting the counties of Trinity, Tehama and Shasta with the road system of Humboldt county.

History: Approved March 23, 1911, Stats. 1911, p. 455.

This act appropriated \$50,000 for the purpose indicated.

TRINITY-TEHAMA-SHASTA-HUMBOLDT STATE HIGHWAY—SURVEY OF
EXTENSION.

ACT 1937—An act making an appropriation for the location and survey of a proposed highway to connect the counties of Trinity, Tehama and Shasta with the road system of Humboldt county.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 1134.

This act appropriated \$3,000 for the purpose indicated.

KINGS RIVER STATE HIGHWAY.

ACT 1939—An act to provide for the location and construction of a public highway from the General Grant park in Fresno county; thence easterly a distance of about fifty miles to the Kings river canyon; and making an appropriation for the construction thereof; and providing for a commission to take charge of, locate and construct said highway, and to repeal an act entitled "An act to appropriate money for the survey, location and construction of a free wagon road from the town of Mariposa in Mariposa county to the Yosemite valley," approved March 26, 1895.

History: Approved March 22, 1905, Stats. 1905, p. 797. Later acts of March 13, 1909, Stats. 1909, p. 351, and April 21, 1911, Stats. 1911, p. 1044, made additional appropriations for the completion of the highway.

This act appropriated \$25,000 for the purpose indicated. The act of 1909 appropriated a like amount, and the act of 1911, the same.

BAKERSFIELD, MARICOPA AND VENTURA STATE HIGHWAY.

ACT 1940—An act declaring and establishing a state highway from the city of Bakersfield through a portion of the counties of Kern, San Luis Obispo, Santa Barbara and Ventura to the city of San Buena Ventura, designated and known as the Bakersfield, Maricopa and Ventura state highway.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 1134.

This act after describing the course of the highway contained the following provision:

The entire length from Ventura to Bakersfield being one hundred twenty-nine and twenty-five one-hundredths miles, or thereabouts, is hereby declared to be, and the same is hereby constituted, a state highway, and shall be designated and known as the Bakersfield, Maricopa and Ventura

state highway, and the same is hereby placed under the supervision and control of the state board of engineering; provided, that said highway shall not be and become a state highway, and be and become subject to the supervision and control of the state board of engineering until said highway shall have been fully completed.

WAGON ROAD FROM MCKINNEY'S TO DONNER LAKE DECLARED A STATE
HIGHWAY.

ACT 1941—An act declaring the wagon road from McKinney's to the west end of Donner Lake a state highway.

History: Approved May 17, 1915. In effect August 8, 1915. Stats. 1915, p. 441.

Wagon road, McKinney's to Donner Lake, declared state highway.

§ 1. The wagon road extending along the west side of Lake Tahoe, from McKinney's in El Dorado county to Tahoe city, thence along the Truckee river to Truckee and thence in a westerly direction to the west end of Donner Lake in Nevada county, connecting with the present state highway from Emigrant Gap, is hereby declared to be a state highway and placed under the management and control of the department of engineering, and it shall be the duty of the said department to locate, survey, construct and reconstruct the same with such variations as will in the opinion of the said department be advisable.

Rights of way, etc., to be acquired.

§ 2. The said department is authorized and directed to take such steps as may be necessary to acquire for the state all rights of way, roads, culverts, bridges, quarries, timber and tools, machinery and appliances necessary to the construction and improvement of the said highway; provided, however, that no public corporation or political subdivision of the state shall receive any compensation on account of the said road.

**PURCHASE OF PORTION OF GREAT SIERRA WAGON ROAD, OR
"TIOGA ROAD."**

ACT 1941a—An act to appropriate money to purchase a portion of the Great Sierra wagon road and to provide for the acceptance and maintenance of said road as a state road.

History: Approved May 17, 1915. In effect August 8, 1915. Stats. 1915, p. 488.

Appropriation: Tioga road.

§ 1. There is hereby appropriated out of any money in the state treasury not otherwise appropriated the sum of three thousand dollars for the purchase of that portion of the Great Sierra wagon road, better known as the "Tioga road," lying without the boundary of the Yosemite national park, approximately seven miles in length; provided, that the portion of the said "Tioga road" lying within the Yosemite national park is taken over by the national government and the maintenance therefor is provided for.

Engineering department to purchase.

§ 2. The state department of engineering through the state engineer is hereby authorized and directed to negotiate and complete the purchase of said portion of said Great Sierra wagon road, and on behalf of the state of California to accept the deed for the same from the owners thereof, and to secure from the boards of supervisors of Tuolumne and Mono counties such orders as may be necessary to vacate any orders previously made by said boards relative to any franchise or grant made for said road. Upon the acceptance of said deed the said department of engineering shall improve and maintain said road as a state road and any expense incurred after the date of the acceptance of said deed shall be a proper charge against any money in the state treasury appropriated for the improvement and maintenance of state roads.

§ 3. The state controller is hereby directed to draw his warrants on order and as directed by the state engineer for the sum named, and the state treasurer is directed to pay the same, for the purchase of the above named road.

BIG OAK FLAT AND YOSEMITE TOLL ROAD, A STATE HIGHWAY.

ACT 1942—An act to take title to and thereafter maintain as a state highway, the toll road in Tuolumne and Mariposa counties, known as the Big Oak Flat and Yosemite road, also a section of Tuolumne county road to connect said toll road with the Sonora lateral of the state highway.

History: Approved May 19, 1915. In effect August 8, 1915. Stats. 1915, p. 635.

Big Oak Flat and Yosemite road declared a state highway.

§ 1. That all that certain toll road in Tuolumne and Mariposa counties known as the Big Oak Flat and Yosemite road beginning at a point near the former location of Jack Bell sawmill in Tuolumne county and extending thence in an easterly direction through a portion of Mariposa county at Hamilton station, thence again into Tuolumne county, past the Hearidin ranch, Crocker station, Crane Flat and Gin Flat to the boundary line of the original Yosemite Grant near Caescade creek, about thirty-two

miles in length, is hereby declared a state highway, and shall hereafter be maintained by the state under the supervision of the department of engineering.

Conveyance of title.

§ 2. This act shall not take effect until the county of Tuolumne shall have deposited with the state department of engineering a good and sufficient conveyance, conveying thereby title to said road without cost or charge to the state of California; and when said conveyance shall have been so delivered, the state engineer shall then take charge of said road and maintain the same out of the moneys provided by law for the maintenance of state highways.

Connecting road taken over.

§ 3. Also, the state engineer is hereby authorized to take over from the county of Tuolumne the section of road, approximately twenty-seven miles in length, connecting the western terminus of the Big Oak Flat and Yosemite toll road to the Sonora lateral of the state highway—provided no money consideration shall be given for roadbed or rights of way—and declare the same a state highway and maintain it with the funds available for maintaining state highways. Said connecting section of road beginning at the western terminus of said toll road shall run westerly via the main traveled route through Smith's ranch, Groveland, Big Oak Flat and over the new Priest hill highway to Jacksonville. From this point the state engineer shall select from the routes available, the road he deems the most practicable, direct and easily maintained to make connection with the state highway lateral.

“YOLO AND LAKE HIGHWAY.”

ACT 1942a—An act to establish the Yolo and Lake highway; to define its course; to provide for its location and survey; and to make an appropriation therefor.

History: Approved May 17, 1915. In effect August 3, 1915. Stats. 1915, p. 478.

Yolo and Lake highway established.

§ 1. A highway commencing at the town of Rumsey, in the county of Yolo, state of California, and following generally, the meanderings of Cache creek, along the most practical and feasible route, to the town of Lower Lake, in the county of Lake, state of California, and to be known as “Yolo and Lake Highway,” be and the same is hereby declared and established.

Department of engineering to locate and survey.

§ 2. That the said department of engineering is hereby authorized to locate the said highway, and to make the surveys and investigations necessary for such location, together with the estimates of cost, and make a report thereof to the governor of the state of California; that said department of engineering may make such variations in the location of said road as, in the opinion of said department, may be deemed advisable.

Appropriation.

§ 3. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of three thousand (3,000) dollars, to be expended under the supervision of said department, for the location and survey of said highway, and the estimates of the cost thereof. The state controller is hereby directed to draw his warrants in such sums and at such times as the said engineer may present claims therefor, and the state treasurer is directed to pay the same.

§ 4. That the state shall not be responsible for any sum other than the amount herein appropriated.

TAHOE CITY AND CRYSTAL BAY STATE HIGHWAY.

ACT 1943—An act making an appropriation for the location, survey and construction of a state highway from Tahoe city, Placer county, along the northern boundary of Lake Tahoe to the western boundary of the state of Nevada at Crystal bay in Placer county.

History: Approved June 9, 1915. In effect August 8, 1915. Stats. 1915, p. 1328.

Appropriation: survey, highway from Tahoe city to Crystal bay.

§ 1. For the location, survey and construction of a state highway from Tahoe city, Placer county, along the northern boundary of Lake Tahoe to the western boundary of the state of Nevada at Crystal bay, in Placer county, there is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of three thousand dollars, contingent upon the appropriation by the county of Placer of a like sum for the same purpose.

§ 2. The work of locating, surveying and constructing said highway is hereby placed under the management and control of the state department of engineering.

§ 3. The state controller is hereby directed to draw his warrants in such amounts and at such times as said engineer may present claims therefor, and the state treasurer is directed to pay the same.

STATE HIGHWAY FROM KERN COUNTY TO NORDHOFF.

ACT 1943a—An act to provide for the survey, location and estimate of cost of a state highway from a point on the present located California state highway in Kern county, California, south of Bakersfield, southerly to the town of Nordhoff, Ventura county.

History: Approved June 12, 1915. In effect August 11, 1915. Stats. 1915, p. 1491.

Appropriation: survey of highway to Nordhoff.

§ 1. There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, the amount of eight thousand dollars for the survey and location and preparation of estimate for a state highway, beginning at some point on the present located state highway in Kern county, south of Bakersfield, southerly to the town of Nordhoff, Ventura county.

§ 2. The work of surveying, locating and making of an estimate is placed under the charge of the state department of engineering, and it shall be the duty of said department to make such location and survey along the route which in their opinion is deemed most advisable.

HIGHWAY FROM SURPRISE VALLEY TO THE NEVADA LINE.

ACT 1943b—An act providing for an appropriation for the location, survey and construction of a highway to lead from Surprise valley, in Modoc county, to the Nevada state line.

History: Approved June 12, 1915. In effect August 11, 1915. Stats. 1915, p. 1530.

Appropriation: highway across Middle lake.

§ 1. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of twenty thousand dollars for the location, survey and construction of a highway across Middle lake in Surprise valley, in Modoc county, California.

§ 2. The work of locating, surveying and constructing said highway shall be under the management and control of the state department of engineering, and it shall be

the duty of said state department of engineering to start the survey, location and construction at a point east of Cedarville, in Modoc county, California, at the shore of Middle lake; thence across the bed of said lake a distance of about two miles to connect with a road leading from Forty-nine canyon into the state of Nevada.

§ 3. The state controller is hereby instructed and directed to draw his warrants in such amounts and at such times as the department of engineering may present claims therefor, and the state treasurer is directed to pay the same.

HIGHWAY FROM PESCADERO TO CALIFORNIA REDWOOD PARK.

ACT 1943c—An act to provide for locating, surveying and maintaining a highway from Pescadero in the county of San Mateo to the California Redwood Park in Santa Cruz county, and making an appropriation therefor.

History: Approved June 12, 1915. In effect August 11, 1915. Stats. 1915, p. 1529.

Highway, Pescadero to Redwood Park.

§ 1. That a highway shall be constructed from Pescadero in the county of San Mateo to the California Redwood Park, in the county of Santa Cruz.

Responsibility of state.

§ 2. The responsibility of the state of California in the location, survey, construction and maintenance of said highway shall cease with the expenditure of the appropriation herein contained.

Work under control of engineering department.

§ 3. The work of locating, surveying and constructing said highway, to the extent of the expenditure of the appropriation herein contained is hereby placed under the management and control of the state department of engineering, and it shall be the duty of said department, to the extent of such expenditure to locate, survey and construct said highway along the route above described, with such variations as will, in the opinion of said department, be deemed advisable.

Appropriation.

§ 4. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of ten thousand dollars to be expended under the supervision of said state department of engineering for the location, survey and construction of said highway. Said appropriation shall be available as set forth in section 5 hereof, only in the event that the board of supervisors of the county of San Mateo file with the state controller resolutions pledging said county to the completion and maintenance of said highway.

§ 5. The state controller is hereby directed to draw his warrants in such sums and at such times as the state engineer may present claims therefor, and the state treasurer is directed to pay the same.

PASADENA STATE HIGHWAY.

ACT 1943d—An act making an appropriation for the location and survey of a state highway, to be known as the Pasadena state highway.

History: Approved June 9, 1915. In effect August 8, 1915. Stats. 1915, p. 1379.

Appropriation: highway, La Cañada to Antelope.

§ 1. There is hereby appropriated out of any money in the state treasury not otherwise appropriated the sum of seventy-five hundred dollars (\$7500) for the location and

survey of a state highway to connect the La Cañada valley in Los Angeles county with the Antelope valley in said county, to be known and designated as the Pasadena state highway.

§ 2. The work of locating and surveying said highway shall be under the management and control of the state department of engineering, and it shall be the duty of the said department of engineering to start survey from a point about two miles north-east from La Cañada; thence following north and northwesterly the Arroyo Seco to a point east of Hoyt ranch; thence northeasterly following Tujunga canyon and Mill creek to Tie canyon; thence northwesterly by the way of Kennedy springs to Vincent, all in the county of Los Angeles, state of California.

STATE HIGHWAY FROM SARATOGA GAP TO CALIFORNIA REDWOOD PARK.

ACT 1943e—An act to provide for the survey and construction of a state highway from Saratoga Gap, on the line between the counties of Santa Clara and Santa Cruz, to, into and within California Redwood Park in Santa Cruz county, and making an appropriation therefor.

History: Approved June 13, 1913. In effect August 10, 1913. Stats. 1913, p. 855.

Appropriation: state highway, Saratoga Gap to Bloom's mill.

§ 1. There is hereby appropriated out of any money in the state treasury not otherwise appropriated, the sum of seventy thousand dollars for the survey and construction of a state highway from a point known as Saratoga Gap on the line between the counties of Santa Clara and Santa Cruz, extending thence by the most practicable route in a generally southwesterly direction along the ridge between the San Lorenzo and Pescadero creeks to the present boundary of the California Redwood Park, thence into the California Redwood Park in Santa Cruz county to Governor's Camp, and thence through said park to the boundary thereof at Bloom's mill.

Right of way.

§ 2. No portion of this appropriation shall be available until a strip of land or right of way not less than two hundred feet in width for said road, along said route from the Santa Clara county line to the present boundary of said California Redwood Park has been deeded to or otherwise acquired by the state of California to form a part of said California Redwood Park.

Work under department of engineering.

§ 3. The work of locating, surveying and constructing said highways is hereby placed under the management of the state department of engineering, and it shall be the duty of the said department to locate, survey and construct said road along the route herein mentioned, subject to the approval of said California Redwood Park commission.

State controller directed to draw warrant.

§ 4. The state controller is hereby directed to draw his warrant in such sums and at such times as the state engineer may present claims therefor and the state treasurer is hereby directed to pay the same.

STATE HIGHWAY FROM SAN BERNARDINO TO REDLANDS.

ACT 1944—An act declaring and establishing a state highway from the city of San Bernardino, by way of Arrowhead avenue, Waterman canyon, the "Crest drive" and Mill creek to the city of Redlands.

History: Approved May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1314.

State highway established.

§ 1. A certain highway in San Bernardino county, running substantially as follows:

Beginning at a point in Waterman canyon at the termination of the pavement of the San Bernardino county highway system, thence following the meanderings of the road known as the "Crest drive" into Bear valley, ending at a point directly opposite the most easterly point of Bear lake.

The entire length thereof is hereby declared to be and the same is hereby constituted a state highway, and the same is hereby placed under the supervision and control of the state board of engineering; provided, that the said state board of engineering is empowered and authorized to change the route of said highway whenever and wherever it may deem wise.

TAKING OVER ROAD IN BOULDER CREEK TOWNSHIP, SANTA CRUZ COUNTY.

ACT 1944a—An act providing for the taking over by the state of California of a certain road in Boulder Creek township, county of Santa Cruz, and for the maintenance and improvement of the same as a state road under the supervision of the state department of engineering.

History: Approved May 29, 1917. In effect July 28, 1917. Stats. 1917, p. 1325.

Road conveyed to state.

§ 1. The board of supervisors of the county of Santa Cruz, state of California, is hereby authorized to transfer and convey unto the state of California, that certain road situate in Boulder Creek township, county of Santa Cruz, state of California, and described as follows, to wit: Beginning at the intersection of Main and Lorenzo streets in the town of Boulder Creek, thence running in a northwesterly direction over the present traveled road to the Sequoia schoolhouse; thence running over the road known as the Boulder Creek and state park road to the easterly boundary of the California Redwood Park; length of road, nine and one-half miles; and to execute on the part of said county of Santa Cruz, a deed to the state of California to carry into effect such transfer and conveyance.

The state department of engineering, through the state engineer, is hereby authorized and directed to accept said deed and said road on behalf of the state of California.

Improvement by department of engineering.

§ 2. Upon the acceptance of such deed, the said department of engineering shall improve and maintain said road as a state road and any expense incurred in such work after the date of the acceptance of said deed, shall be a proper charge against any money in the state treasury available for the improvement and maintenance of state roads.

HIGHWAY BETWEEN SUSANVILLE AND THE NEVADA LINE.

ACT 1944b—An act making an appropriation for the survey, location and construction of a highway between Susanville in Lassen county and a point on the line between California and Nevada, approximately two miles east of Constantia in said county.

History: Approved June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1611.

Appropriation: highway in Lassen county.

§ 1. Out of any money in the state treasury not otherwise appropriated, there is hereby appropriated the sum of sixty thousand dollars for the survey, location and construction of a highway by the most direct and feasible route, to follow as nearly as practicable the line of the road as it now exists, running in an easterly direction from

Susanville in Lassen county to a point on the line between California and Nevada, approximately two miles east of Constantia, in said county; provided, however, that the money hereby appropriated shall not become available until there is also available a like sum provided by the county of Lassen for the same purpose.

§ 2. The work of locating, surveying and constructing said road is placed under the management and control of the state department of engineering.

HIGHWAY FROM TRUCKEE TO THE NEVADA LINE.

ACT 1945—An act declaring and establishing a state highway from the town of Truckee running in a northeasterly direction along the present traveled road to the Nevada state line near Verdi.

History: Approved April 15, 1919. In effect July 22, 1919. Stats. 1919, p. 102.

State highway to Nevada.

§ 1. A certain highway in Nevada and Sierra counties, running substantially as follows: From a point in the town of Truckee, where the present state highway branches at the subway under the Southern Pacific tracks, going toward Lake Tahoe, continuing through the town of Truckee, crossing Prosser creek and over what is known as the "Dog Valley grade," as far as the state line about one mile northwest of Verdi, Nevada, a distance of twenty-two and one-half miles, more or less.

The entire length thereof, is hereby declared to be and the same is hereby constituted a state highway, and the same is hereby placed under the supervision and control of the state highway commission of the state department of engineering; provided, that the said state department of engineering is empowered and authorized to change the route of said highway whenever and wherever it may be expedient.

HIGHWAY FROM BUTTE COUNTY HIGHWAY TO WILLOWS.

ACT 1945a—An act declaring and establishing a state highway between the present state highway in Butte county and the present state highway in Glenn county, over existing county roads passing through Butte city and Glenn post office to Willows.

History: Approved May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1190.

State highway established.

§ 1. That certain highway beginning at a point on the present state highway in Butte county about three miles northerly of the town of Biggs, thence extending westerly and crossing Cherokee canal and Butte creek and extending through Butte city and across the Sacramento river; thence northerly to Glenn post office; thence westerly to the town of Willows in Glenn county and the entire length thereof is hereby declared to be and the same is hereby constituted a state highway and said road is hereby placed under the supervision and control of the state department of engineering; provided, that the said department of engineering is empowered and authorized to improve the said road and to change the route thereof whenever and wherever it may deem expedient.

DECLARING HIGHWAY FROM LONG BARN TO SONORA A STATE HIGHWAY.

ACT 1945b—An act declaring the public highway extending from Long Barn in Tuolumne county to the eastern boundary of the city of Sonora to be a public state highway.

History: Approved May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1069.

Sonora and Mono road declared state highway.

§ 1. All that portion of the public highway commencing at the end of the Sonora and Mono state highway at Long Barn in Tuolumne county and leading therefrom to

the eastern boundary of the city of Sonora and known as the Sonora and Mono road, is hereby declared to be a state highway and placed under the management and control of the department of engineering; and it shall be the duty of the said department to locate, survey, construct and reconstruct the same, with such variations as may, in the opinion of said department, be advisable.

Improvement.

§ 2. The said department is authorized and directed to take such steps as may be necessary to acquire for the state all rights of way, roads, culverts, bridges, quarries, timber, tools, machinery and appliances necessary for the construction and improvement of the said highway; provided, however, that no public corporation or political subdivision of the state shall receive any compensation on account of said road.

REPORT ON ROAD LAWS.

ACT 1946—An act providing for an investigation by the legislative counsel of laws relating to roads, streets, highways and bridges, and for the submission of a report thereon to the governor for presentation to the legislature.

History: Approved March 25, 1919. In effect July 22, 1919. Stats. 1919, p. 18.

Report on road laws by legislative counsel.

§ 1. The legislative counsel is hereby directed to investigate and study the existing laws of this and other states relating to roads, streets, highways and bridges, and to prepare a report, accompanied by a draft of an act or acts, codifying and perfecting the laws of this state relating thereto. Such report shall be printed by the superintendent of state printing and shall be submitted to the governor on or before the first day of November in the year 1920, and shall be presented by him to the legislature at the opening of its forty-fourth session.

HILLSBOROUGH.

See Act 3094, note.

CHAPTER 145.

HISTORIC PROPERTY.

References: Erection of commemorative tablets, or monuments at historic spots or places. See, Kerr's Cyc. Political Code, § 4052c.

CONTENTS OF CHAPTER.

- ACT 1950. ACQUISITION, PRESERVATION, ETC., OF CERTAIN HISTORIC PROPERTIES.
- 1951. CALIFORNIA HISTORICAL SURVEY COMMISSION.
- 1952. BOARD OF TRUSTEES OF THE PIO PICO MANSION.
- 1953. RECORD OF CALIFORNIA IN GREAT WAR.

ACQUISITION, PRESERVATION, ETC., OF CERTAIN HISTORIC PROPERTIES.

ACT 1950—An act to provide for the acquisition of the old mission at Sonoma, of Fort Ross property, of the landing-place at Monterey of Junipero Serra, and the old theater property at Monterey, and providing for the preservation, maintenance, protection and improvement of said properties.

History: Approved February 21, 1905, Stats. 1905, p. 17.

Acquisition of Fort Ross.

§ 1. The board of Sutter's Fort trustees, created and existing under an act entitled "An act to provide for the appointment of a board of Sutter's Fort trustees, and the acquisition of the Sutter Fort property, and providing for an appropriation for the preservation, protection and improvement of said property," approved March seventh,

eighteen hundred and nintey-one, are hereby authorized to receive and accept from William Randolph Hearst, trustee of the Landmarks Fund, without cost to the state, the possession and title to the old mission at Sonoma and Fort Ross in the county of Sonoma.

Preservation, maintenance, protection and improvement of property.

§ 2. The said board of Sutter's Fort trustees shall provide for the preservation, maintenance, protection and improvement of the property hereinbefore described, in such way and manner as in their judgment may seem best and proper.

Acquisition of landmarks at Monterey.

§ 3. The board of Monterey customhouse trustees created and existing under an act entitled "An act to provide for the appointment of a board of Monterey customhouse trustees and for the acquisition and control of the Monterey customhouse property, and providing for an appropriation for the preservation, protection and improvement of said property," approved March sixteenth, nineteen hundred and one, are hereby authorized to receive and accept from William Randolph Hearst, trustee of the Landmarks Fund, without cost to the state, possession and title to the landing-place at Monterey of Junipero Serra, in the county of Monterey, and old theater property at Monterey, in the county of Monterey.

Preservation, maintenance, protection and improvement of property.

§ 4. The said board of Monterey customhouse trustees shall provide for the preservation, maintenance, protection and improvement of the property last before described, in such way and manner as in their judgment may seem best and proper.

§ 5. This act shall take effect immediately.

CALIFORNIA HISTORICAL SURVEY COMMISSION.

ACT 1951—An act to create a commission for the purpose of making a survey of local historical material in the state of California; defining the power and duties of said commission; and making an appropriation therefor.

History: Approved June 12, 1915. In effect August 11, 1915. Stats. 1915, p. 1528. Amended May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 572.

Historical survey commission.

§ 1. There is hereby established a California historical survey commission composed of three members to be chosen as hereinafter provided.

§ 2. The members of this commission shall be appointed by the governor of the state of California; provided, only that one of the members of said commission shall be nominated by board of regents of the University of California, and that one of the members of said commission shall be nominated by the board of grand officers of the Order of Native Sons of the Golden West; all nominations however shall be subject to approval by the governor.

Term.

§ 3. The commissioners first named shall be appointed for terms ending July 1, 1916, and their successors shall be appointed for a term of two years; the said commissioners to serve without salary.

Purpose of commission. Models of mission buildings. Notice.

§ 4. The purpose of this commission shall be to make a survey of the material on local history within the state of California by investigating documents in local depositories and in the possession of private individuals and other sources of original infor-

mation on the early history of the state of California and to compile, keep and publish a record of such sources of information; and to investigate and acquire information as to the physical characteristics of the several missions which were maintained in the state of California under the charge of the Franciscan Fathers prior to the time of the secularization thereof, and to cause to be made a record thereof, and to be created models of the several mission buildings and outbuildings connected therewith, which shall be accurate representations of the mission buildings and outbuildings connected with the same as they were at the time when the Franciscan Fathers were in charge, and the same shall be known respectively as the California Model of each particular mission in question, and the said commission shall cause to be prepared plans and specifications sufficient in detail to enable any of said buildings and outbuildings to be restored, and the commission shall have authority to pass upon and determine the relative accuracy of information to be obtained and to establish for the state the models and plans and specifications thereof; provided, however, that no model shall thus be established as the correct model of any mission unless the said commission shall first have published for a period of at least sixty days a notice to the public fixing a time and place at which any person interested in the said respective mission, or having information as to the condition of said mission buildings, or any part thereof, may present to the commission facts, papers, documents, records or other information substantiating the said person's ideas as to the condition of said mission buildings at the time in questions, which notice must be published in one newspaper in the city of San Francisco, one newspaper in the city of Sacramento, one newspaper in the city of Los Angeles, and one newspaper in the county in which said mission building was situated. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 572.]

Powers.

§ 5. This commission shall have power to organize the work of the commission; to appoint such assistants as it shall deem necessary, and to fix their compensation; and to spend such other moneys as it may deem advisable, but no expenditure of money by the commission shall exceed the amount appropriated by this act; to make and enforce rules governing this commission and to do such other things as shall be necessary to carry out the provisions and the purposes of this act.

§ 6. This commission shall meet at such times and places within the state of California, as may be expedient and necessary for the proper performance of its duties, such times and places to be designated and determined by this commission.

Appropriation.

§ 7. The sum of ten thousand dollars or so much thereof as may be necessary, is hereby appropriated out of any money in the state treasury, not otherwise appropriated, to be expended in accordance with law for the purposes of this act.

BOARD OF TRUSTEES, PIO PICO MANSION.

ACT 1952—An act to provide for the appointment of a board of Pio Pico mansion trustees and for the acquisition of the Pio Pico mansion property; and making an appropriation for the preservation and protection of said property.

History: Approved June 1, 1915. In effect August 8, 1915. Stats. 1915, p. 1056. The act of May 14, 1917, Stats. 1917, p. 530, appropriated \$900 to carry out the purposes of this act.

Pio Pico mansion trustees created.

§ 1. There is hereby created the board of Pio Pico mansion trustees, which shall consist of three members, at least two of whom shall be residents of Los Angeles county. Within thirty days after this act shall go into effect the governor shall appoint one member of said board for the term of two years and two members for the term of four

years. Thereafter each member shall be appointed by the governor and shall hold office for four years and until his successor is appointed and qualified. Vacancies shall be filled by appointment in the same manner for an unexpired term.

President and secretary. Compensation.

§ 2. Immediately upon their appointment said board of Pio Pico mansion trustees shall organize by electing a president, a secretary, and a treasurer from their number. When empowered by the said board, the said president and secretary may do and perform all things pertaining to the duties of the board. No member of the board shall receive any compensation for his services, but shall be reimbursed his actual necessary expenses incurred when traveling on the business of the board.

Authorized to receive mansion.

§ 3. The said board of Pio Pico mansion trustees are hereby authorized to receive and accept from the city of Whittier without cost to the state, the possession of and the title to that certain property known as Pio Pico mansion and grounds, and which is particularly described as—

All that certain real property situate in the county of Los Angeles, state of California, described as follows:

Beginning at a point marked by a 2 x 2 pine stake which is N. 61° 13' W. eighteen feet from a point which is S. 39° W. 184.50 feet from the most easterly corner of the lot conveyed to the city of Whittier by deed recorded in book 1300, page 77 of deeds of Los Angeles county records; thence N. 61° 13' W. 97 feet to a 1¼-inch pipe; thence S. 39° 47' W. 165 feet to a 2 x 2 pine stake; thence S. 61° 13' E. 97 feet to a 2 x 2 pine stake; thence S. 61° 13' E. 97 feet to a 2 x 2 pine stake; thence N. 39° 47' E. 165 feet to the place of beginning, the same lying and being in lot 24 Rancho Ranchito or Paso de Bartolo in the county of Los Angeles, state of California, and being that proportion of lot 24 as shown on Map A, attached to a decree in partition of a portion of said rancho in case No. 21613, superior court records of the county of Los Angeles, state of California, recorded in book 999, page 81 et seq., of deeds;

Together with all and singular tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof;

Conditions of transfer.

To have and to hold, all and singular, the said premises, together with the appurtenances for and during so long a period of time as said mentioned and herein described property shall be used for the purposes of a museum, and so long as they shall keep in good order, condition and repair such building or buildings as are now on said property wherein shall be deposited and kept, collected, preserved and cared for such records, books, manuscripts, charts, maps, and other materials as may be deemed worthy of a place in the archives of the said state of California kept and maintained on the property herein conveyed and for no other purpose whatever.

Right of way reserved.

It is understood and agreed that the said city of Whittier shall have the use of the eighteen-foot right of way along the east line of the city land described in said deed and recorded in book 1300, page 77, Los Angeles county deed records, being an eighteen-foot roadway and extending from the county road to the premises described above, and the same being a private roadway for the use of the property by the city of Whittier;

Also, there is reserved to the city of Whittier the water rights thereunder, and the right of way thereon.

Appropriation.

§ 4. Out of any moneys in the state treasury not otherwise appropriated there is hereby appropriated the sum of four hundred dollars, to be expended during the sixty-seventh and sixty-eighth fiscal years in accordance with law for the purpose of carrying out the provisions of section three of this act.

RECORD OF CALIFORNIA IN GREAT WAR.

ACT 1953—An act directing the California historical survey commission to prepare a record of California's part in the war between the United States and the central European powers and to compile biographical sketches of California's citizens who served in the army, navy or marine corps of the United States during said war, and making an appropriation to carry out the purposes hereof.

History: Approved May 23, 1919. In effect July 23, 1919. Stats. 1919, p. 830.

History of California's service in great war.

§ 1. It shall be the duty of the California historical survey commission to prepare and compile for publication a record of California's part in the great war between the United States and the central European powers. It shall be the further duty of the said commission to prepare and compile for publication a book or books in which shall appear a brief biography, together with a picture or likeness if obtainable, of each citizen of the state of California who served in either the army, navy or marine corps of the United States of America at any time during said war.

Appropriation.

§ 2. Out of any money in the state treasury not otherwise appropriated, there is hereby appropriated the sum of five thousand dollars to be expended by the California historical survey commission in carrying out the duties imposed upon it by this act.

CHAPTER 146.**HOGS.**

References: See, generally, tits. "Animals"; "Estrays"; "Livestock"; and "Trespassing Animals."

Hogs running at large in particular counties, see particular title.

HOGS RUNNING AT LARGE IN CERTAIN COUNTIES.

ACT 1954—An act to prevent hogs from running at large in the towns of Susanville, Lassen county, Sutter Creek township number two, Amador county, and Oroville, Butte county.

History: Approved March 23, 1872, Stats. 1871-72, p. 510.

Editor's note.—The code commissioner intimates that this act is affected by the provisions of the general estray law of 1897; but see editor's note to chapter on "Estrays."

ACT 1954a—An act to prevent hogs and goats running at large on certain lands in this state.

History: Approved March 31, 1876, Stats. 1875-76, p. 644. Amended February 15, 1878, Stats. 1877-78, p. 85. The prior act of March 30, 1874, Stats. 1873-74, p. 904, was superseded by the present act.

This act declared it unlawful to allow any hogs or goats to run at large on the lands included in any townsite which has received or may thereafter receive patents under the act of congress granting townsites to unincorporated towns on the public lands. The

act was expressly made applicable to El Dorado, Placer, and San Joaquin counties.

Editor's note: The code commissioner intimates that the act was affected by the provisions of the general estray law of 1897; but see editor's note to chapter on "Estrays."

CHAPTER 147.

HOLIDAYS.

References: Holidays in general, see Kerr's Cyc. Political Code, §§ 10, et seq.; Kerr's Cyc. Code Civil Procedure, §§ 10-13, 76, 134-135; Kerr's Cyc. Civil Code, §§ 7, et seq.

CONTENTS OF CHAPTER.

ACT 1955. HOLIDAYS DECLARED BY MUNICIPALITIES.

1956. LINCOLN'S BIRTHDAY DECLARED A LEGAL HOLIDAY.

1957. LINCOLN'S 100TH BIRTHDAY DECLARED A LEGAL HOLIDAY.

HOLIDAYS DECLARED BY MUNICIPALITIES.

ACT 1955—An act authorizing boards of supervisors or other governing bodies of municipalities to declare holidays.

History: Approved March 23, 1901, Stats. 1901, p. 658.

§ 1. The board of supervisors or other governing body of any county, town, city, or city and county, may declare the day on which a primary or other election is held in such municipality to be a holiday therein.

LINCOLN'S BIRTHDAY DECLARED A LEGAL HOLIDAY.

ACT 1956—An act declaring February 12, the birthday of Abraham Lincoln, a legal holiday and providing for a half-day session in the public schools on such holiday, and for certain exercises in the public schools.

History: Approved April 13, 1909, Stats. 1909, p. 861.

Lincoln day.

§ 1. February 12th, the birthday of Abraham Lincoln, is hereby declared a legal holiday, provided, however, that all the public schools throughout the state shall hold sessions in the forenoon of that day in order to allow the customary exercises in memory of Lincoln; and provided, further, that when February 12th falls on Sunday, then Monday following shall be a legal holiday and shall be so observed; and provided still further, that when February 12th falls on Saturday such exercises in the public schools shall take place on the Friday afternoon preceding.

LINCOLN'S 100TH BIRTHDAY DECLARED A LEGAL HOLIDAY.

ACT 1957—An act declaring Friday, February twelfth, 1909, the 100 birthday of Abraham Lincoln, a legal holiday and providing for a half-day session of the public schools for that day.

History: Approved January 20, 1909, Stats. 1909, p. 2.

§ 1. Friday, February twelfth, 1909, the 100th anniversary of the birth of Abraham Lincoln, is hereby declared a legal holiday, provided, however, that all public schools throughout the state shall hold sessions in the forenoon of that day in order to allow the customary exercises in memory of the martyred president.

§ 2. This act shall take effect immediately.

HOLLISTER.

See Act 3094, note.

HOLTVILLE.

See Act 3094, note.

CHAPTER 148.

HOMESTEADS.

References: Homesteads, see Kerr's Cyc. Civil Code, §§ 1237, et seq.

Homestead Corporations, see Kerr's Cyc. Civil Code, §§ 557, et seq.

Homesteads, probate, see Kerr's Cyc. Code Civil Procedure, §§ 1443, 1474, et seq.

CONTENTS OF CHAPTER.

ACT 1974. FORMATION AND EXTENSION OF HOMESTEAD CORPORATIONS.

FORMATION AND EXTENSION OF HOMESTEAD CORPORATIONS.

ACT 1974—An act supplementary to an act entitled an act to authorize the formation of corporations to provide the members thereof with homesteads, or lots of lands suitable for homesteads, approved May twentieth, eighteen hundred and sixty-one.

History: Approved March 23, 1874, Stats. 1873-74, p. 525. The act to which this was supplementary was approved May 20, 1861, Stats. 1861, p. 567; was amended March 30, 1868, Stats. 1867-68, p. 539; March 29, 1870, Stats. 1869-70, p. 474; was supplemented April 4, 1864, Stats. 1863-64, p. 492; the supplementary act amended March 30, 1868, Stats. 1867-68, p. 539; and was superseded by the code. See Kerr's Cyc. Civil Code, §§ 557, et seq.

Extension of time for homestead corporations.

§ 1. Any corporation formed under the act to which this act is supplemental, whose period of existence is not stated in its articles of incorporation to be ten years, may continue its corporate existence for ten years from the date of filing its articles of incorporation, upon complying with the provisions of this act.

How existence continued.

§ 2. Any such corporation existing on the first day of January, eighteen hundred and seventy-four, may at any time before its period of existence, as stated in its articles of incorporation, shall expire, continue its existence, as stated in section one of this act, by a majority vote of its board of trustees at any meeting of such board, or by a vote of a majority of the stockholders, as the board of trustees may elect. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting and a majority of the directors, must be filed in the office of the clerk of the county where the original articles of corporation are filed, and a certified copy thereof must be filed in the office of the secretary of state; and thereafter the corporation shall continue its existence under the provisions of this act, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations prescribed by the act of which this is supplementary.

§ 3. This act shall take effect from and after its passage.

HOMING PIGEONS.

See Kerr's Cyc. Penal Code, § 598a.

HONEY.

See tits. "Adulteration"; "Apiaries."

CHAPTER 149.

HOPS.

CONTENTS OF CHAPTER.

ACT 1991. FIXING TARE ON BALED HOPS.

FIXING TARE ON BALED HOPS.

ACT 1991—An act fixing rate of tare on baled hops.

History: Approved March 31, 1891, Stats. 1891, p. 452.

§ 1. There shall be allowed on baled hops a tare at the rate of two per centum of the weight of the bale for the cloth and other material used in baling; that is, the tare shall be at the rate of two pounds per hundred on the weight of the bale.

§ 2. This act shall take effect and be in force from and after its passage.

CHAPTER 150.

HORTICULTURE.

References: County boards of horticulture, see Kerr's Cyc. Political Code, §§ 2322, et seq.

State board of horticultural examiners, see Kerr's Cyc. Political Code, § 2322.

State commission of horticulture, see Kerr's Cyc. Political Code, §§ 2319, et seq.

See, generally, tits. "Agriculture"; "Forestry"; "Fruit"; "Viticulture."

CONTENTS OF CHAPTER.

ACT 2001. HORTICULTURAL NOMENCLATURE.

2002. PEAR AND WALNUT BLIGHT INVESTIGATION.

2009. HORTICULTURAL ACT OF 1912.

2010. FRAUDULENT SALE OF FRUIT TREES.

2011. DESTRUCTIVE DISEASES OF CULTIVATED PLANTS.

2012. SALE AND SHIPMENT OF FROSTED CITRUS FRUITS.

2013. DATE PALM DISTRIBUTION AND QUARANTINE.

HORTICULTURAL NOMENCLATURE.

ACT 2001—An act to provide for the proper naming of trees, seeds, plants, and vines, sold, offered, or exposed for sale in this state and providing a penalty for the violation of this act.

History: Approved March 3, 1905, Stats. 1905, p. 44.

Penalty for false naming.

§ 1. All trees, seeds, plants and vines, sold, offered or exposed for sale in the state of California shall be properly named as to variety and kind, and any person knowingly selling, trading, or exchanging, or offering or exposing for sale any trees, seeds, plants or vines falsely named as to variety and kind shall be guilty of a misdemeanor, and shall be liable to a fine of not less than ten dollars, nor more than three hundred dollars.

PEAR AND WALNUT BLIGHT INVESTIGATION.

ACT 2002—An act to provide for an investigation of the nature of the diseases known as pear blight and walnut blight and to prevent, eradicate, and procure a cure for the same and to cause to be prosecuted experimental and research work in the field of viticulture, directing publication of the results of such experiments and investigations, making an appropriation therefor and prescribing the duties of the controller and treasurer in relation thereto.

History: Approved March 18, 1905, Stats. 1905, p. 124.

Viticulture; experimental and research work in the field. Pear blight, prevention and suppression of. Walnut blight, remedy for.

§ 1. The regents and the president of the University of California are hereby directed to cause to be prosecuted with all possible diligence, in connection with and in

addition to the work heretofore carried on by the agricultural experiment station, experimental and research work in the field of viticulture, including both cultural and industrial processes. They are directed to ascertain the adaptation of the various kinds of vines to the several climatic and soil conditions of the state, with the special reference to those stocks for propagating purposes, resistant to the phylloxera, and to further their adaptability and utility as grafting stocks for producing wine, raisin and table grapes. They are directed to ascertain the best methods of grafting and propagating said stocks and vines together with the most important methods of vinification and preparation, manufacture and application of yeasts in vinification and distillation. They are further directed to report upon the utilization of the by-products of the vineyard and winery, the study and treatment of the vine diseases, and all matters appertaining to the viticultural industry pertinent to the successful conduct of the business and that may be of general public interest, use and profit. They are further directed to publish the result of said experiments and investigations in form of bulletins from time to time, as may seem advisable and not less than two bulletins showing the progress and result of the work, shall be issued in any fiscal year.

And they are further directed to inaugurate an investigation of the cause, nature, and means of suppression or prevention, of the so-called pear blight, a destructive, infectious disease of pear and apple trees. For such investigation said director shall obtain and establish such assistants, equipment, materials, appliances, apparatus and other incidentals as may be necessary to the successful prosecution of the work, within the appropriation specified.

And they are further directed to secure a remedy for the so-called walnut blight. The said regents are hereby authorized to employ an expert and if necessary, to send him abroad to ascertain the cause of this blight and in an endeavor to secure a remedy therefor.

Appropriation.

§ 2. There is hereby appropriated for the use of said experiment station, for the purposes set forth in this act, the sum of twenty thousand dollars (\$20,000).

Expenditure, under whose direction.

§ 3. All money appropriated under this act shall be paid to the regents of the University of California, and expended under the direction of the director of the agricultural experiment station of said university for the specific purposes herein named.

HORTICULTURAL ACT OF 1912.

ACT 2009—An act to provide for the protection of horticulture and to prevent the introduction into this state of insects or diseases, or animals, injurious to fruit or fruit trees, vines, bushes or vegetables, providing for a quarantine for the enforcement of this act, making a violation of the terms of the act a misdemeanor, and providing the penalty therefor; providing that said act shall be an urgency measure and go into effect immediately, and repealing that certain act entitled "An act for the protection of horticulture and to prevent the introduction into this state of insects, or diseases, or animals, injurious to fruit or fruit trees, vines, bushes or vegetables, and to provide for a quarantine for the enforcement of this act," approved March 11, 1899.

History: Approved January 2, 1912, Stats. 1912, p. 433 (second ex. sess.). Prior act of April 9, 1880, Stats. 1880, p. 36, was superseded by, act of March 14, 1881, Stats. 1881, p. 88, was repealed by, the act of March 31, 1897, Stats. 1897, p. 244, which, with its various amendments of 1905 (Stats. 1905, p. 297) and 1907 (Stats. 1907, p. 112) was superseded by the code, see Kerr's Cyc. Political Code, §§ 2322-2322e. Prior act of March 9, 1885, Stats. 1885, p. 40, was superseded by the act of March 11, 1899, Stats. 1899, p. 91, which was amended February 19, 1903, Stats. 1903, p. 32, and repealed by the present act.

Inspection of articles brought into state. Notice of arrival required. Authority of inspector. Disinfection. Nothing to be removed prior to infection.

§ 1. Any person, persons, firm or corporation who shall receive, bring or cause to be brought into the state of California, any nursery stock, trees, shrubs, plants, vines, cuttings, grafts, scions, buds or fruit pits, or fruit or vegetables, or seed, shall immediately after the arrival thereof notify the state commissioner of horticulture, or deputy quarantine officer, or quarantine guardian of the district or county in which such nursery stock, or fruit or vegetables or seed are received, of their arrival, and hold the same without unnecessarily moving the same, or placing such articles where they may be harmful, for the immediate inspection of such state commissioner of horticulture, or deputy quarantine officer or guardian. If there is no quarantine guardian or state horticultural quarantine officer in the county where such nursery stock or fruit or vegetable, or seed is received, it shall then be the duty of such person, persons, firm or corporation to notify the state commissioner of horticulture, who shall make immediate arrangements for their inspection. The state commissioner of horticulture, deputy quarantine officer, quarantine guardian or such person or persons as shall be commissioned by the state commissioner of horticulture to make such inspection, or to represent said commissioner, is hereby authorized and empowered to enter at any time into any car, warehouse, depot or upon any ship within the boundaries of the state of California whether in the stream or at the dock, wharf, dock, mole, or any other place where such nursery stock or fruit or vegetables or seed or other described articles are received or in which such nursery stock or fruit or vegetables or seed is imported into the state, for the purpose of making the investigation or examination to ascertain whether such nursery stock, trees, shrubs, plants, vines, cuttings, grafts, scions, buds, fruit pits, fruit, vegetables or seed is infested with any species of injurious insects, or their eggs, larvae or pupae or other animal or plant disease.

If after such examination or inspection, any of the said described articles are found to be so infested or infected as aforesaid, then it shall be the duty of the owner, owners, or persons, firm or corporation having charge or possession thereof to so disinfect at his or their expense such portion or portions of the ship, dock, wharf, mole, car, warehouse or depot where said articles may have been located in such a manner as to destroy all infection or infestation present or that is liable to be present, and all articles or packages or soils apt to be so infested or infected shall be held until the said articles or packages or soils have been thoroughly disinfected and all injurious insects, or their eggs, larvae or pupae or other animal or plant disease have been eradicated and destroyed; provided, however, that all articles of nursery stock, trees, shrubs, plants, vines, cuttings, grafts, scions, buds, fruit pits, fruits, vegetables or seed which are infested or infected with such species of injurious insects or their eggs, larvae or pupae or other animal or plant disease which may be or be liable to be injurious to the orchards, vineyards, gardens or farms within said state, shall be destroyed or reshipped out of the state as hereinafter provided. The said officer so making such inspection shall not permit any of the described articles so coming in contact with said infested or infected articles or any articles which might convey infection or infestation to be removed or taken from any such car, warehouse, depot, ship, dock, wharf or any other place until after such infection or infestation shall have been destroyed.

Marking required on articles undergoing shipment.

§ 2. Each carload, case, box, package, crate, bale or bundle of trees, shrubs, plants, vines, cuttings, grafts, scions, buds or fruit pits, or fruit or vegetables or seed, imported or brought into this state, shall have plainly and legibly marked thereon in a conspicuous manner and place the name and address of the shipper, owner, or owners or person forwarding or shipping the same, and also the name of the person, firm or corporation to whom the same is forwarded or shipped, or his or its responsible agents,

also the name of the country, state or territory where the contents were grown and a statement of the contents therein.

Destruction of infected or infested articles. Shipment out of state of articles found infected or infested.

§ 3. When any shipment of nursery stock, trees, vines, plants, shrubs, cuttings, grafts, scions, buds, fruit pits or seed or vegetables or fruit, imported or brought into this state, is found infested or infected with any species of injurious insects, or their eggs, larvae or pupae or other animal or plant disease or there is reasonable cause to presume that they may be so infested or infected, which would cause damage, or be liable to cause damage, to the orchards, vineyards, gardens or farms of the state of California, or which would be or be liable to be detrimental thereto or to any portion of said state, or to any of the orchards, vineyards, gardens or farms within said state such shipment shall be immediately destroyed by the state commissioner of horticulture, his deputy quarantine officer, quarantine guardians or other person or persons, who shall be commissioned by the state commissioner of horticulture to make such inspection; provided, however, that if the nature of the injurious insects, or their eggs, larvae, pupae or animal or plant disease be such that no damage or detriment can be caused to the said orchards, vineyards, gardens or farms of California or any of the same by the shipment of the same out of the state, then the said state commissioner of horticulture, his deputy quarantine officer, quarantine guardians or other person or persons who shall be commissioned by the state commissioner of horticulture to make such inspection, and who shall make such inspection, shall notify the owner or person, firm or corporation having possession or control of said articles to ship the same out of the state within forty-eight hours after such notification, and it shall be the duty of such owner or owners, or person, firm or corporation, to so ship said articles, but such shipment shall be under the sole direction and control of the officer so making the inspection and shall be at the expense of the owner or owners, his or their agent or agents, and for a failure to comply with such notice such owner or owners, his or their agent or agents shall be deemed guilty of a violation of the terms of this act and be punished accordingly and immediately after the expiration of the time specified in said notice said articles shall be seized and destroyed by said officer at the expense of the said owner or owners, his or their agent or agents.

Shipment passing through state.

§ 4. When any shipment of nursery stock, trees, vines, plants, shrubs, cuttings, grafts, scions, fruit, fruit pits, vegetables or seed, or any other horticultural or agricultural product passing through any portion of the state of California in transit, is infested or infected with any species of injurious insects, their eggs, larvae or pupae or animal or plant disease, which would cause damage, or be liable to cause damage to the orchards, vineyards, gardens or farms of the state of California, or which would be, or be liable to be, detrimental thereto or to any portion of said state, or to any of the orchards, vineyards, gardens or farms within said state, and there exists danger of dissemination of such insects or disease while such shipment is in transit in the state of California, then such shipment shall be placed within sealed containers, composed of metallic or other material, so that the same can not be broken or opened, or be liable to be broken, or opened, so as to permit any of the said shipment, insects, their eggs, larvae or pupae or animal or plant disease to escape from such sealed containers and the said containers shall not be opened while within the state of California.

Fruit fly.

§ 5. No person, persons, firm or corporation shall bring or cause to be brought into the state of California any fruit or vegetable or host plant which is now known to be,

or hereafter may become a host plant or host fruit of any species of the fruit fly family Trypetidae from any country, state or district where such species of Trypetidae is known to exist and any such fruit, vegetable, or host plant, together with the container and packing, shall be refused entry and shall be immediately destroyed at the expense of the owner, owners or agents.

Peach yellows or peach rosette.

§ 6. No person, persons, firm or corporation shall bring or cause to be brought into the state of California any peach, nectarine, or apricot tree or cuttings, grafts, scions, buds or pits of such trees, or any trees budded or grafted upon peach stock or roots that have been in a district where the disease known as "peach yellows" or the contagious disease known as "contagious peach rosette" are known to exist, and any such attempting to land or enter shall be refused entry and shall be destroyed or returned to the point of shipment at the option of the owner, owners or agent, and at his or their expense.

Injurious animals.

§ 7. No person, persons, firm or corporation shall bring or cause to be brought into the state of California any injurious animals known as English or Australian wild rabbit, flying fox, mongoose or any other animal or animals detrimental to horticultural or agricultural interests.

Penalty.

§ 8. Any person, persons, firm or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for a period not exceeding six months, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Act an urgency measure.

§ 9. It is hereby determined and declared that this act and each and all of the provisions thereof, constitute and is an urgency measure necessary for the immediate preservation of the public safety and health. The facts constituting such necessity are as follows: There now exist in various islands and territory in close proximity to the state of California dangerous and injurious fruit and plant diseases and insects and animals, and heretofore fruits, vegetables, plants, seeds and other articles of horticulture and agriculture from said islands and territory have been and now are being shipped and brought into the state of California, which are to a large extent infested and infected with dangerous and injurious fruit and plant diseases and insects, their eggs, larvae and pupae, and which if continued to be brought into the state will cause great danger to the public health, and will greatly damage the horticultural and agricultural interests of said state, and will also be detrimental to the public health, and this act is necessary to provide ample power to prevent the introduction of such insects and diseases and injurious animals into the state and to prevent the spread of such disease, insects and animals.

Repeal of former law.

§ 10. That certain act entitled "An act for the protection of horticulture, and to prevent the introduction into this state of insects, or disease, or animals, injurious to fruit or fruit trees, vines, bushes, or vegetables, and to provide for a quarantine for the enforcement of this act," approved March 11, 1899, is hereby repealed.

In effect immediately.

§ 11. This act, being an urgency measure as above set forth, shall take effect and be in full force immediately from and after its passage.

1. Constitutionality—Exercise of judicial power by executive officer.—The act of 1881 was held to be constitutional, a proper exercise of the police power and that the action of the horticultural commissioners in determining whether a particular place was a nuisance or not was not an exercise of judicial power within the meaning of article III of the constitution.—County of Los Angeles v. Spencer, 126 Cal. 670, 77 Am. St. Rep. 217, 59 Pac. 202.

2. Same.—The act of 1897 was constitutional.—County of Riverside v. Butcher, 133 Cal. 324, 65 Pac. 745.

3. Same—"All places, orchards, nurseries," "Pests injurious to plants," nuisances.—"All places, orchards, nurseries," etc., infected with "scale insects, or codlin moth, or other pests injurious to fruit plants," constitute nuisances in fact, and it was within the power of the legislature so to declare.—County of Los Angeles v. Spencer, 126 Cal. 670, 77 Am. St. Rep. 217, 59 Pac. 202.

4. Procedure—Complaint.—A complaint in an action to foreclose the lien given the act of 1897 which alleges service upon an agent in charge and in possession of the premises, requiring him to destroy the scale and insects within ten days after such service shows a sufficient service under the act.—County of Riverside v. Butcher, 133 Cal. 324, 65 Pac. 745.

5. Same—Same—Prayer.—The fact that the prayer of the complaint to enforce the lien under the act of 1897 asks for a personal judgment does not vitiate the complaint.—County of Riverside v. Butcher, 133 Cal. 324, 65 Pac. 745.

5a. Expenses of fumigation.—As to liability of owner of infected orchard for the expenses of fumigation.—County of San Bernardino v. Stewart, 173 Cal. 253.

6. Lien—Notice.—The fact that the notice states that the county claims the benefit of the mechanics' lien law and others does not vitiate the claim of lien allowed by the act of 1897.—County of Riverside v. Butcher, 133 Cal. 324, 65 Pac. 745.

7. Same—Time of accrual.—The right of the county to the lien given by the act of 1897 accrues when it pays the expense of destroying the scale or insects, and not when the work is done, and the county has thirty days after such accrual to file its notice.—County of Riverside v. Butcher, 133 Cal. 324, 65 Pac. 745.

8. Same—Not a delinquent tax.—The lien given by the act for the expense of abating the nuisance, is for an indebtedness due the county, and is not a delinquent tax, and its enforcement in the manner prescribed by the act is not without due process of law.—County of Los Angeles v. Spencer, 126 Cal. 670, 77 Am. St. Rep. 217, 59 Pac. 202.

FRAUDULENT SALE OF FRUIT TREES.

ACT 2010—An act prohibiting the sale of any fruit tree or fruit trees of a certain kind, variety or description and the delivery thereafter with the intent to deceive to the purchaser of a fruit tree or fruit trees of a different kind, variety or description, and providing penalties for the violation thereof, and prescribing the time within which prosecutions under this act may be commenced.

History: Approved March 15, 1907, Stats. 1907, p. 275.

§ 1. It shall be unlawful for any person, persons, firm or corporation, acting either as principal or agent, to sell, to any person, persons, firm or corporation any fruit tree or fruit trees representing same to be of a certain kind, variety and description and thereafter to deliver to such purchaser in filling such order and in completing such sale a fruit tree or fruit trees of a different kind, variety or description than the kind, variety or description of such fruit tree or fruit trees so ordered and sold.

§ 2. Any person violating any provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than fifty (\$50) dollars, nor more than five hundred (\$500) dollars, or by imprisonment in the county jail for not less than twenty days or more than six months, or by both fine and imprisonment.

§ 3. Prosecutions under this act may be commenced at any time within seven years from the time of the delivery of such fruit tree or fruit trees mentioned in section one.

§ 4. This act shall take effect and be in force from and after its passage.

DESTRUCTIVE DISEASES OF CULTIVATED PLANTS.

ACT 2011—An act providing for the investigation of the nature and means of control of destructive diseases of cultivated plants in those portions of the state not benefited by the Southern California Pathological Laboratory, and making an appropriation therefor.

History: Approved April 26, 1909, Stats. 1909, p. 1092.

Investigation of tree diseases.

§ 1. The regents and the president of the University of California are hereby directed to maintain in connection with the agricultural experiment work of the university in those portions of the state not benefited by the Southern California Pathological Laboratory, a scientific station or laboratory with the necessary equipment for the investigation of the nature and means of control of injurious and destructive diseases of cultivated trees, plants and crops.

Information to growers.

§ 2. They are directed to make or cause to be made investigations of such troubles as pear blight, peach blight, olive knot, apricot failures, pear scab, apple diseases, root rot, root knot, diseases of tomatoes, potatoes, asparagus, onions and other vegetables, and such other plant diseases as may be called to their attention. They shall also furnish information and practical demonstrations to the growers of these crops as to the best means of control for such diseases.

Appropriation.

§ 3. The sum of fifteen thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated to be expended by the regents of the University of California in carrying out the purposes of this act and the state controller is hereby authorized and directed to draw his warrant for the same, payable to the regents of the University of California, and the treasurer of the state is hereby directed to pay such warrant.

SALE AND SHIPMENT OF FROSTED CITRUS FRUITS.

ACT 2012—An act regulating the sale and shipment of citrus fruits damaged by frost, and prescribing penalties for the violation of the provisions thereof.

History: Approved May 3, 1915. In effect August 8, 1915. Stats. 1915, p. 328.

Unlawful to ship citrus fruit showing certain per cent of drying.

§ 1. It is unlawful for any person, firm or corporation to ship, offer for shipment, sell or offer for sale citrus fruits in boxes or in bulk, if the contents of any package, or if the fruit in bulk contains fifteen per cent or more of citrus fruits which on a transverse section through the center, shows a marked drying in twenty per cent or more of the exposed pulp.

Commissioner of horticulture to enforce law.

§ 2. It shall be the duty of the commissioner of horticulture and his deputies to enforce the provisions of this act and bring to the notice of the proper authorities any violation thereof. The commissioner and his deputies shall have full power to enter any place where oranges, lemons, or grapefruit are grown, picked, packed, shipped or offered for shipment, sold or offered for sale, to inspect such place or any part thereof.

§ 3. Any person, firm or corporation violating any provision of this act is guilty of a misdemeanor.

DATE PALM DISTRIBUTION AND QUARANTINE.

ACT 2013—An act to regulate the distribution of date palms and date palm offshoots and to hold the same in quarantine under the supervision of the state commissioner of horticulture until they are free from Marlatt scale (*Phoenicococcus marlatti*) and Blanchard scale (*Parlatoria blanchardii*) when introduced from, or grown in, any infested locality within this state or from other states, or if of foreign introduction, after they have been released by the federal horticultural board, and to fix a penalty for violation of this act.

History: Approved April 1, 1915. In effect August 8, 1915. Stats. 1915, p. 19.

Planting of infested date palms prohibited.

§ 1. It shall be unlawful for any person, or persons, their agent or agents, employee or employees, possessing or owning date palms or date palm offshoots, or who may introduce palms from any region of this state, or any other state, or from foreign countries after they have been released by federal authorities, which are infested with either of the two scales (*Phoenicococcus marlatti*) and (*Parlatoria blanchardii*), to place or plant the same except under the supervision and direction of the state quarantine guardian of the county where the said date palms or date palm offshoots have been introduced.

Unlawful to remove palms.

§ 2. It shall also be unlawful for any person, or persons, their agent or agents, employee, or employees, to move any date palms or date palm offshoots after the same have been planted until permission is granted by the aforesaid state quarantine guardian, or until inspection has shown that the said date palms or date palm offshoots are entirely clean of the Marlatt scale (*Phoenicococcus marlatti*) and the Blanchard scale (*Parlatoria blanchardii*), which fact shall be ascertained by the aforesaid state quarantine guardian, when he may consent to the removal, either to an infested district or to an uninfested district.

Penalty.

§ 3. Any one who shall violate any of the provisions of this act shall upon conviction be deemed guilty of a misdemeanor.

CHAPTER 151.**HOSPITALS.**

References: County hospital, see Kerr's Cyc. Political Code, § 4223.

Hospitals for employees, see tit. "Master and Servant."

Hospitals for the insane, see tit. "Insane Asylums."

Municipal Hospitals, see tit. "Municipal Corporations."

See, generally, tit. "Public Health."

CONTENTS OF CHAPTER.

ACT 2017. MATERNITY HOSPITALS.

2018. ENDOWMENT OF HOSPITALS.

MATERNITY HOSPITALS.

ACT 2017—An act to provide for the licensing and inspecting of maternity hospitals, lying-in asylums and homes for children; defining the duties of persons conducting the same; and the duties and powers of the county boards of health or county health officers and other health officers in relation thereto, and providing a penalty for the violation of its provisions.

History: Approved March 20, 1903, Stats. 1903, p. 317.

Maternity hospitals, etc., must obtain license.

§ 1. Any person who, without first having obtained a license in writing so to do from the county board of health or county health officers, as hereinafter provided, manages, conducts, establishes or maintains within any county or city and county in this state any maternity hospital or lying-in asylum where females may be received, cared for or treated during pregnancy, or during or after delivery; or manages, conducts, establishes or maintains within any county or city and county in this state any institution, boarding-house, home or other place for the reception or care of children, or keeps, at any such place, any child under the age of twelve years, not his relative, apprentice, or ward, without legal commitment; or neglects, refuses or omits to comply with the

provisions of this act, or who violates the provisions of such act, is guilty of a misdemeanor.

Duty and power of board of health or health officer as to licenses.

§ 2. For such places within the limits of their respective territorial jurisdictions, the county board of health in all counties or city and county governments, having a county board of health, and in all other counties or city and county governments, the county health officer shall have power to issue licenses, and every such license must specify the name and residence of the person so undertaking the care of such females or children; and the location within the county or city and county of the place where the same are kept and the number of females or children thereby allowed to be received, boarded or kept therein, and shall be revocable for cause by the said county board of health or county health officer, as the case may be, in any case where the provisions of this act are violated, or in any case where, in the opinion of such county board of health or such county health officer, such hospital, asylum, institution, home, boarding-house or other place is being managed, conducted or maintained without proper regard for the health, comfort or morality of the inmates thereof, or without due regard or proper sanitation or hygiene.

Holder of license must keep register.

§ 3. Every person so licensed must keep a register, wherein he shall enter the names and addresses of all such females, the names and ages of all such children, and of all children born on the premises, and the names and residences of their parents, so far as is known, and the time of the reception and discharge of such children and the reasons therefor, and also the name and age of every child who is given out, adopted, taken away, or indentured from such place, to or by any person, together with the name and residence of the person so adopting, taking away or indenturing such child; and within forty-eight hours after such child is so given out, taken away or indentured, shall cause a correct copy of the register relating to such child to be sent to the county board of health or county health officer, as the case may be.

Health officers may inspect premises.

§ 4. It shall be lawful for the officers and representatives of such county board of health, or for such county health officers and their representatives, and for all health officers, at all reasonable times, to enter and inspect the premises wherein such females and children are so boarded, received or kept, and to call for and inspect the license and the register and also to see and visit such children and females.

ENDOWMENT OF HOSPITALS.

ACT 2018—An act to promote the public welfare, by providing for the conveyance, holding and protection of property, and the creation of trusts for the founding, endowment, erection and maintenance within this state of hospitals for the relief of the sick and for training schools for nurses.

History: Approved February 19, 1907, Stats. 1907, p. 10.

Act to be liberally construed.

§ 1. The provisions of this act shall be liberally construed with a view to effect its objects and promote its purposes; and in the construction thereof, the singular number shall be deemed to include the plural, and the plural shall be deemed to include the singular number, and the masculine gender shall be deemed to include the feminine.

Endowment of hospitals, manner of.

§ 2. Any person desiring in his lifetime to promote the public welfare by founding, endowing and having maintained within this state a hospital for the relief of the sick,

and as a training school for nurses, may to that end and for such purpose, by grant in writing, convey to a trustee or any number of trustees named in such grant, and to their successors, any property real or personal, belonging to such person, and situated or being within this state, provided, that if any such person be married and the property be community property, then both husband and wife must join in such grant.

Designation of scope of institution.

§ 3. The person making such grant may therein designate:

1. The nature, object and purpose of the hospital and school for nurses to be founded, endowed and maintained.
2. The name by which it shall be known.
3. The powers and duties of the trustees, and the manner in which they shall account, and to whom, if accounting be required; but such powers and duties shall not be held to be exclusive of other powers and duties which may be necessary to enable such trustees to fully carry out the objects of such grant.
4. The mode and manner, and by whom, the successors of the trustee or trustees named in the grant are to be appointed.
5. Such rules and regulations for the management of the property conveyed as the grantor may elect to prescribe; but such rules shall, unless the grantor otherwise prescribes, be advisory only, and shall not preclude such trustees from making such changes as new conditions may from time to time require.

Trustees, powers of. Seal.

§ 4. The trustee or trustees named in such grant, and their successors may in the name of the said hospital and school for nurses, as designated in such grant, receive and hold gifts and donations of real and personal property, sue and defend, in relation to the trust property, and in relation to all matters affecting the said hospital and said school endowed or established by such grant, and such trustees are hereby given, and shall have, the right to exercise corporate powers and privileges, and to that end they may organize and act as a board of trustees, elect such officers of such board as they may deem to be necessary, adopt by-laws, and as such board, and through the officers thereof, they may transact such business, perform such acts and exercise such powers as they in writing may provide may be transacted, performed and exercised by such board. Such board may adopt and use a seal and such seal when attached to any document or writing shall be prima facie evidence that such document or writing was made by and under due authority from such board and from such trustees.

Grantee may exercise powers of trustee.

§ 5. The person making such grant, by a provision therein, may elect in relation to the property conveyed and in relation to the erection, maintenance and management of such hospital and school, to perform, during his life, all the duties and exercise all the powers which, by the terms of the grant, are enjoined upon and vested in the trustee therein named, and in such case the powers and duties conferred and imposed by such grant upon said trustees therein named, shall be exercised and performed by the person making such grant, during his life; provided however, that upon the death of such person such powers and duties shall devolve upon and shall be exercised by the trustees named in the grant, and their successors.

Execution of grant.

§ 6. Any such grant may be executed, acknowledged and recorded in the same manner as is now provided by law for the execution, acknowledgment and recording of grants of real property.

Right of action to annul trust.

§ 7. No suit, action or proceeding shall be commenced or maintained by any person to set aside, annul or affect said conveyance or to affect the title to the property conveyed, or the right to the possession, or to the rents, issues and profits thereof, unless the same be commenced within two years after the date of filing such grant for record; nor shall any defense be made to any suit, action or proceeding commenced by the trustees named in said grant or their successors, privies or persons holding under them, which defense involves the legality of said grant, or affects the title to the property thereby conveyed, or the right of possession, or the rents, issues and profits thereof, unless such defense is made in a suit, action or proceeding commenced within two years after such grant shall have been filed for record, and after such filing said property shall be exempt from execution and forced sale.

§ 8. This act shall be in force from and after its passage.

CHAPTER 152.**HOTELS.**

References: See, generally, "Buildings"; "Dwelling Houses"; "Intoxicating Liquors"; "Prostitution"; "Tenement Houses."

CONTENTS OF CHAPTER.

- ACT 2023. USE OF ILLUMINATING GAS IN HOTELS.
- 2024. EXIT SIGNS IN HOTELS, ETC.
- 2026. "STATE HOTEL AND LODGING HOUSE ACT" OF 1917.
- 2028. HOTEL ACT OF 1917.

ACT 2023—An act to regulate the use of illuminating gas.

History: Approved March 20, 1903, Stats. 1903, p. 289.

§ 1. Every hotel-keeper, lodging-house keeper, and innkeeper, or keeper of any place where rooms are let to lodgers in which, or any of which such places illuminating gas is used, who shall turn off, or cause to be turned off at the meter the flow of such illuminating gas, during the time of the use of any such room or rooms, shall be guilty of a misdemeanor; provided, however, that this act shall not apply to any of the persons herein enumerated, when such person or persons shall have connected every exit orifice upon the gas fixtures used in such place or places with a practical and safe automatic gas igniter.

§ 2. This act shall take effect and be in force immediately from and after its passage.

EXIT SIGNS IN HOTELS, ETC.**ACT 2024—An act to protect the lives and property of the patrons of all public hotels, lodging and rooming houses in the state of California.**

History: Approved March 25, 1911, Stats. 1911, p. 494.

Exit signs in lodging-houses.

§ 1. Every owner, manager, proprietor, lessee or other person having the management, charge or control of any public hotel, lodging or rooming house, is hereby required to put up in conspicuous places in the halls of such hotel, lodging or rooming house, exit and stairway signs and permanently maintain the same. Said signs shall be made and placed where they will definitely direct the patrons thereof to the exits and stairways, so as to enable them to escape from such building in case of fire or other accident.

Penalty for violations.

§ 2. Every owner, manager, proprietor, lessee or other person, having the management, charge or control of any such hotel, lodging or rooming house who shall violate

any of the provisions of this act or who shall refuse or neglect to comply therewith shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by fine not to exceed one hundred dollars or by imprisonment not to exceed three months or by both such fine and imprisonment.

"STATE HOTEL AND LODGING HOUSE ACT" OF 1917.

ACT 2026—An act to regulate the erection, construction, reconstruction, moving, alteration, maintenance, use and occupancy of hotels, and the maintenance, use and occupancy of the premises and land on which hotels are erected or located, in all parts of the state of California, including incorporated towns, incorporated cities, and incorporated cities and counties, and to provide penalties for the violation thereof; and repealing an act entitled "An act to regulate the building and occupancy of hotels and lodging houses in incorporated towns, incorporated cities, and cities and counties, and to provide penalties for the violation thereof," approved June 16, 1913, statutes of California of 1913, page 1429.

History: Approved May 31, 1917. In effect September 1, 1917. Stats. 1917, p. 1422. Prior act of June 16, 1913, Stats. 1913, p. 1429, repealed by the present act.

Title.

§ 1. This act shall be known as the "state hotel and lodging house act," and its provisions shall apply to all parts of the state of California, including incorporated towns, incorporated cities, and incorporated cities and counties.

Duty of building department.

§ 2. It shall be the duty of the "building department" of every incorporated town, incorporated city, and incorporated city and county, to enforce all the provisions of this act pertaining to the erection, construction, reconstruction, moving, conversion, alteration and arrangement of hotels and to issue the certificate of "final completion" hereinafter provided.

Duty of housing department.

It shall be the duty of the "housing department" and if there is no housing department the health department of every incorporated town, incorporated city, and incorporated city and county to enforce all of the provisions of this act pertaining to the maintenance, sanitation, ventilation, use and occupancy of hotels after said hotels have been erected, constructed or altered, as the case may be, and the certificate of "final completion" has been issued by the building department and to issue the "permit of occupancy" as hereinafter provided.

In case no such departments.

In the event that there is no building department or no housing department or health department in an incorporated town, incorporated city or incorporated city and county, it shall be the duty of the officer or officers who are charged with the enforcement of ordinances and laws regulating the erection, construction or alteration of buildings, or the maintenance, sanitation, ventilation or occupancy of buildings, or of the police, fire or health regulations in said incorporated town, incorporated city or incorporated city and county to enforce all of the provisions of this act.

Enforcement.

In every county it shall be the duty of the officer or officers who are charged with the enforcement of ordinances or laws regulating the erection, construction or alteration of buildings, or of the maintenance, sanitation, occupancy and ventilation of buildings, or of the police, fire or health regulations in said county, to enforce all of the provisions of this act outside of the limits of any incorporated town or incorporated city.

Every incorporated town, incorporated city, or incorporated city and county in the state of California shall have authority, and it is hereby empowered and given authority, to designate and charge by ordinance any other department or officer than the department or officers mentioned herein, with the enforcement of this act, or any portion thereof.

Power of commission of immigration and housing.

The commission of immigration and housing of California shall have, and it is hereby empowered and given authority to enforce the provisions of this act, which do not pertain to the actual erection, construction, reconstruction, moving, conversion, alteration and arrangement of hotels in all parts of the state of California, including all incorporated towns, incorporated cities, incorporated cities and counties, in the state of California, whenever said commission finds or discovers a violation or violations of the provisions of this act and notifies the local department or officer, or departments or officers who are charged with the enforcement of the provisions of this act, in writing, of such violation or violations, and the said local department or officer, or departments or officers, fail, neglect or refuse to enforce the provisions of the said act within thirty days thereafter; provided, however, that the said commission of immigration and housing of California shall enforce the provisions of this act only in the instances specified in said written notice.

Unlawful to construct hotel contrary to act.

§ 3. It shall be unlawful for any person, firm or corporation, whether as owner, agent, contractor, builder, architect, engineer, superintendent, foreman, plumber, tenant, lessee, lessor, occupant, or in any other capacity whatsoever, to erect, construct, reconstruct, alter, build upon, move, convert, use, occupy or maintain, or to cause, permit or suffer to be erected, constructed, reconstructed, altered, built upon, moved, converted, used, occupied or maintained any hotel or any portion thereof contrary to the provisions of this act, or to commit or maintain or cause or permit to be committed or maintained any nuisance in or upon any hotel or any portion thereof, or any of the premises, yards or courts which are a part thereof, or which are required by the provisions of this act; or to do or cause to be done, or to use or cause to be used, any privy, sewer, cesspool, plumbing or house drainage affecting the sanitary condition of any hotel or any portion thereof, or of the premises thereof, contrary to any of the provisions of this act.

Alterations.

§ 4. It shall be unlawful for any person to make any alterations or changes or reconstruction work of any kind whatsoever, to any hotel erected prior to the passage of this act, or to any hotel hereafter erected, or to increase the height, in any manner which would be inconsistent with any of the provisions of this act, or in violation of the said provisions of this act; or in any manner to diminish the size of the yards, courts or shafts or the size of windows or skylights, or to remove any stairway or fire escape, or to obstruct the egress from such building or from the hallways or stairways, or to do anything that would affect the ventilation and sanitation of the building, contrary to any of the provisions of this act.

Building converted to use as hotel.

§ 5. A building not erected for, or which is not used as a hotel at the time of the passage of this act, if hereafter converted to or altered for such use, shall thereupon become subject to all of the provisions of this act affecting hotels hereafter erected.

Building moved.

A building used as a hotel at the time of the passage of this act, if moved, shall be made to conform to all of the provisions of this act affecting hotels hereafter erected, in so far as they pertain to the percentage of lot occupied and the size of outer courts, inner courts bounded by a lot line, and yards.

Building reconstructed.

It shall be unlawful to reconstruct any hotel which is hereafter damaged by fire or the elements to an extent in excess of fifty-one per cent of its physical proportions, unless the said building is made to conform to all of the provisions of this act affecting hotels hereafter erected.

Penalty for violation.

§ 6. Any person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine not exceeding five hundred dollars, or by imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment, and in addition to the penalty therefor, shall be liable for all costs, expense and disbursements paid or incurred by the department, by any of the officers thereof, or by any agent, employee or contractor of same, in the prosecution of such violation. The costs, expense and disbursements by this section provided shall be fixed by the court having jurisdiction of the matter.

Procedure.

Except as herein otherwise specified, the procedure for the prevention of violations of this act, for the vacation of hotels or premises unlawfully occupied, or for the abatement of a nuisance in connection with a hotel, or the premises thereof, shall be as set forth in the charter and ordinances of the municipality in which the procedure is instituted.

Permit to erect hotel. Application.

§ 7. In every incorporated town, incorporated city, and incorporated city and county, it shall be unlawful to commence or to proceed with the erection, construction, reconstruction, conversion or alteration of a hotel, or to move or to build upon a hotel, or to convert a building or any portion thereof into use as a hotel without first obtaining a permit in writing so to do from the department charged with the enforcement of this act. Any person, firm or corporation desiring such a permit shall file an application therefor with the department charged with the enforcement of this act. Said application shall give a detailed statement in writing, verified under oath by the person making the same, of the erection, construction, reconstruction, moving, conversion, or alteration, as the case may be, upon blanks or forms to be furnished by the said department. The said application must be accompanied with a full, true and complete set of the plans of the hotel, or alteration, or work proposed, as the case may be, together with a set of specifications describing the materials proposed to enter into the construction of the proposed work, also a plan of the lot on which such building is proposed to be erected, constructed, reconstructed, converted, altered or moved, as the case may be. Such statement shall give in full the name and address by street and number of the owner or owners, also the name and address of the architect and of the contractor, if there be such an architect or contractor; also shall give such other data and information as in the judgment of the department charged with the enforcement of this act is deemed necessary.

Affidavit. Permit issued. Revocation.

The affidavit to said application shall allege that the plans and specifications are true and contain a correct description of the proposed hotel, lot and proposed work. If any

person other than the owner makes such affidavit, such person shall not be recognized except that he allege in his affidavit that he is authorized and empowered by the said owner to act for him and to sign the required affidavit. Said department charged with the enforcement of this act shall cause all such plans, specifications and statements to be examined, and if it appears that they conform to the provisions of this act, shall then issue a permit to the person submitting the same. Said department may, from time to time, approve changes in any plans, specifications or statements previously approved by it; provided, that all changes when so made shall be in conformity with the provisions of this act. Said department shall have the power to revoke or cancel any permit or approval that it has previously issued in case of any refusal, failure or neglect of the person to whom such permit or approval has been issued to comply with any of the provisions of this act, or in case any false statement or misrepresentation is made in any of the said plans, specifications or statements submitted or filed for such permit or approval. The erection, construction, reconstruction, moving, alteration or conversion of any such hotel, as the case may be, shall be made in accordance with the plans, specifications and statements submitted or filed, and for which the permit is issued.

Plans kept on premises.

A true copy of the plans, specifications and other information submitted or filed, upon which a permit is issued, with the approval of the department with which they are filed, stamped or written thereon, shall be kept upon the premises of the hotel or work for which the said permit is issued, from the commencement of the said building or work to the final completion of same, and shall be subject to inspection at all times by proper authorities.

Permit for nominal alterations.

The department charged with the enforcement of this act may, at its discretion, issue a permit in case of nominal alterations or repairs, when application is made therefor, in writing, by the owner or his agent, when the making of said nominal alterations and repairs do not affect any structural feature or the sanitation or the ventilation of the hotel, without requiring the filing or [of] plans or specifications.

The issuance or granting of a permit or approval by the department charged with the enforcement of this act under the authority of this section shall not be deemed or construed to be a permit or an approval of the violation of any of the provisions of this act.

Expiration of permit.

Every permit or approval which is issued by the department charged with the enforcement of this act, but under which no work has been done within ninety days from the date of issuance, or where work has been suspended for a period of ninety days, shall expire by limitation and a new permit shall be obtained before the work may be done.

Certificate of "final completion" and "permit of occupancy."

§ 8. In every incorporated town, incorporated city, and incorporated city and county, it shall be unlawful to occupy or to permit to be occupied, any hotel hereafter erected, constructed, reconstructed, altered, converted or moved, as the case may be, or any portion thereof, for human habitation until the issuance of a "certificate of final completion" and a "permit of occupancy" by the department or departments charged with the enforcement of this act.

It shall also be unlawful to occupy any existing hotel until a permit of occupancy has been issued by the department designated to issue such permit.

Renewal of permit of occupancy.

Every permit of occupancy shall be renewed each calendar year by the department designated to issue the said permit; provided, that no structural alteration, or changes have occurred since the issuance of the certificate of final completion; and provided, that all other provisions of this act have been complied with.

Certificate issued.

Any person desiring a certificate shall file a notice with the department charged with the enforcement of this act. Said department shall cause an inspection to be made of the said hotel or portion thereof, or work described in the said notice, within ten days after written application therefor, and shall issue a "certificate of final completion" if it is found that all the provisions of this act, regulating the erection, construction, alteration or moving, as the case may be, have been complied with.

Permit issued.

The department charged with the enforcement of this act and designated to issue the permit of occupancy, shall issue the said "permit of occupancy" upon application, in writing, therefor by the owner or his agent, and upon the filing by the owner or his agent of such statements or records required by the department, after the "certificate of final completion" has been issued; provided, that no violations have occurred since the issuance of the certificate of final completion, or in the case of a hotel erected prior to the passage of this act, and for which no certificate of final completion has been issued, then after the said department has caused an inspection to have been made of the said hotel and has found that all of the provisions of this act applying to such hotel have been complied with.

All permits and certificates shall be made in duplicate and a copy shall remain on file in the department issuing them.

Hotel occupied without certificate or permit deemed nuisance.

Any hotel hereafter erected, altered, converted or moved, which is occupied, or any portion thereof which is occupied for human habitation, prior to a "certificate of final completion" or a "permit of occupancy" being issued, shall be deemed a nuisance and the department or departments charged with the enforcement of this act may cause it to be vacated, until the said certificate of completion and permit of occupancy have been obtained in accordance with the provisions of this act.

Power to enter hotel.

§ 9. The department or departments charged with the enforcement of this act in any incorporated town, incorporated city, and incorporated city and county, or county, and the authorized officers, agents or employees of such department or departments, may, whenever necessary, enter hotels or portions thereof, or the premises thereof, within the corporate limits of such towns, cities, cities and counties, or counties, for the purpose of inspecting such buildings, in order to secure compliance with the provisions of this act and to prevent violations thereof.

The members of the commission of immigration and housing of California and the agents, officers or employees of said commission may, whenever necessary, enter hotels or portions thereof, or the premises thereof, for the purpose of inspecting such buildings in order to secure compliance with the provisions of this act and to prevent violations thereof.

The owner or his authorized agent may, whenever necessary, enter hotels or portions thereof, or the premises thereof, owned by him, to carry out any instructions or to perform any work required to be done by the provisions of this act.

Definitions.

§ 10. For the purpose of this act, certain words and phrases are defined as follows, unless it shall be apparent from their context that they have a different meaning:

Words used in the singular include the plural, and the plural the singular.

Words used in the present tense include the future.

Words used in the masculine gender include the feminine, and the feminine, the masculine.

Words "building department," "health department," "housing department," "department charged with the enforcement of this act," "fire commissioner," shall be construed as if followed by the words, "of the incorporated town, incorporated city, incorporated city and county, or county," as the case may be, in which the hotel is situated.

"Approved" means whatever material, appliance, appurtenance, or other matter meets the requirements and approval of the department charged with the enforcement of this act, or which is approved by local ordinance of the municipality in which the building is situated, or any appliance, appurtenance, or other matter which conforms to the requirements of, and bears the approval of the "national board of fire underwriters"; provided, however, that no such material, appliance, appurtenance or other matter shall be deemed "approved" for use where, or in such a manner as would be inconsistent with the intent, or specific provisions of this act.

"Basement" is any story or portion thereof partly below the level of the curb or the actual adjoining ground level, the ceiling of which in no part is less than seven feet above the curb level or actual adjoining ground levels. If the adjoining ground is excavated to or below the curb level, or to or below the adjoining natural ground level, such excavated space shall have not less than the minimum width and length required in this act for outer courts. Every basement is a story.

"Building" is a hotel.

"Building department" means the commissioner of buildings, superintendent of buildings, chief inspector of buildings, or any officer or department charged with the enforcement of ordinances and laws regulating the construction and alteration of buildings or structures.

"Cellar" is any story or portion thereof, the ceiling of which in any part is less than seven feet above the curb level and actual adjoining ground levels.

Court.

"Court" is an open, unoccupied space other than a yard on the lot on which is situated a hotel. A court, one entire side or end of which is bounded by a front yard, a rear yard or a side yard, or by the front of lot, or by a street or a public alley, is an "outer court." Every court which is not an "outer court" is an "inner court."

Every court shall be open and unobstructed to the sky from a point not more than two feet above the floor line of the lowest story in the building in which there are windows from rooms abutting the said court, except that a cornice on the building may extend into an "outer court" two inches for each one foot in width of such court, and a cornice may extend into an "inner court" one inch for each one foot in width of such court.

"Curb level" is the curb level opposite the center of the "front of lot."

Wherever the word "department" is used it means the building department, the housing department, the health department or such other department or officer, or departments or officers, who are charged with the enforcement of the provisions of this act.

"Dormitory" is a room in which more than two persons are "guests" and are not living together, and shall, for the purpose of computing the number of rooms, be deemed a separate guest room for each one hundred square feet of superficial floor area therein.

Fireproof hotel.

"Fireproof hotel" is a building wherein all the exterior and interior loads or strains are transmitted to the foundation by means of concrete, reinforced concrete, brick, stone or by means of a skeleton framework of steel or iron; the exterior walls, inner court walls and roof constructed of concrete, reinforced concrete, brick, stone or hollow terra cotta tile; where all the structural steel or iron is thoroughly fireproofed by concrete, cement, plaster, tile, brick or sandstone, not less than two inches thick; where all the interior partitions are constructed of either hollow terra cotta tile blocks, gypsum blocks, brick, concrete, reinforced concrete, or of metal studs lathed with metal lath and plastered not less than three-quarters inch thick including the lath, or of metal studs lathed with approved plaster board and plastered not less than three-quarters inch thick including the plaster board, or constructed of wire glass not less than one-fourth inch thick, set in metal frames and sash, and all other materials, used in the said building are of approved incombustible material except that the glass in windows, transoms, or doors may be of plain glass, and except that doors, frames, sash and the usual trim of rooms, hallways, corridors, and passageways may be of wood, and except that wood floors may be placed on top of the floors constructed of incombustible materials, except in the public hallways.

"Guest" is any person hiring and occupying a room for sleeping purposes, and shall include both boarders and lodgers.

"Guest room" is a room which is occupied, or is intended, arranged or designed to be occupied for sleeping purposes by one or more guests, but shall not be deemed to include dormitories used for sleeping purposes.

Hotel.

"Hotel" is any house or building, or portion thereof, containing six or more guest rooms which are let or hired out to be occupied, or which are occupied by six or more guests, whether the compensation for hire be paid directly or indirectly in money, goods, wares, merchandise, labor or otherwise, and shall include Turkish baths, bachelor hotels, studio hotels, public and private clubs and any building of any nature whatsoever so designed or occupied, except hospitals where persons temporarily reside and where each such person receives regular bona fide medical attendance on the premises, and jails, detention buildings and similar buildings where human beings are housed and detained under restraint.

"Housing department" is any department or commission charged with the enforcement of ordinances or laws regulating the occupancy and maintenance of hotel, lodging house or dwelling house buildings; and where no such department is maintained, shall be deemed to be the health commissioner, the department of health, health officer, or similar department charged with the enforcement of laws and ordinances relating to the protection of the public health.

Lot.

"Lot" is a parcel or area of land on which is situated a hotel, together with the land, yards, courts and unoccupied spaces for such a hotel as required by this act; all of which land shall be owned by or be under the absolute lawful control and in the lawful possession of the hotel.

A lot situated at the junction of two or more intersecting streets, with a boundary line thereof bordering on each of the two streets, is a "corner lot." All parts of the width of such corner lot which are distant more than seventy-five feet from the junction point of the two or more intersecting streets, shall be deemed to be an "interior lot." The owner or his authorized agent may designate either street frontage as being the front of such corner lot for the purpose of determining the width thereof.

A lot which has only one boundary line bordering on a public street is an "interior lot."

"Rear lot" is a parcel or area of land having no boundary line bordering on a street, or having less than one-half of its width as a boundary line bordering on a street.

"Front of lot" is the boundary line of lot bordering on the street. In case of a corner lot, either of the boundary lines may be the "front of lot."

"Rear of lot" is the boundary line thereof opposite the "front of lot."

"Depth of lot" is the mean distance from the "front of lot" to the "rear of lot."

"Nuisance" embraces public nuisance as known at common law or in equity jurisprudence, and whatever is dangerous to human life or detrimental to health; and shall also embrace the overcrowding with occupants of any room, insufficient ventilation, or illumination, or inadequate or insanitary sewerage or plumbing facilities, or uncleanness, and whatever renders air, food or drink unwholesome or detrimental to the health of human beings.

"Person" is the natural person, his heirs, executors, administrators or assigns; also includes a firm, partnership, or corporation, its or their successors or assigns.

"Public hallway" is a hallway, corridor, passageway or vestibule not within a suite, and includes stairways, landings and platforms.

"Rear hotel" is a hotel on a "rear lot."

Semifireproof hotel.

"Semifireproof hotel" is a building with all exterior walls and walls of inner and outer courts constructed of brick, stone, concrete, reinforced concrete or hollow terra cotta tile, except that the walls of the inner court, which court is surrounded on four sides by the same building, may be constructed as provided in this act for such inner courts; interior partitions and floors constructed of approved incombustible materials or of wood, with all ceilings, partitions, soffits of stairways, and outside stringers of open stairways and stair wells metal lathed and plastered not less than three-quarters inch thick including the lath, or lathed with approved plaster board, plastered not less than three-quarters inch thick including the plaster board; in which all finished floors, frames, doors and the usual trim of rooms and hallways may be built of wood, and the roof of which shall be covered with at least a composition fire-retardant material.

"Shall." Whenever this word is used it shall be mandatory.

Street.

"Street" is any public street, alley, thoroughfare or park having a minimum width of sixteen feet, measured from the "front of lot" to the opposite "front of lot" and which shall have been dedicated or deeded to the public for public use.

"Turkish bath" is a dormitory or a combination of guest rooms, accommodating six (6) or more guests, in connection with which any form of bath or massage is given by the attendants to the guests.

Wooden hotel.

"Wooden hotel" is a building which does not fully comply with the requirements for a fireproof or semifireproof hotel as defined in this act, and shall include all frame and all veneered buildings. In every such building all ceilings and walls and partitions of public hallways, soffits of interior stairways and the outside stringers of open stairways and stair wells shall be metal lathed and plastered not less than three-quarters

inch thick including the lath, or lathed with an approved plaster board and be plastered not less than three-quarters inch thick including the plaster board.

Yard.

“Yard” is an open unoccupied space other than a court on the lot on which is situated a hotel, open and unobstructed to the sky from a point not more than two feet above the floor line of the lowest story in the building in which there are windows from rooms abutting the said yard; except that outside stairways, platforms and balconies constructed of open metal work and fire escapes may extend not more than four feet into a yard, providing they do not in any manner obstruct the light or ventilation of rooms. If such yard is between the front line of the building and the front boundary line of the lot, it is a “front yard.” If it is between the extreme rear line of the building and the rear of the lot, it is a “rear yard.” If it extends from the rear yard to the front yard, or front of lot, it is a “side yard.”

Front yard.

§ 11. No hotel shall hereafter be erected on or moved onto a rear lot. No building for any purpose shall hereafter be erected in front of any hotel unless there shall be left unoccupied a front yard extending from the front of the rear hotel to the front line of lot bordering on the street.

Such front yard shall not be in any part less in width than fifty (50) per cent of the actual width of the rear hotel.

Height.

§ 12. No fireproof hotel hereafter erected shall exceed one hundred fifty feet in height, nor more than one and one-half times the width of the widest street to which the lot on which it is situated abuts.

No semifireproof hotel building hereafter erected shall exceed six stories at any point, nor more than sixty-five feet in height (except as hereinafter provided), nor more than one and one-half times the width of the widest street to which the lot on which it is situated abuts.

No wooden hotel hereafter erected shall exceed three stories at any point, nor more than thirty-six feet in height (except as hereinafter provided), nor more than one and one-half times the width of the widest street to which the lot on which it is situated abuts.

The width of the street, for this purpose, shall be measured from the extreme front of the building to the “front of lot” opposite, across the street.

Height defined.

For the purposes of this section, a basement is a story.

The height of a fireproof hotel is the perpendicular distance from the curb level or adjoining ground levels to the highest point of the roof. The height of a semifireproof or of a wooden hotel is the perpendicular distance from the curb level or adjoining ground levels to the lowest point of the finished ceiling of the top story; provided, that in the case of a semifireproof hotel situated on a lot with the ground sloping downward from the facade at which the measurement is taken the height of the building shall not at any point exceed sixty-five feet above the curb level measured on the facade facing the street, nor shall the height of the building at any point of the grade exceed seventy-five feet above the adjoining curb in case of a corner lot, or above the level of the ground in the case of an interior lot, and in the case of a wooden hotel situated on a lot with the ground sloping downwards from the facade at which the measurement is taken the height of the building shall not at any point exceed thirty-six feet above the

curb line measured on the facade facing the street, nor shall the height of the building at any point of the grade exceed forty-six feet above the adjoining curb in the case of a corner lot or above the level of the ground in the case of an interior lot.

Yard serving two hotels.

§ 13. In no event shall any yard or court be made to serve the purpose of two hotels hereafter erected, or of an existing hotel and a hotel hereafter erected, unless such yard or court, as the case may be, is of the full size required for two hotels, and then only in the event that such yard or court, as the case may be, is located on the same lot and owned by or in the absolute lawful control and in the lawful possession of the hotel it proposes to serve.

Distance between buildings.

Where a hotel, now or hereafter erected, stands upon a lot, no other building shall hereafter be placed upon the front or rear of that lot, unless the minimum distance between such buildings shall be at least ten feet and two additional feet shall be added to such minimum distance of ten feet for every story more than one in height of the highest building on such lot.

Depth of rear yard.

§ 14. The depth of a rear yard shall be measured at right angles from the extreme rear line of the building towards the rear lot line.

Minimum size of rear yard.

§ 15. The minimum size of every rear yard for a hotel hereafter erected shall be not less in width and in area than an inner court, except that if such rear yard is bounded on its entire one end or side by an outer court, or by a side yard or by a street, or by a public alley or park, then such rear yard shall be not less in width or exceed the maximum length of an outer court; provided, however, that if the lot extends through from one street to another street or public alley, one-half of the narrowest street or public alley, to which said lot abuts may be considered as a part of the lot in computing the rear yard required.

Passageway to street.

§ 16. Every rear yard not bordering on a street or public alley and without direct access thereto shall have access to a street or public alley by means of an unobstructed passageway not less than three feet six inches in clear width, nor less than seven feet in clear height; and if such passageway or any portion thereof passes through a building, such portion thereof shall be built of approved incombustible materials, or shall be lathed with metal lath or approved plaster board and be plastered not less than three-quarters inch thick including the lath or plaster board, or shall be lined with not less than number twenty-six (gauge) galvanized iron, and shall be drained and lighted.

Excavated front yard.

§ 17. Every front yard which is excavated below the level of the curb or below the adjoining ground level for the purpose of furnishing light and ventilation to a basement shall in no part be less in width and length than required for outer courts.

Width of side yard.

§ 18. The width of every side yard shall be not less than the width required for an outer court, except that the provisions of this act regarding the maximum lengths of an outer court shall not apply to a side yard; provided, that if there is a side yard on both sides of the building connected one with the other across the rear of the building by the rear yard, then the width of the side yards may be reduced twelve inches.

Minimum size of outer court.

§ 19. The minimum size of every outer court for a hotel hereafter erected shall be as follows:

<i>Height of building based on the full number of stories in the building measured upward from and including the lowest story in which there is a guest room, or guest rooms, or a dormitory or dormitories.</i>	<i>Minimum width of court</i>	<i>Maximum length of court</i>
1 story	4 ft. 0 in.	16 ft. 0 in.
2 stories	4 ft. 0 in.	16 ft. 0 in.
3 stories	4 ft. 6 in.	25 ft. 0 in.
4 stories	5 ft. 6 in.	30 ft. 0 in.
5 stories	6 ft. 0 in.	35 ft. 0 in.
6 stories	8 ft. 0 in.	35 ft. 0 in.
7 stories	10 ft. 0 in.	40 ft. 0 in.
8 stories	12 ft. 0 in.	40 ft. 0 in.
9 stories	13 ft. 0 in.	40 ft. 0 in.
10 or more stories	14 ft. 0 in.	40 ft. 0 in.

There shall be added to the minimum width of each such outer court six inches for each five feet or fractional part thereof in excess of the maximum length; provided, however, that the maximum lengths herein provided shall not apply when the outer court is bounded on one side for its entire length by a lot line; provided, further, that if an outer court is bounded by a public alley or public park, the width of such public alley or public park may be considered a part of the lot in determining the required width of the outer court.

Minimum size of inner court.

§ 20. The minimum size of every inner court for a hotel hereafter erected shall be as follows:

<i>Height of building based on the full number of stories in the building measured upward from and including the lowest story in which there is a guest room, or guest rooms, or a dormitory or dormitories</i>	<i>Minimum width of court</i>	<i>Minimum area of court in square feet</i>
1 story	6 ft. 0 in.	75 square feet
2 stories	6 ft. 0 in.	75 square feet
3 stories	7 ft. 0 in.	120 square feet
4 stories	8 ft. 0 in.	160 square feet
5 stories	12 ft. 0 in.	250 square feet
6 stories	16 ft. 0 in.	400 square feet
7 stories	20 ft. 0 in.	625 square feet
8 stories and more	24 ft. 0 in.	840 square feet

provided, however, that the minimum size of every inner court which is bounded on one side for its entire length by a lot line may be as follows:

<i>Height of building based on the full number of stories in the building measured upward from and including the lowest story in which there is a guest room, or guest rooms, or a dormitory or dormitories</i>	<i>Minimum width of court</i>	<i>Minimum area of court</i>
1 story	5 ft. 0 in.	75 square feet
2 stories	5 ft. 0 in.	75 square feet
3 stories	6 ft. 0 in.	120 square feet
4 stories	7 ft. 0 in.	160 square feet
5 stories	9 ft. 0 in.	250 square feet
6 stories	16 ft. 0 in.	400 square feet
7 stories	20 ft. 0 in.	625 square feet
8 stories and more	24 ft. 0 in.	840 square feet

Every inner court hereafter constructed and every inner court or vent shaft now in any hotel or lodging house shall be provided with a door or window at or near the bottom thereof, giving sufficient access to such court or vent shaft as to enable it to be properly cleaned out.

Recess.

§ 21. Every recess from a court, yard or street in a hotel hereafter erected shall unless it conforms to the requirements of this act for an inner court, or an outer court, be not less in width than its depth. Every such recess shall be open and unobstructed from a point not more than two feet above the floor line of the lowest story in the building in which there are rooms the said recess proposes to serve.

Intakes for inner court.

§ 22. Every inner court in a hotel of two or more stories in height hereafter erected shall be provided with one or more horizontal intakes at the bottom of the court, as follows:

<i>Inner court areas</i>	<i>Minimum number of intakes</i>	<i>Net aggregate area of intakes</i>
Each not exceeding 300 square feet.....	One	19½ square feet
Each not exceeding 800 square feet.....	Two	40 square feet
Each exceeding 800 square feet.....	Two	60 square feet

Every such intake shall always extend directly to the front of lot or front yard, or rear yard, or to a side yard, or to a street, or to a public alley or park. Whenever more than one intake is required, one such intake shall extend to the front of lot or front yard, and one to the rear yard, public alley, public park, or to the other street, and the court ends of the air intakes shall be as far apart as possible.

Each such intake shall consist of an unobstructed duct or passageway having a minimum width of three feet in all its parts and a minimum height of six feet six inches.

Construction.

Every such intake shall be constructed of approved incombustible materials, or shall be lined with at least number twenty-six (gauge) galvanized iron on the inside thereof. Such air intakes may be closed at each end with a gate or grill having not less than seventy-five per cent of open work.

In case the inner court does not extend below the second floor level, then each such air intake may consist of an unobstructed open duct, constructed of approved incombustible materials or lined with at least number twenty-six (gauge) galvanized iron on the inside thereof, having an interior area of not less than nineteen and one-half square feet, and in no dimension less than twelve inches, and covered at each end with a wire screen of not less than one inch mesh.

Every air intake shall be drained and so constructed and arranged as to be readily cleaned out.

Cellars.

§ 23. In no hotel shall any room in the cellar be constructed, altered, converted or occupied for sleeping purposes.

Every cellar shall be illuminated and ventilated. The walls and floor of every cellar hereafter constructed, which are below the ground level, shall be made waterproof and dampproof, and whenever deemed necessary and so ordered by the department charged with the enforcement of this act, the walls and ceilings thereof shall be plastered.

Basements.

§ 24. In no hotel shall any room in the basement be constructed, altered, converted or occupied for sleeping purposes, unless such room conforms to all of the requirements of this act for rooms in other parts of the building, and that ceiling of each such room be in all parts not less than seven feet above the adjoining ground level.

Every basement shall be illuminated and ventilated. The walls and floors of every basement hereafter constructed, which are below the ground level, shall be made waterproof and dampproof, and whenever deemed necessary and so ordered by the department charged with the enforcement of this act, the walls and ceilings thereof shall be plastered.

Ventilation beneath floor.

§ 25. In every hotel hereafter erected, the lowest floor thereof shall be at least eighteen inches above the surface soil adjoining and under the floor, and the entire space under such floor shall be kept dry, drained, clean and free from any accumulation of rubbish, debris or filth.

Such space under the floor shall be enclosed and provided with a sufficient number of openings with removable screens or similar provisions of a size to insure ample ventilation; provided, however, that in any such building the lowest floor thereof may be less than eighteen inches above the surface soil but in no case less than six inches (except where masonry floors are laid directly on the soil) if the said floor is made impervious to the ingress of rats or other vermin, as follows:

Floor made impervious to rats.

(a) Foundation walls shall be constructed of concrete or of brick or stone or other masonry laid in a good mortar or constructed of some other equally as rat proof material.

(b) The said foundation walls shall be not less than six inches in thickness at the top nor less than twelve inches in thickness at the bottom, nor extend less than twelve inches below the surface soil, and except where masonry floors are laid directly on the soil, shall extend not less than six inches above the surface soil.

(c) Every opening in the foundation walls, for ventilation or for other purposes, shall be made rat proof with suitable metal screens or with some other similar rat proof material. Door or window openings in such walls shall have tight-fitting doors or windows.

(d) The said lowest floor or differing levels thereof, forming a complete floor between the outside walls of the building, shall be constructed either of masonry or covered with concrete not less than one and one-half inches thick, or constructed of two layers of flooring with a layer of galvanized iron or galvanized iron wire cloth or other approved equally as ratproof material placed between the two layers of flooring. Or in lieu of the floor being constructed as herein prescribed, the entire ground area under the floor shall be covered with concrete not less than two inches thick, except where the surface of the soil is composed of rock. The ratproofing material shall always extend under the plates of the exterior walls and supporting partitions.

(e) All openings throughout the said floor for chimneys, plumbing, water pipes or for any other purpose, shall be closed up tight in the same manner and with the same kind of materials as required under the plates of the exterior walls and supporting partitions, and if the rat-proofing material used for the closing of openings is other than masonry, it shall extend beyond and underlap the flooring all around the opening, not less than two inches.

Floor area of guest room. Width and height. Curtains.

§ 26. In every hotel hereafter erected, every guest room shall contain not less than ninety square feet of superficial floor area. Every such room shall at every point be not less than seven feet in width, nor less than nine feet in height, measured from the finished floor to the finished ceiling; except that attic rooms and rooms where sloping ceilings occur need be nine feet in height in but one-half the area of the room.

Every water-closet compartment shall be not less than thirty-six inches in clear width, and every such water-closet compartment, bath or slop-sink compartment, or closet or recess from a room, or dressing room shall have a height of not less than seven feet six inches, measured from the finished floor to the finished ceiling.

Every closet, recess from a room, or dressing room which contains more than twenty-five square feet of superficial floor area (built-in dressers, clothes presses and similar features which are a substantial part of the structure shall not be deemed to be a part of the floor area of a closet, recess from a room, or dressing room), shall conform to all of the provisions of this act as to guest rooms, and shall contain not less than ninety square feet of superficial floor area.

No part of any room in any hotel shall hereafter be enclosed or subdivided wholly or in part, by a curtain, portiere, fixed or movable partition, or other contrivance or device, for any purpose, contrary to any of the provisions of this act.

Entertainment, amusement or reception rooms, or public dining rooms, hereafter constructed, altered or converted in any hotel shall conform to the provisions of section thirty of this act.

Dormitories hereafter constructed, altered or converted in any hotel shall conform to the provisions of section sixty-two of this act.

Windows.

§ 27. In every hotel hereafter erected, every guest room, dormitory, kitchen, scullery, pantry or other room in which food is stored or prepared, public dining room, laundry, barber shop, Turkish baths, general amusement, entertainment or reception room, water-closet or shower compartment, bath, toilet or slop-sink room and general utility room shall have at least one window, of the area hereinafter required, opening directly upon a street, or upon a yard or court of the dimensions specified in this act and located on the same lot.

All windows required by this act shall be located so as to properly light all portions of the room and shall be made so as to open in all parts and be so arranged that at least one-half of the window may be opened unobstructed.

Opening into vent shaft.

The windows required by this section in a water-closet or shower compartment, bath, toilet or slop-sink room may open directly into a vent shaft in lieu of a street, yard or court. Such vent shaft to be not less than of the minimum size, and constructed of the materials and in the manner prescribed by section fifty-seven of this act, or such rooms or compartments, in lieu of being provided with windows may be ventilated by an exhaust system of ventilation installed, constructed and maintained as prescribed by section sixty-one hereof.

Opening through porch.

The windows required by this section to open onto a street, yard, or an outer court, except windows from kitchens, may open through porches, provided that said porches do not exceed seven feet in depth, measured at right angles to the windows and that at least seventy-five per cent of the entire side of the porch, bounded by the street, yard, or outer court, is left open except that the open space may be enclosed with mosquito screens.

Ventilation by exhaust system.

Kitchens, sculleries, pantries or other rooms used for cooking, storing or preparing of food, public dining rooms, laundries, barber shops, Turkish baths, general amusement or reception rooms and general utility rooms, in lieu of windows may be ventilated by an exhaust system of ventilation installed, constructed and maintained as prescribed by section sixty-one hereof.

Window area.

§ 28. In every hotel hereafter erected, the total window area in each guest room, kitchen, scullery, pantry or other room in which food is stored or prepared, laundry, barber shop, Turkish bath, or general utility room, shall be at least one-eighth of the superficial floor area of the room.

The aggregate window area in each room shall be not less than twelve square feet and no single window shall be less than six square feet in area.

All measurements for window area shall be taken to the outside of the sash.

The window area required for dormitories, entertainment, amusement, reception or dining rooms shall be as hereinafter provided.

§ 29. In every hotel hereafter erected each window in a water-closet compartment, bath, toilet or slop-sink room, or shower room, shall be not less than three square feet in area. The aggregate area of windows for each such compartment or room shall be not less than six square feet. In each such compartment or room containing more than one water-closet, bath, urinal or slop-sink, the aggregate window area shall be equivalent to three square feet for each water-closet, bath, urinal or slop-sink therein; except that at no time need the aggregate window area exceed one-fourth of the superficial floor area of such compartment or room.

Total window area in dining room, etc.

§ 30. In every hotel hereafter erected the total window area in each room used for the purpose of entertainment, amusement, reception or dining room, which room has a superficial floor area not exceeding one hundred eighty square feet, shall be at least one-eighth of the superficial floor area of such room.

Every such room which has a superficial floor area exceeding one hundred eighty square feet shall have an aggregate window area not less than that required for a room of one hundred eighty square feet of superficial floor area.

Height of rooms.

Every such entertainment, amusement, reception or dining room shall have a minimum height between the finished floor and the finished ceiling of not less than nine feet. No such room or part thereof shall be used for sleeping purposes, except that said room or part thereof complies with all of the other provisions of this act for guest rooms.

Windows in public hallway.

§ 31. In every hotel hereafter erected every public hallway, on any floor where there are more than five guest rooms, shall have at least one window, opening directly upon a street, or upon a yard or a court, of the dimensions specified in this act and located on the same lot; such windows shall be at the end of the public hallway and placed so as to secure the maximum light into the hallway; provided, however, that in hotels not exceeding two stories in height the public hallway may, in lieu of such windows, be lighted and ventilated by one or more skylights constructed in accordance with the provisions of this act.

Every window required by this act in a public hallway shall be not less than twenty-nine inches in clear width, nor less than fifty-eight inches in height, and the finished sill of same shall be not more than thirty inches above the adjoining finished floor.

Every window shall be made so as to open, and so arranged that at least one-half of the window may be opened unobstructed.

Skylights.

Every skylight provided for in this section shall have an effective horizontal area of glass of not less than fifteen square feet, and shall have ridge ventilators or fixed or movable louvres so as to provide a ventilating area of not less than five hundred square inches. Such skylights shall be so located that no portion of the hallway be distant more than twenty feet, measured from a vertical line, from a skylight opening.

Any part of a public hallway which is offset, recessed, or cut off from any other part of a hallway where such offset or recess is more in length than one and one-half times the width of the public hallway from which it offsets or recesses, shall be deemed a separate public hallway within the meaning of this section.

French windows.

French windows or doors, if arranged to open and glazed to give the areas of opening and glass required by this act for windows in public hallways, may be used in lieu of windows therein.

Ventilating skylight.

§ 32. In every hotel two or more stories in height hereafter erected, where there are more than five guest rooms on any one floor, there shall be provided at the roof over each stairway a ventilating skylight, placed directly as practicable over same, having a minimum effective horizontal area of glass at least twenty square feet in area for buildings two stories in height, and the area of glass in such skylight shall be increased at the ratio of six square feet for each additional story in height. In every such skylight the ventilating area shall be not less than five hundred square inches.

Every such skylight, ventilating openings, shutters and closing and opening devices for the ventilating openings, shall be made of approved incombustible materials, and so arranged that the entire ventilating area may be readily opened from at least the topmost and first story levels; except that in hotels not exceeding four stories in height the ventilators may be arranged so as to open from at least the first story, or may be fixed permanently in an open position.

Skylights as in this section prescribed may be omitted in case that windows are provided of the size fixed by section thirty-one hereof, and located adjoining the stairways, and that each window adjoining the stairway be provided with an open louvre or ventilator providing a ventilating area of not less than one hundred square inches or such louvre or ventilator may be placed in the roof over the stairway in which event the ventilating area shall be not less than five hundred square inches.

Whenever a skylight is required, as in this section provided, there shall be constructed a stair well, the clear open area of which shall be at each floor equal to one-third of the area of the glass in the skylight.

Water-closets. Waterproof floor.

§ 33. In every hotel hereafter erected there shall be installed not less than one water-closet in a separate compartment, located on the public hallway, for each sex on such floor. One of such water-closets shall be distinctly marked "for men", and one of the water-closets distinctly marked "for women"; and there shall be installed not less than one water-closet in a separate compartment, located on the public hallway, for every ten guest rooms, or fractional part thereof, on such floor, which are not provided with private water-closets. Each of the said water-closets shall be accessible from each of the guest rooms through the public hallway, and not more than one hundred feet distant from the entrance door of each of the guest rooms the said water-closet proposes to serve.

In every hotel hereafter erected there shall be installed not less than one water-closet for every twenty employees of each sex in said building.

No door or other opening in a water-closet or urinal compartment shall open from or into any room in which food is prepared or stored.

The walls enclosing a water-closet compartment shall be well plastered, or constructed of some nonabsorbent material, except that the ordinary wood trim for openings may be used in such a compartment. Every water-closet compartment shall be provided and equipped with a full door, properly hung, and provided with a lock or bolt to lock same.

The floor of every water-closet compartment hereafter constructed shall be made waterproof with asphalt, tile, marble, terrazzo, cement or some other similar nonabsorbent material, and such waterproofing shall extend not less than six inches on the vertical walls of the compartment.

In hotel already erected.

§ 34. In every hotel erected prior to the passage of this act there shall be installed not less than one water-closet in a separate compartment, located on the public hallway for each sex; one of such water-closets shall be distinctly marked "for men," and one of the water-closets shall be distinctly marked "for women"; and there shall be installed not less than one water-closet in a separate compartment, located on the public hallway, for every twelve guest rooms, or fractional part thereof, on such floor, which are not provided with water-closets; provided, however, that the housing department charged with the enforcement of this act may exempt any hotel existing at the time of the passage of this act from fully complying with the provisions of this paragraph when, in its discretion, such deviation will not be detrimental to the health of the occupants thereof, or to the sanitation of the said hotel or premises; provided, further, that no such exemption shall apply to any addition or extension to a hotel.

Every water-closet hereafter placed in a hotel erected prior to the passage of this act shall comply with every provision of this act relative to water-closets installed in hotels hereafter erected, except that if a water-closet is installed in the top story of any such building, the compartment in which it is installed may be ventilated by a skylight with fixed louvres in lieu of a window; provided, however, that a new water-closet may be installed to replace a defective or antiquated fixture in the same location. No door or other opening in a water-closet, privy, or urinal compartment shall open from or into a room in which food is prepared or stored.

Sewer connection required.

Every hotel erected prior to the passage of this act or hereafter erected, where a connection with the sewer is possible, shall discontinue the use of any school sink, privy vault or any similar receptacle used to receive fecal matter, urine or sewage, and every such receptacle shall be completely removed and the place where it was located be properly disinfected. All such receptacles shall be replaced by individual water-closets of durable nonabsorbent material, properly connected, trapped, vented and provided with flush tanks, the same as is required, by the provisions of this act, in hotels hereafter erected.

Bath tub or shower.

§ 35. In every hotel hereafter erected there shall be installed not less than one bath tub or shower, in a separate compartment, located on the public hallway, for every ten guest rooms, or fractional part thereof, not provided with private baths; provided, that the said bath tub or shower is on the same floor and is accessible from each guest room through the public hallway. There shall also be installed not less than one slop-sink on each floor.

The walls and floors to every bath, shower or slop-sink room hereafter constructed shall be waterproofed and shall be provided with doors in the same manner as required for the construction of water-closet compartments in hotels hereafter erected.

In hotel already erected.

§ 36. In every hotel erected prior to the passage of this act there shall be installed not less than one bath tub or shower, in a separate compartment, located in the public hallway, for every twenty guest rooms, or fractional part thereof, which are not provided with private baths; provided, that the said bath tub or shower is located on the same floor and is accessible from each guest room through the public hallway.

There shall also be installed not less than one slop-sink on each floor; provided, however, that the housing department charged with the enforcement of this act may exempt any hotel existing at the time of the passage of this act from fully complying with the provisions of this section when, in its discretion, such deviation will not be detrimental to the health of the occupants thereof, or to the sanitation of the said hotel or premises; provided, further, that no such exemption shall apply to any addition or extension to a hotel.

Running water. Sewer connection.

§ 37. In every hotel hereafter erected every plumbing fixture shall be provided with running water, and there shall be provided faucets, with running water, sufficient in number so that all of the yards, courts and passageways may be washed. Faucets shall be of the hose bibb type, not less than three-quarter inch size.

Every plumbing fixture affecting the sanitary drainage system in any hotel hereafter erected, shall be properly connected with the street sewer, if a street sewer exists in the street abutting the lot on which the building is located and is ready to receive connections. When it is impracticable to connect such plumbing fixtures with a street sewer, then the plumbing fixtures shall be connected and drained into a cesspool constructed satisfactorily to the department charged with the enforcement of this act; or some other means of sewage disposal satisfactory to the department charged with the enforcement of this act may be made until such time as it may become practicable and possible to connect with the street sewer.

In hotel already erected.

§ 38. In every hotel erected prior to the passage of this act, every plumbing fixture shall be provided with running water, and there shall be provided faucets, with running water, sufficient in number so that all of the yards, courts and passageways may be washed. Faucets shall be of the hose bibb type, not less than three-quarter inch size.

In case no running water. Privy.

§ 39. Water-closets, baths, showers, sinks, slop-sinks, faucets and other plumbing fixtures required by this act need not be installed in the event that the hotel hereafter erected or an existing hotel, as the case may be, is situated where there is no running water and where there is no practical means of sewage disposal, until such time as it becomes practicable and possible to obtain running water and means of sewage disposal; provided, in every such case the department charged with the enforcement of this act shall decide whether or not it is practicable and possible to provide running water and proper means of sewage disposal. A special permit in writing shall be obtained in every such case from the department charged with the enforcement of this act, which permit shall be made in duplicate, and a copy thereof shall remain on file in the department issuing it; provided, further, that proper, separate toilet facilities for each sex shall be provided for the use of the occupants of such building. Such facilities shall be made sanitary. A privy, or toilet other than a water-closet,

erected under the authority of this section shall consist of a pit at least three feet deep, with suitable shelter over the same to afford privacy, and protection from the elements. The openings of the shelter and pit shall be enclosed by mosquito screening, and the door to the shelter shall be made to close automatically by means of a spring or other device. No privy pit shall be allowed to become filled with excreta to nearer than one foot from the surface of the ground, and the excreta in the pit shall be covered with earth, ashes, lime or similar substances at regular intervals.

All drainage water shall be conveyed from the premises by means of a covered drain to a covered cesspool.

Plumbing fixtures made sanitary.

§ 40. In every hotel erected prior to the passage of this act all plumbing fixtures affecting the sanitary drainage system shall be properly trapped and vented and made sanitary in every particular. In any hotel hereafter erected, and in any hotel erected prior to the passage of this act no plumbing fixtures shall be enclosed with woodwork, but the space under and around same must be left entirely open. All woodwork enclosing a water-closet, sink, slop-sink, wash tray or lavatory shall be removed and the floor and wall surfaces beneath and around such water-closet, sink, slop-sink, wash tray or lavatory shall be maintained in good repair, and if of wood, well painted with a light colored paint of sufficient body to make it non-absorbent. All wooden seats, attached to water-closets bowls, shall be varnished or enameled, or by some other method made nonabsorbent.

In every hotel hereafter erected water-closets shall have earthenware bowls and shall have earthenware seats integral with the bowls, or wooden seats, varnished or enameled so as to be nonabsorbent, or seats made of some nonabsorbent material attached directly to the bowls. No wooden wash trays or wooden kitchen sinks shall be permitted in such buildings. All plumbing connections hereafter made in buildings shall be of standard lead, iron, steel or brass; and every gas and water service connection hereafter made shall be of steel or iron, and shall be equipped with cut-off valves placed outside of the building, and such cut-off valves shall be readily accessible.

Whenever any plumbing fixture become insanitary the department charged with the enforcement of this act is hereby empowered to order the same removed and to order that it be replaced by a fixture conforming to the provisions of this act.

Two means of egress.

§ 41. Every hotel hereafter erected, three or more stories in height and in which there are more than five guest rooms on any one floor, shall be so designed and constructed that every guest room in such building shall have not less than two means of egress, either by stairways or fire escapes, constructed in accordance with the provisions of this act. Such means of egress shall be accessible from every guest room, either directly or through a public hallway, and so located that should one egress be or become blocked, the other egress shall be available.

Stairways.

§ 42. Every hotel two or more stories in height, hereafter erected shall have not less than two stairways.

Every fireproof hotel two or more stories in height hereafter erected shall have not less than one stairway, not less than three feet six inches wide, for each six thousand square feet, or fractional part thereof, of floor area in any one floor above the first floor thereof.

Every semifireproof hotel two or more stories in height hereafter erected shall have not less than one stairway, not less than three feet six inches wide, for each four thou-

and square feet, or fractional part thereof, of floor area in any one floor above the first floor thereof.

Every wooden hotel two or more stories in height hereafter erected shall have not less than one stairway, not less than three feet six inches wide, for each three thousand square feet, or fractional part thereof, of floor area in any one floor above the first floor thereof.

Every hotel hereafter erected shall have not less than one stairway leading from the outside to every basement or cellar thereof.

Computing number of stairways required.

§ 43. The largest floor area above the ground floor shall be used as the basis for computing the number of stairways required in a hotel hereafter erected; provided, that if all floors above the largest floor area of the building are diminished in area, the stairway or stairways from that portion of the building containing a smaller area may be computed on the basis of the largest floor area in that portion of the building.

Location of stairways.

§ 44. All stairways hereafter constructed shall be located so as to furnish the best means of egress from the building, shall be as far removed from each other as is practicable, and shall be as follows:

Access to stairways shall be provided at every floor by means of a public hallway, corridor, or passageway, and the public hallway, corridor, passageway and stairway from the ground exit level to the top story or roof shall be accessible at all times.

No stairway shall abut on more than one side of an elevator shaft, except on the entrance and topmost stories; provided, that the stairway is so located that it can be approached from the street entrance without passing by or in front of the open side of the said elevator shaft.

No stairway shall be located over a steam boiler, gas meter or gas heater or furnace, unless such boiler, gas meter, gas heater or furnace be located in a room, the walls and ceiling of which are constructed as required for a boiler room by section fifty-nine of this act. No stairway leading from any other portion of the building shall terminate in or pass through a boiler room.

Construction of stairways.

§ 45. Every stairway hereafter constructed shall be as follows: have a rise of not more than eight inches and a run of not less than 9 inches, without change in the run or rise between floors; and shall be provided with head room of not less than six feet six inches, measured from the nearest nosing of the stairway to the nearest soffit.

The depth of every landing in a stairway shall be not less than the width of the stairway, and all treads shall be of equal width for every run of stairs, and shall not vary in width in the width of the stairs.

Every stairway required by this act shall be continuous from the ground level to the top story, i. e., the flights of such stairway shall be constructed one directly above the other, or shall be constructed so that each flight shall be in plain view of each succeeding flight; provided, however, that half of the stairways from the upper floors may terminate at the second floor, in the event that the stairways from the first to the second floor be increased in width not less than fifty per cent.

Every stairway shall have at least one handrail and if the stairway be five feet or more in width, shall have a handrail on each side thereof.

The under side and soffits of wooden stairways and the outside stringers of open stairways, except outside stairways in semifireproof and wooden hotels shall be metal

lathed and plastered not less than three-quarters inch thick including the lath, or lathed with approved plaster board and plastered not less than three-quarters inch thick including the plaster board.

The width of stairways shall be measured in the clear of all projections except the baseboards, and except that handrails and newel posts may project not more than four inches.

Space under stairway.

§ 46. No closet of any kind shall be constructed in any hotel under any wooden stairway, but such space shall be kept entirely open, and be kept clean and free from all encumbrance; or such space shall be effectually closed with walls of studs, lathed and plastered, with no door or opening of any kind therein; provided, however, that the provisions of this section as to a closet under a stairway shall not apply to any hotel not more than two stories in height, in which there are not more than five guest rooms above the first floor thereof.

Stairway to roof.

§ 47. In every hotel hereafter erected more than two stories in height, the stairway nearest to the main entrance of the building shall be carried to the roof level and shall give egress to the roof through a penthouse or roof structure. In every such building not exceeding two stories in height there shall be constructed a scuttle, in the public hallway, near the stairway. Such scuttle shall be not less than two feet by three feet in area, and shall be cut through the ceiling and roof.

Penthouses over stairways shall be built either of fireproof materials or of wood studs, lathed with metal lath or approved plaster board and plastered not less than three-quarters inch thick including the lath or plaster board on the inside and outside thereof; or such penthouses may be covered in the same manner and with the same kind of materials as required by this act for the doors from such penthouses.

The door to the roof from a penthouse or roof structure shall be self-closing and shall open outward to the roof and shall be covered on both sides and edges with tin or other metal.

The frames and trim of such door opening shall be similarly constructed and all glass in such door shall be wired glass not less than one-fourth inch thick.

In hotel already erected.

Every hotel of more than two stories in height, erected prior to the passage of this act, shall have in the roof a penthouse or a scuttle, which scuttle shall be not less than two feet by three feet in area, located in the ceiling of a public hallway. There shall be provided a stairway or a stationary ladder, leading from the top floor of such hotel to the roof thereof. Such stairway or stationary ladder shall be made readily accessible to all the tenants of the building. No scuttle or penthouse door shall at any time be locked with a key, but may be fastened on the inside by a movable bolt or lock.

Hallways, etc., from stairways.

§ 48. Public hallways, landings, and corridors from stairways shall be of the same width and measured in the same manner as the stairways, as provided in section forty-six hereof.

Fire escapes.

§ 49. On every hotel hereafter erected more than two stories in height, there shall be provided at least one fire escape. If such hotel exceeds three thousand square feet of floor area on any one floor above the second floor thereof, such building shall be provided with one additional fire escape for each four thousand square feet of floor area or fractional part thereof.

Types of fire escapes.

Fire escapes required by this act shall be of one of the following types:

[Type 1.]

Type 1. Metallic throughout and fastened securely to the exterior walls of the building, with a balcony at each story above the first story thereof, with inclined stairways connecting all balconies and a goose-neck ladder connecting the topmost balcony to the roof. The lowest balcony of such fire escape to be not more than fourteen feet above the street or ground level directly under same.

All metallic balconies shall be not less than forty-four inches in width nor less than thirty-three square feet in area. The stairway openings therein shall be not less than twenty-one inches wide and forty inches in length. The balcony balustrade shall be not less than thirty-four inches high, with no opening in such balustrade greater than eight inches in horizontal dimension.

There shall be no opening greater than one inch in width in a fire escape balcony platform, except the stair well opening.

There shall be no opening greater than one inch in width in the lowest fire escape balcony platform, except that there be attached a counterbalanced or permanent ladder reaching to the street or ground below.

Every balcony platform shall be fastened to the outside walls of the building by building in and anchoring to such walls the balcony platform and the balustrade framing, or by securely bolting same thereto. Every balcony shall be supported by brackets, braces, or struts fastened to or built in and anchored to the walls.

The inclined stairways shall be not less than eighteen inches in width and placed in no part nearer than twenty-one inches from the face of the wall. Such inclined stairways shall have an inclination of not less than four inches and not more than six horizontally to each twelve inches of vertical height. The treads shall be not less than four inches wide, placed not more than twelve inches apart. Each side of such stairways shall be provided with a handrail not less than one inch in diameter fastened to the stair stringers and continued around the well hole openings of balcony platform.

The goose-neck ladder shall be not less than fifteen inches wide and extend vertically from the topmost balcony to three feet above the fire wall or roof above, and then be brought down and fastened to the inside face of the fire wall or to the roof. The rungs of the goose-neck ladder shall be not less than five-eighths inch round iron or steel, placed not more than fourteen inches apart. The goose-neck ladder shall be securely braced and fastened to the outside wall, and in no case shall such ladder pass in front of any opening in the wall to the interior of the building. The cornice opening for the passage of such ladder shall be not less than twenty-four inches in width and twenty-four inches in the clear outside of the ladder.

Such fire escape shall be framed and riveted or bolted together in a solid, substantial manner and properly supported, braced and fastened to the outside walls so as to be rigid, durable and secure and carry the loads imposed.

All metallic fire escapes shall be painted with not less than two coats of good, durable paint; or such fire escapes may be galvanized.

[Type 2.]

Type 2. Metallic ladders and stairways conforming to the provisions set forth for type one and with reinforced concrete or iron or steel fireproofed balconies, with fastenings of similar materials. Such balconies to measure the full size inside of balustrades. Floor openings and well holes provided and protected similarly to the requirements for metallic balconies.

[Type 3.] Enclosed spiral fire escape.

Type 3. Any type of an enclosed approved metallic spiral fire escape which consists of a rigid form of an inclined chute or chutes constructed entirely of incombustible material; securely attached to the outside walls of the building; provided with proper means of ingress thereto from the building and egress therefrom at the bottom; having means enabling firemen to reach the roof thereby from the ground; equipped with stand-pipes; painted the same as provided for metallic fire escapes; and satisfactory to the department charged with the enforcement of this act as being as solid, substantial and durable and as fireproof in construction, and providing at least as safe and efficient means of escape from the building for the occupants thereof, and furnishing all the protection and utility of the metallic fire escape described as "type one" in this act.

[Type 4.] Fire and smoke towers.

Type 4. Fire and smoke towers, consisting of a fire escape stairway not less than twenty inches in width, constructed of reinforced concrete, iron or steel, or a combination of these materials; and in all other details as required in this act for metallic fire escape stairways; said stairways being continuous the full height of the building from the first floor exit level to the roof, and with handrails on each side thereof the full length of same. Such stairways to be constructed at a point adjoining the exterior walls of the building and be entirely enclosed with walls of brick, terra cotta tile, concrete or reinforced concrete not less than twelve inches thick; such walls to be continuous from the basement up to and extending three feet above the roof of the building, with no covering of any kind over same, and with no openings in the walls of such tower into the building. The enclosing walls of such tower not to be used to carry or support any floor joist, beam, girder or other structural feature of the building, nor to be chased for any pipe, conduit or other purpose; to have an exit from the enclosure at the first floor line opening directly to a street or yard, and having an entrance by means of an outside balcony at each floor, such balconies to have a solid floor and in all other details and kind of materials to be as in this act required for metallic fire escape balconies. The balconies to be located and arranged to connect with a door opening from a public hallway in the interior of the building and with a door opening leading from the balcony to the tower, such door opening from the building to the balcony and from the balcony to the tower to be not less than thirty inches wide by seventy-two inches high and be equipped with metal-lined doors and with a frame and threshold of such door openings constructed of fireproof materials.

[Type 5.]

Type 5. A fire and smoke tower in every way similar to "type four" of this section, except that instead of the outside balcony there be built a vestibule with enclosing walls continuous with and of the same kind of materials and of the same thickness as the enclosing walls of the fire tower; that the vestibule opening be direct from a public hallway and be equipped with metal-lined doors. The vestibule floor to be of masonry construction. The enclosure to have an opening at each floor through the exterior wall of the building, such opening to extend from the floor to the ceiling and be not less in width than three-fourths of the width of the tower, said opening to be protected with an open metallic balustrade similar to that specified for metallic fire escape balconies.

Stairway and fire escape combined.

§ 50. In any hotel hereafter erected in which there is constructed a fire escape of "type four" or "type five," as prescribed in this act, such fire escape may be used and construed as a stairway and a fire escape combined; provided, that there is at least one other stairway or one other fire escape constructed in accordance with the provisions of this act, in the said building.

Location of fire escapes.

§ 51. Every fire escape required by this act shall be located on the building so as to furnish the best means of escape therefrom for the occupants, and at least one such fire escape shall be located on a street front. Every such fire escape shall have egress thereto from a public hallway or passageway not less than three feet wide, or such fire escapes, in lieu of being located on a public hallway, shall be so located that each guest room has direct egress thereto without passing through another room. If a public parlor, public lobby, or similar room is connected directly with the public hall, corridor or passageway through a clear and unobstructed opening, without doors, then egress may be had thereby to a fire escape. Signs both pointing towards and marking the locations of fire escapes shall be placed on each floor.

Computing number of fire escapes required.

§ 52. The largest floor area above the second floor shall be used as a basis for computing the number of fire escapes required by this act; provided, that if all floors above the largest floor area are diminished in size, the number of fire escapes from that portion of the building containing the smaller area may be computed on the basis of the largest floor area in that portion of the building.

Strength of platform, etc.

§ 53. All parts of each balcony platform of a fire escape shall be designed to carry, in addition to the dead load thereof, a live load of one hundred pounds per square foot over the entire area thereof, using outside dimensions, and the live and dead loads from the ladders or stairs supported thereon.

Each ladder shall be designed to withstand a horizontal pressure of one hundred pounds per square foot.

Each stairway shall be designed to carry, in addition to the dead load thereof, a live load of one hundred fifty pounds per square foot of horizontal projection.

Top rails of balcony balustrades shall be designed to withstand a horizontal pressure of one hundred pounds per lineal foot of railing.

Strength of fastenings, etc.

Each balcony shall be independently supported.

All fastenings of fire escape balconies to the building shall be designed to carry twenty-five per cent greater load than the total dead and live loads carried by the balconies. The balcony anchorage shall be direct to the structural steel or iron members of the balustrades and platforms extended into the walls and anchored into the structural work of the building.

The level of the inside sill of the door or window giving access to a fire escape balcony or the balcony floor shall be not more than thirty inches above the adjoining floor in the building. Every such door or window opening shall be not less than twenty-nine inches in clear width nor less than fifty-eight inches in height.

Where double-hung windows are used in such openings, the lower sash shall be at least the size of the upper sash and shall slide to the top of such opening. Any lock used on any such window shall be of a type which can be readily opened from the interior of the building without the use of a key or other tool.

Readily accessible.

§ 54. Every fire escape in or on a hotel hereafter erected, or in or on a hotel erected prior to the passage of this act, shall at all times be maintained in good order and repair, well painted and clear and unobstructed at all times, and be readily accessible.

Standpipes.

§ 55. On every hotel hereafter erected four or more stories in height, there shall be provided one or more metallic standpipes. Each such standpipe shall be not less than four inches in internal diameter, and shall have a Siamese inlet valve near the sidewalk or ground directly under same, and an outlet valve at each story above the first story and on the roof.

One such standpipe shall be placed on or in the exterior walls of the building at one fire escape on each street frontage, and the outlet valves shall be readily accessible from the balconies of the fire escapes.

The inlet and outlet valves on every standpipe shall be threaded and brought to a size which will meet the standard connections of the local fire department of the municipality in which such hotel or lodging house is being erected.

The standpipes required by this section need not be installed in any hotel which is situated where there is no running water and where it is not practicable or possible to obtain water for efficient use of such standpipes in case of fire, until such time as it is practicable and possible to obtain running water; and the department charged with the enforcement of this act shall decide whether or not it is possible or practicable to obtain running water.

Elevator shaft enclosed.

§ 56. In every fireproof hotel hereafter erected, every elevator shaft, dumb-waiter shaft or other interior shaft shall be inclosed in walls constructed of concrete, reinforced concrete, brick, terra cotta tile or other similar hard, incombustible materials, or shall be constructed of metal studs lathed either with metal lath or an approved plaster board and plastered on both sides so as to make a solid partition not less than two inches thick.

In every semifireproof or wooden hotel hereafter erected, every such shaft shall be inclosed by walls constructed as provided by this act for fireproof hotels, or such wall shall be constructed with wood studs, with wood firestops the same size as the studs, cut in between the studs at each floor and half way between each floor, lathed on both sides with metal lath or an approved plaster board and be plastered not less than three-quarters inch thick including the lath or plaster board.

Every opening from any shaft into the building shall be equipped with a metal door and with door frame and trim entirely of metal; or such door and door frame shall be constructed of wood covered with metal on the shaft side thereof, and if there is any glass therein, such glass shall be wired glass not less than one-fourth inch thick. Every door or window therein shall be made to close tight, and every door except elevator doors therein shall be self-closing.

Every window in such shaft shall be of wired glass, not less than one-fourth inch thick, set in a metal sash or a sash metal-covered on the shaft side thereof.

At the roof over every elevator shaft there shall be constructed a ventilating skylight or a ventilator with open louvres.

Vent shafts enclosed.

§ 57. In every hotel hereafter erected every vent shaft shall be inclosed by walls constructed the same as required by this act for elevator shafts in the same class of building. Such vent shafts may, in a semifireproof or wooden hotel, be lined on the outside thereof (weather side) with metal in lieu of metal lath and plaster; also, that portion of such shaft extending from the ceiling joists to the top thereof may be lined with metal in the same manner as is required for the weather side of such vent shaft.

Every opening from any vent shaft into the building or any window therein shall

be equipped in the same manner as required by this act for elevator shafts in the same class of building.

Plaster on the weather side of any such shaft shall be cement plaster.

Every vent shaft required by this act shall be not less than four feet in any direction and be at least sixteen square feet in area. If such vent shaft exceeds fifty feet in height, measured from the bottom to the top of the walls of such shaft, then such vent shaft shall throughout its entire height be increased in area three square feet for each additional ten feet or fractional part thereof above fifty feet.

Every such vent shaft shall be provided with an air intake or duct at or near the bottom thereof, communicating with the street or yard or a court. Such intake shall be not less than three square feet in total area, and may be divided into not more than three separate ducts running between the joists or otherwise, and shall in all cases be placed as nearly horizontal as possible. Every such intake or duct shall be constructed of approved fireproof material or shall be of metal or metal-lined, and be provided with a wire screen of not less than one inch mesh at each end. Plumbing, gas, steam or other similar pipes may be placed in such a vent shaft.

Every vent shaft shall have a door or a window at or near the bottom of the shaft, so arranged as to permit of its being readily cleaned out.

Walls of inner court.

§ 58. The walls of every inner court in a fireproof hotel hereafter erected shall be constructed of concrete, reinforced concrete, brick, terra cotta tile or other similar hard, incombustible material. In a semifireproof or in a wooden hotel such inner court walls, if surrounded on four sides by the walls of the same building, be constructed as provided for fireproof hotels, or may be of wood studs with wood firestops the same size as the studs, cut in between the studs at each floor and halfway between each floor, lathed on both sides with metal lath, or with an approved plaster board and be plastered not less than three-quarters inch thick including the lath or plaster board. Plaster on the weather side of such inner court walls shall be cement plaster, or such inner court walls may be lined on the weather side with not less than number twenty-six (gauge) metal, in lieu of metal lath and plaster.

Boiler room.

§ 59. In every hotel hereafter erected, every boiler used for the purpose of heating the building, using fuel other than gas, and every heating furnace or water-heating apparatus, using oil for fuel, shall be installed in a room, the walls of which room shall be built of concrete, reinforced concrete, brick, stone or terra cotta tile, not less than six inches thick, and such walls shall extend from the floor of the boiler room to the ceiling over the same. The entire ceiling of such room shall be built of similar materials as the walls, or shall be built with a double ceiling, with a space of not less than seven-eighths inch between the two ceilings, each ceiling shall be metal lathed or lathed with an approved plaster board and be plastered not less than three-quarters inch thick including the lath or plaster board. The floor of a boiler room shall be of concrete not less than two inches thick.

Doors in boiler room.

Any door in the wall of such room shall be a fire-resisting door, constructed of three thicknesses of seven-eighths inch by not more than six inches, tongued and grooved, matched, redwood boards entirely covered on the sides and edges with lockjointed tin; every such door shall be self-closing, so hung as to overlap the walls of the room at least three inches, and any glass in any such door or any glass in any window or opening in the walls of a boiler room shall be wired glass, not less than one-fourth inch thick, set in a metal or metal-covered sash.

All such doors shall have hinges, hangers, latches and other hardware of wrought iron, bolted to the doors, and shall have steel tracks, when sliding doors are used, with wrought-iron stops and binders bolted through the wall. Swinging doors shall have wall eyes of wrought iron, built into or bolted through the wall.

Every such boiler room shall have a sill across each door not less than four inches high. Such sills shall be of masonry, and the doors shall overlap same at least three inches, or in lieu of a masonry sill a steel or iron sill may be used, in which case the door shall close tight on top of same.

Where oil or other fluid fuel is burned, the oil or other fluid fuel shall not be fed by a gravity flow.

Garage.

§ 60. In every hotel hereafter erected any portion of such building in which there is kept or stored any automobile or automobiles shall be a room enclosed in partitions which shall be built of concrete, reinforced concrete, brick, stone or terra cotta tile, not less than six inches thick. Such enclosing partitions shall extend from the floor of the room to the ceiling of the same. The entire ceiling of such room shall be built of material similar to that in the construction of its walls or shall be either metal lathed or be lathed with an approved plaster board and be well plastered, and if any portion of the building is used as a public automobile garage, or automobile repair shop, or machine shop the ceiling thereof shall be constructed either of masonry, or of a double ceiling metal lathed or lathed with an approved plaster board and be well plastered, there shall be left a space between the ceilings of not less than six inches measured vertically. The lower ceiling shall be suspended with iron or steel channels. In each case each of the ceilings shall be plastered not less than three-quarters of an inch thick including the lath or the plaster board. The floor of such room shall be of concrete not less than two inches thick. Every door, window or other opening in the walls of such room opening to the interior of the building shall be protected in the same manner required by section fifty-nine hereof for doors, windows and other openings in a boiler room.

Fan exhaust system of ventilation.

§ 61. In every hotel hereafter erected the water-closet compartments, bath, toilet or slop-sink rooms, kitchens, sculleries, pantries or other rooms in which food is stored or prepared, public dining rooms, laundries, barber shops, Turkish baths, general amusement, entertainment or reception rooms, and rooms used for similar purposes and general utility rooms, in lieu of being provided with windows, as in this act prescribed, may be provided with a fan exhaust system of ventilation. Such fan exhaust system of ventilation shall consist of independent inlet ducts, extending from the outer air to each such room or compartment and exhaust ducts extending from each such room or compartment to the outer air above the highest roof of the building.

All of the inlet ducts and exhaust ducts shall be constructed of galvanized iron or other smooth surfaced, nonabsorbent material and so arranged that they may be readily cleaned out.

The exhaust ducts shall always be connected to an exhaust fan mechanically operated, so designed and operated as to provide a complete change of air in not to exceed fifteen minutes for each room used for the following purposes: kitchens; pantries or other rooms used for cooking, storing or preparing of food; barber shops; Turkish baths; laundries.

General amusement, entertainment, reception or dining rooms, or rooms used for similar purposes; general utility rooms; and the said fan exhaust system of ventilation shall be so designed and operated as to provide a complete change of air in not to

exceed five minutes for each room used for the following purposes: water-closets; shower compartments; bath, toilet or slop-sink rooms or sculleries.

Penalty for failure to maintain.

Any person in charge of a building in which a system of fan exhaust ventilation, as in this section is required, who fails, neglects or refuses to operate and maintain the said system of ventilation in good order and repair so that the ventilation (complete change of air) herein specified is provided in each of the rooms or compartments at all times, shall be deemed guilty of a misdemeanor and subject to all of the penalties fixed by this act.

Dormitory.

§ 62. Every dormitory hereafter constructed, altered, or converted in any hotel shall be as follows:

(a) In no one dormitory shall there be provided sleeping accommodations for more than twenty adult persons, nor shall the superficial floor space for each person be less than required by section sixty-five hereof.

(b) The ceiling height, measured from the finished floor to the finished ceiling, shall in no case be less than nine feet in the clear, and in no case shall there be permitted in such dormitory more than one tier of beds; provided, however, that in a dormitory in which the clear ceiling height is not less than eighteen feet measured between the finished floor to the finished ceiling thereof, a double tier of beds may be permitted, i. e., one tier above the other, provided that in no event shall there be less than three feet of clear vertical space between the beds, nor less than three feet in any horizontal direction between any of the beds, nor less than one foot of clear space between the floor of the room and the under side of the first tier of beds.

(c) In every dormitory there shall be provided windows opening onto a street, or onto a yard or court of the dimensions specified in this act and located on the same lot. The window area shall in no case be less than one-eighth of the superficial floor area in the dormitory, and in the event that a double tier of beds are provided, the said window area shall be doubled.

(d) The frames of beds in every dormitory shall be made of steel or iron or of some similar hard, smooth, incombustible and nonabsorbent material.

(e) In every dormitory there shall be provided not less than one water-closet in a separate compartment, not less than one urinal in a separate compartment, and not less than one shower in a separate compartment, and not less than one wash-sink, for each twenty persons or fractional part thereof occupying the said dormitory.

(f) Every dormitory in a hotel erected prior to the passage of this act shall be made to conform to the provisions of subsection "(a)" of this section.

§ 63. In any hotel erected prior to the passage of this act, every additional room or hallway that is hereafter constructed or created may be of the same height as the other rooms or hallways on the same story of such hotel.

Windows, courts, etc., in hotels already erected.

§ 64. Every room in a hotel erected prior to the passage of this act shall, if the said room be hereafter occupied for living or sleeping purposes, have a window of an area not less than eight square feet, opening directly upon a street, a yard, a court or upon a vent shaft not less than twenty-five square feet in area, which vent shaft shall in no part be less than four feet wide and open and unobstructed, without roof or skylight over same; except that if such room be located on the top floor of the building, such room may be ventilated by a skylight with fixed louvres directly to the outer air, or may have a window opening upon a vent shaft not less than ten square feet in area, if

such window from the room be not more than three feet below the top of the wall of such vent shaft.

Every public hallway in every hotel erected prior to the passage of this act, which does not conform to the provisions for public hallways in buildings hereafter erected, shall be provided with light and ventilation to the outer air. Such light and ventilation shall be provided by the placing of windows or skylights, or by making such alterations as in the judgment of the housing department may be deemed necessary to accomplish the result.

Kitchen.

§ 65. Food shall not be cooked or prepared in any room except in a kitchen designed for that purpose. Floors of kitchens and rooms in which food is stored shall be made impervious to rats by a layer of concrete not less than one and one-half inches thick or by a layer of sheet tin or iron or similar material.

Sleeping in cellar, etc. Floor space for each occupant.

It shall be unlawful for any person to live or sleep, or permit or suffer any person to live or sleep, in any cellar, bath, shower or slop-sink room, water-closet compartment, hallway, closet, kitchen, recess from a room, or dressroom, except when such recess from a room, or dressing room has at least ninety square feet of superficial floor area and complies with every requirement of this act for rooms, or in any other place in such building which in the judgment of the department charged with the enforcement of this act, would be dangerous or prejudicial to life or health by reason of want of light, windows, ventilation, drainage or on account of dampness, offensive, obnoxious or poisonous odors, or in any room that shall be so overcrowded as to afford less than the following floor space for each occupant, in accordance with the age of said occupant :

<i>Number of persons over 12 years of age</i>	<i>Number of persons under 12 years of age</i>	<i>Superficial floor area required</i>
1 or	2	60 square feet
2 or	4	120 square feet
3 or	6	180 square feet
4 or	8	240 square feet
5 or	10	300 square feet
6 or	12	360 square feet

Additional floor area in the same ratio shall be provided for additional persons.

Lighting of hallway, etc.

§ 66. In every hotel there shall be installed and kept burning from sunrise to sunset throughout the year artificial light sufficient in volume to properly illuminate every public hallway, stairway, fire escape egress, elevator, passageway, public water-closet compartment, or toilet room, whenever there is insufficient natural light to permit a person to read in any part thereof.

In every hotel there shall be installed and kept burning from sunset to sunrise throughout the year artificial light sufficient in volume to properly illuminate every public hallway, stairway, fire escape egress, elevator, public water-closet compartment, or toilet room and exterior passageway on the lot.

Light-colored material on wall.

§ 67. The walls and ceilings of every sleeping room in every hotel shall, except when there is sufficient natural light to permit a person to read in any part thereof during daytime, be calcimined or painted or papered with a light-colored material, and such

calimine, paint or paper, as the case may be, shall be renewed as often as is necessary to maintain the same of a light color and clean and free from vermin.

The walls of courts and shafts, unless built of light-colored materials, shall be painted of a light color or whitewashed, and such painting or whitewashing shall be renewed as often as is necessary to maintain the same of a light color.

Repapering.

§ 68. No wall, partition or ceiling of any room in any hotel shall be repapered, calced, or have any other covering placed thereupon unless the old wall paper or other covering shall have first been removed therefrom, and the said wall, partition or ceiling cleaned, disinfected and freed from bugs, insects or vermin.

Repairs.

§ 69. Every hotel shall be maintained in good repair. The roofs shall be kept waterproof and all storm or casual water properly drained and conveyed therefrom to the street sewer, storm drain or street gutter.

All portions of the lot about such hotel, including the yards, courts, areaways, vent shafts and passageways, shall be properly graded and drained; and whenever the department charged with the enforcement of this act deems it necessary for the protection of the health of the occupants of such building, or for the proper sanitation of the premises, it may require that the said lot, yards, courts, areaways, vent shafts and passageways be graveled or properly paved and surfaced with concrete, asphalt or similar materials.

Metal mosquito screening.

§ 70. There shall be provided, whenever it is deemed necessary for the health of the occupants of any hotel or for the proper sanitation or cleanliness of any such building, metal mosquito screening of at least sixteen mesh, set in tight-fitting removable sash, for each exterior door, window or other opening in the exterior walls of the building.

Garbage cans.

§ 71. In every hotel there shall be provided such number of tight metal receptacles with close-fitting metal covers for garbage, refuse, ashes and rubbish as may be deemed necessary by the department charged with the enforcement of this act, or in lieu of such metal receptacles there may be constructed a garbage chute or shaft approved by the housing department. Each of said receptacles, chutes or shafts shall be kept in a clean condition by the person in charge or in control of the building.

Rooms, etc., to be kept clean.

§ 72. Every room, hallway, passageway, stairway, wall, partition, ceiling, floor, skylight, glass window, door, carpet, rug, matting, window curtain, water-closet compartment or room, toilet room, bathroom, slop-sink or washroom, plumbing fixture, drain, roof, closet, cellar, or basement in any hotel or on the lot, yard, court or any of the premises thereof, shall be kept in every part clean and sanitary and free from all accumulation of debris, filth, rubbish, garbage or other offensive matter.

Swill, etc., not to be deposited in plumbing fixtures.

No person shall, or cause or permit any person to deposit any swill, garbage, bottles, ashes, cans or other improper substance in any water-closet, sink, slop-hopper, bathtub, shower, catch-basin, or in any plumbing fixture connection or drain therefrom; or otherwise to obstruct the same; or to place or cause or permit to be placed any filth, urine or other foul matter in any place other than the place provided for same; or to keep or cause or permit to be kept any urine or filth or foul matter in any room in any hotel, or in or about the said building or premises thereof, for such length of time as to create a nuisance.

Beds kept clean.

§ 73. In every hotel, every part of every bed, including the mattress, sheets, blankets and bedding, shall be kept in a clean, dry and sanitary condition, free from filth, urine or other foul matter, in or upon the same; and free from the infection of lice, bedbugs or other insects. No roller or public towel shall be permitted. Bed linen shall be changed at least as often as a new guest occupies the bed.

Dangerous articles not to be kept.

§ 74. In no hotel, or any part thereof, or in the lot, yard, court or any portion thereof, shall there be kept, stored or handled any article dangerous or detrimental to life or to the health of the occupants thereof; nor shall there be stored, kept, or handled any feed, hay, straw, excelsior, cotton, paper stock, rags or junk, except upon a written permit so to do, obtained from the fire commissioner or other department authorized to issue such permit. Every such permit shall be deemed to be a public record, made in duplicate and a copy thereof shall remain on file in the office of the fire commissioner or department issuing same.

Animals not to be kept.

§ 75. No horse, cow, calf, swine, sheep, goat, rabbit, mule or other animal, chicken, pigeon, goose, duck or other poultry shall be kept in a hotel, or any part thereof; nor shall any such animal or poultry, nor shall any stable be kept or maintained on the same lot, yard, court or premises of a hotel, or within twenty feet of any window or door of such building.

No hotel shall be connected with or have any door, window or transom opening to any part of a building wherein paint or oil are stored or kept for the purpose of sale or otherwise.

Housekeeper in charge.

§ 76. In every hotel in which there are eight or more guest rooms and in which the owner does not live, there shall be a janitor, housekeeper or other responsible person, who shall reside in such hotel or on the same lot or premises thereof and have charge of same.

Action to abate nuisance. Authority to execute order.

§ 77. In case any hotel, or any part thereof, is constructed, altered, converted or maintained in violation of any provisions of this act or of any order or notice of the department charged with its enforcement, or in case a nuisance exists in any such hotel or building or structure or upon the lot on which it is situated, said department may institute any appropriate action or proceeding to prevent such unlawful construction, alteration, conversion or maintenance, to restrain, correct or abate such violation or nuisance, to prevent the occupation of said hotel, building or structure, to prevent any illegal act, conduct of business in or about such hotel or lot. In any such action or proceeding said department may, by affidavit setting forth the facts, apply to the superior court, or to any judge thereof, for an order granting the relief for which said action or proceeding is brought, or for an order enjoining all persons from doing or permitting to be done any work in or about such hotel, building, structure or lot, or from occupying or using the same for any purpose, until the entry of final judgment or order. In case any notice or order issued by said department is not complied with, said department may apply to the superior court, or to any judge thereof, for an order authorizing said department to execute and carry out the provisions of said notice or order, to remove any violation specified in said order or notice, or to abate any nuisance in or about such hotel, building or structure, or the lot upon which it is situated. The court, or any judge thereof, is hereby authorized to make any order specified in this section. In no

case shall the said department or any officer thereof or the municipal corporation be liable for costs in any action or proceeding that may be commenced in pursuance of this act.

Fine a lien.

§ 78. Every fine imposed by judgment under section six of this act upon a hotel owner shall be a lien upon the house in relation to which the fine is imposed, from the time of the filing of a certified copy of said judgment in the office of the recorder of the county in which said hotel is situated, subject only to taxes and assessments and water rates, and to such mortgage and mechanics' liens as may exist thereon prior to such filing; and it shall be the duty of the department charged with the enforcement of the provisions of this act, upon the entry of such judgment, to file forthwith the copy as aforesaid, and such copy upon filing shall be forthwith indexed by the recorder in the index of mechanics' liens.

Notice of pendency of action.

§ 79. In any action or proceeding instituted by the department charged with the enforcement of this act, the plaintiff or petitioner may file, in the county recorder's office of the county where the property affected by such action or proceeding is situated, a notice of the pendency of such action or proceeding. Said notice may be filed at the time of the commencement of the action or proceeding, or at any time afterwards before final judgment or order, or at any time after the service of any notice or order issued by said department. Such notice shall have the same force and effect as the notice of pendency of action provided for in the Code of Civil Procedure. Each county recorder with whom such notice is filed shall record it and shall index it in the name of each person specified in a direction subscribed by an officer of the department instituting such action or proceeding. Any such notice may be vacated upon the order of a judge of the court in which such action or proceeding was instituted or is pending. The recorder of the county where such notice is filed is hereby directed to mark such notice and any record or docket thereof as canceled of record, upon the presentation and filing of a certified copy of such order.

Name of owner, etc., filed.

§ 80. Every owner of a hotel and every lessee or other person having control of a hotel, shall file in the housing department a notice, containing his name and address, and also a description of the property, by street and number and otherwise, as the case may be, in such manner as will enable the department charged with the enforcement of this act easily to find the same; and also the number of rooms in the building. In case of a transfer of any hotel, it shall be the duty of the grantee of said hotel to file in the housing department a notice of such transfer, stating the name of the new owner, within thirty days after such transfer. In case of the devolution of the said property by will, it shall be the duty of the executor and the devisee, if more than twenty-one years of age, and in case of devolution of such property by inheritance without a will, it shall be the duty of the heirs, or in case all the heirs are under age, it shall be the duty of the administrator of the deceased owner of said property, to file in said department a notice, stating the death of said owner and the names of those who have succeeded to his interests, within thirty days after the death of the decedent, in case he died intestate, and within thirty days after the probate of his will if he died testate.

Name of agent filed.

§ 81. Every owner, agent or lessee of a hotel shall file in the housing department a notice containing the name and address of such agent of such house, for the purpose of receiving service of process, and also a description of the property, by street and number

or otherwise, as the case may be, in such manner as will enable the department charged with the enforcement of this act easily to find the same. The name of the owner or lessee may be filed as agent for this purpose.

Index of names.

§ 82. The names and addresses filed in accordance with sections seventy-nine and eighty shall be indexed by the housing department in such a manner that all of those filed in relation to each hotel shall be together and readily ascertainable. Said indices shall be public records, open to public inspection during business hours.

Time of service.

§ 83. Every notice or order in relation to a hotel shall be served five days before the time for doing the thing in relation to which it shall have been issued.

Manner of service.

§ 84. In any action brought by any department charged with the enforcement of this act in relation to a hotel for injunction, vacation of the premises or other abatement or nuisance, or to establish a lien thereon, it shall be sufficient service of summons to serve the same as notices and orders are served under the provisions of the Code of Civil Procedure.

Minimum requirements. Supplementary.

§ 85. The provisions of this act shall be held to be the minimum requirements adopted for the protection, the health and the safety of the community, and for the protection, the health and the safety of the occupants of hotels. Nothing in this act contained shall be construed as prohibiting the local legislative body of any incorporated town, incorporated city, incorporated city and county, or county, from enacting from time to time, supplementary ordinances or laws imposing further restrictions, or providing for fees to be charged for permits, certificates or other papers required by this act; but no ordinance, law, regulation or ruling of any municipal department, authority, officer or officers, shall repeal, amend, modify or dispense with any of the provisions of this act.

Repealed.

All statutes of the state and all ordinances of incorporated towns, incorporated cities, incorporated cities and counties, and counties, as far as inconsistent with the provisions of this act, are hereby repealed; provided, that nothing in this act contained shall be construed as repealing or abrogating any present ordinance or law of any incorporated town, incorporated city, incorporated city and county, or county, in the state which further restricts the percentage of the lot to be covered by a hotel, the number of stories or height of such hotel or number of rooms therein, the occupation thereof, the materials to be used in its construction, or increasing the size of the yards or courts, the floor space to each person occupying a room, the requirements as to sanitation, ventilation, light and protection against fire.

Powers of cities not abrogated.

Nothing in this act contained shall be construed as abrogating, diminishing, minimizing or denying the power of any incorporated town, incorporated city, incorporated city and county, or county, by ordinance or law, to further restrict the percentage of the lot to be covered by a hotel within said municipality, the number of stories or height of such hotel or number of rooms therein, the occupation thereof, the materials to be used in its construction, or increasing the size of the yards or courts, the floor space to each person occupying a room, the requirements as to sanitation, ventilation, light and protection against fire.

Constitutionality.

§ 86. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

In effect when.

§ 87. This act shall take effect and be in force from and after September 1, 1917.

Repealed.

§ 88. "An act to regulate the building and occupancy of hotels and lodging houses in incorporated towns, incorporated cities, and cities and counties, and to provide penalties for the violation thereof," approved June 16, 1913, statutes of California of 1913, page 1429, and all acts amending said act, are hereby repealed.

HOTEL ACT OF 1917.

ACT 2028—An act relating to hotels, defining the same, providing regulations in connection therewith, providing for the sanitation of the rooms of such hotels, providing for the sanitary method and manner of keeping, handling and using bedclothes or bedcovering in such hotels, providing for its enforcement by the state board of health and local health officers, prescribing a penalty for the violation of the provisions hereof; and repealing an act entitled "An act relating to hotels, defining the same, providing regulations in connection therewith, providing for the sanitation of the rooms of such hotels, providing for the sanitary method and manner of keeping, handling and using bedclothes or bedcovering in such hotels, repealing all acts or parts of acts in conflict with this act, providing for its enforcement by the state board of health, and providing a penalty for the violation of any of its provisions," approved April 26, 1915.

History: Approved May 11, 1917. In effect July 27, 1917. Stats. 1917, p. 432. Prior act of April 26, 1915, Stats. 1915, p. 213, repealed by the present act.

Hotel defined.

§ 1. Every building or structure, kept as, used as, maintained as, or advertised as, or held out to the public to be, a place where sleeping or rooming accommodations are furnished to the public, or any part of the public, whether with or without meals, shall, for the purpose of this act, be deemed to be a hotel, and whenever the word "hotel" shall occur in this act, it shall be deemed to include lodging house and rooming house.

Clean bedding, etc.

§ 2. All bedding, bedclothes, or bedcovering, including mattresses, quilts, blankets, sheets, pillows or comforters, used in any hotel in this state must be kept clean and free from all filth or dirt; provided, that no bedding, bedclothes or bedcovering, including mattresses, quilts, blankets, sheets, pillows or comforters, shall be used which is worn out or unfit for use by human beings according to the true intent and meaning of this act.

Infected rooms fumigated.

§ 3. Any room in any hotel in this state which is or shall be infested with vermin or bedbugs or similar things, shall be thoroughly fumigated, disinfected and renovated until such vermin or bedbugs or other similar things are entirely exterminated.

Clean rooms.

§ 4. Every room in any hotel in this state used for sleeping purposes, must be kept free from any and every kind of dirt or filth of whatsoever nature, and the walls, floors, ceilings and doors of every such room shall be kept free from dirt.

Ventilation devices.

§ 5. Every room in any hotel, used for sleeping purposes, shall have devices, such as a window or transom, so constructed as to allow for proper and a sufficient amount of ventilation in each such room.

Size of sheets.

§ 6. Every bed, for the accommodation of any person or persons or guests, kept or used in any hotel in this state, must be provided with a sufficient supply of clean bedding and must be provided with sheets at least eighty-one inches wide and ninety-eight inches long; provided, however, that on every single bed there shall be sheets at least fifty inches wide and ninety-eight inches long. Every bed shall be supplied with clean sheets and pillow slips as often as assigned to a different person.

Individual towels.

§ 7. Every hotel, within this state, having a public washstand or washbowl, where different persons gather to wash themselves, must keep a sufficient supply of clean individual towels for the use of such persons within easy access of or to such persons and in plain sight and view.

Penalty for violation.

§ 8. Every owner, manager, lessee or other person in charge of any hotel in this state who shall fail to comply with this act whether through the acts of his agents or employees, or otherwise, shall be guilty of a misdemeanor and upon conviction shall be fined not more than two hundred dollars or shall be imprisoned for not more than three months; and every day that any hotel shall be kept in violation of any of the provisions of this act such keeping shall constitute a separate offense.

Enforcement.

§ 9. It shall be the duty of the state board of health and local health officers to enforce the provisions of this act.

Other than hotels.

§ 10. Nothing in this act shall be construed to include cots or bunks where the same are used in places other than in hotels.

Stats. 1915, p. 213, repealed.

§ 11. An act of the legislature entitled "An act relating to hotels, defining the same, providing regulations in connection therewith, providing for the sanitation of the rooms of such hotels, providing for the sanitary method and manner of keeping, handling and using bedclothes or bedcovering in such hotels, repealing all acts or parts of acts in conflict with this act, providing for its enforcement by the state board of health, and providing a penalty for the violation of any of its provisions," approved April 26, 1915, is hereby repealed.

CHAPTER 153.

HOURS OF LABOR.

References: See, generally, tits. "Infants"; "Master and Servant"; "Municipal Corporations"; "Pharmacy." Also Kerr's Cyc. Political Code, §§ 3244, et seq.; Kerr's Cyc. Penal Code, §§ 651, 653c.

CONTENTS OF CHAPTER.

ACT 2034. WOMEN'S EIGHT-HOUR LAW.

WOMEN'S EIGHT-HOUR LAW.

ACT 2034—An act limiting the hours of labor of females employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company; compelling each employer in any manufacturing, mechanical, or mercantile establishment, laundry, hotel or restaurant, or other establishment employing any female to provide suitable seats for all female employees and to permit them to use such seats when they are not engaged in the active duties of their employment; and providing a penalty for failure, neglect or refusal of the employer to comply with the provisions of this act, and for permitting or suffering any overseer, superintendent, foreman or other agent of any such employer to violate the provisions of this act.

History: Approved March 22, 1911, Stats. 1911, p. 437. Amended (1) June 12, 1913, in effect August 10, 1913, Stats. 1913, p. 713; (2) May 23, 1917, in effect July 27, 1917, Stats. 1917, p. 829; May 10, 1919, in effect July 22, 1919, Stats. 1919, p. 394. The amendment of 1913 was of the entire act except the title.

Females not to work more than eight hours per day. Employment in more than one establishment. Not applicable to nurses, fruit canning, etc.

§ 1. No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, public lodging house, apartment house, hospital, place of amusement, or restaurant, or telegraph or telephone establishment or office, or in the operation of elevators in office buildings or by any express or transportation company in this state more than eight hours during any one day of twenty-four hours or more than forty-eight hours in one week. It shall be unlawful for any employer of labor to employ, cause to be employed or permit any female employee to labor any number of hours whatever, with knowledge that such female has heretofore been employed within the same date and day of twenty-four hours in any establishment and by any previous employer, for a period of time that will, combined with the period of time of employment by a previous employer exceed eight hours; provided, that this shall not prevent the employment of any female in more than one establishment where the total number of hours worked by said employee does not exceed eight hours in any one day of twenty-four hours. If any female shall be employed in more than one such place, the total number of hours of such employment shall not exceed eight hours during any one day of twenty-four hours or forty-eight hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or forty-eight hours during any one week; provided, further, that the provisions of this section in relation to hours of employment shall not apply to or affect graduate nurses in hospitals, nor the harvesting, curing, canning or drying of any variety of perishable fruit, fish or vegetable during such periods as may be necessary to harvest, cure, can or dry said fruit, fish or vegetable in order to save the same from spoiling. [Amendment of May 10, 1919. In effect July 22, 1919. Stats. 1919, p. 394.]

This section was also amended May 23, 1917, Stats. 1917, p. 829.

Seats for female employees.

§ 2. Every employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or other establishment employing any female, shall provide suitable seats for all female employees, and shall permit them to use such seats when they are not engaged in the active duties of their employment.

Enforcement of act.

§ 3. The bureau of labor statistics shall enforce the provisions of this act. The commissioner, his deputies and agents, shall have all powers and authority of sheriffs or other peace officers, to make arrests for violations of the provisions of this act, and to serve all processes and notices thereunder throughout the state.

This title of the amending act of 1919 recites an amendment of this section, but no such amendment appears in the body of the act.

Penalty. Disposition of fines.

§ 4. Any employer who shall permit or require any female to work in any of the places mentioned in section one more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to so arrange the work of females in his employ so that they shall not work more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to provide suitable seats as provided in section two of this act, or who shall permit or suffer any overseer, superintendent, foreman, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished for a first offense, by a fine of not less than twenty-five dollars nor more than fifty dollars; for a second offense, by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars; or by imprisonment for not more than sixty days, or by both such fine and imprisonment. All fines imposed and collected under the provisions of this act shall be paid into the state treasury and credited to the contingent fund of the bureau of labor statistics.

1. Constitutionality.—Only one subject embraced in title.—Only one subject—that of female employment—is embraced in the title of the act.—In re Miller, 162 Cal. 687, 700, 124 Pac. 427.

2. Same—Not unreasonable as a health regulation.—The limitation of the hours of labor of women in hotels is not unreasonable as a health regulation.—In re Miller, 162 Cal. 687, 698, 124 Pac. 427.

3. Same — Exclusive application to women not unreasonable.—The application of the eight-hour laws exclusively to women is justified on the ground that they are less robust in physical organization and structure than men, that they have the burden of child bearing, and consequently, that the health and strength of posterity and of the public in general is presumed to be enhanced by preserving and protecting women from exertion which men might bear without detriment to the general welfare.—In re Miller, 162 Cal. 687, 695, 124 Pac. 427.

4. Same—Not unreasonable as applied exclusively to women.—Reasonable regulations limiting the hours of labor of women are within the scope of legislative action through a state police statute.—Miller v. Wilson, 236 U. S. 373, 59 L. ed. 628, 35 Sup. Ct. 342, L. R. A. 1915F, 829.

5. Same — Same.—The reasonable exertion of the police authority of a state is not overstepped and liberty of contract unduly abridged by a statute prescribing eight hours a day or a maximum of forty-eight hours a week for women.—Miller v. Wilson, 236 U. S. 373, 59 L. ed. 628, 35 Sup. Ct. 342, L. R. A. 1915F, 829.

6. Same—Does not violate constitutional rights.—The woman's eight-hour law does not constitute a violation of section 18, article XX, or of section 1, article I, or of section 11, article I, or of section 21, article I, or of section 25 of article IV, of the constitution.—In re Miller, 162 Cal. 687, 692, 124 Pac. 427.

7. Same—Certain exemptions not unreasonable discrimination.—The exemption of women employed in harvesting, curing, canning or drying perishable fruits or vegetables is not an improper discrimination, in view of the short period of such employment, the greater necessity, from the standpoint of the general welfare, for facility in obtaining employees to do the work than obtains in ordinary employments in order to avoid loss from the perishable nature of the products preserved.—In re Miller, 162 Cal. 678, 700, 124 Pac. 427.

9. Same—Women in hotels, exemption of, not unreasonable discrimination.—The

California statute of 1911 is not unconstitutional as to women employed in hotels, either as an unwarranted invasion of liberty of contract, or as a denial of equal protection of the law, on the ground of unreasonable discrimination because of the omissions of certain classes of female laborers from its operation, or because the classification is based on the character of the employer's business, and not upon the character of the employees work.—*Miller v. Wilson*, 236 U. S. 373, 59 L. Ed. 628, 35 Sup. Ct. 342, L. R. A. 1915F, 829; *Bosley v. McLaughlin*, 236 U. S. 385, 59 L. Ed. 632, 35 Sup. Ct. 345.

10. *Same—Same.*—The act of March 22, 1911 (437), known as the woman's eight hour law is constitutional so far as it applies to women employed in hotels.—*In re Miller*, 162 Cal. 687, 692, 124 Pac. 427.

11. *Same—Same.*—The woman's eight hour law is not rendered special or discriminating because it is made to apply to women employed in hotels, and not to those employed in lodging houses.—*In re Miller*, 162 Cal. 687, 699, 124 Pac. 427.

12. *Same—Exemption of pharmacists and student nurses, not unreasonable discrimination.*—Pharmacists and student nurses perform work of such character and

importance to the public that it should not be performed by persons over-fatigued, and it is therefore a proper subject for the legislative control of the hours of labor of women so employed.—*Bosley v. McLaughlin*, 236 U. S. 385, 59 L. Ed. 632, 35 Sup. Ct. 345.

13. *Same—Same.*—The question of the necessity of limiting the hours of labor of women pharmacists and nurses is a matter for the legislature and not for the courts.—*Bosley v. McLaughlin*, 236 U. S. 385, 59 L. Ed. 632, 35 Sup. Ct. 345.

14. *Same—Pharmacists and student nurses—Invasion of right of contract.*—The restriction of the hours of labor of women pharmacists and nurses in hospitals to eight hours a day or a maximum of forty-eight hours a week is not so palpably arbitrary as to be an unconstitutional invasion of the right of contract.—*Bosley v. McLaughlin*, 236 U. S. 385, 59 L. Ed. 632, 35 Sup. Ct. 345.

15. *Same—Exception of graduate nurses.*—The exception of graduate nurses from the operation of the statute is not so arbitrary as to render the act unconstitutional as denying the equal protection of the law.—*Bosley v. McLaughlin*, 236 U. S. 385, 59 L. Ed. 632, 35 Sup. Ct. 345.

HOUSE OF CORRECTION.

See tit. "Preston School of Industry."

HOUSEBOATS.

See "Waters."

HOUSES OF PROSTITUTION.

See tit. "Prostitution," and Kerr's Cyc. Penal Code, §§ 315, 316.

CHAPTER 154.

HUMBOLDT BAY.

References: Depositing sawdust, slabs, etc., in Humboldt Bay, see Kerr's Cyc. Penal Code, § 612.

Obstructions in channels, see Kerr's Cyc. Political Code, §§ 2567, et seq.

See, generally, tit. "Buoys and Beacons," and Kerr's Cyc. Penal Code, §§ 609, 613, 614.

CONTENTS OF CHAPTER.

- ACT 2051. GRANT OF TIDE LANDS TO U. S. FOR PURPOSE OF IMPROVING HARBOR. ACT OF 1887.
- 2052. GRANT OF TIDE LANDS TO U. S. FOR PURPOSE OF IMPROVING HARBOR. ACT OF 1889.
- 2053. PURCHASE OF CERTAIN LANDS IN HUMBOLDT BAY.
- 2054. SURVEY OF HUMBOLDT BAY.

GRANT OF TIDE LANDS TO THE UNITED STATES. ACT OF 1887.

ACT 2051—An act to grant to the United States certain tide lands belonging to the state of California for the purpose of improving the harbor of Humboldt bay.

History: Approved March 9, 1887, Stats. 1887, p. 59.

GRANT OF TIDE LANDS TO THE UNITED STATES. ACT OF 1889.

ACT 2052—An act to grant to the United States certain tide lands belonging to the state of California, for the purpose of improving the harbor of Humboldt bay.

History: Approved March 15, 1889, Stats. 1889, p. 201.

PURCHASE OF CERTAIN LANDS IN HUMBOLDT BAY.

ACT 2053—An act authorizing the governor and attorney general to purchase for the state certain lands in Humboldt bay.

History: Approved March 22, 1899, Stats. 1899, p. 166.

SURVEY OF HUMBOLDT BAY.

ACT 2054—An act appropriating money to be expended by and under the direction of the department of engineering for the purpose of making a preliminary survey of Humboldt Bay and gathering data for a report to the legislature as to the necessity of dredging and removing sand and other deposits formed across the channels of said bay and as to the best manner of removing said deposits that the navigability of said bay may be improved and making an estimate of the cost thereof.

History: Approved April 12, 1909, Stats. 1909, p. 841.

This act appropriated \$2,000 for the purpose indicated.

CHAPTER 155.

HUMBOLDT COUNTY.

References: County boundary, see tit. "County Boundaries," and Kerr's Cyc. Political Code, § 3920.

County government, officers, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

Navigable streams, see Kerr's Cyc. Political Code, § 2349.

CONTENTS OF CHAPTER.

ACT 2062. ADDITIONAL SUPERIOR JUDGE.

2063. CHALLENGES TO JURORS IN JUSTICE'S COURTS.

2064. SCALING LOGS.

2071. DISPOSAL OF LOTS IN TOWNS AND VILLAGES ON THE PUBLIC LANDS.

ADDITIONAL SUPERIOR JUDGE.

ACT 2062—An act to provide an additional judge for.

History: Approved March 8, 1895, Stats. 1895, p. 27.

This act increased the number of superior judges from one to two.

CHALLENGES TO JURORS IN JUSTICE'S COURTS.

ACT 2063—An act in relation to jurors in courts of justice of the peace in Humboldt county.

History: Approved March 3, 1874, Stats. 1873-74, p. 229.

Superseded in part by fee bill act of 1895, Stats. 1895, p. 273.—See Kerr's Cyc. Political Code, §§ 4230, et seq.

This act related to the grounds of challenge of jurors in civil actions. Compare Kerr's Cyc. Code Civil Procedure, §§ 600, et seq., and 885.

LOG SCALING.

ACT 2064—An act providing for the scaling of logs in Humboldt county.

History: Approved March 30, 1878, Stats. 1877-78, p. 779.

This act was approved two days after the act passed by the same session of the legislature providing a standard for log scaling.—See Act 2569.

This act provided for the scaling of logs by the "quarter scale." As to the meaning of this method of scaling timber, see the court's opinion in *Bullock v. Consumer's Lumber Co.*, 3 Cal. Unrep. 609, 31 Pac. 367.

DISPOSAL OF TOWN AND VILLAGE LOTS ON PUBLIC LANDS.

ACT 2071—An act to provide for the disposal of lots in the towns and villages on the public lands in the county of Humboldt.

History: Approved April 27, 1855, Stats. 1855, p. 168. Amended April 3, 1856, Stats. 1856, p. 75; April 24, 1857, Stats. 1857, p. 241; January 24, 1860, Stats. 1860, p. 5.

This act was passed to carry out the provisions of and to give effect to the federal statutes for the benefits of the occupants of such towns and villages.—Ricks v. Reed, 19 Cal. 551.

1. **Constitutionality.**—The legislation is both constitutional and wise and furnishes a proper method of giving protection to the rights of bona fide occupants, as distinguished from mere trespassers who have temporarily intruded upon the lots.—Ricks v. Reed, 19 Cal. 551; Ryan v. Tomlinson, 31 Cal. 11.

2. **Jurisdiction of court not appellate.**—The jurisdiction of conflicting claims under the act conferred upon the county court is not appellate but original, and is

such jurisdiction as the legislature is authorized to confer upon such court under section 9, article VI of the constitution of 1849.—Ricks v. Reed, 19 Cal. 551; Ryan v. Tomlinson, 31 Cal. 11.

3. **Trial, a "special case."**—The trial of a conflicting claim under this act by the county court is a "special case."—Ricks v. Reed, 19 Cal. 551; Ryan v. Tomlinson, 31 Cal. 11.

4. **Ground of jurisdiction.**—The action of the board of trustees only became material as furnishing authority for the proceedings before the county court.—Ricks v. Reed, 19 Cal. 551; Ryan v. Tomlinson, 31 Cal. 11.

CHAPTER 156.

HUNTING ON PRIVATE GROUNDS.

References: Hunting on enclosed land, see Kerr's Cyc. Penal Code, §§ 384c, 602, 627.

Tearing down "No hunting" signs, see Kerr's Cyc. Penal Code, § 602, 627.

See, generally, tits. "Fences"; "Trespass."

CONTENTS OF CHAPTER.

ACT 2078. HUNTING AND SHOOTING UPON PRIVATE GROUNDS.

HUNTING AND SHOOTING ON PRIVATE GROUNDS.

ACT 2078—An act to prevent hunting and shooting on private inclosed grounds, and the destruction of growing timber on private grounds in certain counties in this state.

History: Approved March 8, 1872, Stats. 1871-72, p. 304. Amended March 30, 1874, Stats. 1873-74, p. 792.

Partly codified by § 602, Penal Code.

This act applied to Alameda, San Mateo, Marin, San Bernardino, San Diego, Colusa, Sacramento, Sonoma, Nevada, Humboldt, Los Angeles, Santa Barbara, Contra Costa, and San Luis Obispo counties. It was amended in 1873-74, p. 792, so as to make it

apply to Alameda, San Mateo, Marin, San Bernardino, San Diego, Colusa, Sacramento, Sonoma, Nevada, Humboldt, Los Angeles, Santa Barbara, Contra Costa, San Luis Obispo, and Mendocino counties.

See Act 1499.

HUNTINGTON BEACH.

See Act 3094, note.

HUNTINGTON PARK.

See Act 3094, note.

HUSBAND AND WIFE.

See Kerr's Cyc. Civil Code, §§ 159, et seq.

ICE CREAM.

See tit. "Dairies."

CHAPTER 157.

IMMIGRATION.

References: Immigration laws, violation of, see Kerr's Cyc. Penal Code, §§ 174, 175.

Immigration regulations, see Kerr's Cyc. Political Code, §§ 2949, et seq.

CONTENTS OF CHAPTER.

ACT 2089. IMMIGRATION OF PERSONS INCOMPETENT TO BECOME CITIZENS.

2090. IMMIGRATION AND HOUSING ACT OF 1913.

2091. IMMIGRANT DISEMBARKING ZONES.

IMMIGRATION OF PERSONS INCOMPETENT TO BECOME CITIZENS.

ACT 2089—An act to discourage the immigration to this state of persons who can not become citizens.

History: Approved April 28, 1855, Stats. 1855, p. 194.

This act imposed a fine of fifty dollars on every immigrant incompetent to become a citizen. It was declared unconstitutional in *People v. Downer*, 7 Cal. 169.

IMMIGRATION AND HOUSING ACT OF 1913.

ACT 2090—An act relating to immigrants and immigration, creating a commission of immigration and housing, providing for the employment by said commission of a secretary, agents and other employees, authorizing said commission to fix their compensation, prescribing the duties of said commission, providing for the investigation by said commission of all things affecting immigrants, and for the care, protection and welfare of immigrants, and making an appropriation for the purpose of carrying out the provisions hereof.

History: Approved June 12, 1913. In effect August 10, 1913. Stats. 1913, p. 608. Amended (1) May 26, 1915, in effect August 8, 1915, Stats. 1915, p. 848; (2) May 31, 1917, in effect July 30, 1917, Stats. 1917, p. 1514.

Commissioners of immigration and housing.

§ 1. Within thirty days after this act shall go into effect, the governor of the state shall appoint five suitable persons to act as commissioners of immigration and housing. Said commissioners shall hold office and serve solely at the pleasure of the governor and not otherwise.

Compensation.

§ 2. Said commissioners shall serve without compensation, but shall be entitled to receive from the state their actual necessary expenses while traveling on the business of the commission, either within or without the state of California.

Organization of commission, seal, quorum, etc. Vacancy. Headquarters.

§ 3. The commission shall be known as the "commission of immigration and housing of California." It shall have a seal for the authentication of its orders and proceedings upon which shall be inscribed the words "commission of immigration and housing—California—seal." Each member of the commission, before entering upon the duties of his office, shall take the oath of office as prescribed by the Political Code for state officers in general, and must execute an official bond in the sum of five thousand dollars. Within thirty days after appointment, the commission shall meet at the state capitol and organize, selecting a president, a vice-president and a secretary. A majority of the commission shall constitute a quorum for the exercise of the powers or authority conferred upon it. Whenever a vacancy occurs in the commission, from any cause whatsoever, such vacancy shall be filled by the governor, as provided in section one for the original creation of the commission. In case of a vacancy, the remaining members shall exercise all the powers and authority of the commission until such vacancy is filled. The commission shall maintain its headquarters and principal office in the city and county of San Francisco, and may establish branch offices at any place or places which in the judgment of the commission may be deemed advisable. The commission may, however, hold sessions at any place other than its offices when the convenience of the commission and the parties interested so requires.

Employees.

§ 4. For the purpose of carrying out the provisions of this act, the said commission is authorized to employ such expert and other employees as it may deem necessary, and upon such terms and for such compensation as it may deem proper. The said commis-

sion shall have power to enter into contracts of employment with such persons as it may desire to employ for a definite period of time; but no contract shall be made for more than one year. The employees of the commission shall be entitled to receive from the state their actual necessary expenses while traveling on the business of the commission, either within or without the state of California.

Powers and duties of commission. Employment bureaus.

§ 5. The commission of immigration and housing shall have the power to make full inquiry, examination and investigation into the condition, welfare and industrial opportunities of all immigrants arriving and being within the state. The commission shall also gather information as to the agricultural possibilities and opportunities for settlement on land within the state; such information to include soil and agricultural surveys of the arable land within the state and other data relating to the price and productivity of land. The commission shall also have power to collect information with respect to the need and demand for labor by the several agricultural, industrial and other productive activities, including public works, within the state; to gather information with respect to the supply of labor afforded by such immigrants as they shall from time to time arrive or be within the state; to ascertain the occupations for which such immigrants shall be best adapted, and to bring about intercommunication between them and the several activities requiring labor which will best promote their respective needs; to investigate and determine the genuineness of any application for labor that may be received and the treatment accorded to those for whom employment shall be secured; to co-operate with the state employment bureaus, municipal employment bureaus, and with private employment agencies within the state, and also with the employment and immigration bureaus conducted under the authority of the federal government or by the government of any other state, and with public and philanthropic agencies designed to aid in the distribution and employment of immigrants; and to devise and carry out such other suitable methods as will tend to prevent or relieve congestion and obviate unemployment; and to collect and publish, in English or foreign languages, for distribution among immigrants, in, or embarked for, California, such information as is deemed essential to their protection, distribution, education and welfare; and said commission is hereby empowered and authorized to have printed by the state printer any such reports or information, records or proceedings as it may deem necessary or proper; and if for any reason the state printer is not equipped to do any part of said work, then the said commission shall have the right and the authority to have the same done elsewhere upon such terms and conditions as it may deem proper.

Co-operation with federal, etc., authorities. Children of school age. Instruction in English. Playgrounds.

§ 6. The commission shall co-operate with the proper authorities and organizations, federal, state, county, municipal and private, with the object in view of bringing to the immigrant the best opportunities for acquiring education and citizenship. To that end it shall procure from, or with the consent of, the federal authorities, complete lists giving the names, ages and destination within the state of all immigrant children of school age, and such other facts as will tend to identify them, and shall forthwith deliver copies of such lists to the superintendent of public instruction or the several boards of education and school boards in the respective localities within the state to which said children shall be destined, to aid in the enforcement of the provisions of the education law relative to the compulsory attendance at school of children of school age. The commission shall further co-operate with the superintendent of public instruction and with the several boards of education in the state to ascertain the necessity for and the extent to which instruction should be imparted to immigrants within the state and to devise methods for the proper instruction of adult and minor aliens in the English language

and other subjects; and in respect to the duties and rights of citizenship and the fundamental principles of the American system of government; and shall co-operate with the proper authorities and with private agencies to put into operation practical devices for training for citizenship and for encouraging naturalization. It shall be the aim to communicate this instruction to the immigrant as soon after his arrival as is practicable. The commission shall co-operate with the proper authorities to extend this education for both children and adults to labor camps and other localities from which the regular schools are not easily accessible. The commission in co-operation with the proper authorities and organizations shall encourage the establishment of playgrounds and other recreational activities, and also the establishment of settlements and social centers in cities and towns.

Inspection of labor camps, etc. Housing conditions. Ticket agents. Aid societies.

§ 7. With the object in view of rendering to the immigrant that protection to which they are entitled, the commission of immigration and housing may inspect all labor camps within the state, and may inspect all employment and contract agencies dealing with immigrants or who secure or negotiate contracts for their employment within the state; may investigate the banking relations that exist between immigrants and laborers; may investigate and inspect institutions established for the temporary shelter and care of immigrants and such philanthropic societies as shall be organized for the purpose of securing employment for or aiding in the distribution of immigrants, and the methods by which they are conducted; and shall investigate housing conditions under which immigrants live, and sanitary and safety conditions under which immigrants are employed; it shall further investigate conditions prevailing at the various places where immigrants are landed within the state and at the several docks, ferries, railway stations, and on trains and boats therein, and shall investigate any and all complaints with respect to frauds, extortion, incompetency and improper practices by notaries public and other public officials; it shall further investigate the relations existing between immigrants and steamship and railway ticket agents, hotel runners, cabmen, baggage-men, interpreters and pawn-brokers; it shall further investigate the dealings carried on between immigrants and real estate firms or corporations; and as the result of any of the above inspections or investigations, if it should find evidences of fraud, crime, extortion, incompetency, improper practices or exploitation, it shall be the duty of the commission of immigration and housing to present to the proper authorities the evidences for action thereon, and shall bring to bear all the authority within its power to see that justice is rendered. The commission shall also encourage the establishment of legal aid societies.

Violations of law. Remedial action. Right to enter tenements, etc.

§ 8. With the further object in view of bringing to the immigrant the best protection the state can afford, it shall be the duty of the commission to call to the attention of the proper authorities any violations it may discover of the laws pertaining to the payment of wages, to the mode of paying, pertaining to the child labor laws, the employment of women, factory inspection laws, weekly day of rest laws, protection of labor under building laws, protection of labor under public works laws, laws relating to the white slave traffic, and laws of the state and county and municipal health departments; the tenement house laws, and other laws pertaining to housing conditions. The commission shall investigate and study the general economic, housing and social conditions of immigrants within the state, for the purpose of inducing remedial action by the various agencies of the state possessing requisite jurisdiction; and shall generally, in conjunction with existing public and private agencies, consider and devise means to promote the welfare of the state. The members of the commission of immigration and housing or any of their authorized agents shall have the right to enter into tenement

houses, buildings and dwelling places for the purpose of inspecting such houses, buildings, and dwelling places to secure compliance with state tenement and building acts and municipal building ordinances and to prevent violation thereof, and shall have the right to examine the records of the various city departments charged with the enforcement of the tenement house law and other building regulations and to secure from them reports and copies of their records at any time.

Information from state officials, etc. Evidence may be gathered.

§ 9. The commission shall have the right to demand of all officials, state, county and municipal, and it shall be the duty of said officials to supply, such information and references to records as will enable the commission to carry into effect the provisions and intent of this act; and shall have the right to enter upon private property to make investigation for the purposes of carrying out the provisions of this act. For the purpose of carrying out fully the intent and spirit of this act, the said commission shall have full power and authority to gather any and all such evidence as it may deem proper and necessary in order to present the same to the proper authorities for the purpose of instituting prosecutions against any and all persons, firms or corporations found violating any of the laws of any municipality, county or of the state or of the federal government, concerning any of the matters in this act referred to.

Hearings. Commission may subpoena witnesses.

§ 10. For the purpose of carrying out to the fullest extent the provisions hereof, the said commission or any member thereof shall have power to hold hearings for the purpose of investigation or inquiry, and for the purpose of reaching an amicable settlement of controversies existing between persons, firms, and corporations mentioned herein; and to this end and purpose, the said commissioners and each of them and such person as may be designated in writing by said commission, are hereby authorized and empowered to subpoena witnesses to appear at such hearings and to administer oaths. No decision shall be termed to be final until ratified and approved by the said commission and filed in its office. [Amendment of May 26, 1915. In effect August 8, 1915. Stats. 1915, p. 848.]

Definitions.

§ 11. For the purposes of this act, the words immigrant and immigration shall refer to any alien who is within the state, either permanently or temporarily domiciled here, or in transit, or passing through the state to a contiguous state or territory; said words shall further refer to any alien who may first have taken up residence in some other state or in one of the federal territorial possessions, and then shall have removed to this state; said words shall further refer to all aliens coming to and being within the state of California. For the purpose of this act, the word alien shall refer to all persons who are not native born or who have not received their final citizenship papers under the naturalization laws of the United States.

Immigration not encouraged.

§ 12. This act shall not be construed to authorize or direct the commission of immigration and housing to induce or encourage immigration into this state or the United States.

Annual report.

§ 13. The commission of immigration and housing shall make an annual report to the governor, on the second day of January, of the operation of the commission.

Appropriation.

§ 14. The sum of fifty thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, for the purpose of carrying out the

provisions of this act; and the state controller is hereby authorized and directed to draw warrants upon such sum, from time to time, upon the requisition of said commission, approved by the board of control; and the state treasurer is hereby authorized and directed to pay such warrants.

Immigration and housing commission to promote city planning.

§ 15. The commission may make investigations of the housing of immigrants and working people and of city planning in California and elsewhere, may encourage the creation of local city planning commissions and may furnish information as to the progress of other cities for the use of such commissions. It may investigate and report upon defective housing and the evils resulting therefrom and the work being done to remedy the same in California and elsewhere. It may make studies of the operation and enforcement of building and tenement house laws, of housing finances and taxes, of zoning and districting regulations and may promote the formation of organizations intended to increase the supply of wholesome homes for the people, and aid in the enforcement of any laws enacted to promote the purposes for which the commission is established. [New section added May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1515.]

Annual report of city planning commissions. Conference. City planners.

§ 16. It shall be the duty of each and every city planning commission or housing commission of any incorporated city or town in the state of California to file on the first day of June of each year with the secretary of the commission of immigration and housing of California a complete report of its transactions and recommendations to any municipal organization or private person or corporation during the previous year, and particularly to report any conflict in authority, lack of co-operation with local municipal authorities or with adjoining cities, with recommendations for needed legislation to properly carry on the development of their housing and city planning work. The commission may annually, or oftener, call a conference of representatives of these commissions, of local health officers, housing inspectors, building inspectors or such other municipal officers as it shall deem advisable to carry out the purposes of this act. The commission may employ city planners and other persons whose salaries, wages and other necessary expenses of the commission will be provided for out of the funds at the disposal of the commission. [New section added May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1515.]

Annual report. Information furnished.

§ 17. The commission may make an annual report on housing and city planning to the governor, which the state printer shall cause to be printed as a public document, and copies of this report shall be filed with each and every local housing and city planning commission in the state of California. The commission is further authorized to furnish information and suggestions from time to time to city governments, housing and city planning commissions and other public, semi-public or private bodies such as may, in its judgment, tend to promote the purposes for which the commission is established. [New section added May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1515.]

IMMIGRANT DISEMBARKING ZONES.

ACT 2091—An act providing for the establishment by the commission of immigration and housing of California of zones or areas on docks where immigrants are landed; prescribing the powers and duties of the said commission with regard thereto; and providing a penalty for violation of the provisions hereof.

History: Approved May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 926.

Areas on docks where immigrants land.

§ 1. At any place within the state where immigrant aliens are landed from ships on land or docks owned and controlled by the state of California the commission of immigration and housing of California may establish and mark out or fence off on such land or docks a zone or an area around the spot where said immigrants disembark, into which zone or area no person shall be admitted at times when immigrant aliens are being landed or are about to be landed, without a license or permit from said commission, unless he be an officer or a member of the crew of a vessel landing at such spot or a bona fide passenger on such vessel.

State may co-operate with U. S., cities, etc.

§ 2. The commission of immigration and housing of California may also co-operate with the officials of the United States government, or with the officials of any county or city, or with any private person, firm, or corporation, in establishing and conducting zones or areas, as provided in section one hereof, on land or docks owned or controlled by the United States, or any such county or city, or by any such private person, firm, or corporation.

Size of area.

§ 3. The zone or area mentioned in sections one and two hereof must in no case be larger than is reasonably necessary for the disembarking, assembling and distributing of the passengers landed in such zone or area.

§ 4. Any person who acts in violation of the provisions of this act shall be guilty of a misdemeanor.

IMPERIAL CITY.

See Act 3094, note.

CHAPTER 158.**IMPERIAL COUNTY.**

References: County boundary, see Kerr's Cyc. Political Code, § 3921.

County government, officers, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.**ACT 2093. ADDITIONAL SUPERIOR JUDGE.**

ACT 2093—An act to provide one additional judge of the superior court in the county of Imperial.

History: Approved May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1295.

§ 1. The number of judges of the superior court of the state of California for the county of Imperial is hereby increased from one to two.

Additional superior judge in Imperial county.

§ 2. Within thirty days after the taking effect of this act, the governor shall appoint one additional judge of the superior court of the county of Imperial, state of California, who shall hold office until the first Monday after the first day of January, A. D. 1921. At the general election to be held in November, 1920, a judge of the superior court of said county shall be elected in said county, who shall be the successor of the judge appointed hereunder, to hold office for the term prescribed by the constitution and by law.

INCLOSURES.

See tits. "Game Laws"; "Hunting on Private Grounds"; "Trespass."

INDEX.

See tit. "California Statutes, Index to."

CHAPTER 159.**INDIANS.**

References: Intoxicating liquors, selling or furnishing to, see Kerr's Cyc. Penal Code, § 397.

Military duty, not subject to, see Kerr's Cyc. Political Code, § 1895.

School attendance of, payment for by federal government, see Kerr's Cyc. Political Code, § 1543, subd. 17.

Separate schools for, see Kerr's Cyc. Political Code, § 1662.

Vagrancy, not punishable for, see Kerr's Cyc. Penal Code, § 647.

CONTENTS OF CHAPTER.

ACT 2095. GOVERNMENT AND PROTECTION OF INDIANS.

2097. GRANT OF LANDS IN INDIAN RESERVATIONS TO THE UNITED STATES.

2098. INTERFERENCE WITH INDIAN AGENTS.

GOVERNMENT AND PROTECTION OF INDIANS.

ACT 2095—An act for the government and protection of Indians.

History: Passed April 22, 1850, Stats. 1850, p. 408. Amended (1) April 28, 1855, Stats. 1855, p. 179; (2) April 18, 1860, Stats. 1860, p. 196; (3) April 27, 1863, Stats. 1863, p. 743; (4) April 27, 1863, Stats. 1863, p. 755.

Some provisions of this act were repealed by later inconsistent statutes: *People v. Antonio*, 27 Cal. 404. Other provisions were undoubtedly repealed by the codes. It is probably not in force in any particular. (Code commissioners' note). In the absence of direct legislation, it is deemed advisable to call attention to it.

This act was obviously intended to be applied to Indians in tribes or when living in separate communities or companies, and not to a case where an Indian has been living for years among white men.—*People v. Antonio*, 27 Cal. 104.

GRANT OF LANDS IN INDIAN RESERVATIONS TO THE UNITED STATES.

ACT 2097—An act granting certain lands to the United States.

History: Approved May 14, 1862, Stats. 1862, p. 552.

INTERFERENCE WITH INDIAN AGENTS.

ACT 2098—An act to aid officers in the Indian department, appointed by the general government for the state of California, in the discharge of their duties.

History: Approved April 21, 1856, Stats. 1856, p. 223. Amended April 9, 1857, Stats. 1857, p. 186.

Code commissioner's note: "The above-named statute is mentioned by the code commissioners at § 1346 without anything to indicate that they suppose it to be repealed by any of the codes. If, however, as is indicated by the note to § 6 of the

Penal Code, that section was intended to enumerate every act or omission made punishable, then this statute must have been substantially, if not absolutely, repealed by that code."

INDUSTRIAL ACCIDENT BOARD.

See tit. "Industrial Accident Commission."

CHAPTER 160.

INDUSTRIAL ACCIDENT COMMISSION.

References: See, generally, tits. "Master and Servant"; "Insurance."

Workmen's Compensation, Insurance and Safety Act, see tit. "Master and Servant," Act 2781.

CONTENTS OF CHAPTER.

- ACT 2101. ABOLISHING INDUSTRIAL ACCIDENT BOARD AND CONFERRING POWERS ON INDUSTRIAL ACCIDENT COMMISSION.
- 2101a. ESTABLISHING AND DEFINING JURISDICTION OF COMMISSION OVER CERTAIN UTILITIES.
2102. "INDUSTRIAL ACCIDENT FUND."
2103. "ACCIDENT PREVENTION FUND."
2104. STATISTICAL INFORMATION AS TO INDUSTRIAL ACCIDENTS.
2105. "STATE COMPENSATION INSURANCE FUND"—APPROPRIATION.
2106. "BOYNTON ACT"—"WORKMEN'S COMPENSATION, INSURANCE AND SAFETY ACT" OF 1913—ADMINISTRATIVE.
- 2106a. ACTIONS AGAINST INSURANCE CARRIERS IN CERTAIN CASES.
- 2106b. PROTECTION OF BENEFICIARIES OF WORKMEN'S COMPENSATION INSURANCE POLICIES.

ABOLISHING INDUSTRIAL ACCIDENT BOARD AND CONFERRING POWERS ON INDUSTRIAL ACCIDENT COMMISSION.

ACT 2101—An act to confer upon the industrial accident commission all of the duties, liabilities, authority, powers and privileges conferred and imposed by law upon the industrial accident board, abolishing the industrial accident board and providing for a transfer of its funds to the credit of the industrial accident commission. [Approved June 16, 1913. Stats. 1913, p. 950. In effect August 10, 1913.]

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 950.

Certificate of industrial accident commission.

§ 1. Upon the organization of the industrial accident commission, the commission shall file in the office of the secretary of state its certificate setting forth that the commission has been organized as provided by law.

To succeed industrial accident board.

§ 2. Upon the filing of the certificate required by section one hereof, the industrial accident commission shall supersede the industrial accident board and all duties, liabilities, authority, powers, and privileges conferred and imposed by law upon the industrial accident board shall thereupon devolve upon the industrial accident commission and shall thereafter be exercised and performed by the industrial accident commission in the same manner and with the same force and effect as if exercised and performed by the industrial accident board, and the said industrial accident board shall thereupon cease to exist.

Unexpended balances.

§ 3. Upon the filing of the certificate required by section one hereof, all unexpended balances of moneys appropriated by law for the support, maintenance or use of the industrial accident board shall be placed to the credit of the industrial accident commission by the state controller and the controller is hereby authorized to draw his warrant from time to time in favor of the industrial accident commission for the amount of such unexpended balance expended under its direction, and the treasurer is hereby authorized and directed to pay the same.

ESTABLISHING AND DEFINING JURISDICTION OF COMMISSION.

ACT 2101a—An act establishing and defining the jurisdiction of the industrial accident commission of the state of California and of the railroad commission of the state of California over the safety of employees of public utilities.

History: Approved May 9, 1917. In effect July 27, 1917. Stats. 1917, p. 296.

Jurisdiction of industrial accident commission over safety of employees of public utilities.

§ 1. The industrial accident commission of the state of California is hereby vested with jurisdiction, as provided in the workmen's compensation, insurance and safety act of one thousand nine hundred seventeen, and acts amendatory thereof, subject to the provisions of section three hereof, over the safety of employees of steam railroads employed in shops devoted to the construction or repair of railroad equipment; the safety of employees of electric interurban or street railroads, employed in the generation, transmission or distribution of electric energy, or in shops devoted to the repair of railroad equipment, or in any nonpublic utility operation of such railroads; and the safety of employees of all other public utilities as such utilities are defined in the public utilities act.

Jurisdiction of railroad commission not affected.

§ 2. The jurisdiction vested in the industrial accident commission of the state of California by section one hereof shall in no instance, except those affecting exclusively the safety of employees, be construed to impair, diminish or in any way affect the jurisdiction of the railroad commission of the state of California over the construction, reconstruction, replacement, maintenance or operation of the properties of public utilities as defined in the public utilities act, or over any matter affecting the relationship between such public utilities and their customers or the general public.

Power of railroad commission.

§ 3. If the industrial accident commission, in the exercise of the authority and jurisdiction conferred by this act, makes or issues any order, decision, ruling or direction, which, in the judgment of the railroad commission, unduly and prejudicially interferes with the construction or operation of any public utility affected thereby, or with the public, or with a consumer or other patron of a public utility affected thereby, the railroad commission, of its own motion, or upon application of any utility or person so affected, may suspend, modify, alter, or annul such order, decision, ruling or direction of the industrial accident commission, and the action of the railroad commission in that regard shall supersede and control the order, decision, ruling or direction of the industrial accident commission previously made in the premises.

Act of April 22, 1911, unaffected.

§ 4. This act shall not be construed to repeal or modify the act entitled "An act regulating the placing, erection, use and maintenance of electric poles, wires, cables and appliances, and providing the punishment for the violation thereof," approved April 22, 1911, as amended.

"INDUSTRIAL ACCIDENT FUND."

ACT 2102—An act creating an "industrial accident fund" and appropriating moneys therein.

History: Approved May 26, 1913. In effect August 10, 1913. Stats. 1913, p. 326.

"Industrial accident fund" created.

§ 1. There is hereby created and established a fund to be known as the "industrial accident fund" into which shall be paid all fees collected by the industrial accident

commission and all moneys received by it for transcripts of testimony, certified copies of records and all other moneys received by it and not otherwise provided for, which said fund shall be a revolving fund.

Appropriation of moneys for use of commission.

§ 2. All moneys which are paid into the state treasury for the credit of said fund are hereby appropriated to be used by the industrial accident commission for its contingent expenses, and the controller is hereby directed to draw his warrants on said fund, from time to time, in favor of said commission for the amounts expended under its direction for such purposes, and the treasurer is hereby authorized and directed to pay the same.

"ACCIDENT PREVENTION FUND."

ACT 2103—An act appropriating moneys in the "accident prevention fund" for the purpose of enforcing and promoting safety in employment and places of employment.

History: Approved May 26, 1913. In effect August 10, 1913. Stats. 1913, p. 325.

"Accident prevention fund" for enforcing laws.

§ 1. All moneys which are paid into the state treasury for the credit of the "accident prevention fund" are hereby appropriated to be used by the industrial accident commission for the enforcement of the laws relative to safety in employment and places of employment and for the promotion of such safety, and the controller is hereby directed to draw his warrants on said fund, from time to time, in favor of the industrial accident commission for the amounts expended under its direction for such purposes, and the treasurer is hereby authorized and directed to pay the same.

See Act 2781, § 51.

STATISTICS AS TO INDUSTRIAL ACCIDENTS.

ACT 2104—An act imposing additional duties and conferring additional powers upon the industrial accident board, requiring certain statistical information, fixing a penalty for neglect or refusal to give such information to said board on request, requiring said board to report to the governor and authorizing it to give publicity to the results of its researches and investigations and empowering said board to expend in carrying out the requirements of this act a sum not to exceed fifteen thousand dollars out of the funds heretofore appropriated for carrying out the purposes of an act entitled "An act relating to the liability of employers for injuries or death sustained by their employees, providing for compensation for the accidental injury of employees, establishing an industrial accident board, making an appropriation therefor, defining its powers and providing for a review of its awards, approved April 8, 1911."

History: Approved January 2, 1912, Stats. 1912 (ex. sess.), p. 166.

Collection of statistics in regard to industrial accidents.

§ 1. It shall be the duty of the industrial accident board to collect and compile statistics in regard to industrial accidents happening in this state resulting in personal injury and the cost and probable causes thereof, to investigate methods and devices for the prevention of such accidents, to investigate the comparative merits and relative cost of the various forms of insurance against liability and compensation for personal injuries resulting from industrial accidents.

Duty of employers and insurance companies to furnish information. Industrial accident board not to divulge information without consent.

§ 2. It shall be the duty of every employer of labor and of persons, firms, associations or corporations insuring against liability of employers for damages or compen-

sation for personal injuries to employees by industrial accidents to furnish to the industrial accident board, upon the written request of a member thereof or an examiner appointed thereby, any and all information in his or its possession or under his or its control, pertinent to any of the matters referred to in the preceding section of this act. It shall be unlawful for the said board, or any member thereof, or any examiner appointed thereby, to divulge any information obtained from any employer of labor, or from any person, firm, association or corporation insuring against liability or compensation for industrial accidents, without the written consent of such employer, and of such person, firm, association or corporation; and any member of the said board, or any examiner appointed thereby who violates the provisions of this section of this act, shall be guilty of a misdemeanor, and for each and every such violation shall be, upon conviction thereof, punishable by a fine of not less than ten dollars (\$10) or more than one hundred dollars (\$100) or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment; and any information so obtained shall not be used against any such employer, person, firm, association or corporation, in any action brought against such employer, person, firm, association or corporation without the written consent of such employer, person, firm, association or corporation; provided, however, that this section shall not prevent the industrial accident board from making and publishing the results of its investigations and researches as provided in sections 5 and 6 of this act.

Authority to enter places of employment.

§ 3. Any member of the said board of examiners appointed thereby may, during reasonable business hours, enter any place of employment for the purpose of collecting facts and statistics and examining the provisions made for the safety and welfare of the employees therein.

Penalty for failure to comply with act.

§ 4. It shall be unlawful for any person, firm, corporation, agent or officer of a firm or corporation to fail, neglect or refuse to comply with any of the foregoing provisions of this act. Any person, firm, corporation, agent or officer of a firm or corporation that knowingly violates or omits to comply with any of the provisions of this act, shall be guilty of a misdemeanor for each and every offense and shall be, upon conviction thereof, punishable by a fine of not more than ten dollars.

Report for year 1912.

§ 5. The industrial accident board shall report the results of its investigations covering the calendar year of 1912 to the governor of the state not later than February 1, 1913.

Authority to publish statistics.

§ 6. The industrial accident board is authorized and empowered to make public and publish at such times and in such manner as it deems best, the results of its investigations and researches together with all such other information in relation to the liability of employers for damages or compensation for personal injuries to their employees as it may deem essential to fully acquaint the people of the state with the present law and its purpose and operation.

Funds for use of board.

§ 7. The industrial accident board is hereby authorized to draw upon and expend for the purposes set forth in this act a sum not in excess of fifteen thousand dollars the same to be paid out of the sum of fifty thousand dollars appropriated for the use of said board under section 29 of an act entitled "An act relating to the liability of employers for injuries or death sustained by their employees, establishing an indus-

trial accident board, making appropriation therefor, defining its powers and providing for a review of its awards, approved April 8, 1911," and the controller is hereby directed to draw his warrants in favor of said board for sums so expended when duly audited and approved by the state board of control, and the treasurer is hereby authorized and directed to pay the same.

"STATE COMPENSATION INSURANCE FUND"—APPROPRIATION.

ACT 2105—An act appropriating moneys for the use of the state compensation insurance fund.

History: Approved May 26, 1913. In effect August 10, 1913. Stats. 1913, p. 326.

Appropriation: compensation insurance fund.

§ 1. The sum of one hundred thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to be credited to the "state compensation insurance fund" and to be used by the industrial accident commission in the manner authorized by law for the use of said fund.

Transfer to state compensation insurance fund.

§ 2. The state controller and the state treasurer are hereby authorized and directed to transfer said sum of one hundred thousand dollars from the general fund of the state to the "state compensation insurance fund."

"BOYNTON ACT," "WORKMEN'S COMPENSATION, INSURANCE AND SAFETY ACT" OF 1913—ADMINISTRATIVE.

ACT 2106—An act to promote the general welfare of the people of this state as affected by accident causing the injury or death of employees in the course of their employment, by creating a liability on the part of employers to compensate such employees and their dependents for such accidental injury or death irrespective of the fault of either party, and providing the means and methods of enforcing such liability; and creating a "state compensation insurance fund" to insure employers against such liability and providing for its administration and regulating such insurance by other insurance carriers; and requiring safety in all employments and places of employment in this state and providing the means and methods of enforcing such safety; and requiring reports of industrial accidents; and providing penalties for offenses by employers, their officers, agents, and by employees and other persons and corporations; and creating an industrial accident commission, providing for its organization, defining its powers and duties and providing for a review of its orders, decisions and awards; and appropriating moneys to carry out the provisions of this act; and repealing all acts and parts of acts inconsistent with the provisions of this act.

History: Approved May 26, 1913. In effect January 1, 1914. Stats. 1913, p. 279. Amended (1) May 27, 1915, in effect August 8, 1915; Stats. 1915, p. 913; (2) June 3, 1915, in effect August 8, 1915, Stats. 1915, p. 1079; (3) June 8, 1915, in effect August 8, 1915, Stats. 1915, p. 1302; (4) May 23, 1917, in effect January 1, 1918, Stats. 1917, p. 831. The effect of the amendment of 1917 (see Act 2781) was to separate the compensation, insurance and safety provisions of the original "Boynton Act" from the administrative features of that act, continue the act, as to those features in force, and enact a new act with the compensation, insurance and safety provisions. The latter act is Act 2781 in the chapter on "Master and Servant." Prior act of April 8, 1911, Stats. 1911, p. 796, commonly known as the "Roseberry Act," in force from September 1, 1911, to January 1, 1914, was repealed by the general repealing clause of the present act.

ANALYSIS OF ACT.

- § 1. "WORKMEN'S COMPENSATION ACT."
- § 2. REPEALED. [Act 2781, § 3.]
- § 3. INDUSTRIAL ACCIDENT COMMISSION CREATED. SALARY.
- § 4. ORGANIZATION OF COMMISSION. MAJORITY RULES.
- § 5. SEAL.
- § 6. OFFICE IN SAN FRANCISCO.
- § 7. APPOINTEES. ATTORNEY. SECRETARY. MANAGER OF INSURANCE FUND. SUPERINTENDENT OF SAFETY. OTHER EMPLOYEES.
- § 8. COMPENSATION OF EMPLOYEES. EXPENSES.
- § 9. DEPARTMENTAL EXPENSES.
- § 10. BLANK FORMS. MINUTE BOOK.
- § 11. POWERS. FEES. REPORTS. CHARGES. FEES PAID INTO FUND.
- § 12. REPEALED. [Act 2781, § 6.]
- § 13. REPEALED. [Act 2781, § 7.]
- § 14. REPEALED. [Act 2781, § 8.]
- § 15. REPEALED. [Act 2781, § 9.]
- § 16. REPEALED. [Act 2781, § 11.]
- § 17. REPEALED. [Act 2781, § 12.]
- § 18. REPEALED. [Act 2781, § 13.]
- § 19. REPEALED. [Act 2781, § 14.]
- § 20. REPEALED. [Act 2781, § 15.]
- § 21. REPEALED. [Act 2781, § 16.]
- § 22. REPEALED. [Act 2781, § 17.]
- § 23. REPEALED. [Act 2781, § 18.]
- § 24. REPEALED. [Act 2781, § 19.]
- § 25. REPEALED. [Act 2781, § 20.]
- § 26. REPEALED. [Act 2781, § 21.]
- § 27. REPEALED. [Act 2781, § 22.]
- § 28. REPEALED. [Act 2781, § 23.]
- § 29. REPEALED. [Act 2781, § 24.]
- § 30. REPEALED. [Act 2781, § 25.]
- § 31. REPEALED. [Act 2781, § 26.]
- § 32. REPEALED. [Act 2781, § 27.]
- § 33. REPEALED. [Act 2781, § 28.]
- § 34. REPEALED. [Act 2781, § 30.]
- § 35. REPEALED. [Act 2781, § 31.]
- § 36. "STATE COMPENSATION INSURANCE FUND" CREATED.
- § 37. REVOLVING FUND. CHARGES AGAINST FUND SELF-SUPPORTING. DIVIDENDS FOR RENEWALS.
- § 38. COMMISSION VESTED WITH FULL POWER OVER FUND. TO FIX RATES. POWERS OF COMMISSION. MAY DELEGATE POWERS. NOT LIABLE PERSONALLY.
- § 39. POWERS OF INSURANCE FUND MANAGER.
- § 40. RATES FOR COMPENSATION INSURANCE. HOW DETERMINED.
- § 41. RATES EITHER LIMITED OR UNLIMITED.
- § 42. POLICIES FOR EMPLOYERS, ETC.
- § 43. STATE TREASURER CUSTODIAN OF FUND.
- § 44. MONTHLY ESTIMATE TO BOARD OF CONTROL. MONTHLY ACCOUNTING. SEMI-ANNUAL VALUATION OF PROPERTIES.
- § 45. INVESTMENT OF SURPLUS.
- § 46. COUNTIES, ETC., MAY INSURE.
- § 47. SCHEDULES OF RATES TO BE FURNISHED CERTAIN OFFICERS.
- § 48. QUARTERLY REPORT TO GOVERNOR.
- § 49. PENALTY FOR MISREPRESENTING PAYROLL.
- § 50. OTHER MISREPRESENTATION, MISDEMEANOR.
- § 51. REPEALED. [Act 2781, § 33.]
- § 52. REPEALED. [Act 2781, § 34.]
- § 53. REPEALED. [Act 2781, § 35.]
- § 54. REPEALED. [Act 2781, § 36.]
- § 55. REPEALED. [Act 2781, § 37.]
- § 56. REPEALED. [Act 2781, § 38.]
- § 57. REPEALED. [Act 2781, § 39.]
- § 58. REPEALED. [Act 2781, § 40.]
- § 59. REPEALED. [Act 2781, § 41.]
- § 60. REPEALED. [Act 2781, § 42.]
- § 61. REPEALED. [Act 2781, § 43.]

- § 62. REPEALED. [Act 2781, § 44.]
- § 63. REPEALED. [Act 2781, § 45.]
- § 64. REPEALED. [Act 2781, § 46.]
- § 65. REPEALED. [Act 2781, § 47.]
- § 66. REPEALED. [Act 2781, § 48.]
- § 67. REPEALED. [Act 2781, § 49.]
- § 68. REPEALED. [Act 2781, § 50.]
- § 69. REPEALED. [Act 2781, § 51.]
- § 70. REPEALED. [Act 2781, § 52.]
- § 71. REPEALED. [Act 2781, § 53.]
- § 72. REPEALED. [Act 2781, § 54.]
- § 73. REPEALED. [Act 2781, § 55.]
- § 74. REPEALED. [Act 2781, § 56.]
- § 75. REPEALED. [Act 2781, § 57.]
- § 75a. REPEALED. [Act 2781, § 58.]
- § 76. REPEALED. [Act 2781, § 59.]
- § 77. REPEALED. [Act 2781, § 60.]
- § 78. REPEALED. [Act 2781, § 61.]
- § 79. REPEALED. [Act 2781, § 62.]
- § 80. REPEALED. [Act 2781, § 63.]
- § 81. REPEALED. [Act 2781, § 64.]
- § 82. REPEALED. [Act 2781, § 65.]
- § 83. REPEALED. [Act 2781, § 66.]
- § 84. REPEALED. [Act 2781, § 67.]
- § 85. REPEALED. [Act 2781, § 68.]
- § 86. REPEALED. [Act 2781, § 69.]
- § 87. REPEALED. [Act 2781, § 70.]
- § 88. ANNUAL REPORT TO GOVERNOR.
- § 89. APPROPRIATION.
- § 90. REPEAL OF INCONSISTENT ACTS.
- § 91. PRIOR INJURY.
- § 92. IN EFFECT.

“Workmen’s compensation act.”

§ 1. This act shall be known, and may be cited, as the “workmen’s compensation, insurance and safety act” and shall apply to the subjects mentioned in its title.

Failure on the part of the legislature to repeal this section, or to amend it leaves two acts with the same title on the statute books, except that the act of 1917, containing the compensation insurance and safety features of the legislation, is designated the “Workmen’s compensation, insurance and safety act of 1917.”

Definitions.

§ 2. [Amended June 3, 1915, Stats. 1915, p. 1080; June 8, 1915, Stats. 1915, p. 1303; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 3 of the act of 1917. See Act 2781.

Industrial accident commission created. Salary.

§ 3. There is hereby created a board to consist of three members who shall be appointed by the governor from the state at large and which shall be known as the “industrial accident commission” and shall have the powers, duties and functions hereinafter conferred. Within thirty days prior to the first day of January, 1914, the governor shall appoint the three members of said commission, one for the term of two years, one for the term of three years and one for the term of four years. Thereafter, the term of office of each commissioner shall be four years. Vacancies shall be filled by appointment in the same manner for the unexpired term. Each commissioner shall receive an annual salary of five thousand dollars. Each commissioner shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office.

Organization of commission. Majority rules.

§ 4. The commission shall organize by choosing one of its members as chairman. A majority of the commission shall constitute a quorum for the transaction of any

business, for the performance of any duty, or for the exercise of any power or authority of the commission. A vacancy on the commission shall not impair the right of the remaining members to perform all the duties and exercise all the power and authority of the commission. The act of the majority of the commission, when in session as a commission, shall be deemed to be the act of the commission, but any investigation, inquiry or hearing, which the commission has power to undertake or to hold, may be undertaken or held by or before any member thereof or any referee appointed by the commission for the purpose, and every finding, order, decision, or award made by any commissioner or referee, pursuant to such investigation, inquiry or hearing, when approved and confirmed by the commission and ordered filed in its office, shall be deemed to be the finding, order, decision or award of the commission.

Seal.

§ 5. The commission shall have a seal, bearing the following inscription: "Industrial accident commission state of California, seal." The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the commission shall direct. All courts shall take judicial notice of said seal.

Office in San Francisco.

§ 6. The commission shall keep its principal office in the city and county of San Francisco, and shall also keep an office in the city of Los Angeles, and shall provide itself with suitable rooms, necessary office furniture, stationery and other supplies. For the purpose of holding sessions in other places, the commission shall have power to rent temporary quarters.

Appointees.

§ 7. The commission shall have full power and authority:

Attorney.

(1) To appoint as its attorney an attorney-at-law of this state, who shall hold office at the pleasure of the commission. It shall be the right and the duty of the attorney to represent and appear for the people of the state of California and the commission in all actions and proceedings involving any question under this act or under any order or act of the commission and, if directed so to do by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence, prosecute and expedite the final determination of all actions or proceedings, civil or criminal, directed or authorized by the commission; to advise the commission and each member thereof, when so requested, in regard to all matters in connection with the jurisdiction, powers or duties of the commission and members thereof; and generally to perform all duties and service as attorney to the commission which may be required of him.

Secretary.

(2) To appoint, and it shall appoint, a secretary, who shall hold office at the pleasure of the commission. It shall be the duty of the secretary to keep a full and true record of all the proceedings of the commission, to issue all necessary processes, writs, warrants and notices which the commission is required or authorized to issue, and generally to perform such other duties as the commission may prescribe. The commission may also appoint such assistant secretaries as may be necessary and such assistant secretaries may perform any duty of the secretary, when so directed by the commission.

Manager of insurance fund. Bond.

(3) To appoint a manager of the state compensation insurance fund who shall hold office at the pleasure of the commission. It shall be the duty of such manager to

manage, supervise and conduct, subject to the general direction and approval of the commission, the business and affairs of the state compensation insurance fund and to perform such other duties as the commission may prescribe. Before entering on the duties of his office, he must give an official bond in the sum of \$50,000, and take and subscribe to an official oath. Said bond must be approved by the commission, by written endorsement thereon, and be filed in the office of the secretary of state.

Superintendent of safety.

(4) To appoint a superintendent of the department of safety, who shall hold office at the pleasure of the commission and who shall perform such duties as the commission shall prescribe.

Other employees.

(5) To employ such other assistants, officers, experts, statisticians, actuaries, accountants, inspectors, referees and other employees, as it may deem necessary to carry out the provisions of this act, or to perform the duties and exercise the powers conferred by law upon the commission.

Assistant attorney provided for by section 4 of the act of 1917. See Act 2781.

Compensation of employees. Expenses.

§ 8. All officers and employees of the commission shall receive such compensation for their services as may be fixed by the commission and shall hold office at the pleasure of the commission and shall perform such duties as are imposed on them by law or by the commission. The salaries of the members of the commission, its attorney, secretary and assistant secretary, as fixed by law or the commission, shall be paid in the same manner as are the salaries of other state officers. The salary or compensation of every other person holding office or employment under the commission, as fixed by law or by the commission, shall be paid monthly, after being approved by the commission, upon claims therefor to be audited by the state board of control. All expenses incurred by the commission pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the members thereof, its officers and employees, incurred while on business of the commission, either within or without the state, shall, unless otherwise provided in this act, be paid from the funds appropriated for the use of the commission, after being approved by the commission, upon claims therefor to be audited by the board of control; provided, however, that no such expenses incurred outside of the state shall be allowed unless prior authorization therefor be obtained from the board of control.

Departmental expenses.

§ 9. In all cases in which salaries, expenses or outgoings of one department under the jurisdiction of the commission are expended in whole or in part on behalf of another department the commission may apportion the same between such departments.

Blank forms. Minute book.

§ 10. The commission shall cause to be printed and furnished free of charge to any employer or employee, or other person, such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act; it shall provide a book in which shall be entered the minutes of all its proceedings, a book in which shall be recorded all awards made by the commission and such other books or records as it shall deem requisite for the proper and efficient administration of this act; all such records to be kept in the office of the commission.

Powers.

§ 11. The commission shall also have power and authority:

Fees.

(1) To charge and collect the following fees: for copies of papers and records not required to be certified or otherwise authenticated by the commission, ten cents for each folio; for certified copies of official documents and orders filed in its office or of the evidence taken on proceedings had, fifteen cents for each folio.

Reports.

(2) To publish and distribute in its discretion from time to time, in addition to its annual report to the governor of the state, such further reports and pamphlets covering its operations, proceedings and matters relative to its work as it may deem advisable.

Charges.

(3) To fix and collect reasonable charges for publications issued under its authority.

Fees paid into fund.

(4) The fees charged and collected under this section shall be paid monthly into the treasury of the state to the credit of the "industrial accident fund" and shall be accompanied by a detailed statement thereof.

When liability exists against employer.

§ 12. [Amended June 3, 1915, Stats. 1915, p. 1081; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 6 of the act of 1917. See Act 2781.

"Employer."

§ 13. [Amended June 3, 1915, Stats. 1915, p. 1081; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 7 of the act of 1917. See Act 2781.

"Employee."

§ 14. [Amended May 27, 1915, Stats. 1915, p. 913; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 8 of the act of 1917. See Act 2781.

Compensation schedule, etc.

§ 15. [Amended June 3, 1915, Stats. 1915, p. 1082; repealed May 23, 1917, Stats. 1917, p. 879.]

This section was incorporated in section 9 of the act of 1917. See Act 2781.

Limitation of actions, etc.

§ 16. [Amended June 3, 1915, Stats. 1915, p. 1085; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 11 of the act of 1917. See Act 2781.

Average weekly and annual earnings, etc.

§ 17. [Amended June 3, 1915, Stats. 1915, p. 1086; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 12 of the act of 1917. See Act 2781.

Weekly loss in wages.

§ 18. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 13 of the act of 1917. See Act 2781.

Persons wholly dependent for support.

§ 19. [Amended June 3, 1915, Stats. 1915, p. 1087; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 14 of the act of 1917. See Act 2781.

Notice to employer of accident. Actual knowledge.

§ 20. [Amended June 3, 1915, Stats. 1915, p. 1089; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 15 of the act of 1917. See Act 2781.

Examination by physician.

§ 21. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 16 of the act of 1917. See Act 2781.

Application for hearing on dispute.

§ 22. [Amended June 3, 1915, Stats. 1915, p. 1089; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 17 of the act of 1917. See Act 2781.

Defendant's answer.

§ 23. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 18 of the act of 1917. See Act 2781.

Pleadings, testimony, etc.

§ 24. [Amended June 3, 1915, Stats. 1915, p. 1090; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 19 of the act of 1917. See Act 2781.

Findings and award.

§ 25. [Amended June 3, 1915, Stats. 1915, p. 1090; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 20 of the act of 1917. See Act 2781.

Findings may be filed with court.

§ 26. [Amended June 3, 1915, Stats. 1915, p. 1091; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 21 of the act of 1917. See Act 2781.

Review of decisions by courts.

§ 27. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 22 of the act of 1917. See Act 2781.

Fees of clerk of court. Costs. Interest.

§ 28. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 23 of the act of 1917. See Act 2781.

Assignment of claim, etc.

§ 29. [Amended June 3, 1915, Stats. 1915, p. 1091; repealed May 23, 1917, Stats. 1917, p. 879.]

This section corresponds to section 24 of the act of 1917. See Act 2781.

Principals' liability.

§ 30. [Amended June 3, 1915, Stats. 1915, p. 1092; repealed May 23, 1917, Stats. 1917, p. 879.]

This act corresponds with section 25 of the act of 1917. See Act 2781.

Claim operates as assignment of right.

§ 31. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section corresponds to section 26 of the act of 1917. See Act 2781.

No exemption by contract, etc.

§ 32. [Amended June 3, 1915, Stats. 1915, p. 1093; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 27 of the act of 1917. See Act 2781.

Commission may commute compensation to lump sum, etc.

§ 33. [Amended June 3, 1915, Stats. 1915, p. 1094; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 28 of the act of 1917. See Act 2781.

Mutual insurance companies not affected.

§ 34. [Amended June 3, 1915, Stats. 1915, p. 1095; repealed May 23, 1917, Stats. 1917, p. 879.]

This section corresponds with section 30 of the act of 1917. See Act 2781.

“Limited compensation policy.”

§ 35. [Repealed May 23, 1917. Stats. 1917, p. 879.]

This section became section 31 of the act of 1917. See Act 2781.

“State compensation insurance fund” created.

§ 36. There is hereby created and established a fund to be known as the “state compensation insurance fund,” to be administered by the industrial accident commission of the state, without liability on the part of the state beyond the amount of said fund, for the purpose of insuring employers against liability for compensation under this act, and against the expense of defending any suit for damages under the optional provisions of section twelve hereof (subdivision b), and insuring to employees and other persons the compensation fixed by this act for employees and their dependents. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1097.]

See section 32 of the act of 1917, Act 2781.

Revolving fund.

§ 37. (a) The state compensation insurance fund shall be a revolving fund and shall consist of such specific appropriations as the legislature may from time to time make or set aside for the use of such fund, all premiums received and paid into the said fund for compensation insurance issued, all property and securities acquired by and through the use of moneys belonging to said fund and all interest earned upon moneys belonging to said fund and deposited or invested, as herein provided.

Charges against fund.

(b) Said fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of the salaries and other expenses to be charged against said fund in accordance with the provisions contained in this act.

Self-supporting. Dividend for renewals.

(c) Said fund shall, after a reasonable time during which it may establish a business, be fairly competitive with other insurance carriers, and it is the intent of the legislature that said fund shall ultimately become neither more nor less than self-supporting. In order that the state compensation insurance fund shall ultimately become neither more nor less than self-supporting, the actual loss experience and expense of the fund shall be ascertained on or about the first of January in each year for the year preceding, and should it then be shown that there exists an excess of assets over liabilities, such liabilities to include the necessary reserves, and a reasonable surplus for the catastrophe hazard, then, in the discretion of the commission, a cash dividend shall be declared to, or a credit allowed on the renewal premium of each employer who has been insured with the fund, such cash dividend or credit to be such an amount to which, as in the discretion

of the commission, such employer may be entitled as the employer's proportion of divisible surplus. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1097.]

See Act 2105.

Commission vested with full power over fund.

§ 38. (a) The commission is hereby vested with full power, authority and jurisdiction over the state compensation insurance fund and may do and perform any and all things whether herein specifically designated, or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction over said fund in the administration thereof, or in connection with the insurance business to be carried on by it under the provisions of this act, as fully and completely as the governing body of a private insurance carrier might or could do.

To fix rates.

(b) The commission shall have full power and authority, and it shall be its duty, to fix and determine the rates to be charged by the state compensation insurance fund for compensation insurance, and to manage and conduct all business and affairs in relation thereto, all of which business and affairs shall be conducted in the name of the state compensation insurance fund, and in that name, without any other name or title, the commission may:

Powers of commission.

(1) Sue and be sued in all the courts of the state in all actions arising out of any act, deed, matter or thing made, omitted, entered into, done, or suffered in connection with the state compensation insurance fund, the administration, management or conduct of the business or affairs relating thereto.

(2) Make and enter into contracts of insurance as herein provided, and such other contracts or obligations relating to the state compensation insurance fund as are authorized or permitted under the provisions of this act.

(3) Invest and reinvest the moneys belonging to said fund as hereinafter provided.

(4) Conduct all business and affairs, relating to the state compensation insurance fund, whether herein specifically designated or in addition thereto.

May delegate powers.

(c) The commission may delegate to the manager of the state compensation insurance fund, or to any other officer, under such rules and regulations and subject to such conditions as it may from time to time prescribe, any of the powers, functions or duties, conferred or imposed on the commission under the provisions of this act in connection with the state compensation insurance fund, the administration, management and conduct of the business and affairs relating thereto, and the officer or officers to whom such delegation is made may exercise the powers and functions and perform the duties delegated with the same force and effect as the commission, but subject to its approval.

Not liable personally.

(d) This commission shall not, nor shall any commissioner, officer or employee thereof, be personally liable in his private capacity for or on account of any act performed or contract or other obligation entered into or undertaken in an official capacity, in good faith and without intent to defraud, in connection with the administration, management or conduct of the state compensation insurance fund, its business or other affairs relating thereto.

Powers of insurance fund manager.

§ 39. In conducting the business and affairs of the state compensation insurance fund, the manager of the said fund or other officer to whom such power and authority

may be delegated by the commission, as provided by subsection (c) of section thirty-eight hereof, shall have full power and authority:

(1) To enter into contracts of insurance, insuring employers against liability for compensation and insuring to employees and other persons the compensation fixed by this act.

(2) To sell annuities covering compensation benefits.

(3) To decline to insure any risk in which the minimum requirements of the commission with regard to construction, equipment and operation are not observed, or which is beyond the safe carrying of the state compensation insurance fund, but shall not have power or authority, except as otherwise provided in this subdivision, to refuse to insure any compensation risk tendered with the premium therefor.

(4) To reinsure any risk or any part thereof.

(5) To inspect and audit, or cause to be inspected and audited the pay-rolls of employers applying for insurance against liability for compensation.

(6) To make rules and regulations for the settlement of claims against said fund and to determine to whom and through whom the payments of compensation are to be made.

(7) To contract with physicians, surgeons and hospitals for medical and surgical treatment and the care and nursing of injured persons entitled to benefits from said fund.

Rates for compensation insurance.

§ 40. (a) It shall be the duty of the commission to fix and determine the rates to be charged by the state compensation insurance fund for compensation insurance coverage as herein provided, and such rates shall be fixed with due regard to the physical hazards of each industry, occupation or employment and, within each class, so far as practicable, in accordance with the elements of bodily risk or safety or other hazard of the plant or premises or work of each insured and the manner in which the same is conducted, together with a reasonable regard for the accident experience and history of each such insured, and the means and methods of caring for injured persons, but such rates shall take no account of the extent to which the employees in any particular establishment have or have not persons dependent upon them for support.

How determined.

(b) The rates so made shall be that percentage of the pay-roll of any employer which, in the long run and on the average, shall produce a sufficient sum, when invested at three and one half per cent interest:

(1) To carry all claims to maturity; that is to say the rates shall be based upon the "reserve" and not upon the "assessment" plan;

(2) To meet the reasonable expenses of conducting the business of such insurance;

(3) To produce a reasonable surplus to cover the catastrophe hazard.

Rates either limited or unlimited.

§ 41. The insurance contracts entered into between the state compensation insurance fund and persons insuring therewith may be either limited or unlimited and issued for one year or, in the form of stamps or tickets or otherwise, for one month or any number of months less than one year, or for one day or any number of days less than one month, or during the performance of any particular work, job or contract; provided, that the rates charged shall be proportionately greater for a shorter than for a longer period and that a minimum premium charge shall be fixed in accordance with a reasonable rate for insuring one person for one day. Nothing in this act shall be construed to prevent any person applying for compensation insurance from being covered temporarily until the application is finally acted upon, or to prevent the injured from surrendering any policy

at any time and having returned to him the difference between the premium paid and the premium at the customary short term for the shorter period which such policy has already run. The state compensation insurance fund may at any time cancel any policy, after due notice, upon a pro rata basis of premium repayment.

Policies for employers, etc.

§ 42. The state compensation insurance fund may issue policies, including with their employees, employers who perform labor incidental to their occupations, and including also members of the families of such employers engaged in the same occupation, such policies insuring to such employers and working members of their families the same compensations provided for their employees, and at the same rates; provided, that the estimations of their wage values, respectively, shall be reasonable and separately stated in and added to the valuation of their payrolls upon which their premium is computed. Such policies may likewise be sold to self-employing persons and to casual employees, who, for the purpose of such insurance, shall be deemed to be employees within the meaning of sections twelve to thirty-five, inclusive, of this act.

State treasurer custodian of fund.

§ 43. The treasurer of the state shall be custodian of all moneys and securities belonging to the state compensation insurance fund, except as otherwise provided in this act, and shall be liable on his official bond for the safekeeping thereof. All moneys belonging to said fund collected or received by the commission, or the manager of the state compensation insurance fund, under and by virtue of the provisions of this act, shall be delivered to the treasurer of the state or may be deposited to his credit in such bank or banks throughout the state as he may, from time to time, designate, and such moneys when so delivered or deposited shall be credited by the treasurer to the said fund and no moneys received or collected on account of such fund shall be expended or paid out of such fund without first passing into the state treasury and being drawn therefrom as provided in this act. In like manner there shall be delivered to the treasurer all securities belonging to said fund which shall be held by him until otherwise disposed of as provided in this act.

Monthly estimate to board of control.

§ 44. (a) The commission shall submit each month to the state board of control an estimate of the amount necessary to meet the current disbursements from the state compensation insurance fund during each succeeding calendar month and, when such estimate shall be approved by the state board of control, the controller is directed to draw his warrant on said fund in favor of said commission for such amount, and the treasurer is authorized and directed to pay the same.

Monthly accounting.

(b) At the end of each calendar month the commission shall account to the state board of control and the state controller for all moneys so received, furnishing proper vouchers therefor.

Semi-annual valuation of properties.

(c) During the months of January and July of each year the state board of control or the commission shall cause a valuation to be made of the properties and securities which have been acquired and which are held for said fund, and shall report the results of the same to the state controller, whose duty it shall be to keep a special ledger account showing all of the assets pertaining to the state compensation insurance fund. In the controller's general ledger this fund account may be carried merely as a cash account, like other accounts of funds in the state treasury, and therein only the actual cash coming into the state compensation insurance fund shall be credited to such fund.

Investment of surplus.

§ 45. (a) The commission shall cause all moneys in the state compensation insurance fund, in excess of current requirements, to be invested and reinvested, from time to time, in the securities now or hereafter authorized by law for the investment of funds of savings banks.

(b) The commission shall, from time to time, submit to the state board of control an estimate of the amount required by it for investment, which estimate shall be accompanied by a full description of the kind and character of the investments to be made and, when such estimate shall be approved by the state board of control, the controller is directed to draw his warrant on the state compensation insurance fund in favor of the commission for such amount and the treasurer is authorized and directed to pay the same.

(c) At the end of each calendar month the commission shall account to the said board of control and the state controller for all moneys so received, furnishing proper vouchers therefor.

(d) All moneys in said fund, in excess of current requirements and not otherwise invested, may be deposited by the state treasurer from time to time in the banks authorized by law to receive deposits of public moneys under the same rules and regulations that govern the deposit of other public funds and the interest accruing thereon shall be credited to the state compensation insurance fund.

Counties, etc., may insure.

§ 46. Each county, city and county, city, school district or other public corporation or quasi-public corporation within the state not including, however, any public utility corporation, may insure against its liability for compensation with the state compensation insurance fund and not with any other insurance carrier unless such fund shall refuse to accept the risk when the application for insurance is made, and the premium therefor shall be a proper charge against the general fund of each such political subdivision of the state. [Amendment of June 3, 1915. In effect August 8, 1915, Stats. 1915, p. 1098.]

Schedules of rates to be furnished certain officers.

§ 47. When the premium rates for insurance in the state compensation insurance fund shall have been established the commission shall furnish schedules of rates and copies of the forms of policy to the commissioner of labor, to the clerk and to the treasurer of every county, city and county, and city in the state, and it shall be the duty of every public officer to whom the foregoing may be furnished to fill out and transmit to the manager of the state compensation insurance fund applications for compensation insurance in such fund and to receive and transmit to said manager all premiums paid on account of any policy issued or applied for, and for this service such officials may be allowed such commission or other compensation as the commission may from time to time direct. [Amendment of June 3, 1915. In effect August 8, 1915, Stats. 1915, p. 1098.]

Quarterly report to governor.

§ 48. The commission shall each quarter make to the governor of the state, reports of the business done by the state compensation insurance fund during the previous quarter, and a statement of the fund's resources and liabilities, and it shall be the duty of the state board of control to audit such reports and to cause an abstract thereof to be published one or more times in at least two newspapers of general circulation in the state. The commission shall likewise make to the state insurance commissioner all reports required by law to be made by other insurance carriers.

Penalty for misrepresenting pay-roll.

§ 49. Any employer who shall wilfully misrepresent the amount of the pay-roll upon which his premium under this act is to be based shall be liable to the state in ten times the amount of the difference in premium paid and the amount the employer should have paid had his pay-roll been correctly computed, and the liability to the state under this section shall be enforced in a civil action in the name of the state compensation insurance fund and any amount so collected shall become a part of said fund.

Other misrepresentation, misdemeanor.

§ 50. Any person who wilfully misrepresents any fact in order to obtain insurance at less than the proper rate for such insurance, or in order to obtain any payments out of such fund, shall be guilty of a misdemeanor.

Definitions.

§ 51. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 33 of the act of 1917. See Act 2781.

Duty of employer.

§ 52. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 34 of the act of 1917. See Act 2781.

Employee not to go into unsafe place.

§ 53. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 35 of the act of 1917. See Act 2781.

Unsafe structures.

§ 54. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 36 of the act of 1917. See Act 2781.

Removing safety device prohibited.

§ 55. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 37 of the act of 1917. See Act 2781.

Supervision of places of employment.

§ 56. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 38 of the act of 1917. See Act 2781.

Powers. Safety devices, etc.

§ 57. [Amended June 3, 1915, Stats. of 1915, p. 1099; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 39 of the act of 1917. See Act 2781.

Publication of hearing on general safety orders.

§ 58. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 40 of the act of 1917. See Act 2781.

May order places, etc., made safe.

§ 59. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 41 of the act of 1917. See Act 2781.

Time for complying with order.

§ 60. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 42 of the act of 1917. See Act 2781.

May investigate unsafe places.

§ 61. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 43 of the act of 1917. See Act 2781.

Duty of employer, etc., to comply with orders.

§ 62. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 44 of the act of 1917. See Act 2781.

Review of orders by court.

§ 63. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 45 of the act of 1917. See Act 2781.

County and city authorities not deprived of power.

§ 64. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 46 of the act of 1917. See Act 2781.

Further powers, etc.

§ 65. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 47 of the act of 1917. See Act 2781.

Orders, etc., as evidence.

§ 66. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 48 of the act of 1917. See Act 2781.

Penalty for not complying with orders.

• § 67. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 49 of the act of 1917. See Act 2781.

Separate offenses.

§ 68. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 50 of the act of 1917. See Act 2781.

Fines paid into fund.

§ 69. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section was incorporated in section 51 of the act of 1917, Act 2781.

May not divulge confidential information.

§ 70. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 52 of the act of 1917. See Act 2781.

Employer's reports of accidents to employees, etc.

§ 71. [Amended June 3, 1915, Stats. 1915, p. 1099; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 53 of the act of 1917. See Act 2781.

Commission to investigate all industrial accidents.

§ 72. [Amended June 3, 1915, Stats. 1915, p. 1100; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 54 of the act of 1917. See Act 2781.

Proceedings before commission. Orders lawful.

§ 73. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 55 of the act of 1917. See Act 2781.

Service of notice, etc.

§ 74. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 56 of the act of 1917. See Act 2781.

Further powers, etc.

§ 75. [Amended June 3, 1915, Stats. 1915, p. 1100; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 57 of the act of 1917. See Act 2781.

Controversies over injuries suffered outside state.

§ 75a. [New section added June 3, 1915, Stats. 1915, p. 1101; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 58 of the act of 1917. See Act 2781.

Reference of cases.

§ 76. [Amended June 3, 1915, Stats. 1915, p. 1101; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 59 of the act of 1917. See Act 2781.

Rules of procedure and of evidence, etc.

§ 77. [Amended June 3, 1915, Stats. 1915, p. 1102; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 60 of the act of 1917. See Act 2781.

Power to administer oaths, issue subpoenas, etc.

§ 78. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 61 of the act of 1917. See Act 2781.

Superior court may compel witnesses to attend. Order to attend. Remedy cumulative.

§ 79. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 62 of the act of 1917. See Act 2781.

Power to do all things necessary.

§ 80. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 63 of the act of 1917. See Act 2781.

Application for rehearing, etc.

§ 81. [Amended June 3, 1915, Stats. 1915, p. 1103; repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 64 of the act of 1917. See Act 2781.

Time and grounds for rehearing on award, etc.

§ 82. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 65 of the act of 1917. See Act 2781.

Time and grounds for rehearing on other order, etc.

§ 83. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 66 of the act of 1917. See Act 2781.

Appeal to Supreme Court.

§ 84. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 67 of the act of 1917. See Act 2781.

Suspension of order during rehearing.

§ 85. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 68 of the act of 1917. See Act 2781.

Act liberally construed.

§ 86. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 69 of the act of 1917. See Act 2781.

Election to come under act, etc.

§ 87. [Repealed May 23, 1917, Stats. 1917, p. 879.]

This section became section 70 of the act of 1917. See Act 2781.

Annual report to governor.

§ 88. The commission shall, not later than the first day of December of each calendar year, subsequent to the year 1913, make a report to the governor of the state covering

its entire operations and proceedings for the previous fiscal year, with such suggestions or recommendations as it may deem of value for public information. Such report shall be printed and a copy thereof furnished to all applicants within this state.

Appropriations.

§ 89. The sum of one hundred eighty-seven thousand four hundred seventy dollars is hereby appropriated out of any money in the state treasury, not otherwise appropriated, to be used by the industrial accident commission in carrying out the purposes of this act, and the controller is hereby directed to draw his warrant on the general fund from time to time in favor of said industrial accident commission for the amounts expended under its direction, and the treasurer is hereby authorized and directed to pay the same.*

This section was not expressly excepted from the repeal in the title and in repealing section 71 of the repealing act of 1917, as were all the other retained sections; but it was not repealed, and, although obsolete, is inserted.

Repeal of inconsistent acts.

§ 90. All acts or parts of acts inconsistent with this act are hereby repealed.

Prior injury.

§ 91. The compensation provisions of this act shall not apply to any injury sustained prior to the taking effect thereof.

This section was not expressly excepted from repeal in the title of repealing section 71 of the repealing act of 1917, as were all other retained sections. This was apparently an oversight, since it relates to the compensation provisions of law, and it appears in substantially identical language as section 73 of the act of 1917. See Act 2781.

In effect.

§ 92. This act shall take effect and be in force on and after the first day of January, A. D. 1914.

Editor's note: The notes relating to the constitutionality, scope, purpose and effect of the legislation on the subject of compensation for industrial accidents, and the jurisdiction, and procedure of the commission, the right of review, as well as those

dealing in detail with the subject of employer's liability, insurance carriers, compensation and death benefits are collected in one place under the "workmen's compensation, insurance and safety act of 1917." —See Act 2781.

ACTIONS AGAINST INSURANCE CARRIERS.

ACT 2106a—An act relating to actions against an insurance carrier when the insured person is insolvent or bankrupt, or without property sufficient to satisfy execution on account of loss or damage insured against, and requiring policy to be exhibited in certain cases.

History: Approved May 21, 1919. In effect July 22, 1919. Stats. 1919, p. 776.

Action against insurance carrier when insured is insolvent. Exhibit of policy.

§ 1. No policy of insurance against loss or damage resulting from accident to, or injury suffered by another person and for which the person insured is liable other than a policy of insurance under the workmen's compensation, insurance and safety act of 1917 or any subsequent act on the same subject, or, against loss or damage to property caused by horses or other draught animals or any vehicle, and for which loss or damage the person insured is liable, shall be issued or delivered to any person in this state by any domestic or foreign insurance company, authorized to do business in this state, unless there shall be contained within such policy a provision that the insolvency or bankruptcy of the person insured shall not release the insurance carrier from the payment of damages for injury sustained or loss occasioned during the life of such policy and stating that in case judgment shall be secured against the insured in an action brought by the injured person or his heirs or personal representatives, in case death

resulted from the accident, then an action may be brought against the company, on the policy and subject to its terms and limitations, by such injured person, his heirs or personal representatives as the case may be, to recover on said judgment. Upon any proceeding supplementary to execution, the judgment debtor may be required to exhibit any policy carried by him insuring against the loss or damage for which judgment shall have been obtained.

PROTECTION OF BENEFICIARIES OF WORKMEN'S COMPENSATION INSURANCE POLICIES.

ACT 2106b—An act to provide for the protection of beneficiaries of workmen's compensation insurance policies against the default or insolvency of insurance carriers issuing such policies by requiring such carriers to provide security for the payment of such compensation.

History: Approved May 9, 1917. In effect July 27, 1917. Stats. 1917, p. 292.

Workmen's compensation insurance carrier to file bond.

§ 1. Every insurance carrier, except the state compensation insurance fund, transacting the business of workmen's compensation insurance in this state, shall on the first day of October, A. D. 1917, file in the office of the insurance commissioner of this state a bond in favor of said insurance commissioner as trustee for the beneficiaries of awards of compensation rendered by the industrial accident commission, executed by said carrier and some surety company or companies approved by said insurance commissioner and authorized to transact the business of suretyship in this state. Said bond shall be in an amount not less than the reserve for outstanding losses of said insurance carrier on compensation insurance in this state on December 31, A. D. 1916, calculated as prescribed by the laws of this state, nor for more than double the amount of said reserve, but in no case for less than the sum of one hundred thousand dollars.

Bond to provide for payment of awards by surety.

§ 2. It shall be provided in said bond that, in the event said insurance carrier shall fail to pay any award or awards which shall be rendered against it by said industrial accident commission, within thirty days after the same become final, the said surety will forthwith pay, to the extent of its liability under said bond, said award or awards to said insurance commissioner as trustee for said beneficiaries. Said bond shall further provide that, if said insurance carrier shall suspend payment or become insolvent or a receiver shall be appointed therefor, the said surety will pay said awards, to the extent of its liability under said bond, upon the expiration of thirty days after the same become final, without regard to any proceedings for the liquidation or reinstatement of said insurance carrier. It shall be further provided in said bond, but as a cumulative remedy only, that, in the event said insurance carrier shall fail to pay any award which shall be rendered against it by said industrial accident commission within thirty days after the same becomes final, an award may be rendered by said commission against said surety and in favor of said insurance commissioner as trustee for the beneficiary of said award without notice to said surety for the amount of the unpaid portion of said award against said carrier. Said industrial accident commission is hereby vested with the same full power, authority and jurisdiction as to such awards against said sureties in such cases as it has over said insurance carrier, and it shall issue a certified copy thereof upon the application of any party affected thereby. Said party may file a certified copy of any such award in the office of the clerk of the superior court of any county or city and county of the state of California, and, upon the filing of the same, said clerk shall immediately enter a judgment thereon against said surety. Said certified copy of said award and said judgment shall constitute the judgment roll and shall conclusively establish the liability of said surety without any additional evidence in

any and all proceedings to renew said judgment or to enforce the payment thereof. Said bond shall provide for the payment of all legal costs, including reasonable attorneys' fees, incurred in all actions or proceedings taken to enforce payment of said bonds or payment of said awards or said judgments against said surety. No stay of execution of any such judgment shall be granted except upon the order of said industrial accident commission. Nothing herein contained shall operate to enlarge the liability of said surety beyond the penal sum of its bond. Payment of awards by said surety aggregating the amount of its bond shall constitute a full discharge of all liability under said bond.

Filing of new bond each year.

§ 3. Every such insurance carrier shall on or prior to the first day of July of the year A. D. 1918, and of each succeeding year, file in the office of the insurance commissioner of this state a new bond conditioned as aforesaid in an amount not less than the amount of the reserve for outstanding losses of said insurance carrier on compensation insurance in this state on the thirty-first day of the month of December of the preceding year, as shown by its last report of said business filed in the office of said insurance commissioner, nor for more than double the amount of said reserve, but in no case for less than the sum of one hundred thousand dollars, except where said insurance carrier has ceased to do such business in this state, in which case said bond shall be fixed by said insurance commissioner at such amount as he may deem sufficient for the protection of the beneficiaries of the policies of such insurance carrier. Upon the filing of said new bond, approved as herein required, and not until such filing and approval, all liability under the previous bond shall thereby terminate. Said new bond shall embrace the entire liability of said previous bond except in so far as the same may have been paid or discharged.

Financial ability of surety.

§ 4. Said insurance commissioner shall, before approving any such bond, satisfy himself of the financial ability of the surety to assume the obligations imposed thereby, and no company shall be accepted by him as surety which shall have assumed obligations in excess of the limits prescribed by standards of suretyship recognized as reasonable and proper and which it shall be the duty of said commissioner to promulgate for uniform application in such cases.

No authorization issued until bond filed.

§ 5. No authorization shall be issued or renewed to any insurance carrier to transact the business of workmen's compensation insurance in this state, until it has filed said bond with the insurance commissioner and the same has been approved by him. It shall be the duty of the insurance commissioner to notify the industrial accident commission of the approval and filing of every bond given pursuant to the provisions of this act.

Additional bond.

§ 6. The insurance commissioner shall have the right, and it shall be his duty, to require any such insurance carrier at any time to file an additional bond, conditioned as aforesaid, if the amount of the bond then on file is in his judgment insufficient to cover the liability of said insurance carrier for said compensation, or if the surety on said bond has become insufficient in the judgment of the said commissioner.

Liability of two or more sureties.

§ 7. Two or more surety companies may be accepted as sureties on said bond, or separate bonds may be executed by different sureties for amounts aggregating the sum specified by the said commissioner. In such cases each of said sureties shall be jointly and severally liable to the extent of the amount of the liability assumed by it.

Liability of sureties.

§ 8. The liability of the sureties under the bonds hereby required to be given shall be the entire liability of the principals named therein, not exceeding the amount of said bonds or the limit of the liability assumed by any such surety, for the payment of awards of compensation rendered or to be rendered against said principals by said industrial accident commission under the terms of the workmen's compensation insurance and safety act and acts amendatory thereof and supplementary thereto, without regard to the time when the injury upon which an award was based may have occurred, but said bond shall not include any other liability of said carrier nor shall any payment made under any such bond by said surety be applied otherwise than in satisfaction of awards of compensation rendered by said industrial accident commission.

Insurance commissioner may act as trustee.

§ 9. Full power and authority is hereby conferred upon said insurance commissioner to act as trustee for all beneficiaries under awards rendered by said industrial accident commission, and he may take assignments in his own name as trustee and as such he shall have the authority to institute and maintain actions against said sureties, and, upon the collection by him by suit or otherwise of the amount of said awards, he shall pay the same to the parties entitled thereto. The payment of any such award or part thereof by said insurance commissioner shall constitute a satisfaction thereof to the extent of the payment made and, in the event any judgment shall have been entered on any such award, the said commissioner shall file a satisfaction thereof, to the extent of said payment, in the office of the clerk of the court wherein such judgment has been entered.

Right of surety to require new bond of principal.

§ 10. Any such surety shall have the right to require the principal on its bond, on thirty days' notice, to furnish a new bond, to be approved by the insurance commissioner as in other cases, and, in the event of a failure to do so, said principal shall forfeit the right to continue to issue compensation policies in this state.

Deposit of security with state treasurer.

§ 11. Any compensation insurance carrier may, in lieu of said bond and subject to the same conditions, deposit with the state treasurer, through the insurance commissioner, from time to time as may be demanded by said commissioner, cash or approved interest-bearing securities readily convertible into cash, equal to the reserves for outstanding losses required by section six hundred two (a) of the Political Code at the time of said deposit, on the compensation business of said carrier in the state of California, calculated as hereinbefore provided, as security for the payment of its obligations on said business done in this state, and said deposit shall not be withdrawn except upon the written order of the insurance commissioner in payment of compensation claims, but shall be forthwith payable by the state treasurer to the insurance commissioner upon such order; provided, that any such deposit, or any remainder thereof, may be repaid to such carrier upon satisfactory showing to the insurance commissioner that every liability to pay compensation shall have been reinsured with a solvent carrier or fully paid and discharged. Said deposit shall be used only for the payment of compensation claims so long as there shall remain unpaid any such claim or any part thereof.

Revocation of certificate.

§ 12. The insurance commissioner shall have power to revoke the certificate of authority to transact compensation insurance business in this state of any insurance carrier failing to comply with the requirements of this act.

CHAPTER 161.

INDUSTRIAL LOAN COMPANIES.

See tit. "Corporations."

INDUSTRIAL WELFARE COMMISSION.

References: See, generally, tits. "Hours of Labor"; "Labor Bureau"; "Master and Servant."

CONTENTS OF CHAPTER.**ACT 2107. INDUSTRIAL WELFARE COMMISSION ACT.****INDUSTRIAL WELFARE COMMISSION ACT.**

ACT 2107—An act regulating the employment of women and minors and establishing an industrial welfare commission to investigate and deal with such employment, including a minimum wage; providing for an appropriation therefor and fixing a penalty for violations of this act.

History: Approved May 26, 1913. In effect August 8, 1913. Stats. 1913, p. 632. Amended May 29, 1915, in effect August 8, 1915, Stats. 1915, p. 950; May 5, 1919, in effect July 22, 1919, Stats. 1919, p. 302.

Industrial welfare commission established.

§ 1. There is hereby established a commission to be known as the industrial welfare commission, hereinafter called the commission. Said commission shall be composed of five persons, at least one of whom shall be a woman, and all of whom shall be appointed by the governor as follows: two for the term of one year, one for the term of two years, one for the term of three years, and one for the term of four years; provided, however, that at the expiration of their respective terms, their successors shall be appointed to serve a full term of four years. Any vacancies shall be similarly filled for the unexpired portion of the term in which the vacancy shall occur. Three members of the commission shall constitute a quorum. A vacancy on the commission shall not impair the right of the remaining members to perform all the duties and exercise all the powers and authority of the commission.

Compensation. Secretary.

§ 2. The members of said commission shall draw no salaries but all of said members shall be allowed ten dollars per diem while engaged in the performance of their official duties. The commission may employ a secretary, and such expert, clerical and other assistants as may be necessary to carry out the purposes of this act, and shall fix the compensation of such employees, and may, also, to carry out such purposes, incur reasonable and necessary office and other expenses, including the necessary traveling expenses of the members of the commission, of its secretary, of its experts, and of its clerks and other assistants and employees. All employees of the commission shall hold office at the pleasure of the commission.

Duties.

§ 3. (a) It shall be the duty of the commission to ascertain the wages paid, the hours and conditions of labor and employment in the various occupations, trades, and industries in which women and minors are employed in the state of California, and to make investigations into the comfort, health, safety and welfare of such women and minors.

Information to be furnished commission.

(b) It shall be the duty of every person, firm or corporation employing labor in this state:

1. To furnish to the commission, at its request, any and all reports or information which the commission may require to carry out the purposes of this act, such reports

and information to be verified by the oath of the person, or a member of the firm, or the president, secretary, or manager of the corporation furnishing the same, if and when so requested by the commission or any member thereof.

2. To allow any member of the commission, or its secretary, or any of its duly authorized experts or employees, free access to the place of business or employment of such person, firm, or corporation, for the purpose of making any investigation authorized by this act, or to make inspection of, or excerpts from, all books, reports, contracts, pay rolls, documents, or papers, of such person, firm or corporation relating to the employment of labor and payment therefor by such person, firm or corporation.

3. To keep a register of the names, ages, and residence addresses of all women and minors employed.

Minor defined.

(c) For the purposes of this act, a minor is defined to be a person of either sex under the age of eighteen years.

Power to issue subpoenas, etc.

§ 3½. Any member of the commission or deputies duly authorized by it in writing, shall have the power and authority to issue subpoenas to compel the attendance of witnesses or parties and the production of books, papers, pay rolls or records, and to administer oaths and to examine witnesses under oaths and to take the verification or proof of instruments of writing, and to take depositions and affidavits for the purpose of carrying out the provisions of this act, or any of its orders, rules or regulations; provided, that no witness shall be compelled to attend on said commission outside of the county in which said witness resides or at a distance greater than fifty miles from his place of residence.

Obedience to subpoenas issued by the commission or its duly authorized representatives shall be enforced in the superior courts of the county or city and county in which the subpoenas were issued. [New section added May 5, 1919. In effect July 22, 1919, Stats. 1919, p. 302.]

Public hearings.

§ 4. The commission may specify times to hold public hearings, at which times, employers, employees, or other interested persons, may appear and give testimony as to the matter under consideration. The commission or any member thereof shall have power to subpoena witnesses and to administer oaths. All witnesses subpoenaed by the commission shall be paid the fees and mileage fixed by law in civil cases. In case of failure on the part of any person to comply with any order of the commission or any member thereof, or any subpoena, or upon the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated before any wage board or the commission, it shall be the duty of the superior court or the judge thereof, on the application of a member of the commission, to compel obedience in the same manner, by contempt proceedings or otherwise, that such obedience would be compelled in a proceeding pending before said court. The commission shall have power to make and enforce reasonable and proper rules of practice and procedure and shall not be bound by the technical rules of evidence.

Conference of "wage board." Compensation. Report of wage board.

§ 5. If, after investigation, the commission is of the opinion that, in any occupation, trade, or industry, the wages paid to women and minors are inadequate to supply the cost of proper living, or the hours or conditions of labor are prejudicial to the health, morals or welfare of the workers, the commission may call a conference, hereinafter called "wage board," composed of an equal number of representatives of employers and employees in the occupation, trade, or industry in question, and a representative

of the commission to be designated by it, who shall act as the chairman of the wage board. The members of such wage board shall be allowed five dollars per diem and necessary traveling expenses while engaged in such conferences. The commission shall make rules and regulations governing the number and selection of the members and the mode of procedure of such wage board, and shall exercise exclusive jurisdiction over all questions arising as to the validity of the procedure and of the recommendations of such wage board. The proceedings and deliberations of such wage board shall be made a matter of record for the use of the commission, and shall be admissible as evidence in any proceedings before the commission. On request of the commission, it shall be the duty of such wage board to report to the commission its findings, including therein:

1. An estimate of the minimum wage adequate to supply to women and minors engaged in the occupation, trade or industry in question, the necessary cost of proper living and to maintain the health and welfare of such women and minors.

2. The number of hours of work per day in the occupation, trade or industry in question, consistent with the health and welfare of such women and minors.

3. The standard conditions of labor in the occupation, trade or industry in question, demanded by the health and welfare of such women and minors.

Power to fix wages, hours, etc. Notice of hearing.

§ 6. (a) The commission shall have further power after a public hearing had upon its own motion or upon petition, to fix:

1. A minimum wage to be paid to women and minors engaged in any occupation, trade or industry in this state, which shall not be less than a wage adequate to supply to such women and minors the necessary cost of proper living and to maintain the health and welfare of such women and minors.

2. The maximum hours of work consistent with the health and welfare of women and minors engaged in any occupation, trade or industry in this state; provided, that the hours so fixed shall not be more than the maximum now or hereafter fixed by law.

3. The standard conditions of labor demanded by the health and welfare of the women and minors engaged in any occupation, trade or industry in this state.

(b) Upon the fixing of the time and place for the holding of a hearing for the purpose of considering and acting upon any matters referred to it in subsection (a) hereof, the commission shall give public notice by advertisement in at least one newspaper published in each of the cities of Los Angeles, Oakland, and Sacramento, and in the city and county of San Francisco, and shall give due notice in at least one newspaper published in each of the cities of Fresno, Eureka, San Diego, Long Beach, Alameda, Berkeley and Stockton, and by mailing a copy of said notice to the county recorder of each county in the state to be posted at the court house of each county, or city and county, and to each association of employers or employees of fifteen or more members within the state of California which shall file with the commission a written request for such notice of such hearing and purpose thereof; which notice shall state the time and place fixed for such hearing, which shall not be earlier than fourteen days from the date of publication and mailing of such notices.

Mandatory order specifying wages. Notice to employer.

(c) After such public hearing, the commission may, in its discretion, make a mandatory order to be effective in sixty days from the making of such order, specifying the minimum wage for women or minors in the occupation in question, and the maximum hours; provided, that the hours specified shall not be more than the maximum for women or minors in California, and the standard conditions of labor for said women or minors; provided, however, that no such order shall become effective until after April 1, 1914. Such order shall be published in at least one newspaper in each of the cities of Los Angeles and Sacramento and in the city and county of San Francisco, and a copy

thereof be mailed to the county recorder of each county in the state, and such copy shall be filed without charge. The industrial welfare commission shall send by mail, so far as practicable, to each employer in the occupation in question, a copy of the order, and each employer shall be required to post a copy of such order in the building in which women or minors affected by the order are employed. Failure to mail notice to the employer shall not relieve the employer from the duty to comply with such order. Finding by the commission that there has been such publication and mailing to county recorders shall be conclusive as to service. [Amendment of May 5, 1919. In effect July 22, 1919, Stats. 1919, p. 303.]

Order may be rescinded or amended.

§ 7. Whenever wages, or hours, or conditions of labor have been so made mandatory in any occupation, trade, or industry, the commission may at any time in its discretion, upon its own motion or upon petition of either employers or employees, after a public hearing held upon the notice prescribed for an original hearing, rescind, alter or amend any prior order. Any order rescinding a prior order shall have the same effect as herein provided for in an original order.

License for employment for less than minimum wage.

§ 8. (a) For any occupation in which a minimum wage has been established, the commission may issue to a woman physically defective by age or otherwise, a special license authorizing the employment of such licensee, for a period of six months, for a wage less than such legal minimum wage; and the commission shall fix a special minimum wage for such person. Any such license may be renewed for like periods of six months.

License for apprentices.

(b) For any occupation in which a minimum wage has been established, the commission may issue to an apprentice or learner, a special license authorizing the employment of such apprentice or learner, for such time and under such conditions as the commission may determine at a wage less than such legal minimum wage; and the commission shall fix a special wage for such apprentice or learner.

(c) The commission may fix the maximum number of women, and minors under eighteen years of age, to be employed under the licenses provided for in subdivisions (a) and (b) of this section in any occupation, trade, industry or establishment in which a minimum wage has been established. [Amendment of May 29, 1915. In effect August 8, 1915, Stats. 1915, p. 950.]

Statistics.

§ 9. Upon the request of the commission, the labor commissioner shall cause such statistics and other data and information to be gathered, and investigations made, as the commission may require. The cost thereof shall be paid out of the appropriations made for the expenses of the commission.

Discharging employee who testifies, misdemeanor.

§ 10. Any employer who discharges, or threatens to discharge, or in any other manner discriminates against any employee because such employee has testified or is about to testify, or because such employer believes that said employee may testify in any investigation or proceedings relative to the enforcement of this act, shall be deemed guilty of a misdemeanor.

Payment of less than minimum wage, unlawful. Penalty.

§ 11. The minimum wage for women and minors fixed by said commission as in this act provided, shall be the minimum wage to be paid to such employees, and the payment

to such employees of a less wage than the minimum so fixed shall be unlawful, and every employer or other person who, either individually or as an officer, agent, or employee of a corporation or other person, pays or causes to be paid to any such employee a wage less than such minimum, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars, or by imprisonment for not less than thirty days, or by both such fine and imprisonment; and every employer or other person who, either individually or as an officer, agent or employee of a corporation, or other persons, violates or refuses or neglects to comply with the provisions of this act, or any orders or rulings of this commission, shall be guilty of a misdemeanor, and upon conviction thereof be punished by a fine of not less than fifty dollars, or by imprisonment for not less than thirty days, or by both such fine and imprisonment. [Amendment of May 29, 1915. In effect August 8, 1915, Stats. 1915, p. 950.]

Enforcement.

§ 11b. It shall be the duty of the industrial welfare commission to enforce the provisions of this act and compliance with its orders, rules and regulations. Full power and authority is hereby vested in the commission to take such action as may be deemed essential for such purposes. [New section added May 5, 1919. In effect July 22, 1919, Stats. 1919, p. 304.]

Prosecution. Findings of fact conclusive. Complaint served with summons. Hearing.

§ 12. In every prosecution for violation of any provision of this act, the minimum wage, the maximum hours of work and the standard conditions of labor fixed by the commission as herein provided, shall be prima facie presumed to be reasonable and lawful, and to be the living wage, the maximum hours of work and standard conditions of labor required herein. The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive; and the determination made by the commission shall be subject to review only in a manner and upon the grounds following: Within twenty days from the date of the determination, any party aggrieved thereby may commence in the superior court in and for the city and county of San Francisco, or in and for the counties of Los Angeles or Sacramento, an action against the commission for review of such determination. In such action a complaint, which shall state the grounds upon which a review is sought, shall be served with the summons. Service upon the secretary of the commission, or any member of the commission, shall be deemed a complete service. The commission shall serve its answer within twenty days after the service of the complaint. With its answer, the commission shall make a return to the court of all documents and papers on file in the matter, and of all testimony and evidence which may have been taken before it, and of its findings and the determination. The action may thereupon be brought on for hearing before the court upon such record by either party on ten days' notice of the other. Upon such hearing, the court may confirm or set aside such determination; but the same shall be set aside only upon the following grounds:

- (1) That the commission acted without or in excess of its powers.
- (2) That the determination was procured by fraud.

Controversy recommitted.

Upon the setting aside of any determination the court may recommit the controversy and remand the record in the case to the commission for further proceedings. The commission, or any party aggrieved, by a decree entered upon the review of a determination, may appeal therefrom within the time and in the manner provided for an appeal from the orders of the said superior court. [Amendment of May 25, 1915. In effect August 8, 1915, Stats. 1915, p. 951.]

Employee may sue for unpaid balance.

§ 13. Any employee receiving less than the legal minimum wage applicable to such employee shall be entitled to recover in civil action the unpaid balance of the full amount of such minimum wage, together with costs of suit, notwithstanding any agreement to work for such lesser wage.

Complaints.

§ 14. Any person may register with the commission a complaint that the wages paid to an employee for whom a living rate has been established, are less than that rate, and the commission shall investigate the matter and take all proceedings necessary to enforce the payment of a wage not less than the living wage.

Biennial report.

§ 15. The commission shall biennially make a report to the governor and the state legislature of its investigations and proceedings.

Appropriation.

§ 16. There is hereby appropriated annually out of the moneys of the state treasury, not otherwise appropriated, the sum of fifteen thousand dollars, to be used by the commission in carrying out the provisions of this act, and the controller is hereby directed from time to time to draw his warrants on the general fund in favor of the commission for the amounts expended under its direction, and the treasurer is hereby authorized and directed to pay the same.

Not board of arbitration.

§ 17. The commission shall not act as a board of arbitration during a strike or lock-out.

Interpretation of act. Constitutionality.

§ 18. (a) Whenever this act, or any part or section thereof, is interpreted by a court, it shall be liberally construed by such court.

(b) If any section, subsection, or subdivision of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, subdivision, sentence, clause and phrase thereof; irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses or phrases is declared unconstitutional.

Act applies to all occupations.

§ 19. The provisions of this act shall apply to and include women and minors employed in any occupation, trade or industry, and whose compensation for labor is measured by time, piece or otherwise.

CHAPTER 162.

INFANTS.

References: See, generally, tits. "Juvenile Court"; "Orphan Asylums"; "Preston School of Industry"; "Whittier State School."

Abandonment and neglect of, see Kerr's Cyc. Penal Code, §§ 270, et seq.

Abduction of, see Kerr's Cyc. Penal Code, § 267.

Care and custody of minor children, see Kerr's Cyc. Civil Code, §§ 198, 199.

Child stealing, see Kerr's Cyc. Penal Code, § 278.

Contract rights and obligations, see Kerr's Cyc. Civil Code, §§ 33, 34, 1556, 1557.

Crimes against children, see Kerr's Cyc. Penal Code, § 288.

Cruelty to children, see Kerr's Cyc. Penal Code, § 273a.

Employment of children in places of amusement, see Kerr's Cyc. Penal Code, § 272.

Entering saloons, etc., see Kerr's Cyc. Penal Code, §§ 273e, 273f; Kerr's Cyc. Civil Code, § 607g.

Guardianship, etc., see Kerr's Cyc. Code Civil Procedure, §§ 1747, et seq.

Parent and child, see Kerr's Cyc. Civil Code, §§ 193, et seq.

Placing of infants under sixteen in prison, see Kerr's Cyc. Penal Code, § 273b.

Rape of female infant, see Kerr's Cyc. Penal Code, § 261.

Sale of intoxicating liquors to, see Kerr's Cyc. Penal Code, § 397b.

Societies for the prevention of cruelty to children, see Kerr's Cyc. Civil Code, §§ 607, et seq.

CONTENTS OF CHAPTER.

ACT 2110. ATTENDING PRIZE-FIGHTS AND COCK-FIGHTS.

2113. CHILD LABOR LAW OF 1905.

2113a. CHILD LABOR LAW OF 1919.

2115. MINORS UNDER EIGHTEEN—ENGAGING IN BUSINESS AT NIGHT.

ATTENDING PRIZE-FIGHTS AND COCK-FIGHTS.

ACT 2110—An act to prevent any minor under the age of eighteen years visiting any prize-fight, cock-fight, or place where any prize-fight or cock-fight is advertised or represented to take place and to provide a punishment therefor.

History: Approved April 17, 1909, Stats. 1909, p. 983.

Minors under sixteen shall not visit prize-fights or cock-fights.

§ 1. It shall be unlawful for any minor under the age of sixteen years to visit or attend any prize-fight, cock-fight, or place where any prize-fight, cock-fight, or place where any prize-fight or cock-fight is advertised to take place.

Minors under eighteen not to be admitted.

§ 2. It shall be unlawful for the owner, lessee or proprietor, or the agent of any owner, lessee or proprietor of any place where any prize-fight or cock-fight is advertised or represented to take place to admit any minor under the age of eighteen years to such a place where any prize-fight or cock-fight is advertised or represented to take place; or to admit, or to sell or give away to any such minor a ticket or other paper by which said minor might be admitted to such place where such prize-fight or cock-fight is advertised to take place.

Misdemeanor.

§ 3. Every person violating any of the provisions of the preceding sections is guilty of a misdemeanor, and shall be punished by a fine of not exceeding fifty dollars, or be imprisoned in county jail not more than twenty-five days.

Prize-fights and cock-fights are prohibited, see Kerr's Cyc. Penal Code, §§ 412, 597c.

CHILD LABOR LAW OF 1905.

ACT 2113—An act regulating the employment and hours of labor of children—prohibiting the employment of minors under certain ages—prohibiting the employment of certain illiterate minors—providing for the enforcement hereof by the commissioner of the bureau of labor statistics and providing penalties for the violation hereof.

History: Approved February 20, 1905, Stats. 1905, p. 11. Amended (1) March 19, 1907, Stats. 1907, p. 598; (2) March 23, 1907, Stats. 1907, p. 978; (3) March 8, 1909, Stats. 1909, p. 211; (4) March 15, 1909, Stats. 1909, p. 387; (5) March 6, 1911, Stats. 1911, p. 282; (6) April 4, 1911, Stats. 1911, p. 910; (7) June 2, 1913, in effect August 10, 1913, Stats. 1913, p. 364; (8) June 5, 1915, in effect August 8, 1915, Stats. 1915, p. 1201; (9) May 22, 1917, in effect July 27, 1917, Stats. 1917, p. 826; (10) May 10, 1919, in effect July 22, 1919, Stats. 1919, p. 393. The amendments of April 14, 1911 (Stats. 1911, p. 910), of 1913 and 1915, were of the entire act, to which the amendment of 1915 added four new sections. Prior act of February 8, 1889, Stats. 1889, p. 4, was superseded by the act of March 23, 1901, Stats. 1901, p. 631, which was in turn superseded by the present act. The present act was undoubtedly superseded by the act of 1919, see Act 2113a.

See new section, Stats. 1905, ch. LXXV; Kerr's Cyc. Pen. Code, § 273, relative to minors entering saloons, gambling houses, and other immoral places.

Duty to warn of danger infant employees.—See 1 Am. St. Rep. 28.

Violation of statute prohibiting employment of minors—Evidence of negligence.—See 61 L. R. A. 811.

Duration daily session.—Pol. Code, § 1673.

School month defined.—Pol. Code, § 1697.

1. Constitutionality—Special law.—The act is not a special law for the punishment of a crime where a general law could be made applicable, in violation of section 25, subdivisions 2 and 33, article IV, of the constitution.—In re Spencer, 149 Cal. 396, 117 Am. St. Rep. 137, 9 Ann. Cas. 1105, 86 Pac. 896.

2. Same—Not discriminatory.—The act is not discriminatory in conflict with sections 11 and 21 of article I, of the constitution.—In re Spencer, 149 Cal. 396, 117 Am. St. Rep. 137, 9 Ann. Cas. 1105, 86 Pac. 896.

2a. Same—Same.—The provisions of section 2 as to hours of labor allowed in the case of children who can "read English at sight and write simple English sentences" is not an unreasonable discrimination against illiterate children.—In re Spencer, 149 Cal. 396, 117 Am. St. Rep. 137, 9 Ann. Cas. 1105, 86 Pac. 895.

3. Same—Legislative discretion.—The preliminary questions as to the effect of specified occupations on children engaged therein, are questions of fact for the legislature to determine, and if there is any reasonable doubt as to the soundness of its judgment in determining such questions, such doubt must be resolved in favor of the act of its validity.—In re Spencer, 149 Cal. 396, 117 Am. St. Rep. 137, 9 Ann. Cas. 1105, 86 Pac. 895.

4. Same—Classification of forbidden callings.—The specifications of forbidden callings are broad and comprehensive, and it can not be said of the omitted callings that a saloon is not a "mercantile institution," a barber shop, a "workshop," or of ferries

and railroads, that they are not engaged in the "distribution or transmission of merchandise or messages."—In re Spencer, 149 Cal. 396, 117 Am. St. Rep. 137, 9 Ann. Cas. 1105, 86 Pac. 895.

5. Construction—Prohibited occupations—Scope of permit.—The proviso permitting children over twelve years old to work at the prohibited occupations, during regular school vacations, upon a permit from the principal of the public school attended by such child, does not give the principal exclusive power to issue such permit, but its true meaning is that the permit can extend only to the time of the public school vacation.—In re Spencer, 149 Cal. 396, 117 Am. St. Rep. 137, 9 Ann. Cas. 1105, 86 Pac. 895.

6. Same—Same—Children over twelve.—The proviso permitting children over twelve years old to work in the prohibited occupations, where the parents are unable, from sickness, to labor, does not discriminate against orphans or abandoned children, the proviso not being for the benefit of the child, but of the parent, and where there is no sick parent, the reason for the exception is wanting.—In re Spencer, 149 Cal. 396, 117 Am. St. Rep. 137, 9 Ann. Cas. 1105, 86 Pac. 895.

7. Same—Act of March 24, 1903, Stats. 1903, p. 388—Act 4554.—The provisions of this act relating to attendance upon schools must be construed with the provisions of the act of March 24, 1903, Stats. 1903, p. 388.—In re Spencer, 149 Cal. 396, 117 Am. St. Rep. 137, 9 Ann. Cas. 1105, 86 Pac. 895.

8. Same—Minors under eighteen—More than nine hours in manufacturing, mechanical and mercantile establishments—Railroad watchman.—The provisions of section 1 of the amended act of 1911 prohibiting the employment of minors under eighteen for more than nine hours in any one day in manufacturing, mechanical, or mercantile establishments, should not be construed to forbid the employment of such minor as a watchman in a railroad tunnel for more than the time limited.—Williams

v. Southern Pacific Co.; 173 Cal. 525; 160 Pac. 660.

9. **Same—Unlawful employment of child is negligence per se.**—The employment of a child under twelve years of age, in a manufacturing establishment (iron foundry) contrary to the child labor act of 1905 constituted negligence per se.—*Scully v. Garratt & Co.*, 11 Cal. App. 138, 104 Pac. 325.

10. **Instruction—Watchman in tunnel—Employment for twelve hours.**—It was error to instruct the jury in an action for the death of a minor while employed as a watchman in a railroad tunnel for twelve hours a day, that such employment was in violation of this statute.—*Williams v. Southern Pacific Co.* 173 Cal. 525, 160 Pac. 660.

CHILD LABOR LAW OF 1919.

ACT 2113a—An act to be known as the child labor law, and regulating the employment, hours, kinds and conditions of labor of children; providing for the administration and enforcement of the provisions of this act by the commissioner of the bureau of labor statistics, providing penalties for the violation hereof and repealing all acts and parts of acts inconsistent herewith.

History: Approved May 10, 1919. In effect July 22, 1919. Stats. 1919, p. 415. This act undoubtedly superseded the prior act of 1905, but the last amendment to that act went into effect on the same date this act went into effect. See Act 2113.

Child labor regulated.

§ 1. No minor under the age of sixteen years shall be employed, permitted or suffered to work in or in connection with any mercantile establishment, manufacturing establishment, mechanical establishment, workshop, office, laundry, place of amusement, restaurant, hotel, apartment house, or in the distribution or transmission of merchandise or messages, or in any other place of labor at any time except as may be provided by the provisions of this act or by the provisions of an act entitled "An act to enforce the educational rights of children and providing penalties for violation of the act," as now in force or as may be hereafter amended, or by the provisions of an act entitled "An act to require certain high school districts to provide part-time educational opportunities in civic and vocational subjects for persons under eighteen years of age, who are not in attendance upon full-time day schools, and part-time educational opportunities in citizenship for persons under twenty-one years of age who can not adequately speak, read or write the English language; to enforce attendance upon such part-time classes where established, and providing penalties for violation of the provisions of this act."

Work defined.

Work shall be deemed to be done for a manufacturing establishment within the meaning of this act, whenever it is done at any place upon the work of a manufacturing establishment, or upon any of the materials entering into the products of a manufacturing establishment, whether under contract or arrangement with any person in charge of or connected with a manufacturing establishment directly or indirectly through the instrumentality of one or more contractors or other third persons.

Eight-hour limit. Night work.

§ 2. Except as otherwise provided in sections three, three and one-half and five hereof no minor under the age of eighteen years shall be employed more than eight hours in one day of twenty-four hours or more than forty-eight hours in one week, or before the hour of five o'clock in the morning, or after the hour of ten o'clock in the evening.

Messenger service.

§ 3. No girl under the age of eighteen years and no boy under the age of sixteen years shall be employed, permitted or suffered to work as a messenger for any telegraph, telephone or messenger company, or for the United States government or

any of its departments while operating a telegraph, telephone or messenger service, in the distribution, transmission or delivery of goods or messages in towns of more than fifteen thousand inhabitants, nor shall any boy under the age of eighteen years be employed, permitted or suffered to engage in any of the work last mentioned before the hour of six o'clock in the morning or after the hour of nine o'clock in the evening.

Street trades. Exception.

§ 3½. No boy under ten years of age, nor girl under eighteen years of age, shall be employed, permitted or suffered to work at any time in or in connection with the street occupation of peddling, bootblackening, the sale or distribution of newspapers, magazines, periodicals or circulars nor in any other occupation pursued in any street or public place; provided, however, that nothing in this section shall be construed to apply to cities whose population is less than twenty-three thousand according to the last federal census.

Prohibited occupations.

§ 4. No minor under the age of sixteen years shall be employed, permitted or suffered to work in any capacity at any of the following occupations or in any of the following positions, to wit: (1) Adjusting any belt to any machinery, or sewing or lacing machine belts in any workshop or factory, or oiling, wiping or cleaning machinery, or assisting therein, or operating or assisting in operating any of the following machines: (a) Circular or band saws; (b) wood shapers; (c) wood jointers; (d) planers; (e) sandpaper or wood-polishing machinery; (f) wood-turning or boring machinery; (g) picker machines or machines used in picking wool, cotton, hair or any other material; (h) carding machines; (i) paper-lace machines; (j) leather-burnishing machines; (k) printing presses of all kinds; (l) boring or drill presses; (m) stamping machines used in sheet-metal and tinware or in paper and leather manufacturing, or in washer and nut factories; (n) metal or paper-cutting machines; (o) corner-staying machines in paper box factories; (p) corrugating rolls, such as are used in corrugated paper, roofing or washboard factories; (q) steam boilers; (r) dough brakes or cracker machinery of any description; (s) wire or iron straightening or drawing machinery; (t) rolling mill machinery; (u) power punches or shears; (v) washing, grinding or mixing machinery; (w) calendar rolls in paper and rubber manufacturing; (x) laundering machinery; or in proximity to any hazardous or unguarded belts, machinery or gearing; or (2) upon any railroad, whether steam, electric or hydraulic; or (3) upon any vessel or boat engaged in navigation or commerce within the jurisdiction of this state; or (4) in, about, or in connection with any processes in which dangerous or poisonous acids are used; or (5) in the manufacture or packing of paints, colors, white or red lead; or (6) in soldering; or (7) in occupations causing dust in injurious quantities; or (8) in the manufacture or use of dangerous or poisonous dyes; or (9) in the manufacture or preparation of compositions with dangerous or poisonous gases; or (10) in the manufacture or use of compositions of lye in which the quantity thereof is injurious to health; or (11) on scaffolding; or (12) in heavy work in the building trades; or (13) in any tunnel or excavation; or (14) in, about or in connection with any mine, coal breaker, coke oven, or quarry; or (15) in assorting, manufacturing or packing tobacco; or (16) in operating any automobile, motor car or truck; or (17) in a bowling alley; or (18) in a pool or billiard room; or (19) in any other occupation dangerous to the life or limb, or injurious to the health or morals of such child; provided, however, that the provisions of this section shall not apply to the courses of training in vocational or manual training schools or in state institutions.

Bureau of labor statistics to determine whether business is prohibited.

The bureau of labor statistics may, from time to time, after a hearing duly had, determine whether or not any particular trade, process of manufacture or occupation,

in which the employment of children under the age of sixteen years is not already forbidden by law, or any particular method of carrying on such trade, process of manufacture or occupation, is sufficiently dangerous to the lives or limbs or injurious to the health or morals of children under sixteen years of age to justify their exclusion therefrom. No child under sixteen years of age shall be employed, permitted or suffered to work in any occupation thus determined to be dangerous or injurious to such children. There shall be a right of appeal to the superior court from any such determination.

Agricultural, etc., labor. Theatrical employment.

§ 5. Nothing in this act shall be construed to prohibit the employment of minors sixteen years of age or over at agricultural, horticultural, or viticultural, or domestic labor for more than eight hours in one day or more than forty-eight hours in one week. Nor shall anything in this act be construed to prohibit the employment of minors at agricultural, horticultural, or viticultural, or domestic labor during the time the public schools are not in session, or during other than school hours. For the purpose of this act, horticultural shall be understood to include the curing and drying, but not the canning, of all varieties of fruit. Nor shall anything in this act be construed to prohibit any minor between the ages of fifteen and eighteen years, who is by any statute or statutes of the state of California, now or hereafter in force, permitted to be employed as an actor, or actress, or performer in a theater, or other place of amusement, previous to the hour of ten o'clock p. m., in the presentation of a performance, play or drama, continuing from an earlier hour till after the hour of ten o'clock p. m., from performing his or her part in such presentation as such employee between the hours of ten and twelve o'clock p. m.; provided, the written consent of the commissioner of the bureau of labor statistics is first obtained. Nor shall anything in this act prevent, or be construed to prohibit, the employment of any minor, whether resident or nonresident, in the presentation of a drama, play, performance, concert or entertainment, with the written consent of the commissioner of the bureau of labor statistics, but no such consent shall be given unless the officer giving it is satisfied that the environment in which the drama, play, performance, concert or entertainment is to be produced is a proper environment for the minor, and that the conditions of such employment are not detrimental to the health of such minor, and that the minor's education will not be neglected or hampered by its participation in such drama, play, performance, concert or entertainment, and the commissioner may require the person charged with the issuance of age and schooling certificates to make the necessary investigation into such conditions; and every such written consent shall specify the name and age of the minor together with such other facts as may be necessary for the proper identification of such minor, and the date when, and the theaters or other places of amusement in which such drama, play, performance, concert or entertainment is to be produced, and shall specify the drama, play, performance, concert or entertainment in which the minor is permitted to participate, and every such consent shall be revocable at the will of the officer giving it. Dramas and plays shall include the production of motion picture plays.

Employer to keep register.

§ 6. Every person, firm, corporation or agent, or officer of a firm or corporation, employing either directly, or indirectly through the instrumentality of one or more contractors or other third persons, minors under the age of eighteen years, shall keep a separate register containing the names, ages and addresses of such minor employees and shall post and keep posted in a conspicuous place in every room where such minors are employed, a written or printed notice stating the hours per day for each day of the week required of such minors, and shall keep on file all permits and certificates

either to work or to employ, issued under the provisions of this act, or under the provisions of an act entitled "An act to enforce the educational rights of children and providing penalties for the violation of the act," approved March 24, 1903, as amended. Such records and files shall be open at all times to the inspection of the school attendance and probation officers, the state board of education and the officers of the state bureau of labor statistics.

All such certificates and permits to work or to employ shall be returned to the authority issuing the same within five days after the minor quits his employment. Such certificate or permit shall be subject to cancellation at any time by such commissioner of the bureau of labor statistics, or by the authority issuing the same, whenever such commissioner or such issuing authority shall find that the conditions for the legal issuance of such certificate or permit no longer exist or have never existed.

Report by authority issuing permits.

At least once in every six months, to wit, on or before January tenth and on or before July tenth of each year, the authority issuing all such permits and certificates either to work or to employ, shall file a full written report of the same, stating the names, ages and addresses of the minors under sixteen years of age affected thereby, with the state bureau of labor statistics and the state board of education.

Penalty.

§ 7. Any person, firm, corporation, agent, or officer of a firm or corporation, employing either directly or indirectly through the instrumentality of one or more contractors or other third persons, or any parent or guardian of a minor affected by this act, who violates or omits to comply with any of the provisions hereof, or who employs or suffers or permits any minor to be employed in violation thereof, is guilty of a misdemeanor, and shall upon conviction thereof, be punished by a fine of not less than fifty dollars, nor more than two hundred dollars, by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment for each and every offense.

Fines to be paid into school funds. Report of violation of act.

A failure to produce any permit or certificate either to work or to employ or to post any notice required by this act shall be prima facie evidence of the illegal employment of any minor whose permit or certificate is not so produced or whose name is not so posted. Any fine collected under the provisions of this act shall be paid into the school funds of the county, or city, or city and county, in which the offense occurred, except such fines as are imposed and collected as the result of prosecutions by the officers of the bureau of labor statistics, in which cases one-half of the resultant fine or fines shall be paid into the state treasury and credited to the contingent fund of the bureau of labor statistics and one-half paid into the school funds of the county, or city, or city and county, in which the offense occurred. All reported violations of the provisions of this act, whether prosecuted or not, must be reported in writing immediately after their occurrence by the state bureau of labor statistics to the state board of education. Such report shall state the name and address of the person or corporation charged with such violation, the nature of such charge and the name, age and address of the minor or minors affected thereby, and shall be followed, at least once in every six months, to wit, on or before January tenth, and on or before July tenth of each year, by a written summary of all violations of the provisions of this act which have occurred during the preceding period of six months.

Duty of labor commissioner.

§ 8. The bureau of labor statistics shall enforce the provisions of this act. The commissioner, his deputies and agents, shall have all the powers and authority of

sheriffs or other peace officers, to make arrests for violation of the provisions of this act, and to serve any process or notice throughout the state.

Duty of attendance officers.

The attendance officer of any county, city and county, or school district in which any place of employment, in this act named, is situated, or the probation officer of such county, shall have the right and authority, at all times, enter into any such place of employment for the purpose of investigating violations of the provisions of this act, or violations of the provisions of an act entitled "An act to enforce the educational rights of children and providing penalties for the violation of the act," approved March 24, 1903, and any act amending or superseding the same; provided, however, that if such attendance or probation officer is denied entrance to such place of employment, any magistrate may, upon the filing of an affidavit by such attendance or probation officer setting forth the fact that he has a good cause to believe that the provisions of this act, or the act hereinbefore referred to, are being violated in such place of employment, issue an order directing such attendance or probation officer to enter said place of employment for the purpose of making such investigations.

Repealed.

§ 9. All acts and parts of acts inconsistent herewith are hereby expressly repealed.

Constitutionality.

§ 10. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

MINORS ENGAGING IN BUSINESS AT NIGHT.

ACT 2115—An act to prohibit minors under the age of eighteen years to vend and sell goods, engage in, or conduct any business between the hours of ten o'clock in the evening and five o'clock in the morning, and providing penalties for violations thereof.

History: Approved May 1, 1911, Stats. 1911, p. 1341.

Unlawful for minor under eighteen to conduct business between 10 p. m. and 5 a. m.

§ 1. It shall be unlawful for any minor under the age of eighteen years to vend and sell goods, engage in, or conduct any business between the hours of ten o'clock in the evening and five o'clock in the morning.

Punishment for violation of statute.

§ 2. Any person violating any of the provisions of this act shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than twenty dollars, or by imprisonment for not more than ten days, or by both such fine and imprisonment for each offense.

INGLEWOOD.

See Act 3094, note.

INITIATIVE AND REFERENDUM.

See tit. "Municipal Corporations."

CHAPTER 163.

INSANE ASYLUMS.

- References:** Cancellation of registration of insane person, see Kerr's Cyc. Political Code, § 1106.
- Contracts of insane persons,** see Kerr's Cyc. Civil Code, §§ 38, 39, 1556, 1557, 1587, 1996, 1997.
- Custody of insane persons,** see Kerr's Cyc. Civil Code, § 32.
- Guardian of insane person,** see Kerr's Cyc. Code Civil Procedure, §§ 1763, et seq.
- Guardian ad litem of insane person,** see Kerr's Cyc. Code Civil Procedure, §§ 372, 373.
- Homestead of insane person,** see Kerr's Cyc. Civil Code, §§ 1296a, et seq.
- Insanity in criminal matters,** see Kerr's Cyc. Penal Code, §§ 1367, et seq.
- Intoxicating liquors, sale of near asylum,** see Kerr's Cyc. Penal Code, § 172.
- Lunacy commission, etc.,** see Kerr's Cyc. Political Code, §§ 2136, et seq.
- Power of state to control or restrain insane persons,** see Kerr's Cyc. Political Code, § 37.
- Psychopathic parole act,** see Kerr's Cyc. Political Code, § 2167b.
- Restoration to sanity, certificate of,** see Kerr's Cyc. Civil Code, § 40.
- Torts of insane person, liability for,** see Kerr's Cyc. Civil Code, § 41.
- Vacancy in office, because of insanity,** see Kerr's Cyc. Political Code, §§ 996, 997.
- Voter, insane person can not be,** see Kerr's Cyc. Political Code, § 1084.
- See, generally, tit. "Feeble Minded."**

CONTENTS OF CHAPTER.

- ACT 2134. STOCKTON STATE HOSPITAL—ARMORY SITE.**
- 2134a. STOCKTON STATE HOSPITAL—REMOVAL OF BODIES FROM THE CEMETERY.
2138. STOCKTON STATE HOSPITAL—CONDEMNING CERTAIN STREETS FOR.
2139. NAPA STATE HOSPITAL—WATER SUPPLY FOR.
- 2143a. NAPA STATE HOSPITAL—RIGHT OF WAY FOR S. F., N. & C. RY.
2145. AGNEWS STATE HOSPITAL—ERECTION OF WATER TOWERS AND TANKS.
2146. AGNEWS STATE HOSPITAL—REPLACING BUILDINGS DESTROYED IN 1906.
2147. AGNEWS STATE HOSPITAL—CONVEYANCE OF CERTAIN PROPERTY TO WESTERN DISTILLERIES.
- 2147a. AGNEWS STATE HOSPITAL—RIGHT OF WAY FOR SOUTHERN PACIFIC.
- 2147b. AGNEWS STATE HOSPITAL—CONFIRMING SALE TO WESTERN INDUSTRIES CO.
2148. AGNEWS STATE HOSPITAL—COTTAGE FOR FEMALE WORKING PATIENTS.
2150. MENDOCINO STATE HOSPITAL—CHANGE OF NAME.
2152. SOUTHERN CALIFORNIA STATE HOSPITAL—RIGHT OF WAY FOR RAILROAD.
2153. SOUTHERN CALIFORNIA STATE HOSPITAL—CONVEYANCE OF CERTAIN WATER RIGHTS.
2154. SOUTHERN CALIFORNIA STATE HOSPITAL—RIGHT OF WAY FOR ELECTRIC RAILROAD.
2155. SOUTHERN CALIFORNIA STATE HOSPITAL—RATIFICATION OF CONVEYANCE.
2156. NORWALK STATE HOSPITAL—ESTABLISHMENT OF.
2163. "PACIFIC COLONY" ACT.

STOCKTON STATE HOSPITAL—ARMORY SITE.

- ACT 2134—An act to provide for marking off and setting apart a portion of the Stockton State Hospital grounds for a site upon which to construct an armory; to provide for the conveyance and transfer of the lands comprising said proposed site by said corporation through its proper officers, board of managers or their successors as trustees of such property, to the state of California; to provide for the control and management thereof; to provide for the construction and erection of an armory and drill hall thereon, and appropriating money therefor.**

History: Approved May 17, 1915. In effect August 8, 1915. Stats. 1915, p. 493.

This act provided for the setting apart and conveyance to the state of certain land in the Stockton State Hospital grounds for a site for an armory and drill grounds.

STOCKTON STATE HOSPITAL—REMOVAL OF BODIES FROM THE CEMETERY.

ACT 2134a—An act providing for the removal of bodies from the cemetery at the Stockton State Hospital and the disposition thereof and making an appropriation therefor.

History: Approved June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1661.

STOCKTON STATE HOSPITAL—CONDEMNING CERTAIN STREETS FOR.

ACT 2138—An act condemning parts of certain streets adjacent to insane asylum, in the city of Stockton, for asylum purposes.

History: Approved April 4, 1864, Stats. 1864, p. 469.

This act provided for the condemnation of certain streets adjacent to the hospital grounds for the use of the hospital.

This hospital was originally known as the State Insane Asylum, and as the Stock-

ton Insane Asylum, but the name was changed to Stockton State Hospital by the act of 1903.—See Kerr's Cyc. Political Code, § 2145.

NAPA STATE HOSPITAL—WATER SUPPLY FOR.

ACT 2139—An act to provide a supply of water for the Napa State Asylum for the insane.

History: Approved April 3, 1876, Stats. 1875-76, p. 883.

This act authorized the condemnation of adjoining springs.

This hospital was originally known as the Napa State Asylum for the Insane, but the

name was changed to Napa State Hospital by the act of 1903.—See Kerr's Cyc. Political Code, § 2145.

NAPA STATE HOSPITAL—GRANT OF RAILROAD RIGHT OF WAY.

ACT 2143a—An act authorizing the board of managers of the Napa State Hospital to grant a right of way to San Francisco, Napa and Calistoga Railway over land owned by the state of California, for the consideration herein expressed.

History: Approved May 15, 1919. In effect July 22, 1919. Stats. 1919, p. 621.

This act provided for the grant of a right of way through the grounds of the hospital for the San Francisco, Napa and Calistoga Railway.

AGNEWS STATE HOSPITAL—ERECTION OF WATER TOWERS AND TANKS.

ACT 2145—An act to provide for the erection of water towers and tanks on the grounds of the Agnews state hospital.

History: Approved March 25, 1901, Stats. 1901, p. 806.

This act appropriated \$5000 for the purpose indicated.

Original name of institution.—The name of the institution was changed from "California Hospital for the Chronic Insane" to "State Insane Asylum" by the amending act

of 1889 (Stats. 1889, p. 130), to the act of 1885 (Stats. 1885, p. 35). It was subsequently changed to "Agnews State Hospital" by the act of 1903.—See Kerr's Cyc. Political Code, § 2145.

AGNEWS STATE HOSPITAL—REPLACING BUILDINGS DESTROYED IN 1906.

ACT 2146—An act authorizing and directing the board of managers of the Agnews State Hospital to continue the work of replacing and reconstructing and re-equipping for the accommodation and treating of patients, buildings destroyed April 18, 1906, to appropriate the sum of two hundred fifteen thousand dollars therefor, to direct the manner of expenditure thereof, to remove restriction upon the per capita cost, and authorizing and directing the state controller to draw his warrant for the said sum, and the state treasurer to pay the same.

History: Approved March 25, 1909, Stats. 1909, p. 791.

AGNEWS STATE HOSPITAL—CONVEYANCE OF CERTAIN PROPERTY TO
WESTERN DISTILLERIES.

ACT 2147—An act to authorize and empower the board of managers of the Agnews State Hospital to sell and convey a portion of real property situate in Santa Clara county, in the state of California, and belonging to said state, to the Western Distilleries.

History: Approved April 20, 1909, Stats. 1909, p. 1010.

ACT 2147a—An act to authorize and empower the board of managers of the Agnews State Hospital to grant, under the conditions herein provided, to the Southern Pacific Railroad Company, a corporation, a right of way and easement for the purpose of constructing, maintaining and operating an industrial spur track over, along and upon a strip of land situate in the county of Santa Clara and belonging to the state of California.

History: Approved May 5, 1917. In effect July 27, 1917. Stats. 1917, p. 251.

This act authorized the board of managers, in its discretion, to convey a right of way and easement over a certain portion of the hospital grounds to the Southern

Pacific Co., for a spur track to the Western Grain and Sugar Products Company's property, upon certain specified conditions.

ACT 2147b—An act confirming the sale and conveyance by the board of managers of the Agnews State Hospital to Western Industries Company of a portion of real property situate in the county of Santa Clara, state of California, and belonging to the state of California.

History: Approved May 21, 1919. In effect July 22, 1919. Stats. 1919, p. 780.

This act was made necessary by the change of name of the Western Distilleries to Western Grain and Sugar Products Com-

pany, and the reorganization of the latter company as the Western Industries Company.—See Act 2147.

AGNEWS STATE HOSPITAL—COTTAGE FOR FEMALE WORKING PATIENTS.

ACT 2148—An act appropriating money for building and furnishing a cottage for female working patients at Agnews State Hospital.

History: Approved June 7, 1913. In effect August 10, 1913. Stats. 1913, p. 857.

This act appropriated \$60,000 for the purpose indicated.

MENDOCINO STATE HOSPITAL—CHANGE OF NAME.

ACT 2150—An act to change the name of the Mendocino State Asylum for the Insane to Mendocino Asylum.

History: Approved March 3, 1893, Stats. 1893, p. 75.

The name of this institution was again changed by the act of 1903 to "Mendocino State Hospital." See Kerr's Cyc. Political Code, § 2145.

SOUTHERN CALIFORNIA STATE HOSPITAL—RAILROAD RIGHT OF WAY.

ACT 2152—An act to authorize and empower the board of managers of the Southern California state hospital for the insane, near the city of San Bernardino, San Bernardino county, to sell and convey a strip or parcel of land situate in San Bernardino county, in the state of California, and belonging to said state, to the San Pedro, Los Angeles & Salt Lake Railroad Company, for the purposes of a right of way for a steam railroad thereon.

History: Approved March 23, 1901, Stats. 1901, p. 563.

This act authorized the sale of a strip of land sixty feet wide to the San Pedro, Los Angeles and Salt Lake Railroad Company.

SOUTHERN CALIFORNIA STATE HOSPITAL—CONVEYANCE OF CERTAIN WATER RIGHTS.

ACT 2153—An act authorizing the trustees of the Southern California State Asylum to convey certain water rights.

History: Approved March 27, 1895, Stats. 1895, p. 233.

Name of institution.—The name of this institution was changed from "Southern California State Insane Asylum" to "Southern California State Hospital" by the act of 1903.—See Kerr's Cyc. Political Code, § 2145.

This act authorized the sale of certain water rights to the North Fork Water Company in exchange for the shares of the corporation.

SOUTHERN CALIFORNIA STATE HOSPITAL—RIGHT OF WAY FOR ELECTRIC RAILROAD.

ACT 2154—An act to authorize and empower the board of managers of the Southern California State Hospital for the Insane, near the city of San Bernardino, San Bernardino county, to sell and convey a strip or parcel of land situate in San Bernardino county, in the state of California, and belonging to said state, to the San Bernardino Valley Traction Company for the purposes of a right of way for an electric railroad thereon.

History: Approved March 23, 1907, Stats. 1907, p. 911.

SOUTHERN CALIFORNIA STATE HOSPITAL—RATIFICATION OF CONVEYANCE.

ACT 2155—An act to ratify a deed of conveyance made by the Southern California State Hospital to the Bear Valley Mutual Water Company.

History: Approved March 21, 1907, Stats. 1907, p. 848.

NORWALK STATE HOSPITAL—ESTABLISHMENT OF.

ACT 2156—An act to provide for the establishment of a state hospital for the insane and providing for commitment thereto and management thereof, and making an appropriation therefor.

History: Approved June 7, 1913. In effect August 10, 1913. Stats. 1913, p. 884.

Hospital for insane established in southern California.

§ 1. A state hospital shall be established in southern California, preferably near to the sea coast, for the care of the insane.

Commission created for building.

§ 2. A commission composed of the governor, lieutenant-governor, state engineer, the general superintendent of the state hospitals, and a member of the Psychopathic Association of California, to be appointed by the governor, is hereby created and is hereby authorized to select and purchase a suitable site, accept the plans and direct the engineering department to erect the necessary buildings as and for a hospital for insane persons.

Commitments.

§ 3. Upon the completion of such state hospital, insane persons may be committed or admitted thereto in the manner provided by law for the commitment of insane persons, and for the admission of insane persons, under special agreements, to state hospitals for the insane.

Management as provided by law.

§ 4. Upon the adoption of plans as herein provided for such institution, the commission herein created shall cease to exist and the control and management of said institu-

tion as a hospital for the insane shall be continued as and in the manner provided by law for the control, management and operation of state hospitals for the care of the insane.

Title to land and water rights.

§ 5. Title to land and water right thereunto appertaining acquired in pursuance of this act shall be approved by the attorney general and shall be taken in the name of the state of California. The deeds therefor shall be filed with the secretary of state.

Appropriation.

§ 6. There is hereby appropriated from the funds of the state not otherwise appropriated the sum of two hundred and fifty thousand dollars to be used for the purchase of a site together with water rights for said hospital and the erection and equipment of buildings and improvements thereon. Not more than ninety thousand dollars of the money herein appropriated shall be used for the purchase of said site and water rights. Said site shall contain not less than three hundred acres of tillable land.

"PACIFIC COLONY" ACT.

ACT 2163—An act to establish an institution for the care, confinement and instruction of feeble-minded and epileptic persons; to provide for the government and maintenance thereof, and for the study of mental deficiency and related problems; to provide for admission and commitment to such institution, and to prescribe penalties for unlawfully or improperly contriving to have persons adjudged feeble-minded under this act; to provide for the sterilization of inmates of such institutions; to prescribe penalties for procuring the escape, or aiding or advising in the escape, of inmates, or concealing inmates thereof; to provide a contingent fund for the use of such institution and to make an appropriation therefor.

History: Approved June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1623.

Pacific colony created.

§ 1. There is hereby created an institution to be known as the Pacific colony and which is hereby declared to be a corporation.

Board of trustees.

§ 2. The said institution shall be under the control of a board of three trustees, to be appointed by the governor, one for one year, one for two years, and one for three years, and thereafter for terms of four years each, to hold office until their successors are respectively appointed and qualified. The governor shall fill vacancies occurring from any cause in the membership of such board, and the first board shall be appointed within thirty days after this act takes effect.

Chairman.

§ 3. The said trustees shall annually elect from their own number a chairman and a vice chairman, whose terms of office shall be one year and until their successors shall be duly appointed and qualified.

By-laws.

§ 4. The board of trustees may, from time to time, establish such by-laws, rules and regulations, not inconsistent with the laws of the state, as they may deem expedient for the efficient management and government of the said institution, for the transaction of its business and the holding of its meetings.

Vacancy.

§ 5. If any trustee fail, for three months, to attend the regular meetings of the board, unless he is ill or absent from the state, his office shall become vacant, if the

board, by resolution, so declare. A copy of any such resolution certified by the secretary of the board, must thereupon be forthwith transmitted to the governor.

Compensation.

§ 6. The trustees shall be entitled to receive as compensation for their services, while in the actual discharge of their duties as such trustees, ten dollars per day each; provided, that the total thereof shall not exceed two hundred forty dollars in any one year for any trustee; and provided, that if such services be performed on two or more consecutive days, there shall in such case be remuneration paid for one day only; and provided, also, that the trustees shall be entitled to receive, in addition to such compensation, all of their necessary expenses while attending to the business of the institution.

Superintendent. Secretary.

§ 7. The board of trustees shall appoint a superintendent, not of their own number, who shall be a resident of the institution and shall have charge, manage and control of the same and of its property, and shall have the charge, control, discipline and training of its inmates, subject to the direction of the board of trustees; and he shall give a bond to the state in such sum and with such sureties as will be satisfactory to the state board of control, for the faithful performance of his duties. The board of trustees shall appoint a secretary who shall perform such duties as the board may direct. The superintendent may be appointed to that position.

Treasurer.

§ 8. The superintendent shall, subject to the approval of the board of trustees, employ, with power to discharge, a treasurer and such other officers and employees as he may consider proper and necessary for the efficient carrying into effect of the design of the said institution, determine their titles, and prescribe their duties.

Duty of treasurer.

§ 9. The treasurer shall receive and disburse all moneys and keep account of the same, under the direction of the board of trustees, but subject to such supervision or control as is vested by law in the state board of control, and he shall give a bond to the state in such sum and with such sureties as will be satisfactory to the state board of control for the faithful performance of his duties.

Compensation of officers.

§ 10. The board of trustees shall fix the compensation of the superintendent, whose salary shall be not less than three hundred dollars per month, and the superintendent shall fix the compensation of the other officers and employees, subject to the approval of the board of trustees.

Purchase of site.

§ 11. The board of trustees, together with the superintendent, are hereby empowered and instructed to purchase on behalf of the state, in the territory covered by and included within the counties of Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside and San Diego, for the use of the said institution, such a site as they may deem most advantageous, of preferably not less than eight hundred acres, subject to the approval of the state board of control as to the purchase price, and subject to such approval, the said board of trustees and superintendent may, if they consider it advisable, purchase water rights or make provision for the development of water for the use of said lands. The state department of engineering shall, at the request of the board of trustees, and with the approval of the state board of control, examine into the matter of water, light, power and sanitation, and the engineering

problems involved, in connection with any site or sites the board may investigate with a view to purchasing, and shall report thereon to the board of trustees, with special regard to the suitability of such site or sites for the purposes of the institution.

The University of California shall, on the approval of the state board of control, render to the board of trustees such reasonable assistance as the board may desire, in determining the quality and character of the soil of such site or sites for agricultural, horticultural and other purposes, and its suitability for the purposes of the institution.

The said trustees and superintendent, the said state department of engineering, and the said university, shall be entitled to receive their necessary expenses in connection with said investigations and the selection and purchase of said site.

Buildings.

§ 12. The board of trustees shall erect the buildings for said institution, subject to such supervision or control as is by law vested in the state department of engineering.

Equipment, etc.

§ 13. The board of trustees is authorized and required to purchase such equipment, furniture, supplies and materials, as it may deem suitable for the proper completion and furnishing of the said buildings, and for the operation and maintenance of the said institution, subject to such supervision or control as is by law vested in the state board of control and the state purchasing agent.

Donations and bequests.

§ 14. The said institution may take and hold in trust for the state any grant or devise of land, or any donation or bequest of money or other personal property, heretofore or hereafter granted, devised, donated, or bequeathed to the use of the institution, and shall dispose of the same in accordance with the wishes of the donor, or testator, if expressed, and if no condition be attached thereto, or in so far as any wishes expressed do not prevent, then to invest and reinvest the same, or to change the investment thereof, as to the board of trustees may seem best, and to use the income arising therefrom for the best interests of the institution.

Forms for admission of inmates.

§ 15. The board of trustees shall prescribe and publish instructions and forms, in relation to the commitment and admission of inmates, and may include in them such interrogatories to be answered as it may deem necessary or useful; which instructions and forms shall be furnished to any one applying therefor, and shall also be sent in sufficient numbers to the county clerks of the several counties of the state.

Who are "feeble-minded."

§ 16. The following persons, if not insane, shall be held to be "feeble-minded" within the meaning of this act:

(a) Those who are so mentally deficient that they are incapable of managing themselves and their affairs independently, with ordinary prudence, or of being taught to do so, and who require supervision, control, and care, for their own welfare, or for the welfare of others, or for the welfare of the community; or

(b) Those whose intelligence in the judgment of one or more psychologists, when they have been examined by such psychologist or psychologists making use of standardized psychological tests and whatever supplementary material may be available, will not develop beyond the level of the average child of twelve years.

Petition to superior court for order admitting person.

§ 17. Whenever any parent, guardian or other person charged with the support of a supposedly feeble-minded person who is not insane, or an epileptic under twenty-one

years of age, desires such person to be admitted into the said institution, he may petition the superior court of the county in which such person resides for an order admitting such person thereto; the petition shall disclose his reasons for supposing such person to be eligible for admission thereto, and shall be verified by the affidavit of the petitioner. Or whenever any peace officer[r] desires any such supposedly feeble-minded or epileptic person to be so admitted, he may petition the said court as afore-said for an order therefor; provided, he shall have given two days previous written notice of the date of the presentation of the petition personally or by United States mail, to such parent, guardian or other person charged with such support, if known to him, and if not so known, then to some other relative or friend, if any known to him, residing in the said county, an affidavit whereof, together with the names, addresses and relationship of the parties so notified, and the facts of his said knowledge or want of knowledge, shall be filed with the petition.

Warrant for arrest.

§ 18. The court may cause a warrant to issue for the arrest and delivery to the court of such supposedly feeble-minded or epileptic person, whenever considered advisable or necessary, and have the same executed by any peace officer.

Examination of person. Order of commitment.

§ 19. The judge of the said court must inquire into the condition or status of such supposedly feeble-minded or epileptic person, for which purpose he may by subpoena require the attendance before him of a clinical psychologist and a reputable physician, or one of each, or two of either, to examine such person and testify as to his or her mentality. Such physicians must have made a special study of mental deficiency and be qualified to act as "medical examiners." The said judge may also by subpoena require the attendance of such other persons to give evidence as he may deem advisable, and if the judge find such person to be a feeble-minded person, as defined by section sixteen of this act, or an epileptic person under twenty-one years of age, and that such person has been a resident of the state for at least one year next preceding the presentation of the petition, such judge may make an order of commitment to said institution, and on the presentation of such order the superintendent must receive such person therein; provided, that, in the opinion of the board of trustees, the condition of such person, the accommodation at the said institution, and the state of its finances, be such as to justify the receiving of such person. Pending the said investigation the said supposedly feeble-minded or epileptic person may be left in charge of the parent, guardian or other suitable person or in a detention home.

Order to pay expenses.

§ 20. The judge shall attach to the order of commitment his findings and conclusions, together with all the social and other data he may have bearing upon the case, and the same shall be delivered to the said institution with such order. The judge must inquire into the financial condition of the parent, guardian or other person charged with the support of any such person, and if he find him able to do so, in whole or in part, he must make a further order, requiring him or her to pay, to the extent the judge may consider him or her able to pay, the expenses of the proceedings in connection with the investigation, detention and commitment of such person, and the expenses of the delivery thereof to the institution, and to pay to the institution, at stated periods, such sums as, in the opinion of the judge, are proper, during such time as the person may remain in the institution. This order may be enforced by such further orders as the judge deems necessary, and may be varied, altered or revoked in his discretion.

Petitioner to pay when.

§ 21. In case of the dismissal of the said petition, the judge may, if he considers the petition to have been filed with malicious intent, order the petitioner to pay the expenses in connection therewith, and may enforce the same by such further orders as he may deem necessary.

Penalty.

§ 22. Any one who shall knowingly contrive to have any person adjudged feeble-minded under this act, unlawfully or improperly, shall be deemed guilty of a misdemeanor.

Feeble-minded boy or girl before juvenile court.

§ 23. When a boy or girl is brought before a juvenile court under the juvenile court law, if it appear to the court, either before or after adjudication, that such person is feeble-minded within the meaning of this act; or if on the conviction of any person of crime by any court it appear to the court that such person is feeble-minded as aforesaid, the court may adjourn the proceedings or suspend the sentence, as the case may be, and direct some suitable person to take proceedings under this act against the person before the court, and the court may order that, pending the preparation, filing and hearing of the petition, the person before the court be detained in a place of safety, or be placed under the guardianship of some suitable person, on his entering into a recognizance for the appearance of the person upon trial or under conviction when required. If upon the hearing of the petition, or upon a subsequent hearing under this act, the person upon trial or under conviction be not found to be feeble-minded, the court may proceed with the trial or impose sentence, as the case may be.

Persons admitted for observation.

§ 24. The superintendent may admit to the Pacific colony temporarily, without commitment, under such rules and regulations as the board of trustees may prescribe, for purposes of observation and testing, such persons, as are suspected of being feeble-minded, to ascertain whether or not they are actually mentally defective, and proper cases for care, treatment and training in an institution for the feeble-minded, and if such is found to be the case, application may be made to the superior court for an order of commitment of such persons to such an institution. On presentation of an affidavit or affidavits of the facts upon which such opinion is based, the judge of the said court may make such order.

Witness fees.

§ 25. Each psychologist and physician shall be entitled to receive for each attendance mentioned in section nineteen the sum of five dollars for each person examined together with his necessary actual expenses occasioned thereby, and other witnesses shall be entitled to receive for such attendance such fees and expenses as the court in its discretion may allow, if any, not exceeding the fees and expenses allowed by law in other cases in the said courts.

Payment by county treasurer.

§ 26. Any fees or traveling expenses payable to a psychologist, physician, or witness as aforesaid, and all expenses connected with the execution of any process under this act, which may not be paid by the parent, guardian or person charged with the support of the said supposed feeble-minded or epileptic person, shall be paid by the county treasurer of the county in which such person resides, upon the presentation to the treasurer of a certificate of the said judge that the party is entitled thereto.

Transfer to or from state hospital for insane.

§ 27. The said board of trustees, when it shall deem desirable, owing to the mental condition of an inmate of the Pacific colony, may, with the approval of the state commission in lunacy, transfer such inmate to a state hospital for the insane, provided that on due investigation by such commission, the commission shall consider such inmate a fit subject therefor. And the said commission, whenever on due observation and investigation it shall consider a patient in any state hospital for the insane eligible for commitment to the Pacific colony may with the approval of the said board of trustees, transfer such patient thereto, for care and treatment therein.

Transfer to or from Sonoma state home.

§ 28. Inmates of the Sonoma state home may be transferred to the Pacific colony, and inmates of the Pacific colony may be transferred to the Sonoma state home, at any time and from time to time as may be agreed upon by the boards of trustees of the two institutions, upon the application of the parent, guardian or other persons charged with the support of such inmate, provided he pay the expenses thereof, and may, with the approval of the state board of control, be so transferred without such application and without such payment, in which latter case the expenses thereof shall be paid by either or both of such institutions as may be determined by the state board of control.

Liability for support unchanged.

§ 29. In the event of the transfer of any inmate or patient as provided in sections twenty-seven and twenty-eight of this act the liability of any estate, person or county for the care, support and maintenance of such person, shall be the same to the institution to which the person is transferred as it was to the institution from which the transfer is made.

Execution of writ of commitment.

§ 30. It shall be the duty of the sheriff of any county wherein an order is made by the judge of the superior court committing any person to the Pacific colony, or of any other person designated by the said judge, to execute the writ of commitment, and to receive as compensation therefor such fees as are now or may hereafter be provided by law for the transportation of prisoners to the state prison; provided, that in all cases the parent, guardian or other person charged with the support of such person may, at his option, with the approval of the said judge, and in all cases where he is able or the estate of such person is sufficient, shall, if the said judge approve, without expense to the county or state, execute said writ, after being duly sworn therefor, with like effect and with like powers as the sheriff would have; but no such person, being a female, shall be taken to the said colony by any male person not her husband, father, brother or son, without the attendance of some woman of good character and mature age, chosen for the purpose by the judge, which woman shall, if the judge see fit, be paid therefor such reasonable remuneration as he may allow.

Payments by county.

§ 31. For each person committed to the Pacific colony there shall be paid by the county from which he is committed, to the state treasurer, the sum of fifteen dollars monthly, for and during each month or part of month such person so committed remains an inmate of the institution, in case the payments herein provided to be made by the parent, guardian or other person charged with the support of any such person should not be made, and to the extent they are not made, not exceeding fifteen dollars per month.

Statement by county auditor.

§ 32. Each county auditor must include in his state settlement report, rendered to the controller in the months of May and December, the amount due under this act, by

reason of commitment to the Pacific colony, and the county treasurer, at the time of the settlement with the state in such months, must pay to the state treasurer, upon the order of the controller, the amounts found to be due by reason of the commitments herein referred to.

When others may be admitted.

§ 33. Whenever the accommodations of the Pacific colony permit, and if such action does not conflict with the interest or welfare of committed cases, the board of trustees, without judicial commitment, and upon such terms as may appear to said board to be to the best interests of the state, may admit to said institution epileptics, of any age, and also such other persons as are, under the provisions of this act, eligible for admission to said institution.

Transfer from state schools.

§ 34. Any boy who has been or may hereafter be committed to the Preston School of Industry, or the Whittier State School, or any girl who has been or may hereafter be committed to the California School for Girls at Ventura, or to any similar institution now or hereafter created, who comes within the provisions of this act, may, on application to a judge of the superior court of the county in which such person may be located, by the superintendent of the institution to which he or she has been committed, be discharged from such last mentioned institution, and be recommitted, for an indeterminate period, to the Pacific colony, to the Sonoma State Home, or to any similar institution hereafter created; provided, the findings of the judge and the opinion of the board of trustees of the institution to which such boy or girl is sought to be committed are the same as on the commitment to and receiving into the Pacific colony of other persons as aforesaid; and provided, that there shall have been served upon such relatives of said boy or girl, or upon such other persons and in such manner as the said judge may deem necessary or proper, such notice of the application as he shall consider sufficient, in order to enable them to be heard on the application.

Object of colony.

§ 35. The object aimed at in the Pacific colony shall be such care and training of its inmates as to render them more useful and happy, and tend to make them as nearly self-supporting as their level of intelligence may permit.

Manufacture of furniture, etc.

§ 36. The Pacific colony may manufacture or raise for sale, such articles of furniture, supplies or produce as may be used in the said or any other state institution, subject to the approval and under the control of the state board of control.

Disposition of funds.

§ 37. All moneys received from the sale of articles of furniture, supplies or produce as provided in section thirty-six of this act shall be paid to the state treasurer, to be placed in the contingent fund to the credit of the said colony and for its use.

Department for clinical diagnosis.

§ 38. The Pacific colony shall have a department for the clinical diagnosis of inmates, and their subsequent classification and observation, with a view to their proper segregation and treatment.

Examination of inmate before discharge.

§ 39. The superintendent shall, at least two weeks before the discharge of any inmate, have made, by a trained clinical psychologist, an examination of the mental condition of such inmate, and a permanent record thereof shall be kept in the office of the

superintendent; which record shall be open to the inspection of all state boards or commissioners authorized by law to investigate or inspect the institution.

Biennial report of superintendent.

§ 40. The superintendent shall issue, at the end of each period of two years, a report of the work done during that period, giving the number of inmates received within that time, their sex, nativity, residence, date of reception, level of intelligence determined as aforesaid, and the results of the investigations that may have been made; such report shall also give the number of inmates discharged during that period, with the date and reason therefor, and the names of all paying inmates, the amounts charged for them, and the amounts received therefrom, together with such other information or suggestions as shall be required by the board of trustees or the state board of control, or to the superintendent may seem desirable; which report shall be kept on file in the office of the superintendent, but shall not be printed. A copy of such report shall be sent to the governor, along with the biennial report of the board of trustees, and may be printed for the use of the legislature or for distribution; provided, the names of the inmates are not given or their identity made evident.

Discharge of inmates.

§ 41. The board of trustees may discharge, or the superintendent may grant a temporary leave of absence to, any inmate at any time.

Sterilization before discharge.

§ 42. Before any inmate who has been committed to the Pacific colony, and who is feeble-minded or is afflicted with incurable chronic mania or dementia, shall be released or discharged therefrom, the board of trustees on the recommendation of the superintendent approved by a clinical psychologist holding the degree of Ph. D. and a physician qualified to serve under section nineteen of this act, after they shall have made a careful investigation of all the circumstances of the case, may cause such person to be sterilized; and such sterilization, whether with or without the consent of the inmate, shall be lawful, and shall not render the said commission, or its members, or any person participating in the operation, the said trustees, the said colony, or any of its officers or employees, liable civilly or criminally.

Action against trustees, etc.

§ 43. No civil action shall be brought against the trustees, the superintendent, or any other officer or employee of the said colony, because of any act done or failure to perform any act while discharging his official duties, without leave of the controller first had or obtained. Any just claim for damages against such trustee, superintendent, officer or employee, for which the state would be legally or equitably liable, may be paid out of any moneys appropriated for the said institution.

Penalty for bringing drugs or liquor.

§ 44. Any person, not authorized by law, who brings into the said colony, or within the grounds adjoining or adjacent thereto, any opium, morphine, cocaine, or other narcotic, or any intoxicating liquor of any kind whatever, except for medicinal or mechanical purposes, or any firearms, weapons, or explosives of any kind, is guilty of a misdemeanor.

Penalty for aiding escape.

§ 45. If any person procure the escape of any male inmate of the said colony, or advise, connive at, aid or assist in such escape, or conceal any such inmate after such escape, or if any person advise or connive at the escape of any female inmate of the said colony, he or she is guilty of a misdemeanor; and if any person procure the escape

of any female inmate of the said colony, or aid or assist in such escape, or conceal such female inmate after such escape, he or she is guilty of a felony.

Trustees, etc., not to be interested in contracts.

§ 46. No trustee or employee of the said colony shall be personally, directly or indirectly, interested in any contract, purchase or sale made, or any business carried on, in behalf of or for said institution. All contracts, purchases or sales made in violation of this section shall be held and declared null and void, and all moneys paid to such trustee, employee, or any other person, for his benefit, in whole or in part, in consideration of such purchases, contracts or sales made, may be recovered by civil suit, to be instituted in the name of the state of California against such trustee, employee or person acting in his behalf; and in addition, it is hereby made the duty of the governor or the board of trustees, as the case may be, upon satisfactory proof of the fact of such interest, to immediately remove the trustee or employee delinquent as aforesaid, and to report the facts to the attorney general, who shall take such legal steps in the premises as he shall deem expedient.

Exempt from control of state commission in lunacy.

§ 47. The Pacific colony, its inmates, officers, employees and property are hereby declared to be exempt from the operation of chapter one, title five, part three of the Political Code, and free from the supervision, inspection or control of the state commission in lunacy.

Appropriation.

§ 48. There is hereby appropriated out of any money in the state treasury not otherwise appropriated, the sum of two hundred fifty thousand dollars (\$250,000.00) for the purposes of this act.

Payment.

§ 49. The controller of the state is hereby directed on requisition of the board of trustees, duly audited by the state board of control, to draw his warrant on the state treasurer in favor of the board of trustees for any moneys duly appropriated, to pay for the expenditures in the establishment and maintenance of the said colony, and the said treasurer is directed to pay the same from the appropriations provided therefor.

Validity.

§ 50. The invalidity of any part of this act shall not be construed to affect the validity of any other part capable of having practical operation and effect without the invalid part.

CHAPTER 164.

INSECTS.

References: See, generally, tits. "Adulteration;" "Horticulture."

CONTENTS OF CHAPTER.

- ACT 2168. MOSQUITO ABATEMENT DISTRICTS.
- 2169. PREVENTION OF IMPORTATION OF INSECTS.

MOSQUITO ABATEMENT DISTRICTS.

ACT 2168—An act to provide for the formation, government, operation and dissolution of mosquito abatement districts in any part of the state, to facilitate the extermination of mosquitos, flies and other insects; and to provide for the assessment, levy, collection and disbursement of taxes therein.

History: Approved May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 1011.

Mosquito abatement districts.

§ 1. Mosquito abatement districts may be organized and incorporated and managed, as herein expressly provided and may exercise the powers herein expressly granted or necessarily implied.

§ 2. Any county, or city and county, or portion of a county, or city and county, whether such portion includes incorporated territory or not, in the state of California, having a population of not less than one hundred inhabitants, may be created a mosquito abatement district under the provisions of this act by proceeding as herein provided.

Petition. Boundaries. Publication.

§ 3. A petition, which may consist of any number of separate instruments, shall be presented at a regular meeting of the board of supervisors of the county in which the proposed mosquito abatement district is located, signed by the registered voters within the boundaries of the proposed district, equal in number, to at least ten per cent of the number of votes cast in said proposed district for the office of governor of this state at the last general election prior to the presenting of the petition; provided, that where one or more municipal corporations or part thereof is included in such proposed mosquito abatement district, such petition must be signed by at least ten per cent of the qualified electors of such municipal corporations or part thereof and of the unincorporated territory included in such proposed district, and in addition thereto the common council, board of trustees or other governing body of each such municipality shall by resolution, duly authenticated, request the inclusion of such incorporated territory in such district. Such petition shall set forth and describe the proposed boundaries of such district, and shall pray that the same be created under the provisions of this act, and the text of such petition shall be published for at least two weeks before the time at which the same is to be presented in a newspaper printed and published in such county, and also a newspaper printed and published in each municipal corporation or part thereof included in such proposed district, and if there be no newspaper published in any such municipal corporation, the text of such petition shall be posted for the same length of time as required to be published, in three public places within such municipal corporation or part thereof included in such proposed district, and the text of such petition so published or posted shall have annexed thereto a notice stating the time of the meeting of the board of supervisors at which the same will be presented. When contained upon more than one instrument, one copy only of such petition need be published and posted. No more than five of the names attached to said petition need appear in such publication or posting of said petition and notice, but the number of signers shall be stated.

Hearing. Establishment of boundaries.

With such publication there shall also be published, and if posted, there shall also be posted, a notice of the time of the meeting of the board when such petition will be considered, and that all persons interested therein may then appear and be heard. At such time the board of supervisors shall hear the petition and those appearing thereon, and also all protests and objections to the same, and may adjourn such hearing from time to time not exceeding two months in all. No defect in the contents of the petition or in the title to or form of the notice or signatures, or lack of signatures thereto, shall vitiate any proceedings thereon, provided such petition or petitions have a sufficient number of qualified signatures attached thereto. On the final hearing said board shall make such changes in the proposed boundaries as may be deemed advisable and shall define and establish such boundaries; provided, that

if said board deems it proper to include therein any territory not included within the said proposed boundaries, they shall first cause notice of their intention so to do, to be mailed to each owner of land within said territory proposed to be included whose name appears as such on the last completed assessment roll of the county or city and county wherein said territory lies, addressed to such owner at his address given on such assessment roll, or if no address is so given, then to his last known address; or if it be not known, then at the county seat of the county in which his land lies, which said notice shall describe the territory so proposed to be included, and shall fix a time, not less than two weeks from the date of mailing thereof, when all persons interested may appear before said board and be heard; and further provided, that the boundaries lying within a municipal corporation shall not be altered unless the municipal board of such municipal corporation shall, by resolution, assent to the alteration of such boundaries therein.

Determination of supervisors. Finding final. Copy filed with secretary of state.

Upon such hearing of such petition the board shall determine whether or not the public necessity or welfare of the proposed territory and of the inhabitants thereof requires the formation of such district, and shall also determine whether or not said petition complies with the provisions of this act, and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. A finding of the board of supervisors in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except the state of California, upon suit commenced by the attorney general. If, from the testimony adduced before said board, it appears to said board that the public necessity or welfare requires the formation of such district, the said board shall, by an order entered on its minutes, declare such to be its finding, and shall further declare and order that the territory within the boundaries so fixed and determined, be created a mosquito abatement district, under an appropriate name to be selected by said board, which name shall contain the words "Mosquito Abatement District." The county clerk shall immediately cause to be filed with the secretary of state a certified copy of such order of the board of supervisors, and from and after the date of the filing of such certified copy, the district named therein shall be deemed incorporated as a mosquito abatement district, with all the rights, privileges and powers set forth in this act, and necessarily incident thereto.

Board of trustees. Term of office.

§ 4. Within thirty days after the said filing with the secretary of state of the certificate of incorporation of said district, a governing board of trustees for said district shall be appointed. Said board shall consist of one trustee to be appointed from said district at large by said board of supervisors and of one trustee to be appointed from each municipality in said district by the governing board of such municipality; provided, that, if the board of trustees thereby created shall consist of less than five members, then the board of supervisors shall appoint from such district at large enough additional members to make a board of five trustees. The governing board of such district shall be called "The Board of Trustees of Mosquito Abatement District." Each trustee appointed by a municipal board shall be an elector of the municipality from which he is appointed, and each appointee of the board of supervisors shall be an elector of the district. All such trustees shall hold office for the term of two years from and after the second day of the calendar year succeeding their appointment; provided, however, that the first board of trustees appointed under the provisions of this act shall, at their first meeting, so classify themselves by lot that one-half of their number, if the total membership is an even number, and if uneven

then that a bare majority of their number, shall go out of office at the expiration of one year and the remainder at the expiration of two years, from the second day of the calendar year succeeding their appointment.

Meetings. Compensation. Quorum.

§ 5. The members of the board of trustees shall meet on the first Monday subsequent to thirty days after the filing with the secretary of state of the certificate of incorporation of said district and shall organize by the election of one of their members as president and one thereof as secretary. The members of the board shall serve without compensation except that the necessary expenses of each member for actual traveling expenses on meetings or business connected with said board shall be allowed and paid. In event of the resignation, death or disability of any member, his successor shall be appointed by the board of supervisors, if such board originally made such appointment, or by the governing board of the appropriate municipality, if such appointment were originally made by the board of a municipality. The board of trustees shall provide for the time and place of holding its regular meetings, and the manner of calling the same, and shall establish rules for its proceedings. Special meetings shall be called by three trustees and notice of the holding thereof shall be given to each member at least three hours before the meeting. All of its sessions, whether regular or special, shall be open to the public and a majority of the members of the board shall constitute a quorum for the transaction of business.

Extermination of mosquitoes, etc.

§ 6. The board of trustees of such district shall have power to take all necessary or proper steps for the extermination of mosquitoes, flies or other insects within the district, and subject to the paramount control of the municipal or other public authorities, to abate as nuisances all stagnant pools of water and other breeding places for mosquitoes, flies or other insects within the district; to purchase such supplies and materials and to employ such labor as may be necessary or proper in furtherance of the objects of this act, and if necessary or proper, in the furtherance of the same, to build, construct and thereafter to repair and maintain, necessary levees, cuts, canals or channels upon any land within the district, and to acquire by purchase, condemnation or by other lawful means, in the name of the district, any necessary lands, rights of way, easements, property or material requisite or necessary for any of such purposes; to make contracts to indemnify or compensate any owner of land or other property for any injury or damage necessarily caused by the exercise of the powers by this act conferred or arising out of the use, taking or damage of such property for any of such purposes, and generally to do any and all things necessary or incident to the powers hereby granted and to carry out the objects specified herein.

Estimate of expenses. Tax levy.

§ 7. The board of trustees of each mosquito abatement district shall at least fifteen days before the first day of the month in which the board of supervisors of the county, or city and county, in which such district is situate, is required by law to levy the amount of taxes required for county, or city and county, purposes, furnish to the board of supervisors and to the county auditor, respectively, an estimate in writing of the amount of money necessary for all purposes required under the provisions of this act during the next ensuing fiscal year. The board of supervisors of such county, or city and county, shall thereafter, at the time and in the manner of levying other county, or city and county, taxes, levy upon all of the taxable property within the district and cause to be collected a tax, to be known as the ".....Mosquito Abatement District Tax," the maximum rate of which must not be greater than sufficient to

raise the amount estimated to be raised by the said board of trustees of the district, nor in any event shall such tax exceed ten cents on each one hundred dollars of taxable property in such district.

Election on tax levy. Ballots.

Whenever it appears to the board of trustees of such district that the amount of funds required during the next ensuing fiscal year shall exceed the maximum amount which the supervisors are authorized to levy for the annual district tax, as hereinabove in this section provided, then said board of trustees may in their judgment call an election and submit to the electors of the district the question of whether a tax shall be voted for raising the necessary additional funds, and notice thereof shall be published for at least four weeks prior to such election in a newspaper printed and published in such district; provided, that no particular form of ballot shall be required nor shall any formalities in conducting such election invalidate the same, if the election shall have otherwise been fairly conducted. At such election the ballots must contain the words "Shall the district vote a tax to raise the additional sum of \$———?" The board of trustees shall canvass said votes cast at such election and if a majority of the votes cast are in favor of the imposition of said tax the board of trustees must report the same to the board of supervisors, stating the additional amount of money required to be raised. The board of supervisors shall at the time of levying the county taxes, levy an additional tax upon all of the taxable property in the district voting such additional tax sufficient to raise the amount voted.

Collection of taxes.

All taxes levied under the provision of this section shall be computed and entered on the county assessment roll by the county auditor, and collected at the same time and in the same manner as state and county taxes; and when collected shall be paid into the county treasury for the use of the district.

Withdrawal of funds.

The funds shall be withdrawn from the county treasury upon the warrant of the board of trustees of such district signed by the president or acting president of the board, and countersigned by its secretary.

Annexation of territory. Canvass of votes. Property in cities.

§ 8. Any territory, incorporated or unincorporated, lying adjacent and contiguous to a mosquito abatement district, may be added and annexed to such district, at any time, upon proceedings being had and taken as in this act provided. The board of trustees of such district, upon receiving a written petition therefor containing a description of the new territory sought to be annexed to such district, signed by the owners comprising more than one-half of the assessed value of such territory as shown by the last county assessment-roll, must thereupon submit to the electors of the district and also to the electors residing in the territory sought to be annexed, the proposition of whether such proposed territory shall be annexed and added to such district. The proposition to be submitted to the electors at such election, both within said district and within said territory so proposed to be annexed, shall be as follows: "For annexation," or "Against Annexation," or words equivalent thereto. Such election must be called and held, and notice thereof shall be published for at least four weeks prior to such election in a newspaper printed and published in such district, and also in a newspaper printed and published in such territory so proposed to be annexed. The board of trustees shall canvass, separately, the votes cast within said district, and the votes cast within said territory so proposed to be annexed, and if it shall appear from such canvass that a majority of all the ballots cast in such district and a majority of all the ballots cast in such territory so proposed to be annexed are in favor of annexation, the

board of trustees shall certify such fact to the secretary of state describing said property proposed to be annexed and upon receipt of such last mentioned certificate, the secretary of state shall thereupon issue his certificate reciting that the territory (describing the same) has been annexed and added to theMosquito Abatement District (naming it), and a copy of such certificate of the secretary of state shall be transmitted to and filed with the county clerk of the county, or city and county, in which such mosquito abatement district is situated. From and after the date of such certificate the territory named therein shall be deemed added and annexed to and form a part of said mosquito abatement district, with all the rights, privileges and powers set forth in this act and necessarily incident thereto. If the property so proposed to be annexed is included within a municipality, consent to such annexation shall first be obtained from the governing board of such municipality, and an authenticated copy of the resolution or order of such board so consenting to such annexation, shall be attached to the petition, and be made a part thereof.

Dissolution of district. Disposition of property.

§ 9. The district may at any time be dissolved upon the vote of two-thirds of the qualified electors thereof, upon an election called by its board of trustees upon the question of dissolution, and the proposition which shall be submitted to the electors at such election shall be as follows: "Shall the district be dissolved?" Such election must be called and held; and notice thereof shall be published for at least four weeks prior to such election in a newspaper printed and published in such districts. If two-thirds of the votes at such election shall be in favor of the dissolution of the district, the board of trustees shall certify such fact to the secretary of state, and upon receipt of such last mentioned certificate, the secretary of state shall thereupon issue his certificate reciting that the mosquito abatement district (naming it) has been dissolved, and a copy of such certificate of the secretary of state shall be transmitted to and filed with the county clerk of the county, or city and county, in which such mosquito abatement district is situated. From and after the date of such certificate the district named therein shall be deemed disincorporated, and the property of the district shall thereupon vest in the county, or city and county wherein said district is situate, if the district at the time of its dissolution comprises unincorporated territory alone, and if it comprises incorporated territory alone, or partly incorporated and partly unincorporated territory, then in such event its property shall be ratably apportioned amongst the several municipalities and the county, or city and county, in proportion to the assessed value of the property included within said district as shown upon the last county assessment roll; provided, however, that any real property, easements or rights of way, belonging to said district shall in such event remain the property of the municipality wherein the same is situate, if situated within incorporated territory, otherwise the same shall remain the property of the county.

Publication of notices. Definitions.

§ 10. Every notice herein required to be published may be published in a daily or weekly or semi-weekly newspaper; and if there is no daily or weekly or semi-weekly newspaper published within the district or within a subdivision thereof or other territory wherein the same is required to be published, then such notice shall be posted for the length of time herein required for the publication of the same in three public places of such district or such subdivision thereof or such other territory as the case may be. The term "municipality," as used in this act, shall include a consolidated city and county, city or town, and shall be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized, for municipal purposes. The word "district" shall apply,

unless otherwise expressed or used, to a mosquito abatement district formed under the provisions of this act, and the word "trustees," and the words "board of trustees," shall apply to the trustees and to the board of trustees of such district.

Constitutionality of act.

§ 11. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

PREVENTION OF IMPORTATION OF INSECTS.

ACT 2169—An act to prevent the importation into or transportation through the state of California of insects injurious to cultivated crops, providing exemption for specific scientific purposes, fixing the authority to grant such exemption and providing a penalty for a violation of the terms of this act.

History: Approved May 5, 1917. In effect July 27, 1917. Stats. 1917, p. 271.

Importation of injurious insects forbidden.

§ 1. No person, firm or corporation shall bring into the state of California, nor shall any railroad, steamship, express or other transportation company knowingly transport into the state of California from any state, territory or district in the United States, or from any foreign country, or from one point or place in the state of California to another point or place therein, any cotton boll weevil, gypsy moth, or any insect in a live state which is injurious to cultivated crops, or the eggs, larvae or pupae of any insect injurious as aforesaid, except when brought for scientific purposes under the regulations hereinafter provided for; nor shall any person bring into the state of California from any state, territory or district in the United States, or from any foreign country, or from any point or place in the state of California to another point or place therein, except for scientific purposes under the regulations as hereinafter provided for, any insect in a live state which is injurious to cultivated crops, or the eggs, larvae or pupae of any insect injurious as aforesaid.

Insects for scientific purposes exempted.

§ 2. No provision in this act shall apply to the transportation or moving into or through the State of California, of live insects for scientific purposes under the rules and regulations promulgated by the United States department of agriculture, or by the state commissioner of horticulture of California.

Penalty.

§ 3. Any person, firm or organization who shall violate the provisions of section one of this act shall be guilty of a misdemeanor.

INSOLVENCY.

See "Bankruptcy and Insolvency."

CHAPTER 165.

INSURANCE.

- References:** Agents, see Kerr's Cyc. Political Code, §§ 633, et seq.
 Benefit societies, see tit. "Benefit Societies."
 Burning insured property, see Kerr's Cyc. Penal Code, § 548.
 Classification of business, see Kerr's Cyc. Political Code, § 594.
 False proof of loss, see Kerr's Cyc. Penal Code, § 549.
 Firemen's insurance, see tit. "Fire Department."
 Insurance commissioner, see Kerr's Cyc. Political Code, §§ 588, et seq.
 Insurance companies, see Kerr's Cyc. Political Code, §§ 596, et seq.
 Insurance corporations, see Kerr's Cyc. Civil Code, §§ 414, et seq.
 Jute goods, insurance of, see tit. "Jute Goods."
 Police insurance, see tit. "Police."
 State property, insurance of, see tit. "Harbor Commissioners."
 Title insurance, see tit. "Titles."
 Workmen's compensation insurance, see tit. "Master and Servant," Act 2781, and tit. "Industrial Accident Commission," Acts 2106, 2106a, 2106b.

Editor's Note.—All acts relating to the formation of insurance corporations enacted prior to the adoption of the Civil Code, were repealed by section 288 of that code, except as to existing corporations. This includes a number of early acts, beginning with that of 1851 (Stats. 1851, p. 523), which were not repealed or otherwise abrogated prior to the enactment of the code. All these acts have been omitted, upon the theory that, since they apply only to corporations formed under them, prior to the adoption of the code, and since few, or probably none, of these corporations exist, the acts themselves are obsolete. As to acts relating to the conditions of doing insurance business, and the matter of insurance regulation, prior to the adoption of the code, they have been repealed or superseded mostly by the code and amendments thereto, and are omitted for that reason.

CONTENTS OF CHAPTER.

- ACT 2181. BORROWING MONEY FROM INSURANCE COMPANIES.
 2182. PRINTING NOTICE OF ASSESSMENT ON POLICY COVER.
 2183. COUNTY FIRE INSURANCE COMPANIES ACT.
 2185. NON-INSURANCE OF STATE PROPERTY.
 2186. STANDARD FORM OF FIRE INSURANCE POLICY.
 2187. EXTENDING TIME FOR FILING INSURANCE STATEMENT.
 2189. LIVESTOCK INSURANCE.
 2189a. STANDARD FORM OF ACCIDENT AND HEALTH POLICY.
 2190. MUTUAL FIRE INSURANCE COMPANIES.
 2192a. RECIPROCAL INDEMNITY INSURANCE ACT OF 1917.
 2193. MUTUAL WORKMEN'S COMPENSATION INSURANCE COMPANIES.
 2194. MISREPRESENTING TERMS OF INSURANCE POLICY.
 2196. SOCIAL INSURANCE INVESTIGATING COMMISSION.
 2197. GUARANTY SURPLUS AND SPECIAL RESERVE FUNDS.
 2199. LIQUIDATION OF DELINQUENT INSURANCE COMPANIES.

BORROWING MONEY FROM INSURANCE COMPANIES.

ACT 2181—An act prohibiting the borrowing of money from an insurance company by an officer of such company.

History: Approved June 6, 1913. In effect August 10, 1913. Stats. 1913, p. 468.

Officers prohibited from borrowing from insurance funds.

§ 1. No officer of any insurance company shall directly or indirectly, for himself or as a partner or agent for others, borrow any of the funds of such insurance company; provided, however, that the provisions of this act shall not be construed to prevent the borrowing by any insured upon the security of policies of insurance in accordance with their terms, nor prevent agents of life insurance companies from receiving advances under their agency contracts.

Penalty.

§ 2. Any officer who acts in violation of the provisions of this act shall be guilty of a misdemeanor.

PRINTING NOTICE OF ASSESSMENTS ON POLICY COVER.

ACT 2182—An act to provide for a notice to be printed on the cover of the policies of all insurance companies, associations or societies relating to future assessments.

History: Approved June 6, 1913. In effect August 10, 1913. Stats. 1913, p. 674.

Notice on policies liable for assessments.

§ 1. Every insurance policy issued in this state under the terms of which the insured named in such policy is liable in any event to pay an assessment in addition to the premium stated in the policy, shall have conspicuously printed upon the back or the outside cover thereof, under the name of the corporation, association, society or persons issuing the same, in plain type, the words: "Notice; under the terms of this policy insured is liable for future assessments."

Provided, however, that the provisions of this section shall not apply to any policy of a mutual fire insurance company.

Penalty.

§ 2. On a violation of the provisions of this act by any insurance company, association or society, the insurance commissioner shall forthwith revoke the certificate of authority of such company, association or society, for a period of not less than one year.

COUNTY FIRE INSURANCE COMPANIES ACT.

ACT 2183—To provide for the organization and management of county fire insurance companies.

History: Approved April 1, 1897, Stats. 1897, p. 439. Amended (1) March 23, 1907, Stats. 1907, p. 941; (2) April 15, 1909, Stats. 1909, p. 912; (3) May 1, 1911, Stats. 1911, p. 1339; (4) April 24, 1917, in effect July 27, 1917, Stats. 1917, p. 163; (5) May 26, 1917, in effect July 27, 1917, Stats. 1917, p. 943.

Incorporation of.

§ 1. Any number of persons, not less than twenty-five, residing in any county in this state, owning insurable property aggregating not less than fifty thousand dollars in value, which they desire to have insured, may incorporate for the purpose of mutual insurance against loss or damage by fire.

Articles of incorporation. Certificate.

§ 2. Such persons shall file with the insurance commissioner a declaration of their intention to incorporate for the purposes expressed in section one of this act, which declaration shall be signed by all of the incorporators, and shall contain a copy of the articles of incorporation proposed to be adopted. The insurance commissioner shall examine the proposed articles of incorporation, and if they conform to this act he shall deliver to such persons a certificate permitting them to incorporate as such insurance company. Such certificate shall be directed to the clerk of the county in which such corporation is proposed to be organized, and shall contain a copy of the proposed articles of incorporation. Upon filing with the secretary of state the certified copies of the duly executed articles of incorporation, as required by section two hundred and ninety of the Civil Code of the state of California, and of the certificate above provided for, the secretary of state shall thereupon issue a certificate of incorporation to such county insurance company, and, upon organizing under such articles of incorporation, such county fire insurance company may carry on a fire insurance business as herein-after provided. The articles of incorporation and the charter or certificate obtained by any county fire insurance company operating under the provisions of this act shall be subject to the control and modification by the legislature of the state of California. The by-laws and all amendments thereto shall be filed with the insurance commissioner within sixty (60) days after their adoption.

Directors.

§ 3. The number of directors shall not be less than (7) seven, nor more than eleven (11), a majority of whom shall constitute a quorum to do business. These directors shall be elected from the members of the association by ballot, and shall hold office for one year, or until their successors are elected and qualified. The annual meeting of the members of the company shall be on the second Monday in January of each year. In the election of the first board of directors each member shall be entitled to one vote. At every subsequent election, every person insured shall be entitled to as many votes as there are directors to be elected, and an equal additional number for every risk or risks he holds in the company, and he may cast the same in person or by proxy, distributing them among the directors to be elected, or among a less number of directors, or cumulating them upon one candidate, as he shall see fit.

Officers.

§ 4. The directors shall elect, from their own number, a president and a vice-president, and shall also elect a treasurer and a secretary, who may or may not be members of the company. All of such officers hold their office for one year from the date of their election, and until their successors are elected and qualified.

Bonds.

§ 5. The treasurer and secretary shall give bonds to the company for the faithful performance of their duties, in such amounts as shall be prescribed by the board of directors.

Powers. By-laws.

§ 6. Such corporation and its directors shall possess the usual powers, and be subject to the usual duties of corporations and directors thereof, and may make such by-laws, not inconsistent with the constitution and the laws of this state, as may be deemed necessary for the management of its affairs, in accordance with the provisions of this act. Also, to prescribe the duties of its officers and to fix their compensation, and to alter and amend its by-laws, when necessary.

Qualifications for members.

§ 7. Any person owning insurable property in the county in which any such company is formed or any person owning insurable property in any county adjoining the county wherein such company is formed as hereinafter provided, may become a member by insuring therein, and shall be entitled to all the rights and privileges appertaining thereto; but no person not residing in the county in which a company is formed shall become a director of such a company. [Amendment of May 26, 1917. In effect July 27, 1917, Stats. 1917, p. 944.]

What may be insured. Limitation. Pro rata share of expense and loss.

§ 8. Such company may issue policies on detached dwellings, schoolhouses, churches, and farm buildings (except hotels and public barns or garages); and such property as may be contained therein; also, on property owned by the assured on the premises or stored in public or private warehouses outside the corporate limits of any city or town; provided, that insurance upon personal property owned by the insured including automobiles and live stock permitted under this act, shall continue in full force and effect during the use or transportation thereof in the ordinary course of business of the insured wherever the same may be located at the time of loss; all for any time not exceeding five years and not to extend beyond the time limited for the existence of the charter; provided, however, that if an amount in excess of four thousand five hundred dollars subject to one risk or hazard be written, then all in excess of this amount must be immediately placed with or reinsured in some other company; provided, also, that no company that has been organized more than six months shall write insurance subject

to one fire in amount exceeding three per cent of the total amount of risks or hazards upon the books of any such company. All persons, whose property is so insured, shall give their obligations to the company binding themselves, their heirs and assigns to pay their pro rata share to the company of the necessary expense and loss by fire which may be sustained by any member thereof during the time for which their respective policies are written; and they shall also at the time of effecting the insurance pay such percentage in cash and such other charges as may be required by law or by the rules and by-laws of the company. [Amendment of May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 944.]

Classifying risks.

§ 9. All such companies must classify the property insured therein at the time of issuing policies thereon under different rates, corresponding as nearly as may be to the greater or less risk from fire loss which may be attached to the several kinds of property insured.

Insuring outside county and in municipalities.

§ 10. No such company shall insure any property beyond the limits of the county wherein the said company is organized, excepting that the company may insure in any county next adjoining the county wherein such company is organized. No such company shall issue policies covering on property in excess of four thousand five hundred dollars on any one risk or hazard under one or more policies, without immediately reinsuring the excess amount in some other company. Nor shall any such company assume a risk or risks on property situated in the limits of any city or town, or within any closely built up district, within any one block, without immediately reinsuring all in excess of four thousand five hundred dollars. Any such company may reinsure or accept reinsurance in any company operating under the provisions of this act, and not otherwise, but in no case shall the reinsurance taken by any one company exceed the amount of the risk written by the company originating the business. The location, character of, and number of risks reinsured shall not vary from that permitted in the case of original insurance. Where the amount of insurance covered by policies already written exceeds four thousand five hundred dollars, no additional insurance shall be written by such company on farm property, within a radius of one hundred feet and such radius shall continue at not less than seventy-five feet during the life of the policy, nor shall any risk be taken on any building closer than one hundred feet to any business property, nor shall any insurance be written by any such company on city or country property in excess of seventy-five per cent of its actual cash value and no additional insurance shall be allowed.

Terms defined.

For the purpose of this act "a city or town block" shall be construed to be an area having at least one frontage in a closely built up district fronting on a used public street or highway, surrounded on all sides by a clear space at least equal in width to the clear space of such public street or highway and containing an area of not more than one hundred sixty thousand square feet.

"Closely built up district" shall mean territory on the line of a public highway or street or block or blocks where for not less than a quarter of a mile the dwelling houses and business structures average less than one hundred feet apart.

"One risk" means one hazard under one or more policies, subject to one fire and relates to the amount named in the policy or policies.

"Clear space" means space free from combustible material likely to communicate fire. [Amendment of May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 944.]

This section was also amended March 23, 1907, Stats. 1907, p. 941; April 15, 1909, Stats. 1909, p. 912; May 1, 1911, Stats. 1911, p. 1339.

Adjustment of losses. Arbitration.

§ 11. Every member of such company who may sustain loss or damage by fire shall immediately notify the president, or in his absence, the secretary thereof, stating the amount of damage or loss sustained or claimed, and if not more than fifteen hundred dollars, then the president and secretary shall proceed to ascertain the amount of such loss or damage and adjust the same. If the claim for damage or loss be for an amount greater than fifteen hundred dollars, then the president of such company, or in his absence, the vice-president, or in the absence of both, the secretary thereof, shall forthwith convene the board of directors of such company, whose duty it shall be when convened, to appoint a committee, of not less than three disinterested members of said company, to ascertain the amount of such damage or loss. If in either case there is a failure of the parties to agree upon the amount of such damage or loss they may submit the question of the amount of such loss to arbitration, and in that event the president of the company shall appoint one disinterested person to act as an arbitrator, and the claimant or insured shall appoint another, and if such two arbitrators fail to agree upon the amount of such loss, then they shall select a third disinterested person to act with them, and such arbitrators so appointed shall have full authority to examine witnesses and to do all other things necessary to the proper determination of the amount of loss sustained by the claimant, and shall make their award in writing to the president of the company, and to the insured, and such award so as aforesaid made, shall be final as to the amount of the loss sustained. The pay of said committee shall be three dollars per day for each day's services so rendered, and five cents for each mile necessarily traveled in the discharge of their duties, which shall be paid by the claimant unless the award of such committee shall exceed the sum offered by the company in liquidation of such loss or damage, in which case such expense shall be paid by the company. [Amendment of April 15, 1909. Stats. 1909, p. 912.]

This section was also amended March 23, 1907, Stats. 1907, p. 941.

Assessments for deficiency. Loans to meet losses not over certain amount.

§ 12. When the amount of any loss shall have been ascertained, which exceeds in amount the cash funds of the company, the president shall convene the directors of said company, who shall make an assessment upon all of the property to the amount for which each several piece of property is insured, taken in connection with the rate of premium under which it may be classified; except when the amount of such loss or losses does not exceed one-eighth of one per cent of the total amount of insurance in force in any county fire insurance company, then and in such event the directors of said company may, by resolution in writing, signed by two-thirds of said directors in meeting assembled, borrow in the name of said company and give said company's note or other evidence of indebtedness therefor, in an amount or amounts whose total shall not exceed one-eighth of one per cent of the total amount of insurance in force in said company. The term of said loan or loans shall not be for a greater period than twelve months nor shall the date of maturity be in excess of thirty days beyond the date of the annual meeting of said company; provided, further, that the board of directors may at their annual meeting levy an assessment not to exceed twenty-five cents on the one hundred dollars on first class insurance and a pro rata amount on other classes, and said sum so raised shall constitute a reserve fund to be used in emergency cases only and another assessment for this fund shall not be made while this reserve fund remains intact. [Amendment of April 24, 1917. In effect July 27, 1917. Stats. 1917, p. 163.]

This section was also amended March 23, 1907, Stats. 1907, p. 941.

Notice of assessments.

§ 13. It shall be the duty of the secretary, whenever such an assessment shall have been made, to immediately notify every person holding a risk in such company, per-

sonally, by an agent, or by letter directed to his usual postoffice address, of the amount of such loss, and the sum due from him, as his share thereof, and of the time and to whom such payment is to be made; but such time shall not be less than thirty days, nor more than ninety days, from the date of such notice.

Action for neglect or refusal to pay assessment.

§ 14. An action may be brought against any member of such company who shall neglect or refuse to pay any assessment made upon him by the provisions of this act, or other liabilities due the company, and the directors of any company so formed who shall willfully refuse or neglect to perform the duties imposed upon them by law or by the by-laws of the company shall be liable in their individual capacity to the person sustaining such laws. An action may also be brought and maintained against any such company by members thereof for losses sustained if payment is withheld after the amount of such losses have been determined, and is due by the terms of the policy.

Annual statement.

§ 15. It shall be the duty of the secretary to prepare an annual statement, showing the condition of such company on the thirty-first day of December, and present the same at the annual meeting.

Withdrawals.

§ 16. Any member of such company may withdraw therefrom by surrendering his policy for cancellation at any time while the organization continues the business for which it was organized, by giving notice in writing to the secretary thereof, and paying his share of all claims that may exist against such company; provided, that the company shall have power to cancel or terminate any policy by giving the insured five days' written notice to that effect, and returning to him any excess of premium he may have paid during the term of the policy over the cost of his insurance as measured by the rules or methods of standard fire insurance companies doing business in this state. [Amendment of April 24, 1917. In effect July 27, 1917. Stats. 1917, p. 164.]

Report of officers.

§ 17. It shall be the duty of the president and secretary, within thirty days after the first day of January in each year, to prepare, under their own oath, and transmit to the insurance commissioner, a statement of the condition of the company on the last day of the month next preceding the annual meeting. If, upon examination, the insurance commissioner finds that such company is doing business correctly, in accordance with the provisions of this act, he shall thereupon furnish the company his certificate, which shall be deemed authority to continue business during the ensuing year, subject, however, to the provisions of this act. For such examination and certificate the company shall pay one dollar. Each company shall pay, at the time of organization, five dollars to the insurance commissioner, for all services which he shall render in the matter of organization.

Dissolution.

§ 18. Any such company may be proceeded against and dissolved in the manner and upon the same conditions as provided in case of other insurance companies incorporated in this state.

Form of county fire insurance policy.

§ 18½. The following is adopted as a standard form of county fire insurance company's policy for the state of California.

Standard form of county fire insurance company's policy.

CALIFORNIA STANDARD FORM COUNTY FIRE INSURANCE POLICY.

No.....

Amount \$.....

Rate.....

No other insurance permitted except by agreement endorsed hereon or added hereto.
(Here insert name of company, and place of its main office in California, and name of the county in which incorporated or organized.)

By this policy of insurance the.....of.....county, in consideration of.....dollars, and the obligation as described herein and in application, does accept as a member and insures.....against loss or damage by fire during a term of.....years, commencing at noon on the.....day of....., one thousand nine hundred and....., and terminating at noon on the.....day of....., one thousand nine hundred and....., to the amount of.....dollars.

On the following property, to wit:
(Blank space for the attachment of forms.)

For a more particular description, and as forming a part of this policy, reference is had to application No..... on file in the office of this company.

This company will not be liable beyond the actual cash value of the interest of the insured in the property at the time of loss or damage nor exceeding what it would then cost the insured to repair or replace the same with material of like kind and quality; said cash value to be estimated without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating repair or reconstruction of buildings, and without compensation for loss resulting from interruption of business or manufacture.

This policy is made and accepted subject to the foregoing stipulations and conditions and those hereinafter stated, which are hereby specifically referred to and made a part of this policy, together with such other provisions, agreements or conditions as may be endorsed hereon or added hereto, and no officer, agent, or other representative of this company shall have power to waive any provision or condition of this policy except by writing endorsed hereon or added hereto, and no person unless duly authorized in writing shall be deemed the agent of this company.

The charter and by-laws of this company are to be resorted to and used to explain the rights and obligations of the parties hereto in all cases not herein otherwise especially provided for, and are hereby made a part of this policy. This policy is made and accepted upon the above expressed condition.

This policy shall not be valid until countersigned by the duly authorized secretary of the company at....., California.

IN WITNESS WHEREOF, this company has executed and attested these presents (here insert name of company) by

.....,

President.

Countersigned at.....California, this.....day of....., one thousand nine hundred and.....

.....

Secretary.

Stipulations and conditions.

STIPULATIONS AND CONDITIONS SPECIFICALLY REFERRED TO.

Property not covered. (a) This company shall not be liable for loss to accounts, bills, currency, evidence of debt or ownership of other documents, money, notes, or securities; nor (b) unless liability is specifically assumed hereon, for the loss to bullion, casts, curiosities, drawings, dies, jewels, manuscripts, medals, models, patterns, pictures,

scientific apparatus, business or store or office furniture or fixtures, sculptures, frescoes and decorations, or property held on storage or for repair.

Hazards not covered. This company shall not be liable for loss by (a) theft, or (b) neglect of the insured to use all reasonable means to save and preserve the property at and after a fire, or when the property is endangered by fire; or (c) (unless fire ensues, and in that event the damage by fire only), by explosion of any kind or lighting; or (d) by invasion, insurrection, riot, civil war, or commotion, or, (except as hereinafter provided), by military or usurped power, or order of any civil authority, but the company will be liable, unless otherwise provided by endorsement hereon or added hereto, if the property is lost or damaged, by fire or otherwise, by civil authority or military or usurped power exercised to prevent the spread of fire not originating from a cause excepted hereunder and which fire otherwise probably would have caused the loss of or damage to the insured property.

Matters voiding policy.

Matters avoiding policy. This entire policy shall be void, (a) if the insured has concealed or misrepresented any material fact or circumstances concerning this insurance or the subject thereof; or (b) in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after loss.

Unless otherwise provided by agreement endorsed hereon or added hereto this entire policy shall be void, (a) if the insured now has or shall procure any other insurance, whether valid or not, on property covered in whole or in part by this policy, or (b) if the interest of the insured be other than unconditional and sole ownership, or (c) if the subject of insurance be a building on ground not owned by the insured in fee simple, or (d) if with the knowledge of the insured foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed, or (e) if this policy be assigned before a loss.

Matters suspending insurance.

Matters suspending insurance. Unless otherwise provided by agreement endorsed hereon or added hereto this company shall not be liable for loss or damage occurring (a) while the hazard be materially increased by any means within the control of the insured; or (b) if the subject of insurance be a manufacturing establishment, while it is operated in whole or in part at night later than ten o'clock or while it ceases to be operated beyond the period of ten consecutive days; or (c) while mechanics or artisans are employed in building or altering or repairing the described premises for more than fifteen days at any one time; or (d) while illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein; or (e) while there be kept, used or allowed on the described premises (any usage or custom of trade or manufacture to the contrary notwithstanding), calcium carbide, phosphorus, dynamite, nitroglycerine, fireworks or other explosives or exceeding one quart each of benzine, gasoline, naphtha or ether; or more than twenty-five pounds of gunpowder; or (f) while a building herein described whether intended for occupation by owner or tenant is vacant or unoccupied beyond the period of ten (10) consecutive days; (g) while the interest in, title to or possession of the subject of insurance is changed excepting; (1) by death of the insured; (2) change of occupancy of building without material increase of hazard; and (3) transfer by one or more several co-partners or co-owners to the others.

Such suspension shall not extend beyond the term of this policy nor create any right for refund of the whole or any portion of premium, nor affect the respective rights of cancellation.

Chattel mortgage.

Chattel mortgage. Unless otherwise provided by agreement in writing endorsed hereon or added hereto this company shall not be liable for loss or damage to any property insured hereunder while encumbered by a chattel mortgage, but the liability of the company upon other property hereby insured shall not be affected by such chattel mortgage.

Fallen building clause.

Fallen building clause. Unless otherwise provided by agreement endorsed hereon or added hereto, if a building or any material part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

Removal when endangered by fire.

Removal when endangered by fire. Should any of said property be necessarily removed because of danger from fire, and there is no other insurance thereon, that part of this policy in excess of the value of the insured property remaining in the original location, or, if there is other insurance thereon, that part of this policy in excess of its proportion of the value of the insured property remaining in the original location, shall, for the ensuing five days only, cover the said removed property in its new location or locations.

Cancellation.

Cancellation. This policy may be canceled and the insured as a member of this company may withdraw therefrom by the insured surrendering his policy for cancellation at any time while the company continues the business for which it was organized, by giving notice in writing to the secretary thereof and paying his share of all claims that may exist against this company; provided, that this company shall have power to cancel or terminate any policy by giving the insured five days' written notice to that effect and returning to him any excess of premium he may have paid during the term of the policy, over the cost of his insurance as measured by the rate of standard fire insurance companies doing business in this state.

Adjustment of losses.

Adjustment of losses—arbitration. The insured who may sustain loss or damage by fire shall immediately notify the president, or in his absence, the secretary of this company, stating the amount of damage or loss sustained or claimed and if not more than one thousand five hundred dollars then the president and secretary shall proceed to ascertain the amount of such loss or damage and adjust the same. If the claim for damage or loss be for an amount greater than one thousand five hundred dollars, then the president of this company, or in his absence, the vice-president, or in the absence of both the secretary thereof, shall forthwith convene the board of directors of said company, whose duty it shall be when convened, to appoint a committee of not less than three disinterested members of this company, to ascertain the amount of such damage or loss. If in either case there is a failure of the parties to agree upon the amount of such damage or loss they may submit the question of the amount of such loss to arbitration, and in that event the president of the company shall appoint one disinterested person to act as an arbitrator, and the claimant or insured shall appoint another, and if such two arbitrators fail to agree upon the amount of such loss, then they shall select a third disinterested person to act with them and such arbitrators so appointed shall have full authority to examine witnesses and to do all other things necessary to the proper determination of the amount of loss sustained by the claimant, and shall make their award in writing to the president of the company and to the insured, and such award, so as aforesaid made, shall be final as to the amount of loss sustained. The pay

of said committee shall be three dollars per day for each day's services so rendered and five cents for each mile necessarily traveled in the discharge of their duties, which shall be paid by the claimant unless the award of such committee shall exceed the sum offered by the company in liquidation of such loss or damage, in which case such expense shall be paid by the company.

Option of company in case of loss.

Option of company in case of loss. This company may, at its option, take all or any part of the property for which insurance hereunder is claimed at its ascertained or appraised value, and may also, at its option, in satisfaction of its liability hereunder, repair, rebuild, or replace any building or structure or machine or machinery used therein, with other of like kind and quality, within a reasonable time, upon giving notice within twenty days of its intention so to do after the receipt by it of the preliminary proof of loss, or, if verified amendments have been requested, within twenty days after their receipt, or, within twenty days after the receipt of an affidavit that the insured is unable to furnish such amendments. There can be no abandonment to this company of any property.

Apportionment of loss.

Apportionment of loss. This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by, and expense of, removal from the premises endangered by fire, than the amount hereby insured bears to the entire insurance covering such property whether valid or not, or by solvent or insolvent insurers.

Assessment for deficiency.

Assessment for deficiency. When the amount of any loss shall have been ascertained, which exceeds in amount the cash funds of the company, the president shall convene the directors of this company, who shall proceed in the manner as provided in section twelve of this act.

Notice of assessment.

Notice of assessment. It shall be the duty of the secretary, whenever assessment shall have been made, to immediately notify every person holding a risk in this company, personally, by an agent, or by letter directed to his usual postoffice address, of the amount of such loss, and the sum due from him, as his share thereof, and of the time and to whom such payment is to be made; but such time shall not be less than thirty days, nor more than ninety days from date of such notice.

Action for neglect to pay assessments.

Action for neglect or refusal to pay assessments. An action may be brought against the member whose property is insured herein and this policy is automatically suspended if the insured shall not have paid, before it is delinquent, his portion of any assessment levied or other liability due this company for a period in excess of ninety days. The directors of this company who shall willfully refuse or neglect to perform the duties imposed upon them by law or the by-laws of the company, shall be liable in their individual capacity to the person sustaining such loss. An action may also be brought and maintained against this company by members thereof for losses sustained if payment is withheld after the amount of such losses have been determined and is due by the terms of the policy.

Non-waiver by appraisal.

Non-waiver by appraisal or examination. This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof, by assenting

to the amount of the loss or damage or by any requirement, act or proceeding on its part relating to the appraisal or to any examination herein provided for.

Subrogation.

Subrogation. If this company shall claim that the fire was caused by the act of any person or corporation, this company shall, upon payment of the loss be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

Time for commencement of action.

Time for commencement of action. No suit or action on this policy for the recovery of any claim shall be sustained, until after full compliance by the insured with all of the foregoing requirements, nor unless begun within fifteen months next after the commencement of the fire.

Definitions.

Definitions. Wherever in this policy the word "insured" occurs, it shall be held to include the legal representatives of the insured in case of death, and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage," and wherever the words "the time of loss or damage" are used they shall be deemed the equivalent of "the time of the commencement of the fire."

There shall be printed on the outside fold of said policy in type not smaller than small pica the following words in this form:

READ THIS POLICY.

Insurance company is liable only for actual cash value.

Policy is void in case of any fraud, false swearing, misrepresentation or concealment about material facts.

Policy is void, unless otherwise agreed in writing, if—

1. It is assigned before loss;
2. Insured has or shall procure other insurance;
3. Any change occurs in location of property;
4. Insured building is on ground not owned in fee simple by the insured;
5. Insured is not sole and unconditional owner.

Policy is suspended unless otherwise agreed in writing, if—

6. Described building becomes vacant or unoccupied for ten days;
7. Mechanics are employed more than fifteen days in repairing same;
8. Property is or becomes encumbered by chattel mortgage;
9. Illuminating gas or vapor is generated in or adjacent to described building;
10. Explosives or prohibited quantities of gasoline, etc., (except the gasoline contained in automobiles and gas engine tanks), as are kept on premises; and provided, also, that the insurance on live stock and automobiles shall cover wherever located at the time of the fire.

[PASTER.]

Insurance ceases if described building or any material part falls except as result of fire.

Policy does not cover certain enumerated personal property.

Note particularly duty of insured in case of loss; also provisions avoiding or suspending policy, including changes of ownership or possession.

Dwelling house and contents policy form.

DWELLING HOUSE AND CONTENTS POLICY FORM.

\$.....on the.....dwelling house and all its additions, foundations, porches, verandas and screens, including all permanent wall and ceiling decorations,

frescoes, gas, steam, water, heating and lighting fixtures and connections, and all other permanent fixtures attached to and forming a part of the building, situate....., California.

\$.....on household furniture, useful and ornamental, family wearing apparel, family stores and supplies, and all other personal effects of every kind and description (except accounts, bills, currency, evidences of debt or ownership, or other documents, money, notes, securities, bullion, drawings, dies, manuscripts, medals, models and patterns) including casts, curiosities, pictures, scientific apparatus and sculptures, the property of the insured or of any member of the insured's household, unless specifically insured, all contained in the above described dwelling house.

.....
.....
.....

Loss, on building, if any, payable to.....
Claim for loss on any one picture, piece of statuary, curiosity, or work of art, shall not exceed the cost of same, and unless specifically insured, shall not exceed one hundred dollars.

The privilege for the within described dwelling to remain vacant or unoccupied is hereby increased to thirty (30) consecutive days.

Permission is granted for mechanics or artisans to make alterations or repairs to the within described building for more than fifteen (15) days at any one time, and to build additions, this policy to cover on and in same under the respective items hereof.

Permission is hereby granted (when not prohibited by local ordinance) for the use of gasoline stoves or lamps, it being warranted by the insured that the reservoir attached to each stove or lamp be filled during daylight only, and then only when the stove or lamp is not in use, and that no artificial light be permitted in the room when the reservoir is being filled, and that no gasoline, except that contained in the reservoir, shall be kept within the building. A breach of this warranty renders this permit null and void.

Attached to policy No.....of the.....
Dated.....,191.....Secretary.

[PASTER.]

By special agreement endorsed on the policy or added thereto, the provisions regarding appraisement or apportionment of loss may be waived and the valuations of all or any of the insured property in case of total loss may be agreed upon in advance of loss.

Said standard form of policy shall be plainly printed and no portion thereof shall be in type smaller than small pica and subheads shall be in type larger than pica, and the lines of the policy shall be numbered consecutively.

All mutual fire insurance policies on property in California shall be on said standard form, and except as herein provided, shall not contain additions thereto. No part of the standard form shall be omitted therefrom.

The blanks in said standard form shall be appropriately filled. The company may add to the standard form any matter relating to its financial condition, directors, officers, stockholders and history, and the address of its home office, and principal office in the state; also in red ink any provisions respecting any limitation of liability of the company, its stockholders or members which it is required or permitted by the law of the state or county of its organization to insert in its policies.

Clauses may be added to the standard form providing for and defining the rights, duties and obligations of mortgagees, assignees and other parties who have acquired or may acquire an interest in, right to or lien upon the insured property.

No clause shall be inserted or rider attached affecting the standard form liability

of the insurer for loss or damage by fire occasioned either directly or indirectly by earthquake, hurricane, volcanic action or other disturbance of nature, unless the same shall be printed in red ink in type larger than small pica and at the head of the policy there shall be printed in red ink in large bold-faced type the words "This policy contains limitations of liability not permitted in the California standard form."

Clauses may be added to the standard form (a) covering property and risks not otherwise covered; (b) assuming greater liability than is otherwise imposed on the insurer; (c) granting insured permits and privileges not otherwise provided; (d) waivers of any of the matters, voiding the policy or suspending the insurance; (e) waivers of any of the requirements imposed on the insured after loss.

Except as herein otherwise provided clauses may be attached to the standard form by separate riders in type larger than pica imposing specified duties and obligations upon the insured and limiting the liability of the insurer.

Any insurer, or the agent countersigning or issuing a fire insurance policy covering in whole or in part property in California varying from the California standard form of policy except as herein provided is guilty of a misdemeanor but any policy so issued shall notwithstanding be binding upon the company issuing the same. [New section added May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 945.]

Repealed.

§ 19. All laws and parts of laws in conflict with this act are hereby repealed. [Amendment of May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 953.]

NON-INSURANCE OF STATE PROPERTY.

ACT 2185—An act relative to the noninsurance of property belonging to the state against risk of damage or destruction by fire.

History: Approved March 10, 1891, Stats. 1891, p. 70.

§ 1. No property belonging to this state shall hereafter be insured against risk of damage or destruction by fire, and no policy of fire insurance now existing upon any property belonging to this state shall be renewed at the expiration thereof, except the state printing office and its contents.

§ 2. This act shall take effect immediately.

This act has been repealed as to certain state property. See Act 1865.

STANDARD FORM OF FIRE INSURANCE POLICY.

ACT 2186—An act to establish a standard form of fire insurance policy and to prevent variations therefrom, excepting under certain stated conditions and restrictions.

History: Approved March 18, 1909, Stats. 1909, p. 404.

Standard form of fire insurance policy.

§ 1. The following is adopted as a standard form of fire insurance policy for the state of California:

CALIFORNIA STANDARD FORM FIRE INSURANCE POLICY.

No. ——— Amount \$ ———
Rate ———

No other insurance permitted
except by agreement indorsed hereon or added hereto.

(Here insert name of company, and place of its main office in California, and name of state or country under which incorporated or organized.)

In consideration of the stipulations herein named and of ——— dollars premium does insure ——— for the term of ——— from the ——— day of ——— 19—, at noon, to the ——— day of ———, 19—, at noon against all loss or damage by fire, except as hereinafter provided.

To an amount not exceeding — dollars to the following described property while located and contained as described herein, and not elsewhere, to wit:

The company will not be liable beyond the actual cash value of the interest of the insured in the property at the time of loss or damage nor exceeding what it would then cost the insured to repair or replace the same with material of like kind and quality; said cash value to be estimated without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating repair or construction of buildings, and without compensation for loss resulting from interruption of business or manufacture.

This policy is made and accepted subject to the foregoing stipulations and conditions and those hereinafter stated, which are hereby specially referred to, and made part of this policy, together with such other provisions, agreements or conditions as may be indorsed hereon or added hereto, and no officer, agent, or other representative of this company shall have power to waive any provision or condition of this policy except by writing indorsed hereon or added hereto, and no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy shall not be valid until countersigned by the duly authorized agent of the company, at —.

In witness whereof, this company has executed and attested these presents (here insert name of company)

Countersigned at — this — day of —, 19—.

By —
— Agent.

STIPULATIONS AND CONDITIONS SPECIALLY REFERRED TO.

Property not covered. (a) This company shall not be liable for loss to accounts, bills, currency, evidences of debt or ownership or other documents, money, notes or securities; nor, (b) unless liability is specifically assumed hereon, for loss to bullion, casts, curiosities, drawings, dies, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, business or store or office furniture or fixtures, sculptures, frescoes, decorations, or property held on storage or for repair.

Hazards not covered. This company will not be liable for loss by (a) theft; or (b) by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire, or when the property is endangered by fire; or (c) unless fire ensues (and in that event for the damage by fire only) by explosion of any kind or lightning; or (d) by invasion, insurrection, riot, civil war, or commotion, or (except as hereinafter provided) by military or usurped power, or order of any civil authority, but the company will be liable (unless otherwise provided by indorsement hereon or added hereto) if the property is lost or damaged, by fire or otherwise, by civil authority or military or usurped power exercised to prevent the spread of fire not originating from a cause excepted hereunder and which fire otherwise probably would have caused the loss of or damage to the insured property.

Matters avoiding policy. This entire policy shall be void, (a) if the insured has concealed or misrepresented any material fact or circumstances concerning this insurance or the subject thereof; or, (b) in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

Unless otherwise provided by agreement indorsed hereon or added hereto, this entire policy shall be void, (a) if the insured now has or shall procure any other insurance, whether valid or not, on property covered in whole or in part by this policy, or (b) if the interest of the insured be other than unconditional and sole ownership, or (c) if the subject of insurance be a building on ground not owned by the insured in fee simple,

or (d) if with the knowledge of the insured foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed, or (e) if this policy be assigned before a loss.

Matters suspending insurance. Unless otherwise provided by agreement indorsed hereon or added hereto this company shall not be liable for loss or damage occurring (a) while the hazard be materially increased by any means within the control of the insured; or (b) if the subject of insurance be a manufacturing establishment, while it is operated in whole or in part at night later than 10 o'clock or while it ceases to be operated beyond the period of ten consecutive days; or (c) while mechanics or artisans are employed in building or altering or repairing the described premises for more than fifteen days at any one time; or (d) while illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein; or (e) while there be kept, used or allowed on the described premises (any usage or custom of trade or manufacture to the contrary notwithstanding) calcium carbide, phosphorus, dynamite, nitroglycerine, fireworks or other explosives; or exceeding one quart each of benzine, gasoline, naphtha or ether; or more than twenty-five pounds of gunpowder; or (f) while a building herein described whether intended for occupation by owner or tenant is vacant or unoccupied beyond the period of ten (10) consecutive days; (g) while the interest in, title to or possession of the subject of insurance is changed excepting:—(1) by the death of the insured; (2) a change of occupancy of building without material increase of hazard; and (3) transfer by one or more several copartners or co-owners to the others.

Such suspension shall not extend the term of this policy nor create any right for refund of the whole or any portion of premium, nor affect the respective rights of cancellation.

Chattel mortgage. Unless otherwise provided by agreement in writing indorsed hereon or added hereto this company shall not be liable for loss or damage to any property insured hereunder while encumbered by a chattel mortgage, but the liability of the company upon other property hereby insured shall not be affected by such chattel mortgage.

Fallen building clause. Unless otherwise provided by agreement indorsed hereon or added hereto, if a building or any material part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

Removal when endangered by fire. Should any of said property be necessarily removed because of danger from fire, and there is no other insurance thereon, that part of this policy in excess of the value of the insured property remaining in the original location, or, if there is other insurance thereon, that part of this policy in excess of its proportion of the value of the insured property remaining in the original location, shall, for the ensuing five days only, cover said removed property in its new location or locations.

Cancellation. This policy shall be canceled at any time at the request of the insured, in which case the company shall, upon surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be canceled at any time, without tender of unearned portion of premium, by the company by giving five (5) days' written notice of cancellation to the insured and to any mortgagee or other party to whom, with the written consent of the company, this policy is made payable, in which case the company shall, upon surrender of the policy or relinquishment of liability thereunder, refund the excess of paid premium above the pro rata premium for the expired time.

Duty of insured in case of loss. When a loss occurs the insured must give to this company written notice thereof without unnecessary delay; and shall protect the

property from further damage; forthwith separate the damaged and undamaged personal property and put it in the best possible order; and without unnecessary delay make a complete inventory stating as far as possible the quantity and cost of each article, and the amount claimed thereon.

Within sixty days after the commencement of the fire the insured shall render to the company at its main office in California named herein preliminary proof of loss consisting of a written statement signed and sworn to by him setting forth:—(a) his knowledge and belief as to the origin of the fire; (b) the interest of the insured and of all others in the property; (c) the cash value of the different articles or properties and the amount of loss thereon; (d) all encumbrances thereon; (e) all other insurance, whether valid or not, covering any of said articles or properties; (f) a copy of the descriptions and schedules in all other policies unless similar to this policy, and in that event, a statement as to the amounts for which the different articles or properties are insured in each of the other policies; (g) any changes of title, use, occupation, location or possession of said property since the issuance of this policy; (h) by whom and for what purpose any building herein described, and the several parts thereof, were occupied at the time of the fire.

If the company claims that the preliminary proof of loss is defective and within five days after the receipt thereof (without admitting the amount of loss or any part thereof) notifies in writing the insured, or the party making such proof of loss, of the alleged defects (specifically stating them) and requests that they be remedied by verified amendments the insured or such party within ten days after the receipt of such notification and request must comply therewith, or, if unable so to do, present to the company an affidavit to that effect.

The insured shall also furnish, if required, as far as it is practicable to obtain the same, verified plans and specifications of any buildings, fixtures or machinery destroyed or damaged; and the insured shall exhibit to any person designated in writing by this company all that remains of any property herein described and shall submit to examination under oath, as often as required, by any such person, and subscribe to the testimony so given and shall produce to such person for examination all books of account, bills, invoices and other vouchers, and permit extracts and copies thereof to be made, and in case the originals are lost certified copies, if obtainable, shall be produced.

Ascertainment of amount of loss. This company shall be deemed to have assented to the amount of the loss claimed by the insured in his preliminary proof of loss, unless within twenty days after the receipt thereof, or, if verified amendments have been requested, within twenty days after their receipt, or within twenty days after the receipt of an affidavit that the insured is unable to furnish such amendments, the company shall notify the insured in writing of its partial or total disagreement with the amount of loss claimed by him and shall also notify him in writing of the amount of loss, if any, the company admits on each of the different articles or properties set forth in the preliminary proof or amendments thereto.

If the insured and this company fail to agree, in whole or in part, as to the amount of loss within ten days after such notification, this company shall forthwith demand in writing an appraisal of the loss or part of loss as to which there is a disagreement and shall name a competent and disinterested appraiser, and the insured within five days after receipt of such demand and name, shall appoint a competent and disinterested appraiser and notify the company thereof in writing, and the two so chosen shall before commencing the appraisal, select a competent and disinterested umpire.

The appraisers together shall estimate and appraise the loss or part of loss as to which there is a disagreement, stating separately the sound value and damage, and if

they fail to agree they shall submit their differences to the umpire, and the award in writing duly verified of any two shall determine the amount or amounts of such loss.

The parties to the appraisement shall pay the appraisers respectively appointed by them and shall bear equally the expense of the appraisement and the charges of the umpire.

If for any reason not attributable to the insured, or to the appraiser appointed by him, an appraisement is not had and completed within ninety days after said preliminary proof of loss is received by this company, the insured is not to be prejudiced by the failure to make an appraisement, and may prove the amount of his loss in an action brought without such appraisement.

Options of company in case of loss. This company may, at its option, take all or any part of the property for which insurance hereunder is claimed at its ascertained or appraised value, and may also, at its option, in satisfaction of its liabilities hereunder, repair, rebuild or replace any building or structure or machine or machinery used therein, with other of like kind and quality, within a reasonable time, upon giving notice within twenty days of its intention so to do after the receipt by it of the preliminary proof of loss, or, if verified amendments have been requested, within twenty days after their receipt, or, within twenty days after the receipt of an affidavit that the insured is unable to furnish such amendments.

There can be no abandonment to this company of any property.

Apportionment of loss. This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by, and expenses of, removal from the premises endangered by fire, than the amount hereby insured bears to the entire insurance covering such property whether valid or not, or by solvent or insolvent insurers.

Loss when payable. A loss hereunder shall be payable in thirty days after the amount thereof has been ascertained either by agreement or by appraisement; but if such ascertainment is not had or made within sixty days after the receipt by the company of the preliminary proof of loss, then the loss shall be payable in ninety days after such receipt.

Nonwaiver by appraisal or examination. This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof, by assenting to the amount of the loss or damage or by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for.

Subrogation. If this company shall claim that the fire was caused by the act or neglect of any person or corporation, this company shall, on payment of the loss be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

Time for commencement of action. No suit or action on this policy for the recovery of any claim shall be sustained, until after full compliance by the insured with all of the foregoing requirements, nor unless begun within fifteen months next after the commencement of the fire.

Definitions. Wherever in this policy the word "insured" occurs, it shall be held to include the legal representatives of the insured in case of his death, and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage," and wherever the words "the time of loss or damage" are used they shall be deemed the equivalent of "the time of the commencement of the fire."

What to be printed on outside fold of policy.

§ 2. There shall be printed on the outside fold of said policy in type not smaller than small pica, the following words in this form:

READ THIS POLICY.

Ins. Co. is liable only for actual cash value.

Policy is void in case of any fraud, false swearing, misrepresentation or concealment about material facts.

Policy is void, unless otherwise agreed in writing, if

1st. It is assigned before loss;

2nd. Insured has or shall procure other insurance;

3rd. Any change occurs in location of property;

4th. Insured building is on ground not owned in fee simple by insured;

5th. Insured is not sole and unconditional owner.

Policy is suspended, unless otherwise agreed in writing, if

6th. Described building becomes vacant or unoccupied for ten days;

7th. Mechanics are employed more than 15 days in repairing same;

8th. Property is or becomes encumbered by chattel mortgage;

9th. Illuminating gas or vapor is generated in or adjacent to described building;

10th. Explosives or prohibited quantities of gasoline, etc., are kept on premises.

Insurance ceases if described building or any material part falls except as result of fire.

Policy does not cover certain enumerated personal property.

Note particularly duty of insured in case of loss;

Also provisions avoiding or suspending policy, including changes of ownership or possession.

Special agreement regarding appraisement.

§ 3. By special agreement indorsed on the policy or added thereto the provisions regarding appraisement or apportionment of loss may be waived and the valuations of all or any of the insured property in case of total loss may be agreed upon in advance of loss.

Policy to be plainly printed.

§ 4. Said standard form of policy shall be plainly printed and no portion thereof shall be in type smaller than small pica and subheads shall be in type larger than pica, and the lines of the policy shall be numbered consecutively.

County fire companies excepted.

§ 5. This act shall not apply to any company organized under an act entitled "An act to provide for the organization and management of county fire insurance companies," approved April 1, 1897, or amendments to that act, but all other fire insurance policies on property in California shall be on said standard form, and, except as herein provided, shall not contain additions thereto. No parts of the standard form shall be omitted therefrom.

What may be added to policy.

§ 6. The blanks in said standard form shall be appropriately filled. The company may add to the standard form any matter relating to its financial condition, directors, officers, stockholders and history, and the address of its home office and principal office in the United States; also in red ink any provisions respecting any limitation of liability of the company, its stockholders or members which it is required or permitted by the law of the state or country of its organization to insert in its policies.

Clauses as to mortgagees.

§ 7. Clauses may be added to the standard form providing for and defining the rights, duties and obligations of mortgagees, assignees and other parties who have acquired or may acquire an interest in, right to or lien upon the insured property.

Earthquake clause may be inserted, how.

§ 8. No clause shall be inserted or rider attached affecting the standard form liability of the insurer for loss or damage by fire occasioned either directly or indirectly by earthquake, hurricane, volcanic action or other disturbance of nature, unless the same shall be printed in red ink in type larger than small pica and at the head of the policy there shall be printed in red ink in large bold faced type the words, "This policy contains limitations of liability not permitted in the California standard form."

Other additional clauses.

§ 9. Clauses may be added to the standard form (a) covering property and risks not otherwise covered; (b) assuming greater liability than is otherwise imposed on the insurer; (c) granting insured permits and privileges not otherwise provided; (d) waivers of any of the matters avoiding the policy or suspending the insurance; (e) waivers of any of the requirements imposed on the insured after loss.

Separate riders.

§ 10. Except as herein otherwise provided clauses may be attached to the standard form by separate riders in type larger than pica imposing specified duties and obligations upon the insured and limiting the liability of the insurer.

Insurers other than corporations.

§ 11. Any insurers, other than corporations, issuing policies on property in California, shall use the standard form, changing only such words as refer to the corporation or company or to officers or agents of the corporation or company, and in regard to its organization; and such other insurers may substitute in place of such words having peculiar reference to corporations, appropriate words having similar reference to themselves.

Penalty for violation of act.

§ 12. Any insurer, or the agent countersigning or issuing a fire insurance policy covering in whole or in part property in California varying from the California standard form of policy except as herein provided is guilty of a misdemeanor but any policy so issued shall notwithstanding be binding upon the company issuing the same.

§ 13. This act shall take effect and be in force from and after the first day of August, 1909.

Constitutionality of statutes providing a standard form of fire insurance policy.—See 6 Ann. Cas. 91.

1. Judicial notice of terms in standard form.—The courts will take judicial notice of the terms of a standard form of fire insurance policy, and it is not necessary to plead it.—Northern, etc., Co. v. National, etc., Co., 35 Cal. App. 481.

2. Premature bringing of action.—Where the insurer disclaimed liability upon a standard form insurance policy, an action on the policy commenced before the expiration of ninety days from the alleged presentation of proofs of loss is premature.—Northern, etc., Co. v. National, etc., Co., 35 Cal. App. 481, 170 Pac. 434.

3. Disclaimer in writing presumed.—An allegation in an action on a fire insurance policy of the standard form, that defendant disclaimed liability under the policy will be taken as an allegation that the disclaimer was in writing as the terms of the standard form policy requires.—Northern, etc., Co. v. National, etc., Co., 35 Cal. App. 481, 170 Pac. 434.

4. Rider prevails where inconsistent with suspension clause.—A rider attached to an insurance policy of the standard form prevails over the suspension clause, so far as they are inconsistent.—O'Neill v. Caledonian, etc., Co., 166 Cal. 311, 135 Pac. 1121.

EXTENDING TIME FOR INSURANCE STATEMENT.

ACT 2187—An act to extend the time for filing with the insurance commissioner statements of insurance business transacted during the year ending December 31, 1905, within the time prescribed by law, and to remit penalties for failing to file the same.

History: Approved June 14, 1906, Stats. 1906 (ex. sess.), p. 30.

This act extended the time to file statements to July 31, 1906. It was passed because of the destruction of the records in the conflagration in San Francisco in 1906.

LIVESTOCK INSURANCE.

ACT 2189—An act relating to life, health and accident insurance of live-stock on the assessment plan and the conduct of the business of such insurance.

History: Approved March 23, 1907, Stats. 1907, p. 952.

Contract of mutual insurance of animals defined.

§ 1. Every contract whereby a benefit may accrue to a party or parties therein named upon the death or physical disability of an animal insured thereunder, or for the payment of any sums of money dependent in any degree upon the collection of assessments or dues from owners holding similar contracts, shall be deemed a contract of mutual insurance upon the assessment plan. Such contracts must show that the liabilities of the insured thereunder are not limited to fixed premiums.

How corporations may be formed. Investments. Condition precedent to issuing insurance.

§ 2. Corporations may be formed under the general laws of this state to carry on the business of mutual live-stock insurance upon the assessment plan, and shall be subject only to the provisions of this act. No such corporation shall issue contracts of insurance until at least two hundred (200) persons owning live-stock have applied, in writing, for membership or insurance therein, and have paid to the treasurer of such corporation the sum of five thousand (5000) dollars. This sum shall be invested in bonds or securities, approved by the insurance commissioner of this state, or deposited in some bank in this state where it will earn interest. Said bonds or securities, or evidences of such deposit, shall be placed, through the insurance commissioner of this state, with the state treasurer, and the principal sum shall be held in trust for the contract-holders of such corporation, with the right in the corporation to exchange said bonds, securities, or evidence of bank deposit for others of like value. Such corporation shall also, as a condition precedent to issuing any contracts of insurance, obtain the written certificate of the insurance commissioner that it has complied with the requirements of this act; and that the name of the corporation is not the same as that of any other corporation of this or other states, as indicated by the insurance department reports in his office; nor shall the commissioner approve any name or title so closely resembling another as to mislead the public. No corporation formed hereunder shall have legal existence after one year from the date of its articles, unless its organization has been completed, and business commenced; nor shall any corporation or individual solicit, or cause to be solicited, any business, until such corporation shall have complied with the provisions of section six hundred and thirty-three of the Political Code of this state.

What contracts of insurance shall specify.

§ 3. The contracts of insurance issued by such corporation shall specify the sum or sums to be paid upon the happening of the contingency insured against, and when such payments shall be made. Unless the contract shall have been invalidated by fraud or by breach of its conditions, the corporation shall be obligated to pay the beneficiary the amount or amounts specified in its contract at the time or times therein

named, and such indebtedness shall be a lien upon all the property of such corporation, with priority over all indebtedness thereafter incurred, except as hereinafter provided in case of insolvency. Failure to make such payment within thirty days after notice, at the home office, by mail, as provided by law, of final judgment, unless waiver is made by the beneficiary, shall constitute a forfeiture of the right to do business.

Reserve fund required.

§ 4. Every domestic corporation organized or doing business under this act shall accumulate a reserve or emergency fund, which shall at all times be not less than the largest benefit contracted to be paid by it to any one person. Every existing domestic corporation must accumulate such fund within one year from the date when this act takes effect, and any corporation organized hereunder within one year from the date of its certificate of incorporation. Such fund, to the extent of the largest amount contracted to be paid by any such corporation to any one person, shall be so invested and deposited, as provided in section two hereof, with the right in the corporation to exchange any such securities for others of equal value. The deposit required by section two of this act shall constitute a part of the reserve required by this section, at the option of such corporation. When any corporation doing business hereunder shall discontinue business, this fund shall be returned to such corporation, or so disposed of as may be determined by the superior court of the county, or city and county, in which is its principal place of business.

Foreign corporations, conditions required.

§ 5. Corporations organized under the laws of any other state or country to transact the business of mutual assessment or live-stock insurance, must as a condition precedent to transacting business in this state, deposit with the insurance commissioner of this state a certified copy of its charter, or other instrument, required by its home authorities; a statement, under oath, of its president or secretary, of its business for the preceding year, in such form as may be required by the insurance commissioner of this state; an appointment of a general agent, service upon whom shall bind the corporation; a certificate that for the next preceding twelve months it has paid, in full, the maximum amount named in its contracts of insurance; a certificate from the proper officer of its state or government that like corporations of this state are legally entitled to do business in such state or country; copies of its contracts of insurance and applications, which must show that the liabilities of its members are not limited to fixed premiums; and evidence, satisfactory to the insurance commissioner, that the corporation has accumulated a fund equal to that required of like corporations in this state, constituting a reserve or surplus fund, held in trust for the benefit of its contract-holders, and so invested and held as required by the laws of the state or government under which such corporation was organized. The insurance commissioner shall thereupon issue a license to such corporation to do business in this state. This license must be renewed annually, and may be revoked whenever it is ascertained that the statements required to be made by this section are not true. Upon such revocation, notice thereof shall be given by the insurance commissioner, by publication in some newspaper published in the city and county of San Francisco, for two weeks, daily, and no new contracts shall be made by such company in this state. When any other state or country imposes any additional license, fees, taxes, or penalties upon any corporation organized or doing business under this act, like license, fees, taxes, or penalties shall be imposed upon corporations of the same kind, and their agents, of such state or country doing business in this state.

Limitations of contract. Applications for insurance. False statements, penalty for.

§ 6. No corporation doing business under this act (accept accident or casualty corporations) shall issue a contract of insurance upon the life of any animal after it has

passed its fifteenth birthday. Every such contract of insurance shall be founded upon written application therefor, and (except when the application is for health, accident, or casualty insurance only, or for one hundred dollars life insurance, or less) such application shall be accompanied by the report of a reputable veterinarian, containing a detailed statement of his examination of the animal, and showing the animal to be in good health, and recommending the issuance of a contract of insurance. Any solicitor, agent, employee, examining veterinarian, or other person making a false or fraudulent statement to any corporation doing business under this act, with reference to any application for insurance, or for the purpose of obtaining any money or benefit from such corporation, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court; and any person who shall make a false statement of any material fact or thing in a sworn statement as to the death or disability of an animal of the contract-holder in any such corporation, for the purpose of procuring or aiding the beneficiary or beneficiaries, or contract-holder, in procuring the payment of a benefit named in the contract, shall be guilty of perjury, and may be proceeded against and punished as provided by the statutes of this state in relation to the crime of perjury.

Benefits not liable to attachments.

§ 7. The money, benefit, annuities, endowment, charity, relief, or aid to be paid as provided by the contracts issued by any corporation doing business under this act, shall not be liable to attachment or other process, and shall not be seized, taken, appropriated, or applied by any legal or equitable process, nor by operation of law, to pay any debts or liability of the contract-holder, or any beneficiary named thereunder.

Annual statement to be filed.

§ 8. Every domestic and foreign corporation doing business under this act, shall, annually, on or before the first day of February, file with the insurance commissioner, in such form as he shall prescribe, a statement of the affairs for the year ending on the preceding thirty-first day of December. The insurance commissioner, in person or by duly authorized deputy, shall have the power of examination into the affairs of any domestic corporation doing business or claiming to do business under this act, at any time, in his discretion, and shall make such examination at least once a year.

When corporation may have license revoked.

§ 9. If the insurance commissioner, after examination of the affairs of a corporation, shall find that such corporation is not doing its business in conformity to this act, or that it is doing a fraudulent or unlawful business, or that it is not carrying out its terms of contract, or that it can not within three months from the date of notice of default pay its obligations, he shall cite the president, secretary, manager, or general agent of said corporation, or all of them, to appear before him (stating the time and place) to show cause why the authority of such corporation to do business shall not be revoked; and if they can not show cause, then he shall report the facts to the attorney-general of this state, who shall commence proceedings in the proper court to restrain said corporation from doing any further business.

Assessments, notice of to be mailed.

§ 10. No policy or certificate issued by any corporation or association doing business under the provisions of this act shall lapse or be lapsed for the non-payment of any assessments, dues, or premiums, unless the corporation or association has first mailed

to the insured under such policy or certificate, at his or her last given post-office address, a notice setting forth the amount to be paid, and the time the same is due and payable; and such notice shall be mailed at least fifteen days before the assessment is due (provided, that such corporations doing business under this act as collect specific amounts at specific dates, as contained in the contract, shall not be compelled to send such notices), and an affidavit made by the officer, book-keeper, or clerk of any such corporation having charge of the mailing of notices, setting forth the facts as they appear on the records in the office of the said corporation, showing that such notice was mailed and the date of mailing, shall constitute conclusive evidence of the mailing of such notice.

§ 11. [No section of this number in the act as passed.]

Fees for filing statements, etc.

§ 12. The fees for filing statements, certificates, or other documents required by this act, or for any service or act of the insurance commissioner, and the penalties for any violation of this act, shall, except as otherwise provided herein, be the same as provided in the laws of this state relating to life-insurance companies, and shall be disposed of as provided by such law.

Expenses of insurance commissioner, how paid.

§ 13. And for all lawful expenses under this act, or by reason of any of its provisions in the prosecution of any suit or proceedings, or otherwise, for the enforcement of the provisions of this act, the insurance commissioner must present bills duly certified by him and accompanied with vouchers, to the state board of examiners, who must allow the same, and direct payment thereof to be made; and the state controller shall draw warrants therefor on the state treasurer for the payment of the same to the insurance commissioner, in addition to the ordinary contingent expenses, which warrant shall be payable out of the general fund.

§ 14. This act shall take effect immediately.

STANDARD FORM OF ACCIDENT AND HEALTH POLICY.

ACT 2189a—An act to incorporate standard provisions in policies of accident and health insurance, to prevent discriminations in connection therewith, and to prescribe penalties for violations of the provisions hereof.

History: Approved May 26, 1917. In effect January 1, 1918. Stats. 1917, p. 957.

Accident and health insurance policies approved by insurance commissioner.

§ 1. On and after the first day of January, 1918, no policy of insurance against loss or damage from the sickness, or the bodily injury or death of the insured by accident shall be issued or delivered to any person in this state until a copy of the form thereof and of the classification of risks, if more than one class of risks is written and the premium rates pertaining thereto have been filed with the commissioner of insurance; nor shall it be so issued or delivered until the expiration of thirty days after it has been so filed unless the said commissioner shall sooner give his written approval thereto. If the said commissioner shall notify, in writing, the company, corporation, association, society or other insurer which has filed such form that it does not comply with the requirements of law, specifying the reasons for his opinion, it shall be unlawful thereafter for any such insurer to issue any policy in such form. The action of the said commissioner in this regard shall be subject to review by any court of competent jurisdiction; provided, however, that nothing in this act shall be so construed as to give jurisdiction to any court not already having jurisdiction.

What policy must contain.

§ 2. No such policy shall be so issued or delivered (1) unless the entire money and other considerations therefor are expressed in the policy; nor (2) unless the time at which the insurance thereunder takes effect and terminates is stated in a portion of the policy preceding its execution by the insurer; nor (3) if the policy purports to insure more than one person; nor (4) unless every printed portion thereof and of any endorsements or attached papers shall be plainly printed in type of which the face shall be not smaller than ten point; nor (5) unless a brief description thereof be printed on its first page and on its filing back in type of which the face shall be not smaller than fourteen point; nor (6) unless the exceptions of the policy be printed with the same prominence as the benefits to which they apply; provided, however, that any portion of such policy which purports, by reason of the circumstances under which a loss is incurred, to reduce any indemnity promised therein to an amount less than that provided for the same loss occurring under ordinary circumstances, shall be printed in bold face type and with greater prominence than any other portion of the text of the policy.

Standard provisions.

§ 3. Every such policy so issued shall contain certain standard provisions, which shall be in the words and in the order hereinafter set forth and be preceded in every policy by the caption, "Standard provisions." In each such standard provision wherever the word "insurer" is used, there shall be submitted therefor "company" or "corporation" or "association" or "society" or such other word as will properly designate the insurer. Said standard provisions shall be:

Contract.

(1) A standard provision relative to the contract which may be in either of the following two forms: form (A) to be used in policies which do not provide for reduction of indemnity on account of change of occupation, and form (B) to be used in policies which do so provide. If form (B) is used and the policy provides indemnity against loss from sickness, the words "or contracts sickness" may be inserted therein immediately after the words "in the event that the insured is injured."

Form (A).

(A) 1. This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance. No reduction shall be made in any indemnity herein provided by reason of change in the occupation of the insured or by reason of his doing any act or thing pertaining to any other occupation.

Form (B).

(B) 1. This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance except as it may be modified by the insurer's classification of risks and premium rates in the event that the insured is injured after having changed his occupation to one classified by the insurer as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the insurer will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate but within the limits so fixed by the insurer for such more hazardous occupation.

If the law of the state in which the insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state then the premium rates and classification of risks mentioned in this

policy shall mean only such as have been last filed by the insurer in accordance with such law, but if such filing is not required by such law, then they shall mean the insurer's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the insurer is liable.

Changes in contract.

(2) A standard provision relative to changes in the contract, which shall be in the following form:

2. No statement made by the applicant for insurance not included herein shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the insurer and such approval be endorsed hereon.

Reinstatement of policy.

(3) A standard provision relative to reinstatement of policy after lapse which may be in either of the three following forms: form (A) to be used in policies which insure only against loss from accident; form (B) to be used in policies which insure only against loss from sickness; and form (C) to be used in policies which insure against loss from both accident and sickness.

(A) 3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the insurer or by any of its duly authorized agents shall reinstate the policy, but only to cover loss resulting from accidental injury thereafter sustained.

(B) 3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the insurer or by any of its duly authorized agents shall reinstate the policy but only to cover such sickness as may begin more than ten days after the date of such acceptance.

(C) 3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the insurer or by any of its duly authorized agents shall reinstate the policy but only to cover accidental injury thereafter sustained and such sickness as may begin more than ten days after the date of such acceptance.

Time of notice of claim.

(4) A standard provision relative to time of notice of claim which may be in either of the three following forms: form (A) to be used in policies which insure only against loss from accident; form (B) to be used in policies which insure only against loss from sickness, and form (C) to be used in policies which insure against loss from both accident and sickness. If form (A) or form (C) is used the insurer may at its option add thereto the following sentence: "In event of accidental death immediate notice thereof must be given to the insurer."

(A) 4. Written notice of injury on which claim may be based must be given to the insurer within twenty days after the date of the accident causing such injury.

(B) 4. Written notice of sickness on which claim may be based must be given to the insurer within ten days after the commencement of the disability from such sickness.

(C) 4. Written notice of injury or of sickness on which claim may be based must be given to the insurer within twenty days after the date of the accident causing such injury or within ten days after the commencement of disability from such sickness.

Sufficiency of notice of claim.

(5) A standard provision relative to sufficiency of notice of claim which shall be in the following form and in which the insurer shall insert in the blank space such office and its location as it may desire to designate for such purpose of notice:

5. Such notice given by or in behalf of the insured or beneficiary, as the case may be, to the insurer at.....or to any authorized agent of the insurer, with particulars sufficient to identify the insured, shall be deemed to be notice to the insurer. Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

Forms for filing proof of loss.

(6) A standard provision relative to furnishing forms for the convenience of the insured in submitting proof of loss as follows:

6. The insurer upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not so furnished within fifteen days after the receipt of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

Filing proof of loss.

(7) A standard provision relative to filing proof of loss which shall be in such one of the following forms as may be appropriate to the indemnities provided:

(A) 7. Affirmative proof of loss must be furnished to the insurer at its said office within ninety days after the date of the loss for which claim is made.

(B) 7. Affirmative proof of loss must be furnished to the insurer at its said office within ninety days after the termination of the period of disability for which the company is liable.

(C) 7. Affirmative proof of loss must be furnished to the insurer at its said office in case of claim for loss of time from disability within ninety days after the termination of the period for which the insurer is liable, and in case of claim for any other loss, within ninety days after the date of such loss.

Examination of person insured.

(8) A standard provision relative to examination of the person of the insured and relative to autopsy which shall be in the following form:

8. The insurer shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law.

Time within which payments made.

(9) A standard provision relative to the time within which payments other than those for loss of time on account of disability shall be made, which provision may be in either of the following two forms and which may be omitted from any policy providing only indemnity for loss of time on account of disability. The insurer shall insert in the blank space either the word "immediately" or appropriate language to designate such period of time, not more than sixty days, as it may desire; form (A) to be used in policies which do not provide indemnity for loss of time on account of disability and form (B) to be used in policies which do so provide.

(A) 9. All indemnities provided in this policy will be paid.....after receipt of due proof.

(B) 9. All indemnities provided in this policy for loss other than that of time on account of disability will be paid.....after receipt of due proof.

Periodical payments of indemnity.

(10) A standard provision relative to periodical payments of indemnity for loss of time on account of disability, which provision shall be in the following form, and which may be omitted from any policy not providing for such indemnity. The insurer shall insert in the first blank space of the form, appropriate language to designate the proportion of accrued indemnity it may desire to pay, which proportion may be all or any part not less than one-half, and in the second blank space shall insert any period of time not exceeding sixty days.

10. Upon request of the insured and subject to due proof of loss.....
accrued indemnity for loss of time on account of disability will be paid at the expiration of each [each].....during the continuance of the period for which the insurer is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof.

Indemnity payments.

(11) A standard provision relative to indemnity payments which may be in either of the two following forms: form (A) to be used in policies which designate a beneficiary and form (B) to be used in policies which do not designate any beneficiary other than the insured:

(A) 11. Indemnity for loss of life of the insured is payable to the beneficiary if surviving the insured, and otherwise to the estate of the insured. All other indemnities of this policy are payable to the insured.

(B) 11. All the indemnities of this policy are payable to the insured.

Cancellation of policy.

(12) A standard provision providing for cancellation of the policy at the instance of the insured which shall be in the following form:

12. If the insured shall at any time change his occupation to one classified by the insurer as less hazardous than that stated in the policy, the insurer, upon written request of the insured, and surrender of the policy, will cancel the same and will return to the insured the unearned premium.

Rights of beneficiary.

(13) A standard provision relative to the rights of the beneficiary under the policy which shall be in the following form and which may be omitted from any policy not designating a beneficiary:

13. Consent of the beneficiary shall not be requisite to surrender or assignment of this policy, or to change of beneficiary, or to any other changes in the policy.

Time within which suit may be brought.

(14) A standard provision limiting the time within which suit may be brought upon the policy as follows:

14. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

Time limitations.

(15) A standard provision relative to time limitations of the policy as follows:

15. If any time limitation of this policy with respect to giving notice of claim or

furnishing proof of loss is less than that permitted by the law of the state in which the insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

Optional standard provisions.

§ 4. No such policy shall be so issued or delivered which contains any provision (1) relative to cancellation at the instance of the insurer; or (2) limiting the amount of indemnity to a sum less than the amount stated in the policy and for which the premium has been paid; or, (3) providing for the deduction of any premium from the amount paid in settlement of claim; or, (4) relative to other insurance by the same insurer; or, (5) relative to the age limits of the policy; unless such provisions which are hereby designated as optional standard provisions, shall be in the words and in the order in which they are hereinafter set forth, but the insurer may at its option omit from the policy any such optional standard provision. Such optional standard provisions if inserted in the policy shall immediately succeed the standard provisions named in section three of this act.

Cancellation of policy.

(1) An optional standard provision relative to cancellation of the policy at the instance of the insurer as follows:

16. The insurer may cancel this policy at any time by written notice delivered to the insured or mailed to his last address, as shown by the records of the insurer, together with cash or the insurer's check for the unearned portion of the premiums actually paid by the insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

Reduction of amount of indemnity.

(2) An optional standard provision relative to reduction of the amount of indemnity to a sum less than that stated in the policy as follows:

17. If the insured shall carry with another company, corporation, association or society other insurance covering the same loss without giving written notice to the insurer, then in that case the insurer shall be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of like indemnity in all policies covering such loss, and for the return of such part of the premium paid as shall exceed the pro rata for the indemnity thus determined.

Deduction of premium.

(3) An optional standard provision relative to deduction of premium upon settlement of claim as follows:

18. Upon the payment of claim hereunder any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

Other insurance.

(4) An optional standard provision relative to other insurance by the same insurer which shall be in such one of the following forms as may be appropriate to the indemnities provided, and in the blank spaces of which the insurer shall insert such upward limits of indemnity as are specified by the insurer's classification of risks, filed as required by this act.

(A) 19. If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity in excess of \$....., the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured.

(B) 19. If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for loss of time on

account of disability in excess of \$. weekly, the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured.

(C) 19. If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for loss other than that of time on account of disability in excess of \$., or the aggregate indemnity for loss of time on account of disability in excess of \$. weekly the excess insurance of either kind shall be void and all premiums paid for such excess shall be returned to the insured.

Age limits.

(5) An optional standard provision relative to the age limits of the policy which shall be in the following form and in the blank spaces of which the insurer shall insert such number of years as it may elect:

20. The insurance under this policy shall not cover any person under the age of years nor over the age of years. Any premium paid to the insurer for any period not covered by this policy will be returned upon request.

Contradictory provisions.

§ 5. No such policy shall be so issued or delivered if it contains any provision contradictory, in whole or part, of any of the provisions hereinbefore in this act designated as "Standard provisions" or as "Optional standard provisions"; nor shall any indorsements or attached papers vary, alter, extend, be used as a substitute for, or in any way conflict with any of the said "Standard provisions" or the said "Optional standard provisions"; nor shall such policy be so issued or delivered if it contains any provision purporting to make any portion of the charter, constitution or by-laws of the insurer a part of the policy unless such portion of the charter, constitution or by-laws shall be set forth in full in the policy, but this prohibition shall not be deemed to apply to any statement of rates or classification of risks filed with the commissioner of insurance in accordance with the provisions of this act.

False statement.

§ 6. The falsity of any statement in the application for any policy covered by this act shall not bar the right to recovery thereunder unless such false statement was made with actual intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the insurer.

Rights of insurer in defense of claim.

§ 7. The acknowledgment by any insurer of the receipt of notice given under any policy covered by this act, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy.

Alteration of application.

§ 8. No alteration of any written application for insurance by erasure, insertion or otherwise, shall be made by any person other than the applicant without his written consent, and the making of any such alteration without the consent of the applicant shall be a misdemeanor. If such alteration shall be made by any officer of the insurer, or by any employee of the insurer with the insurer's knowledge or consent, then such act shall be deemed to have been performed by the insurer thereafter issuing the policy upon such altered application.

Policy in violation of act.

§ 9. A policy issued in violation of this act shall be held valid but shall be construed as provided in this act and when any provision in such a policy is in conflict with any provision of this act the rights, duties and obligations of the insurer, the policyholder and the beneficiary shall be governed by the provisions of this act.

Policies issued by insurer not organized under laws of state.

§ 10. The policies of insurance against accidental bodily injury or sickness issued by an insurer not organized under the laws of this state may contain, when issued in this state, any provision which the law of the state, territory or district of the United States under which the insurer is organized, prescribes for insertion in such policies, and the policies of insurance against accidental bodily injury or sickness issued by an insurer organized under the laws of this state may contain, when issued or delivered in any other state, territory, district or country, any provision required by the laws of the state, territory, district or country in which the same are issued, anything in this section to the contrary notwithstanding.

Not applicable to workmen's compensation insurance, etc.

§ 11. (1) Nothing in this act, however, shall apply to or affect any policy or liability of workmen's compensation insurance or any general or blanket policy of insurance issued to any municipal corporation or department thereof, or to any corporation, copartnership, association or individual employer, police or fire department, underwriters' corps, salvage bureau, or like associations or organizations, where the officers, members or employees or classes or departments thereof are insured for their individual benefit against specified accidental bodily injuries or sickness while exposed to the hazards of the occupation or otherwise in consideration of a premium intended to cover the risks of all the persons insured under such policy.

Supplemental contracts.

(2) Nothing in this act shall apply to or in any way affect contracts providing additional benefits for accidental death supplemental to contracts of life or endowment insurance nor where such supplemental contracts contain provisions which operate to safeguard such insurance against lapse or to provide a special surrender value therefor in the event that the insured shall be totally and permanently disabled by reason of accidental bodily injury or by sickness; provided, that no such supplemental contract shall be issued or delivered to any person in this state unless and until a copy of the form thereof has been submitted to and approved by the commissioner of insurance, under such reasonable rules and regulations as he shall make concerning the provisions in such contracts and their submission to and approval by him.

Fraternal societies.

(3) Nothing in this act shall apply to or in any way affect fraternal benefit societies.

Railroad ticket policies.

(4) The provisions of this act contained in clause (five) of section two and clauses two, three, eight and twelve of section three may be omitted from railroad ticket policies sold only at railroad stations, or at railroad ticket offices by railroad employees.

Penalty.

§ 12. Any company, corporation, association, society or other insurer or any officer or agent thereof, which or who issues or delivers to any person in this state any policy in wilful violation of the provisions of this act shall be punished by a fine of not more than one hundred dollars for each offense, and the commissioner of insurance may revoke the license of any company, corporation, association, society or other insurer of

another state or country, or of the agent thereof, which or who wilfully violates any provision of this act.

"Indemnity."

§ 13. The term "indemnity," as used in this act, means benefits promised.

Penalty for discrimination.

§ 14. No insurance corporation authorized in this state to issue or deliver insurance against loss or damage from sickness, or bodily injury or death by accident, nor any agent of such corporation, shall make or permit any discrimination between individuals of the same class in the amount of premiums, policy fees, or rates charged for any policy of accident or health insurance, or in the benefits payable thereunder or in any of the terms or conditions of such insurance contract, or in any other manner whatsoever. Any person or corporation violating any provision of this section shall be guilty of a misdemeanor.

In effect when.

§ 15. This act shall take effect on the first day of January, 1918. Any policy covered by this act the form of which has received the approval of the commissioner of insurance may be issued or delivered in this state on and after the said date.

MUTUAL FIRE INSURANCE COMPANIES.

ACT 2190—An act providing for the organization and management of mutual fire insurance corporations and associations and defining the same, and regulating the transaction of the business of mutual fire insurance in the state of California, and repealing an act entitled "An act providing for the organization and management of mutual fire insurance companies," approved March 19, 1907.

History: Approved May 1, 1911, Stats. 1911, p. 1342.

Mutual fire insurance corporations.

§ 1. Private corporations or associations may be formed for a term to be stated in their articles not exceeding fifty years for the purpose of insuring the property of their members against loss or damage by fire in accordance with this act, and not otherwise.

Trustees to adopt by-laws.

§ 2. The trustees or directors of any corporation or association shall adopt such by-laws not in conflict with the laws of this state, as they may deem proper for the government of its affairs and the conduct of its business. Such by-laws shall provide for the liability of its members in accordance with the provisions of this act.

Each member liable.

§ 3. Each person or partnership or corporation accepting a policy in any such mutual insurance corporation or association shall thereby become a member of such corporation or association and shall be liable for his proportionate share of losses and operating expenses as hereinafter provided.

No policy issued until five hundred thousand dollars is subscribed for.

§ 4. No policy shall be issued by any such corporation or association until not less than five hundred thousand (500,000) dollars of insurance in not less than five hundred separate risks have been subscribed for and are entered upon its books, nor until it has collected from insurance premiums, and then has on hand not less than ten thousand (10,000) dollars in cash over and above all liabilities other than reinsurance reserve as specified in section 13 of this act, and also contingent funds consisting of the liability of its members liable to assessment, in addition to cash premiums collected, amounting to not less than fifty thousand (50,000) dollars, such liability to be shown in the signed applications of its members.

Limit of expenses.

§ 5. The expenses, including commissions and fees to agents and officers of any calendar year, of any such corporation or association organized or operating under this act shall be limited to thirty per cent of what is left of the gross premiums actually received during that year, after deducting from such premiums the return premiums and reinsurance paid out by or for which the corporation or association has become liable during the year. A violation of this provision shall render the officers and directors and all persons having similar powers jointly and severally liable to such company for any amount used for expenses in excess of the amount provided for in this section. In the event that such company fails or refuses to recover such moneys so paid, the insurance commissioner may sue for and recover the same from any one or all of the officers or directors and all persons having similar powers of such company for the benefit of its policy-holders. No officer or other person whose duty it is to determine the character of the risks, and upon whose decision the application shall be accepted or rejected by such corporation shall receive as any part of his compensation a commission upon the premiums, but his compensation shall be a fixed salary and such share of the net profits as the directors, and all persons having similar powers may determine.

Policies not to exceed term of five years and amount of twenty-five hundred dollars.

§ 6. Such corporation or association may issue policies for a term not exceeding five years; provided, the term of any policy does not exceed the time limited for the existence of the charter or articles of association. No policy or policies shall be for an amount in excess of twenty-five hundred (2500) dollars on any one risk, unless protected by reinsurance in companies having sufficient assets and surplus to entitle such companies to be permitted to do business in the state of California; provided, however, that one thousand (1000) dollars additional insurance may be written on any one risk for each million dollars of total insurance outstanding on the books of the corporation or association in excess of one million dollars; provided, further, that two or more buildings situated in the same city block, or separated by less than one hundred feet shall be deemed to be one risk.

Mutual corporation to file statement with insurance commissioner.

§ 7. Any mutual fire insurance corporation or association without subscribed capital or guarantee fund organized under the laws of some other state desiring to transact business in this state shall file with the insurance commissioner its last financial statement, showing its condition on December 31st, next preceding the date of its application for admission, signed by its president and secretary under oath, and showing that it is possessed of cash assets of not less than two hundred thousand (200,000) dollars, of which not less than fifty thousand (50,000) dollars shall be net cash surplus over and above all liabilities, including its reinsurance reserve as provided in section 13 of this act. Also a certificate from the insurance commissioner of the state in which said corporation or association is incorporated, certifying that in the judgment of the state insurance commissioner the statement is correct and that the corporation or association is possessed of two hundred thousand (200,000) dollars cash assets, of which not less than fifty thousand (50,000) dollars is such net cash surplus. The insurance commissioner of this state upon receipt and examination of such statement and certificate and upon satisfying himself of the correctness thereof and of compliance with the law of this state applicable as shown by this act shall issue to such corporation or association a certificate of authority granting it full power to transact business under this act.

Policy-holders liable for assessment.

§ 8. Each policy-holder shall be liable to pay his proportionate share of any assessment which may be levied by any such corporation or association and in accordance with the law and his contract, on account of losses and expenses incurred while he is a member. Any such corporation or association shall charge and collect upon its policies the full premium in cash, and may, in its by-laws, fix the liability of its members for the payment of the losses and expenses not provided for by its cash funds; provided, that the liability of a member to assessment shall not be less than the amount of one annual premium in addition to the annual cash premium of his policy. Provided, however, that corporations or associations which have accumulated, in the regular course of the business, cash assets of not less than two hundred thousand (200,000) dollars of which not less than fifty thousand (50,000) dollars is net cash surplus over and above all the requirements of section 13 of this act shall have power, while in that condition, to adopt by-laws limiting the liability of its policy-holders for loss or damage by fire to any amount it may desire to specify in its policies, and the power to issue policies with such limitation of liability to continue only during the time such corporation or association is in such financial condition; provided, further, that every such corporation or association must print upon its policies such by-laws or mutual conditions as will define the liability of a policy-holder.

Assessments to pay losses and expenses.

§ 9. Whenever such corporation or association is not possessed of cash funds above its reinsurance reserve fund and all other liabilities sufficient for the payment of accrued losses it shall make an assessment for the amount needed to pay such losses and expenses, upon its members liable to assessment therefor in proportion to their several liabilities. The corporation or association shall cause to be recorded in a book kept for that purpose the order of such assessment, together with a statement which shall set forth the condition of the corporation or association at the date of the order, the amount of its cash assets and contingent funds liable to assessment and the amount of the assessment called for. Such record shall be made and signed by the directors or other persons who voted for the order, before any part of the assessment is collected, and any person liable to assessment may inspect and take a copy of the same.

Members may withdraw.

§ 10. Any member of any such corporation or association may withdraw at any time by surrendering his policy or certificate of insurance to the corporation or association and giving thirty days' written notice of his intention to withdraw and by paying his share of all losses which shall have accrued by the end of the time specified in the notice, and of all losses arising out of fires occurring theretofore and all losses occurring within thirty days after the service of such notice and all assessments levied in whole or in part to meet such losses, and all assessments due, accrued or pending at the time of the cancellation of his policy, but the corporation or association may retain the customary short rate for the expired time; provided, also that the corporation shall have power to cancel or determine any policy by giving the insured five days' written notice to that effect, and returning to the insured his pro rata of the unearned premium.

Dividends.

§ 11. No corporation or association formed under this act may make any dividend except from profits on hand, after retaining unimpaired a cash surplus of fifty thousand (50,000) dollars over and above all liabilities including reinsurance reserve and shall thereafter retain not less than five per cent per annum of all profits available for dividends until the sum of two hundred thousand dollars (\$200,000) net cash surplus has

been accumulated. Such cash surplus shall be invested in the manner provided for in subdivisions 1, 2, 3, and 4 of section 421 of the Civil Code of the state of California as that section was amended by act approved March 22, 1907.

Annual statement.

§ 12. Any corporation or association organized or operating under this act shall file with the insurance commissioner on or before the first day of March of each year, its financial statement exhibiting its condition on the thirty-first day of December next preceding. Such statement shall be made as provided for in the blanks furnished by the insurance department.

When company is insolvent.

§ 13. Whenever the liabilities of any corporation or association operating under this act for losses reported, expenses, taxes, reinsurance reserve upon all unexpired fire risks running one year or less from date of policy at fifty (50) per cent, and upon all unexpired fire risks running more than one year from date of policy to be estimated pro rata, are greater than its admitted cash assets, or whenever the available resources of any company are less than the requirements under section 4 of this act, then such company or association is insolvent.

Sections of codes applicable.

§ 14. The general provisions applicable to all corporations as expressed in part IV, division I of the Civil Code of the state of California and all provisions contained in sections 595, 596, 596a, 597, 598, 599, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 615, 616, 617, 618, 619, 620, 621, 622, 623, 627, 631, 631a, 632, 633, 634a, 634b of the Political Code of the state of California, and sections 435 and 439 of the Penal Code of the state of California, and section 388 of the Code of Civil Procedure of the state of California, also section 415 of the Civil Code of the state of California, and all other laws of the state relating to fire insurance, in so far as any section or law herein referred to is not inconsistent with or in conflict with the provisions of this act, are hereby made to apply to all corporations or associations operating under this act; provided, nothing herein shall relieve such corporation or associations from full compliance with the provisions of section 14 of Article XIII of the constitution of the state of California and of all statutes enacted in aid thereof.

Not applicable.

§ 15. This act shall not apply to contracts made between persons, firms and corporations of this state, and others of this state and other states for the protection of their own property under the plan known as reciprocal or inter-insurance, nor to unincorporated inter-indemnity compacts.

County fire insurance companies.

§ 16. Nothing in this act shall be construed to restrict or affect the provisions of "An act to provide for the organization and management of county fire insurance companies," approved April 1, 1897.

Repeal.

§ 17. That certain act of the legislature of the state of California, entitled "An act providing for the organization and management of mutual fire insurance companies" (approved March 19, 1907), is hereby repealed.

RECIPROCAL INDEMNITY INSURANCE ACT OF 1917.

ACT 2192a—An act providing for reciprocal and interexchanges of indemnities, prescribing regulations therefor and fixing a license fee, and repealing an act entitled "An act defining certain classes of contracts for the exchange of indemnity, prescribing regulations therefor and fixing a license fee," approved December 24, 1911.

History: Approved May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 1170. Amended May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1270. Prior act of December 24, 1911, Stats. 1911 (ex. sess.), p. 111, superseded by present act. The title of the present act recites the repeal of the act of 1911, but no mention is made of it in the body of the act.

Exchange of reciprocal or inter-insurance contracts.

§ 1. Individuals, partnerships and corporations of this state, hereby designated subscribers, are hereby authorized to exchange reciprocal or interinsurance contracts with each other, or with individuals, partnerships and corporations of other states, territories, districts and countries, providing insurance among themselves from any loss which may be insured against under other provisions of law, except life insurance.

Execution of contracts.

§ 2. Such contracts may be executed by an attorney, agent or other representative herein designated as attorney, duly authorized and acting for such subscribers under powers of attorney, and such attorney may be a corporation. The principal office of such attorney shall be maintained at such place as is designated by the subscribers in the power of attorney. The power of attorney may further provide for the right of substitution and revocation and impose such restrictions upon the exercise of the power granted as may be agreed upon by the subscribers, and may further provide for the exercise of any right reserved to the subscribers, directly or through a board or other body to be selected under such rules or regulations as the subscribers may adopt.

Declaration filed with insurance commissioner.

§ 3. Such subscribers so contracting among themselves shall, through their attorney, file with the insurance commissioner a declaration verified by the oath of such attorney, or where such attorney is a corporation, by the oath of the duly authorized officers thereof, setting forth:

(a) The name of the attorney and the name or designation under which such contracts are issued, which name or designation shall not be so similar to any name or designation adopted by any attorney or by any insurance organization in the United States writing the same class of insurance, prior to the adoption of such name or designation by the attorney, as to confuse or deceive.

(b) The location of the principal office.

(c) The kind or kinds of insurance to be effected.

(d) A copy of each form of policy, contract or agreement under or by which insurance is to be effected.

(e) A copy of the form of power of attorney under which such insurance is to be effected.

(f) That applications have been made for insurance upon at least one hundred separate risks aggregating not less than one million dollars represented by executed contracts or bona fide applications to become concurrently effective; or in case of employer's liability or workmen's compensation insurance, covering a total pay roll of not less than one million dollars.

(g) That there is in the possession of such attorney and available for the payment of losses, assets conforming to the requirements of section six hereof.

(h) A financial statement under oath in form hereinafter prescribed for the annual statement.

(i) The instrument authorizing service of process as provided for in this act.

(j) Certificate showing deposits of funds or securities.

Instrument and bond filed by attorney.

§ 4. Concurrently with the filing of the declaration provided for by the terms of section three of this act, the attorney shall file with the insurance commissioner:

Instrument.

(a) An instrument in writing executed by him for said subscribers, condition that upon the issuance of a certificate of authority provided for in this act, action may be brought in the county in which the property or person insured thereunder is located and service of process may be had upon the insurance commissioner in all suits in this state arising out of such policies, contracts or agreements, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. Three copies of such process shall be served and the insurance commissioner shall file one copy, forward one copy to said attorney by registered mail addressed to the attorney at the principal office as fixed in the certificate filed, and shall return one copy with his admission of service. A judgment rendered in any such case where service of process has been so made shall be valid and binding against any and all subscribers as their interests appear and such judgment may be satisfied out of the funds in the possession of the attorney belonging to such subscribers or otherwise.

Bond.

(b) A bond in favor of the people of the state of California executed by the said attorney, with two sureties to be approved by the insurance commissioner in the penal sum of twenty-five thousand dollars, condition that the attorney will faithfully perform the duties imposed upon him under the said powers of attorney and faithfully account for moneys handled by him thereunder; such bond may be sued upon by any subscriber suffering loss through violation of the conditions thereof and liability thereunder may be enforced by any individual subscriber or any number of subscribers, in one or the same action; provided, however, that where the power of attorney executed by the subscribers or the rules and regulations adopted by the association for the conduct of its business thereunder, provide for the bonding of the attorney, a certified copy of the bond executed in accordance with such powers of attorney or rules and regulations, shall be filed with the insurance commissioner in lieu of any other bond required under this act. [Amendment of May 27, 1919. In effect July 27, 1919. Stats 1919, p. 1271.]

Statement of indemnity.

§ 5. There shall be filed with the insurance commissioner by such attorney whenever the insurance commissioner shall so require, a statement under oath of such attorney showing the maximum amount of indemnity upon a single risk, and, except as to workmen's compensation insurance, no subscriber shall assume on any single risk an amount greater than ten per cent of the net worth of such subscriber where the liability assumed exceeds the amount of one premium deposit.

Assets to be maintained.

§ 6. There shall at all times be maintained as assets a sum in cash or securities of the kind designated by the laws of the state where the principal office is located for the investment of funds of insurance companies, equal to one hundred per cent of the net unearned premiums or deposits collected and credited to the accounts of subscribers, or assets equal to fifty per cent of the net annual premiums or deposits col-

lected and credited to the accounts of the subscribers on policies having one year or less to run and pro rata on those for a longer period, in addition to which there shall be maintained as a reserve in cash or such securities, assets sufficient to discharge all liabilities on all outstanding losses arising under policies issued, the same to be calculated on the basis and in the manner provided by law for the maintenance of similar reserves by companies insuring similar risks; provided, however, that all reserves on indemnity exchanged prior to July 1, 1919, shall be calculated according to the provision of law in force at the time said contracts were entered into.

Net deposits.

Savings or credits, however, may be returned to the subscribers, irrespective as to the source from which the same accrue, whenever such returns do not constitute an impairment of the assets or reserves to be maintained as herein required; provided, however, that there shall be no discrimination in the making of such returns as between persons or places.

Net deposits shall be construed to mean (a) the advance payments of subscribers after deducting therefrom the amounts specifically provided in the subscribers' agreements for expense, or (b) in the event no such specific provision for expense be therein made, the advance payments of subscribers after deducting therefrom the reasonable expense incidental to the conduct of business not exceeding however twenty-five per cent of such advance payments.

If deficiency in assets.

If at any time the assets so held in cash or such securities, exclusive of loss reserves herein provided for, shall be less than required above, or be less than twenty-five thousand dollars in any exchange writing any kind of insurance, or in any exchange writing common carrier liability insurance shall on or after the third anniversary of the date of the organization be less than fifty thousand dollars, the subscribers, or their attorney for them, shall make up the deficiency within thirty days after notice from the insurance commissioner so to do.

Reserves of independent groups.

Where the subscribers are grouped, by industries, or otherwise, under any rule or agreement which exempts the funds of one group from liability, in whole or in part, for the payment of losses or expenses chargeable against another group, each independent group must maintain the reserve herein specified and comply with the requirements of subdivision (f) of section three hereof, relative to the number and amount of risks to be assumed. [Amendment of May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1272.]

Report of financial condition. Examination by insurance commissioner.

§ 7. Such attorney shall, within the time limited for filing the annual statement by insurance companies transacting the same kind of business, make a report, under oath, to the insurance commissioner for each calendar year, showing the financial condition of affairs at the office where such contracts are issued, and shall at any time furnish such additional information and reports as may be required; provided, however, that the attorney shall not be required to furnish the names and addresses of any subscribers except in case of an unpaid final judgment. The assets, business affairs and records of such organization, shall be subject to examination by the insurance commissioner at any reasonable time, and such examination shall be at the expense of the organization examined. The right of examination herein granted shall include the right to examine the records containing the names and addresses of the subscribers, but any information obtained therefrom shall be regarded as confidential and the disclosure thereof, except under order of court, shall constitute a breach of official

duty. Where the principal office of the attorney is located in another state, the insurance commissioner may, in lieu of the examination provided for in this section, accept a certified copy of the report of examination made by the insurance department of the state where the principal office is located, or by the insurance department of any other state.

Right of corporation to enter into insurance contracts.

§ 8. Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers and franchises specified in its articles of incorporation, have full power and authority to enter into insurance contracts of the kind and character herein mentioned. The right to enter into such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and as fully granted as the rights and powers expressly conferred.

Certificate of authority.

§ 9. Upon compliance with the requirements of this act, and the payment of a fee of fifty dollars, the insurance commissioner shall issue a certificate of authority or a license to the attorney authorizing him to make such contracts of insurance, which license shall specify the kind or kinds of insurance to be effected and shall contain the name of the attorney, the location of the principal office and the name or designation under which such contracts of insurance are issued. Such license shall be renewed annually upon a showing that the standard of solvency required herein has been maintained and all fees and taxes required have been paid. For such renewal a fee of ten dollars shall be paid. [Amendment of May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1273.]

Penalty.

§ 10. Any attorney who shall exchange any contracts of insurance of the kind and character specified in this act or any attorney or representative of such attorney, who shall solicit or negotiate any applications for same without the attorney first complying with the foregoing provisions, shall be deemed guilty of a misdemeanor. For the purpose of organization, and upon issuance of permit by the insurance commissioner, powers of attorney and applications for such contracts may be solicited without compliance with the provisions of this act, but no attorney, agent or other person shall make any such contracts of insurance until all of the provisions of this act shall have been complied with.

Revocation of certificate.

§ 11. In addition to the foregoing penalties and where not otherwise provided, the penalty for failure or refusal to comply with any or all of the terms and provisions of this act, upon the part of the attorney, shall be the refusal, suspension or revocation of certificate of authority no license by the insurance commissioner after due notice and opportunity for hearing has been given such attorney so that he may appear and show cause why such action should not be taken.

Fees. Tax upon gross premiums.

§ 12. In lieu of all other taxes, licenses or fees whatever, state or local, such attorney shall pay annually on account of the transaction of such business in this state, the same fees as are paid by mutual companies transacting the same kind of business, and an annual tax upon the gross premiums or deposits collected from subscribers in this state during the preceding calendar year, after deducting therefrom deposit returns or cancellations, consideration for reinsurance and all amounts returned to subscribers or credited to their accounts as savings; such tax to be computed at the same rate as fixed by law for the taxation of mutual companies transacting the same kind of business.

Provisions inserted not inconsistent with law.

§ 13. The attorney may insert in any form of policy prescribed by the laws of this state any provisions or conditions required by the plan of reciprocal or interinsurance; provided, that same shall not be inconsistent with or in conflict with any law of this state. Such policy in lieu of conforming to the language and form prescribed by such law shall be held to conform thereto in substance if such policy includes a provision or endorsement reciting that the policy shall be construed as if in the language and form prescribed by such law. Any such endorsement shall first be filed with the insurance commissioner.

Not subject to insurance laws.

§ 14. (a) Except as herein provided, the making of contracts as herein provided for and such other matters as are incident thereto shall not be subject to the laws of this state relating to insurance unless they are therein specifically mentioned. This section shall not be construed, however, as depriving the insurance department of the state of the right of examination of and supervision over reciprocal or interinsurance exchanges, their agents and brokers, or of the right to hold and conduct hearings in the manner and under the same procedure as provided by law in the case of mutual or other insurance companies but such right is hereby expressly recognized and confirmed, but agents or brokers of reciprocals need not be expressly licensed.

Unlawful to give rebate.

(b) It shall be unlawful for any reciprocal or interinsurance exchange, its attorney in fact, agent or broker to give or offer a rebate to a subscriber, directly or indirectly. A rebate is hereby defined as an allowance, gift, setoff, or payment directly or indirectly made or offered as an inducement to secure the exchange of indemnities, other than a savings or credit to be returned to a subscriber in accord with the provisions contained in the power of attorney or in the reciprocal or interinsurance contract executed by him. [Amendment of May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1273.]

Repealed.

§ 15. All laws or parts of laws in conflict herewith are hereby repealed.

MUTUAL WORKMEN'S COMPENSATION INSURANCE COMPANIES.

ACT 2193—An act providing for the organization and management of mutual workmen's compensation insurance companies and defining the same and regulating the transaction of the business of mutual workmen's compensation insurance in the state of California.

History: Approved May 26, 1913. In effect August 10, 1913. Stats. 1913, p. 321. Amended June 8, 1915, Stats. 1915, p. 1301.

"Compensation." "Employer." "Employee."

§ 1. The term "compensation" as used in this act shall mean and include any liability imposed upon any or all employers of labor to compensate their employees and the dependents of such employees for any injury sustained by the said employees by accident arising out of and in the course of their employment irrespective of the fault of either party. The term "employer" as used in this act shall be construed to mean: Every person, firm, voluntary association and private corporation (including any public service corporation) who has any person in service under any appointment or contract of hire or apprenticeship, express or implied, oral or written, and the legal representatives of any deceased employer. The term "employee" as used in this act shall be construed to mean: Every person in the service of an employer as defined by this act under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens and also including minors.

Compensation associations.

§ 2. (a) Mutual associations of any number of employers, not less than five, may, subject to the approval of the insurance commissioner, be formed by incorporating under the laws of this state, for the purpose of insuring their members against liability for compensation and insuring to the employees of such members the payment of such compensation.

(b) It shall be within the power of the insurance commissioner to limit the membership of any such mutual association to those employers engaged in the same general character of industry or to employers within a limited part of the state, whenever in his judgment such limitation shall be required for the protection of the members of such association or persons insured.

Articles of incorporation.

§ 3. Before the articles of incorporation shall be filed, a copy thereof shall be submitted for the approval of the insurance commissioner. Such articles shall set forth:

First—The names of the employers entering into such association, their places of residence, the nature of the business in which they are engaged and the number of persons employed by each.

Second—The name by which such association shall be known, which name shall include the word "mutual," and, if the liability of members is limited, the words "limited mutual."

Third—The period for which such association is incorporated, which shall not exceed fifty years.

Fourth—The number of directors, which shall not be less than five (5) nor more than eleven (11), and the names and residences of the directors for the first year.

Fifth—The location of the principal place of business, which shall be in this state.

Such articles must be executed, acknowledged, and filed as provided by law for the formation of other corporations.

By-laws.

§ 4. The members of any company organized under this act shall have power to make such by-laws, not inconsistent with the constitution and laws of this state, as may be deemed necessary for the government of its officers and members, for the admission of new members, for the assessment and collection of premiums and assessments and in general for the proper conduct of its affairs. Such by-laws shall not be effective until a copy thereof has been filed with the insurance commissioner and approved by him.

Employer's liability.

§ 5. Every employer accepting a policy in any company organized under this act shall thereby become a member of such company and shall become liable for his proportionate share of losses and operating expenses as hereinafter provided.

When policies may be issued.

§ 6. No policy shall be issued by any company organized under this act until subscriptions for insurance have been received from at least one hundred employers having an annual pay-roll of at least \$500,000.00 or having in their employment at least one thousand employees, nor until an amount in cash shall be in hand over and above all liabilities other than the unearned premium reserve of not less than fifteen thousand dollars and in any event not less than one full annual premium upon each risk. If at any time the number of employers insured shall fall below one hundred or if the annual pay-roll of said employers shall fall below \$500,000.00 and the number of their said

employees shall fall below one thousand then no further policies shall be issued until subscriptions have been received sufficient to comply with the requirements of this section.

Premiums.

§ 7. [Repealed June 8, 1915, Stats. 1915, p. 1301.]

Established rate.

§ 8. After a compensation insurance rate shall have been established by the state workmen's compensation insurance rating bureau no mutual company organized under this act shall charge a lesser rate upon any risk than the gross bureau rates applicable thereto.

Members' liability for excess loss.

§ 9. Every company organized under this act shall in its by-laws and policies fix the contingent mutual liability of its members for the payment of losses in excess of its available cash funds; but such contingent liability shall not be less than an amount equal to one annual premium in addition to the annual premium charged.

Companies subject to law.

§ 10. Every company organized under this act shall be subject to all the general provisions of the law relative to other insurance companies and also to the general provisions of law applicable to all other corporations in so far as such provisions are not inconsistent or in conflict with the provisions of this act.

Assessment to pay losses.

§ 11. If any company organized under this act is not possessed of cash funds above its unearned premium reserve and claims reserve and other liabilities sufficient for the payment of incurred losses and expenses it shall make an assessment for the amount needed to pay such losses and expenses upon its members liable to assessment therefor in proportion to their several liabilities. The company shall cause to be recorded in a book kept for that purpose the order for such assessment and the amount of the assessment called for, together with a statement setting forth the condition of the company at the date of the order, the amount of its cash assets and contingent funds. Such record shall be made and signed by the directors or other persons who voted for the order and approved by the insurance commissioner before any part of the assessment is collected and any person liable to assessment may inspect and take a copy of the same.

Surplus fund. Dividends.

§ 12. The directors of every such mutual company shall each year set aside as a surplus an amount equal to at least twenty-five per cent of all available profits until such surplus shall be an amount not less than the amount of all premiums charged upon all insurance in force after deducting therefrom the amount of premiums charged for any risks which have been reinsured in other insurance carriers. After setting aside the amount of profits required to be set aside by this section as a surplus fund, the directors of every such mutual association, at such times as their by-laws provide, must make, declare and pay to their members dividends of so much of the additional available profits accrued from the business of the association and interest on moneys invested as to them appears advisable; provided, however, that no such dividend shall be declared or paid unless there is then on hand a surplus of not less than \$15,000 and equal to at least twenty-five per cent of all premiums charged upon all insurance in force after deducting therefrom the amount of premiums charged for any risks which may have been reinsured in other insurance carriers.

Approval of insurance commissioner.

§ 13. No assessment shall be levied and no dividend shall be declared until such assessment or such dividend has been approved by the insurance commissioner.

Investment of funds.

§ 14. The funds of any company organized under this act shall be invested in the manner allowed for the investment of the funds of other insurance companies.

Limitation of expenses.

§ 15. The expenses for any calendar year of any company organized under this act, including commissions and fees to agents and officers, but not including expenses incurred for the prevention of injuries, shall be limited to thirty per cent of the gross premiums actually received during that year. A violation of this provision shall render the officers and directors and all persons having similar powers jointly and severally liable to such company for any amount used for expenses in excess of the amount provided for in this section. In the event that such company fails or refuses to recover such moneys so paid the insurance commissioner may sue for and recover the same from any one or all of the officers or directors and all persons having similar powers of such company for the benefit of its members. No officer or other person, whose duty it is to determine the character of the risks, and to decide what applications shall be accepted and what applications shall be rejected by such company, shall receive as any part of his compensation a commission upon the premiums, but his compensation shall be a fixed salary and such share of the net profits as the directors or trustees may determine.

When insolvent.

§ 16. Whenever the liabilities of any company organized under this act for losses reported, expenses, taxes, unearned premium reserve and claims reserve are greater than its admitted cash assets then such company is insolvent.

Annual statement.

§ 17. Every company organized under this act shall file with the insurance commissioner on or before the first day of March of each year, its financial statement exhibiting its condition on the thirty-first day of December next preceding. Such statement shall be made as provided for in the blanks furnished by the insurance department.

Rules for prevention of injury.

§ 18. The directors of any company organized under this act shall make and enforce reasonable rules and regulations for the prevention of injuries on the premises of members and for this purpose the inspectors of the company shall have free access to all such premises during regular working hours. Any employer or employee aggrieved by any such rule or regulation may petition the industrial accident commission for a review, and it may affirm, amend or annul the rule or regulation.

Wages accounts.

§ 19. Auditors, inspectors and other agents of the company shall have free access to the wages accounts and pay-rolls of members for the purpose of verifying pay-rolls.

Notice of withdrawal.

§ 20. Any member of any company organized under this act may withdraw at any time by giving thirty days' written notice of his intention to withdraw and surrendering his policy; provided, however, that he shall discharge all his obligations to the company at the time of his withdrawal. The termination of such insurance shall not act to release the member withdrawing from liability for the payment of his assigned share

of all assessments then or thereafter made to make up deficiencies due to accidents happening while he was insured in such company. The premium for such surrendered policy shall be returned to the member withdrawing less the customary short term premium for a time during which the policy was in force. The company shall have power to cancel or determine any policy by giving the insured five days' written notice to that effect and returning to the insured his pro rata part of the premium.

Amendment of by-laws.

§ 21. Any company organized under this act shall have power to amend its articles of association and by-laws at its regular annual meeting or at special meetings called and held as provided in its by-laws, but said amendments shall, before they become operative, be approved and filed in the same manner as the original articles and by-laws.

May own property.

§ 22. Any company organized under this act shall have power to own, hold and acquire such real and personal property as shall be necessary for the transaction of its business.

May sue.

§ 23. Any company organized under this act may sue and be sued in any court of law or equity, with the same rights and obligations as a natural person, and in addition to the powers hereinbefore enumerated, shall possess and exercise all such rights and powers as are necessarily incidental to the exercise of the powers as expressly granted herein.

Not applicable to contracts.

§ 24. This act shall not apply to contracts made between persons, firms or corporations of this state, and others of this state and other states for the protection of their own property under the plan known as reciprocal insurance or interinsurance, nor to unincorporated inter-indemnity compacts.

MISREPRESENTING TERMS OF INSURANCE POLICY.

ACT 2194—An act to prohibit insurance companies, associations, or societies and their agents from misrepresenting the terms of any policy of insurance.

History: Approved June 7, 1915. In effect August 8, 1915. Stats. 1915, p. 1272.

Misrepresenting terms of policy prohibited.

§ 1. No insurance company, association, or society, or any officer, director, agent, broker or solicitor thereof shall issue, circulate or use or cause or permit to be issued, circulated or used, any statement, estimate, illustration, or circular misrepresenting the terms of any policy issued or to be issued by such company or the benefits or privileges promised under any such policy, or the future dividends, payable under any such policy. No insurance company, association, or society, officer, director, agent, solicitor or broker, or any person, firm, association or corporation shall make any misrepresentation, oral, written or otherwise, to any person for the purpose of inducing or tending to induce such person to take out a policy of insurance, or for the purpose of inducing or tending to induce a policyholder in any company to lapse, forfeit or surrender his insurance therein, or to refuse to accept a policy issued upon an application therefor, and to take out a policy of insurance in any other company.

No excuse from testifying.

§ 2. No person shall be excused from testifying or from producing any books, papers, contracts, agreements or documents at the trial or hearing of any person or company, association or society charged with violating any provisions of section one of this act

on the ground that such testimony or evidence may tend to incriminate himself, but no person shall be prosecuted for any act concerning which he shall be compelled so to testify or produce evidence, documentary or otherwise, except for perjury committed in so testifying.

Penalty.

§ 3. Any insurance company, association, or society, agent, solicitor or broker, or any person, firm, association, or corporation, violating the provisions of this act shall upon conviction be sentenced to pay a fine of not more than one hundred dollars for each and every violation, or in the discretion of the court, to an imprisonment for a period of not more than six months. The insurance commissioner shall have authority, in his discretion, to revoke or suspend a license theretofore issued to any agent, solicitor or broker, for a period not exceeding three years, on its being proven to him after a hearing that such agent, solicitor or broker, has knowingly or willfully violated any of the provisions of this act.

SOCIAL INSURANCE INVESTIGATING COMMISSION.

ACT 2196—An act authorizing the governor to appoint a commission to investigate and advise the legislature concerning the adoption of a system of social insurance, and to make a report to the forty-third session of the legislature and making an appropriation therefor.

History: Approved May 14, 1917. In effect July 27, 1917. Stats. 1917, p. 468. Prior act approved May 17, 1915. In effect August 8, 1915. Stats. 1915, p. 473, superseded by present act, which is obsolete by lapsation.

Commission to investigate social insurance.

§ 1. The governor of the state of California is hereby authorized and requested to appoint a commission of seven persons, citizens of this state, to investigate and advise the legislature concerning the adoption of a system of social insurance. The commission shall report to the forty-third session of the legislature the details of any or all branches of a social insurance system it may deem advisable, and may recommend for adoption any measure or measures it deems expedient.

Powers.

§ 2. The commission shall have power to subpoena witnesses and to enforce their attendance at any public hearings that may be held for the purpose of obtaining evidence of conditions bearing upon the establishment of any system of social insurance.

Duty of persons, etc., to supply information.

§ 3. It shall be the duty of every person, firm or corporation employing labor in this state to supply the commission, at its request, with any and all information from the books, reports, contracts, pay rolls, documents or papers of such person, firm or corporation which the commission may require to carry out the purposes of this act.

Traveling expenses. Secretary.

§ 4. The members of the commission shall serve without pay but shall be reimbursed for traveling expenses incurred in connection with the work of the commission. The commission shall have power to employ an executive secretary and expert, clerical and other assistants.

Appropriation. Revolving fund.

§ 5. There is hereby appropriated out of the general fund, not otherwise appropriated, the sum of twenty-two thousand five hundred dollars, or any portion thereof, as may in the judgment of the commission be required for the purposes of this act. The

sum of five hundred dollars of said money may be drawn from the state treasury upon approval of the state board of control without the submission of receipts, vouchers or itemized statements to be used by the commission as a cash revolving fund to facilitate its work.

GUARANTY SURPLUS AND SPECIAL RESERVE FUNDS.

ACT 2197—An act to provide for the establishment and maintenance by fire insurance corporations of guaranty surplus funds and special reserve funds and thereby limiting liability and to provide for the waiver by policyholders of recourse against stockholders of such corporations.

History: Approved May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1378.

Guaranty surplus fund and special reserve fund may be created. Limitation on amount of dividend sum deducted in estimating profits.

§ 1. Every domestic corporation having a capital stock issuing fire insurance policies may at its option create a guaranty surplus fund and a special reserve fund by the adoption of a resolution by its board of directors at a regular meeting, and by filing with the insurance commissioner a copy thereof, declaring their desire and intention to create such funds and to do business under this and the two following sections. The insurance commissioner shall thereupon make or cause to be made a certificate of the result thereof, which shall particularly set forth the amount of surplus funds held by it at the date of the examination, and the same may be equally divided between and set apart to constitute guaranty surplus and special reserve funds to the extent necessary to constitute such two funds. Said certificate shall be recorded in the office of the insurance commissioner. Thereafter all policies and renewals of policies issued by such corporation shall contain a provision that they are issued under and in pursuance of this act, referring to the same by the title of this act, and all such policies and renewals shall be subject to the provisions of this act, and a policyholder, by accepting the policy, becomes bound thereby. After the passage and filing of such resolution, the corporation shall not make, declare or pay in any form any dividend upon its capital stock exceeding seven per centum per annum thereon, and upon the surplus funds to be formed thereunder, until after its guaranty surplus fund and its special reserve fund shall have together accumulated to an amount equal to its capital stock; and until such funds shall together amount to a sum equal to its capital stock, the entire surplus profits of the corporation above such annual dividend of seven per centum shall be equally divided between and be set apart to constitute such guaranty surplus and special reserve funds, which funds shall be held and used as hereinafter provided and not otherwise. Any such corporation which shall declare or pay any dividend contrary to the provisions herein contained, shall be deemed to have forfeited its charter. In estimating the profits of any such corporation for the purpose of making a division thereof between the guaranty surplus fund and the special reserve fund, until such funds shall together amount to a sum equal to its capital stock, there shall be deducted from the gross assets of the corporation, including for the purpose the amount of the guaranty surplus fund and the special reserve fund, the sum of the following items:

1. The amount of all outstanding claims.

2. An amount sufficient to meet the liability of the corporation for the unearned premiums upon its unexpired policies, which shall be at least equal to the unearned premiums on policies having one year or less to run, and a pro rata proportion of the premiums received on the policies having more than one year to run, and shall be known as the reinsurance liability.

3. The amount of its guaranty surplus fund and its special reserve fund.

4. The amount of its capital.

5. Interest at the rate of seven per centum per annum upon the amount of its capital and of such funds for whatever time shall have elapsed since the last preceding cash dividend. The balance shall constitute the net surplus of the corporation subject to the equal division between the funds as herein provided. When the corporation shall notify the insurance commissioner that it has fulfilled the requirements of this section, and that its guaranty surplus fund and its special reserve fund, taken together, equal its capital stock, he shall make an examination of the corporation and make a certificate of the result thereof; and thereafter such corporation may continue out of any subsequent profits of its business, to add to such funds, either the whole or only a part thereof, but when any addition is made to the special reserve fund, an equal sum shall be carried to the guaranty surplus fund.

Investment of funds.

§ 2. Such guaranty surplus fund shall be held and invested by such corporation in the same manner as its capital stock and surplus accumulations, and shall be liable and applicable in the same manner as the capital of the corporation to the payment generally of its losses. Such special reserve fund, until it shall amount to a sum equal to one-half of the capital stock, shall be invested in the same manner as the capital of the corporation, and any additional sum added to such fund shall be invested by the corporation in any securities, in which the corporation is by law authorized to invest its capital or its surplus accumulations, and shall be deposited from time to time, as the same shall accumulate and be invested, with the insurance commissioner. Such special reserve fund shall be deemed a fund to protect such a corporation and its policyholders other than claimants for losses already existing or then occurred in case of any extraordinary conflagration or conflagrations as hereinafter mentioned, and shall not be regarded as any part or portion of the assets of the corporation so as to be liable for any claim for loss by fire or otherwise, except as herein provided.

Waiver of recourse against stockholders.

No corporation, after it has declared its desire and intention, as provided in section one hereof, to create a guaranty surplus fund and a special reserve fund, shall have the right thereafter to insert in its policy a provision to the effect that the insured, by accepting the policy, waives recourse against the stockholders of the corporation, until such corporation has created, as herein provided, a guaranty surplus fund and a special reserve fund each in amount equal to one-half of the par value of its capital stock; but, when it has so done, then it may thereafter insert in any policy it may thereafter issue a provision in red ink to the effect that the insured, by accepting the policy, waives any recourse to its stockholders and agrees, in case of making any claim thereunder, to look solely to the assets and property of the corporation as and to the extent herein provided.

In case of extensive conflagration. Corporation discharged from liability.

§ 3. When any extensive conflagration or conflagrations shall occur whereby the claims upon the corporation shall exceed the amount of its capital stock and of the guaranty surplus fund hereinbefore provided, the corporation shall notify the insurance commissioner of the fact, who shall then make or cause to be made, an examination of the corporation, and shall issue his certificate in duplicate of the result, showing the amounts of capital, of guaranty surplus fund, of special reserve fund, of reinsurance liability, and all other assets. One of such certificates shall be given the corporation, and the other shall be recorded in the office of the insurance commissioner. Such special reserve fund shall be immediately held to protect all policyholders of the cor-

poration other than such as are claimants upon it at the time, or such as become claimants in consequence of such conflagration or conflagrations. The amount of such special reserve fund, and an amount equal to the unearned premiums of such corporation, to be ascertained as hereinbefore provided, shall constitute the capital and assets of such corporation for the protection of policyholders other than such claimants, and for the further conduct of its business. Such certificate of the insurance commissioner shall be binding and conclusive upon all parties interested in the corporation, whether stockholders, creditors or policyholders. Upon the payment to the claimants for losses or otherwise, existing at the time of or caused by such general conflagration or conflagrations, of an amount to which they are respectively entitled in proportion to their several claims, of the full sum of the capital of the corporation and of its guaranty surplus fund, and of its assets, except only such special reserve fund and an amount of its assets equal to the liability of the corporation for unearned premiums, as certified by the insurance commissioner, such corporation shall be forever discharged from any and all further liability to such claimants and to each of them on any policy of insurance issued after the creation as above provided of the special reserve fund in amount equal to one-half of its capital stock.

Transfer of securities in special reserve fund. If guaranty surplus fund reduced. If capital impaired.

The insurance commissioner shall, after issuing such certificate upon the demand of the corporation, transfer to it all such securities as shall have been deposited with him by it as such special reserve fund. If the amount of such special reserve fund shall be less than fifty per centum of the full amount of the capital of the corporation, a requisition shall be issued by the insurance commissioner upon the stockholders to make up the capital to that proportion of its full amount. Any capital so impaired shall be so made up to at least the sum of two hundred thousand dollars. If the corporation, after such requisition, shall fail to make up its capital to at least such amount as herein directed such special reserve fund shall be held as security and liable for all losses occurring upon policies of such corporation after such conflagration or conflagrations. If any amount greater than a sum equal to one-half of its capital stock shall by such corporation, under the provisions of the two preceding sections, have been deposited, as aforesaid, with the insurance commissioner, he shall retain of such securities a sum equal to one-half of the amount he shall so hold thereof in excess of such one-half of the capital stock, and transfer the balance thereof to the corporation as herein provided. The amount so transferred to the corporation shall, from the time of such transfer, if not less than two hundred thousand dollars, constitute the capital stock of the corporation for the further conduct of its business as hereinbefore provided. The sum so retained by the insurance commissioner shall thenceforth constitute the special reserve fund of the corporation, to which additions may be made as herein provided, and shall be held in the same manner, for the same purposes and under the same conditions as the original special reserve fund of the corporation was held. The corporation shall in an annual statement to the insurance commissioner set forth the amount of such special reserve fund and of its guaranty surplus fund. If in consequence of the payment of losses by fires, or of the expenses of the business, or of the interest payable under the provisions hereof to stockholders, or from any cause, the guaranty surplus fund shall be reduced in amount below the amount of the special reserve fund, the directors of the corporation shall have the right, at their option, at the time of making any division of the net profits as herein provided, to carry a larger sum to the guaranty surplus fund than to the special reserve fund; but this privilege shall cease when the two funds are made equal in amount. The policy registers, insurance maps, books of record and other books in actual use by the corporation in its business, are not to

be considered as assets, but shall be held by it for its use in the protection of its policyholders not claimants for losses at the time of such general conflagration. If after the accumulation of such special reserve fund, it shall appear upon examination by the insurance commissioner that the capital of the corporation has, in the absence of any such extensive conflagration, become impaired, he shall order a call upon the stockholders to make up such impairment, and the board of directors may either comply with such order and require the necessary payments of the stockholders, or, at their option, they may apply for that purpose so much of such special reserve fund as will make such impairment good. No corporation doing business under this and the two preceding sections shall insure any larger amount upon any single risk than is permitted by law to a corporation possessing the same amount of capital irrespective of the funds hereinbefore provided for.

LIQUIDATION OF DELINQUENT INSURANCE COMPANIES.

ACT 2199—An act to provide for proceedings against and liquidation of delinquent insurance corporations and associations.

History: Approved April 30, 1919. In effect July 22, 1919. Stats. 1919, p. 265.

Application of act.

§ 1. This act shall apply to all corporations and associations which are subject to examination by the insurance commissioner, or which are doing or attempting to do or representing that they are doing the business of insurance in this state, or which are in the process of organization intending to do such business therein; and the words "corporation" or "corporations" herein shall also include all such associations, as well as all voluntary or unincorporated associations; provided, however, that nothing herein contained shall be construed to affect or to relate to any fraternal benefit society as defined in the act entitled "An act for the regulation and control of fraternal benefit societies." approved May 1, 1911, as amended.

Action by insurance commissioner for order to conduct business of domestic corporation.

§ 2. Whenever any domestic corporation (a) is insolvent; or (b) has refused to submit its books, papers, accounts or affairs to the reasonable inspection of the insurance commissioner, or his deputy or examiner; or (c) has neglected or refused to observe an order of the insurance commissioner to make good within the time prescribed by law any deficiency, whenever its capital, if it be a stock corporation, or its reserve, if it be a mutual corporation, shall have become impaired; or (d) has, by contract of reinsurance or otherwise, transferred or attempted to transfer substantially its entire property or business, or entered into any transaction the effect of which is to merge substantially its entire property or business in the property or business of any other corporation or association without having first obtained the written approval of the insurance commissioner; or (e) is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to the public; or (f) has wilfully violated its charter or any law of the state; or (g) whenever any officer thereof has refused to be examined under oath touching its affairs; or (h) if such corporation be organized under chapter six, division one, part four, title two of the Civil Code, or as a corporation to carry on the business of mutual livestock insurance upon the assessment plan, its condition is found, after examination, to be such that it can not meet the requirements for incorporation and authorization specified in the law relating thereto, the insurance commissioner may apply to the superior court, or any judge thereof, in the county in which the principal office of such corporation is located for an order directing such corporation to show

cause why the insurance commissioner should not take possession of its property, and conduct its business, and for such other relief as the nature of the case and the interest of its policyholders, creditors, and the public may require.

Injunction by court.

§ 3. On such application, or at any time thereafter, such court may, in its discretion, issue an injunction restraining such corporation from the transaction of its business or disposition of its property until the further order of the court. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or direct such insurance commissioner, or his successor in office, forthwith to take possession of the property and conduct the business of such corporation, and retain such possession and conduct such business until, on the application either of the insurance commissioner, or of such corporation, it shall, after a like hearing, appear to the court that the ground for such order directing the insurance commissioner to take possession has been removed and that the corporation can properly resume possession of its property and the conduct of its business.

Liquidation by insurance commissioner.

§ 4. If, on a like application and order to show cause, and after a full hearing, the court shall order the liquidation of the business of such corporation, such liquidation shall be made by and under the direction of such insurance commissioner, and his successors in office, who may deal with the property and business of such corporation in their own names as insurance commissioners or in the name of the corporation, as the court may direct, and shall be vested by operation of law with title to all of the property, contracts and rights of action of such corporation as of the date of the order so directing them to liquidate. The filing or recording of such order in any county recorder's office of the state shall impart the same notice that a deed, bill of sale or other evidence of title duly filed or recorded by such corporation would have imparted. The rights and liabilities of any such corporation, and of its creditors, policyholders, stockholders and members, and of all other persons interested in its assets, shall, unless otherwise directed by the court, be fixed as of the date of the entry of the order directing the liquidation of such corporation in the office of the clerk of the county wherein such corporation had its principal office for the transaction of business upon the date of the institution of proceedings under this section.

Action by insurance commissioner in case of foreign corporations.

§ 5. Whenever any of the grounds of jurisdiction over domestic corporations specified in subdivisions (a), (b), (c), (d), (e), (f) and (g) of section two of this act exist or arise with reference to any corporation incorporated by or existing under the government or laws of any country outside of the United States and authorized to transact the business of insurance and having assets in this state; or whenever any foreign corporation so authorized and having assets in this state has been placed in the hands of a receiver or had its property sequestered in its domiciliary state or country or in any other state or country, the insurance commissioner may apply to the superior court or any judge thereof in the county in which such corporation has its principal office for the transaction of business in this state, for an order directing such corporation to show cause why the insurance commissioner should not take possession of its property and conserve its assets for the benefit of its creditors, and for such other relief as the nature of the case and the interests of its policyholders, creditors, stockholders or the public may require.

Injunction by court.

§ 6. On such application, or at any time thereafter, such court may, in its discretion, issue an injunction restraining such corporation and its officers, agents and

employees from the transaction of its business or disposition of its property until the further order of the court. On the return of such order to show cause, and after a full hearing the court shall either deny the application or direct the insurance commissioner forthwith to take possession of the property and conserve the assets of such corporation, and retain such possession until, on the application either of the insurance commissioner, or of such corporation, it shall, after a like hearing, appear to the court that the ground for such order directing the insurance commissioner to take possession has been removed and that the corporation can properly resume possession of its property and conduct its business. If, on such application, the court shall direct the insurance commissioner to take possession of the property and conserve the assets of such corporation, the rights and duties of the said insurance commissioner with reference to such corporation and its said assets shall be those heretofore exercised by and imposed upon ancillary receivers of foreign corporations in this state.

Appointment of deputies, etc.

§ 7. For the purposes of this act, the insurance commissioner shall have power to appoint, under his hand and official seal, one or more special deputy insurance commissioners, as his agent or agents, and to employ such counsel, clerks and assistants as may by him be deemed necessary, and give each of such persons such powers to assist him as he may consider wise. The compensation of such special deputy insurance commissioners, counsel, clerks and assistants, and all expenses of taking possession of and conducting the business of liquidating any such corporation shall be fixed by the insurance commissioner, subject to the approval of the court, and shall, on certificate of the insurance commissioner, be paid out of the funds or assets of such corporation. During the progress of any proceedings taken under this section, the insurance commissioner, his deputies or any examiner authorized by him and the special deputy insurance commissioner acting for the said insurance commissioner therein shall have all of the powers given to the insurance commissioner, his deputy or any examiner authorized by him, including the power to examine under oath the persons specified in such section, and to compel the production of books and papers as therein provided.

Rules and regulations.

§ 8. For the purposes of this act, the insurance commissioner shall have power, subject to the approval of the court, to make and prescribe such rules and regulations as to him shall seem proper.

Report to legislature on liquidated corporations.

§ 9. The insurance commissioner shall transmit to the legislature, in his biennial report, the names of the corporations so taken possession of, whether the same have resumed business or have been liquidated, and such other facts as shall acquaint the policyholders, creditors, stockholders and the public with his proceedings under this act; and to that end, the special deputy insurance commissioner in charge of any such corporation shall file annually with the insurance commissioner a report of the affairs of such corporation.

Commissioner has powers of receiver.

§ 10. In all cases arising under the provisions of this act where not otherwise provided the powers and duties of the insurance commissioner with relation to the property and assets and business of any corporation placed under his control shall be those heretofore exercised by and imposed upon receivers of corporations within this state.

Service of papers.

§ 11. The order to show cause and the papers upon which the same is made in any proceeding instituted under the provisions of this act shall be served upon the corpora-

tion named in such order in the manner prescribed by law for personal service of summons upon a domestic corporation. When it is satisfactorily proved by affidavit that the officers of the corporation named in the said order to show cause, upon whom service is required to be made as above provided, or, if a Lloyds association or inter-insurance exchange be named in the order to show cause, the duly designated attorney-in-fact, have departed from the state or keep themselves concealed therein with intent to avoid service, such order to show cause may provide for service thereof in such manner as the court or judge by whom the same is made, shall direct.

Transfer of place of business to San Francisco.

§ 12. At any time after the commencement of proceedings under an order of liquidation made pursuant to this section, the said insurance commissioner may remove the principal office of the corporation in liquidation to the city and county of San Francisco. In event of such removal the court shall, upon the application of the insurance commissioner, direct the clerk of the county wherein such proceeding was commenced to transmit all of the papers filed therein with such clerk to the clerk of the county of San Francisco, and the proceeding shall thereafter be conducted in the same manner as though it had been commenced in the city and county of San Francisco.

Repealed. Option of commissioner.

§ 13. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed; provided, however, that it shall be optional with the insurance commissioner in any appropriate case to proceed in the manner herein provided or in accordance with the provisions of section six hundred four of the Political Code.

CHAPTER 166.

INTEREST.

References: Interest on loans, see Kerr's Cyc. Civil Code, §§ 1914, et seq.
Legal rate, see Kerr's Cyc. Civil Code, § 1917.
Usury, see tit. "Usury Law."
See, generally, tit. "Pawnbrokers."

CONTENTS OF CHAPTER.

ACT 2200. RATES OF INTEREST ON LOANS UPON CHATTEL MORTGAGES.

RATES OF INTEREST ON LOANS ON CHATTEL MORTGAGES.

ACT 2200—An act fixing the rates of interest and charges on loans upon chattel mortgages on certain personal property, and prescribing penalties for the violation of the act.

History: Approved March 20, 1905, Stats. 1905, p. 422.

Unconstitutional.—In re Sohneke, 148 Cal. 262, 82 Pac. 956; 7 Am. & Eng. Ann. Cas. 477; 113 Am. St. Rep. 236; 2 L. R. A. (N. S.), 813. See, also, Eaker v. Bryant, 24 Cal. App. 87, 140 Pac. 310.

Compare act of 1905, p. 711, to form corporations to lend money on personal property (Act 1022), limiting the rate of interest on chattel mortgages and declared unconstitutional in the same case. See, also, Act 3434, post.

INTERPRETERS.

See Kerr's Cyc. Penal Code, § 925.

CHAPTER 167.

INTOXICATING LIQUORS.

References: See tits. "Adulteration"; "Wines." Also,
 Administering, see Kerr's Cyc. Penal Code, § 222.
 Adulterated liquors, keeping and sale of, see Kerr's Cyc. Penal Code, §§ 382, 383.
 Bringing into certain state institutions, see Kerr's Cyc. Penal Code, § 171a.
 Sale within mile of camp meeting, see Kerr's Cyc. Penal Code, §§ 304, 305.
 Sale to drunkard, see Kerr's Cyc. Penal Code, § 397.
 Sale on election day, see Kerr's Cyc. Penal Code, § 63b.
 Sale to Indian, see Kerr's Cyc. Penal Code, § 397.
 Sale to infants, see Kerr's Cyc. Penal Code, § 397b.
 Sale between 2 and 6 o'clock a. m., see § 397c.
 Sale of in state capitol or grounds thereof, and other state and federal institutions and buildings, see Kerr's Cyc. Penal Code, § 172.
 Theatre, employing women to sell, at, see Kerr's Cyc. Penal Code, § 303.

CONTENTS OF CHAPTER.

- ACT 2213. COLLECTION OF ACCOUNTS FOR LIQUOR.
 2214. SALE TO PERSON INORDINATELY ADDICTED TO USE.
 2222. SALE WITHIN ONE MILE OF MENDOCINO STATE HOSPITAL.
 2223. SALE OF WITHIN ONE MILE OF COLLEGE CITY.
 2224. SALE NEAR CONSTRUCTION CAMP.
 2224a. SALE AT PUBLIC SCHOOL HOUSE.
 2225. "WYLLIE LOCAL OPTION LAW."
 2226. PROHIBITION ENFORCEMENT ACT.
 2227. BUILDING NUISANCE ABATEMENT ACT.

COLLECTION OF ACCOUNTS FOR LIQUOR.

ACT 2213—An act to prohibit the collection of accounts for liquors sold at retail.

History: Approved March 20, 1874, Stats. 1873-74, p. 509. Prior act of April 21, 1858, Stats. 1858, p. 193, superseded by present act.

Invalid consideration.

§ 1. The purchase of, or the sale and delivery of any spirituous or malt liquors, wine, or cider, by retail, or by the drink, is hereby declared to be an invalid consideration for any promise to pay, or assumpsit of account therefor, when the amount of such account or demand exceeds five dollars.

Judgment.

§ 2. No court shall, in any action at law, render judgment for a greater amount than five dollars, for the sale at retail, or by the drink, of any spirituous or malt liquors, wine, or cider, together with costs.

§ 3. Nothing in this act shall be construed to affect in any manner debts contracted prior to its passage.

1. **Construed and applied—Sales "by the drink"—"Sales by retail."**—The act is not to be construed as making sales "by the drink" synonymous with or explanatory of "sale by retail," by reason of the use of the disjunctive "or."—*Bettencourt v. Sheehy*, 157 Cal. 698, 109 Pac. 89.

2. **Same—Same—Same.**—The act, by its terms, clearly applies to both sales "by the drink" and sales "at retail."—*Bettencourt v. Sheehy*, 157 Cal. 698, 109 Pac. 89.

3. **Same—Sales in gallon and half gallon lots.**—Where sales of liquor are in gallon and half gallon lots, the amount of recovery is not limited by the act.—*Bettencourt v. Sheehy*, 157 Cal. 698, 109 Pac. 89.

4. **Words and phrases—"Retail"—Statute in pari materia.**—The word "retail" in this

act is not to be construed as it would be in reference to sales of merchandise, but as it would in § 3381, Political Code, regulating "retail liquor licenses," which is in pari materia with this act, and shows clearly that the phrase sale of liquor "at retail" means sales "in less quantities than one quart."—*Bettencourt v. Sheehy*, 157 Cal. 698, 109 Pac. 89.

Recovery for intoxicating liquors sold contrary to law.—Can not be had.—*Iowa*.—*Taylor v. Pickett*, 52 Iowa 467, 3 N. W. 514; *Quigley v. Duffey*, 52 Iowa 610, 3 N. W. 659; *Gipps Brewing Co. v. De France*, 91 Iowa 108, 58 N. W. 1087; *Fred Miller Brewing Co. v. Stevens*, 102 Iowa 60, 71 N. W. 186. *Mich.*—*Loranger v. Jardine*, 56 Mich. 518, 23 N. W. 203. *Minn.*—*Theo. Harnam Brewing Co. v*

Young, 76 Minn. 246, 79 N. W. 111, 396. Neb.—Tredway v. Riley, 32 Neb. 495, 49 N. W. 263; Storz v. Finklestein, 46 Neb. 577, 65 N. W. 195.

Compare: Wagner v. Breed, 29 Neb. 720, 46 N. W. 286.

As to recovery for intoxicating liquors, destroyed as a nuisance, see 36 L. R. A. 554.

Same—Sold for use or sale in a brothel.—See 9 L. R. A. 506 and note by Robert Desty.

Same—Shipped into prohibition district in violation of local laws.—See Iowa.—Wind v. Iler, 93 Iowa 316, 61 N. W. 1001. Mich.—Gambis v. Sutherland's Estate, 101 Mich. 355, 59 N. W. 652. Fed.—Kohn v. Melscher, 43 Fed. 641, 10 L. R. A. 439.

SALE TO PERSON INORDINATELY ADDICTED TO USE.

ACT 2214—An act to prevent the sale of intoxicating liquors to persons addicted to the inordinate use thereof.

History: Approved March 19, 1889, Stats. 1889, p. 352; amended April 10, 1915. In effect August 8, 1915, Stats. 1915, p. 49.

Penalty for furnishing liquors to person inordinately addicted to use thereof.

§ 1. Any person who, after receiving notice that a person named in said notice is addicted to the inordinate use of intoxicating liquors, should the person named in said notice be so addicted, shall thereafter within a period of twelve months furnish to said person so addicted to the inordinate use of intoxicating liquors, any spirituous liquors, wines, or intoxicating or malt liquors, shall be guilty of a misdemeanor and punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding two hundred dollars, or by both such fine or imprisonment. Said notice shall be in writing and may be given by any adult member of the family of said person so addicted to the inordinate use of intoxicating liquors, or by any adult relative of said person so addicted to the inordinate use of said intoxicating liquors, or by any peace officer or district attorney. [Amendment of April 10, 1915. In effect August 8, 1915. Stats. 1915, p. 49.]

Not to apply to physicians.

§ 2. The provisions of this act shall not prohibit any regularly licensed physician from furnishing or prescribing said liquors in case of sickness.

Act takes effect when.

§ 3. This act shall take effect from and after its passage.

SALE NEAR CONSTRUCTION CAMP.

ACT 2224—An act to prohibit the sale of intoxicating liquors within a certain distance of any camp or assembly of men, numbering twenty-five or more, engaged upon the construction, repair or operation of any public work, improvement, or utility.

History: Approved March 25, 1909, Stats. 1909, p. 722.

Sale of liquors near construction camps.

§ 1. It shall be unlawful for any person to sell, keep for sale, or give away, any spirituous, vinous, malt or mixed intoxicating liquors at any place situated more than one mile outside the limits of an incorporated city or town, and within four miles of any camp or assembly of men, numbering twenty-five or more, engaged upon, or in connection with, the construction, repair or operation of any public or quasi-public work, improvement or utility; provided, however, that nothing in this section contained shall be deemed to apply to the sale, keeping for sale, or disposal of any such liquor at a licensed saloon or liquor-store which shall have been established, or at a licensed saloon or liquor-store which shall be maintained, at the time this act takes effect, upon the same premises where a licensed saloon or liquor-store shall have been established, at least six months prior to the establishment of such camp or assembly of men, or to the sale, keeping for sale, or disposal of any such liquors at any winery, licensed brewery or distillery, where the same is manufactured.

Misdemeanor.

§ 2. Any person violating any of the provisions of this statute shall be guilty of a misdemeanor, and, for each offense, shall be punished by a fine not exceeding five hun-

dred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Act takes effect when.

§ 3. This act shall take effect immediately.

1. Constitutional law.—Act held constitutional.—Ex parte King, 157 Cal. 161, 106 Pac. 579. Also Ex parte Young, 154 Cal. 317, 22 L. R. A. (N. S.) 330, 97 Pac. 822.

2. Same—Classification — Permanent and itinerant saloon.—The criterion adopted by the legislature of a six months' existence to entitle a saloon to the character of permanency was reasonable.—Ex parte King, 157 Cal. 161, 106 Pac. 578. Also, Ex parte Young, 154 Cal. 317, 22 L. R. A. (N. S.) 330, 97 Pac. 822.

3. Same — Same — Same — The design of the legislature was to protect the public work and the men engaged therein from itinerant saloon, and the classification adopted by which the act was made applicable only to that class was a reasonable

one.—Ex parte King, 157 Cal. 161, 106 Pac. 578. Also, Ex parte Young, 154 Cal. 317, 22 L. R. A. (N. S.) 330, 97 Pac. 822.

4. Same—License.—The act is valid and the board of supervisors have no power to license a saloon in violation of its provisions.—Great Western Power Co. v. Supervisors, 21 Cal. App. 146, 131 Pac. 88.

5. Same—Uniform operation of act.—The proviso of section 1 of the act exempting from its operation certain business established six months prior to establishment of camp, does not affect the uniform operation of the act, or render it violative of section 11, article 1 of the constitution.—Ex parte King, 157 Cal. 161, 106 Pac. 578. Also, Ex parte Young, 154 Cal. 317, 22 L. R. A. (N. S.) 330, 97 Pac. 822.

PUBLIC SCHOOLHOUSE ACT.

ACT 2224a—An act prohibiting the sale, gift or delivery of intoxicating liquor at public schoolhouses, and prescribing penalties for the violation of any provision hereof.

History: Approved April 1, 1915. In effect August 8, 1915. Stats. 1915, p. 20.

Sale of liquors at public schools prohibited.

§ 1. Any person, firm, association or corporation that sells, gives or delivers to any person any intoxicating liquor at any public schoolhouse or upon any portion of the grounds thereof, is guilty of a misdemeanor and shall be punished by a fine not to exceed five hundred dollars or by imprisonment in a county jail not to exceed six months, or by both such fine and imprisonment.

Penalty.

§ 2. Any person, firm, association or corporation convicted of the violation of any provision of this act shall, for a period of one year from and after such conviction, be barred from having or receiving any privilege accorded by that certain act entitled "An act providing for the free use of all public schools and property, and to establish a civic center at each and every public schoolhouse in the state of California, and to provide for the maintenance, conduct and management of the same," approved June 6, 1913.

"WYLLIE LOCAL OPTION LAW."

ACT 2225—An act to provide for the regulation of the traffic in alcoholic liquors by establishing local option; authorizing the filing of petitions praying for elections to vote upon the question whether the sale of alcoholic liquors shall be licensed within the territory described in such petitions; providing for the calling and holding of such elections; making it the duty of the proper governing body to declare such territory to be no-license territory unless a majority of votes is cast in favor of license; providing that no licenses, permits or other authority to sell or distribute alcoholic liquors in no-license territory shall be granted; forfeiting and declaring void all such licenses or permits theretofore issued and in force; making it a penal offense to sell, give away or distribute alcoholic liquors within such territory, with certain exceptions; and providing penalties for such offenses.

History: Approved April 4, 1911, Stats. 1911, p. 599.

Petition for election on local option question.

§ 1. Qualified electors of any incorporated city or town, or of that portion of any supervisorial district not included within the boundaries of any incorporated city or town, numbering not less than twenty-five per cent of the number of votes cast for all candidates for governor in the territory described in the petition, at the last preceding election for governor of the state, may petition the city council, board of trustees or other legislative body of such city or town or the board of supervisors of the county in which such supervisorial district is situated, to call an election to vote upon the question, whether the sale of alcoholic liquors shall be licensed in such city, town, or supervisorial district outside of incorporated cities and towns.

Form of petition.

§ 2. Such petition shall be substantially in the following form:

To the.... (here insert the name of the legislative or governing body of the district: city council, board of trustees, board of supervisors, or whatever it may be).... of the (here insert description and name of the city, town or county, as the case may be)

The undersigned, residents and qualified electors of the.... (here insert description and name of the city, town, or supervisorial district outside of incorporated cities and towns, as the case may be) respectfully petition that you cause to be submitted, in the manner provided by law, to the voters of this (here insert "city," "town," or "supervisorial district outside of incorporated cities and towns," as the case may be) the proposition, "Shall the sale of alcoholic liquors be licensed in this (here insert 'city,' 'town,' or 'supervisorial district outside of incorporated cities and towns')?"

Name of Signer.	House number.	Street.	Postoffice.	Date of signing.	Precinct.
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Petitioner's signature. Sworn statement.

§ 3. Each petitioner shall, in addition to signing his name to such petition, write opposite his name thereon his place of residence, giving street and number, if any, and such signing, to be valid, must have been done not more than sixty days before the filing of said petition. There shall be attached to each sheet of such petition a statement, signed and sworn to by a resident of the district described in such petition, that the signatures on the said sheet were made in his presence, by the persons whose names purported to be signed thereto, within the time as provided in this act, and that to the best of his knowledge and belief the persons whose names are signed thereto were, at the time of signing the same, qualified electors in the district described in said petition. No names shall be withdrawn from such petition after the same is filed.

Examination of petition. Notice to person filing. Call election.

§ 4. Upon the filing of said petition the clerk of the body to which it is addressed shall forthwith examine it, and from the great register ascertain whether or not said petition is signed by the requisite number of qualified electors of the territory described therein, and, if necessary, he shall be allowed extra help for that purpose, and within ten days from the date of filing such petition he shall certify in writing the result of such examination and shall file this certificate with the petition. If the clerk finds the number of qualified signers to be insufficient, he shall immediately send a written notice to the person who filed the petition, stating the number of qualified signers he has found thereon, and that they are not sufficient; and the petition may be amended within ten days from the date of such notice by the filing of a supplementary petition. The clerk shall within ten days after such amendment make like examination and cer-

tification of the amended petition. If it is still found insufficient he shall notify the person who filed the petition of that fact, without prejudice, however, to the filing of a new petition to the same effect.

If the petition shall be certified as sufficient, the legislative or governing body having jurisdiction over the territory described therein shall, within the time prescribed herein, call an election to be held in such territory to vote upon the question whether the sale of alcoholic liquors shall be licensed therein.

Provisions governing election.

§ 5. Such election shall be called and held in the manner provided by law; and all the provisions of law, penal or otherwise, applicable to a general state election shall apply to special elections held, under this act, in territory outside of incorporated cities and towns; while all the provisions of law applicable to municipal elections shall apply to special elections held, under this act, in incorporated cities and towns.

Question may be submitted at general election. Special election not oftener than once in two years.

§ 6. If said petition shall be certified as sufficient within six months and not less than forty days before the holding of the next general state or general municipal election within the territory therein described, such question shall be submitted at said general state or general municipal election; otherwise a special election to vote upon the question shall be called to be held within not less than thirty nor more than sixty days after the petition has been certified as sufficient, provided, that no election under this act shall be held within two years of any previous election held under this act within the same territory.

License question on ballots of general election.

§ 7. If said petition is filed with the governing body of an incorporated city or town, and is certified as sufficient within six months and not less than forty days before the holding of the next general state election, said body shall forthwith request the board of supervisors of the county in which such city or town is located to place the license question on the ballots for all voting precincts within such city or town at the next general state election, in the form provided in section 8 hereof. It shall be the duty of said board of supervisors to comply with such request, and immediately after canvassing the returns of such election to report the vote for and against license to the governing body of such city or town, and it shall enter the same upon its minutes, making record of the date of the election and of the number of votes for and against license.

Ballot.

§ 8. The form of ballot shall be as follows:

Shall the sale of alcoholic liquors be licensed in this..... (Here insert "city," "town," or "supervisory district outside of incorporated cities and towns," as the case may be).....	Yes.	
	No.	

To vote for license electors they shall stamp a cross in the square opposite the word "Yes" on the ballot; and to vote against license they shall stamp a cross in the square opposite the word "No" thereon.

Contest of election.

§ 9. Any elector of the territory in which an election under this act is held may contest such election for malconduct on the part of an election board or of any member thereof or on account of illegal votes. Such contest shall be subject to all the provisions of law relating to the contesting of elections, so far as the same may be applicable; provided, that while said contest is pending, and until the same is decided, the force and effect of said election shall be the same as if it had not been contested.

No-license territory.

§ 10. Unless a majority of the votes cast on this question at such election are in favor of license, the territory described in the petition shall be no-license territory on and after ninety days from the date of said election; and the city council, board of supervisors or other governing body having jurisdiction thereof, shall thereupon make an entry on its records declaring that such described territory is no-license territory; but a failure to make such entry shall not affect the result or effect of such election.

In any prosecution under this act the original record in the minutes of said governing body of the number of votes cast at such election, or a copy thereof certified by the clerk of said governing body, shall be prima facie evidence that the territory in which such election was held is no-license territory; provided, said record shows that at said election there was not a majority vote in favor of license.

Election necessary to change to license territory.

§ 11. When any city, town, or supervisorial district outside of incorporated cities and towns, becomes no-license territory it shall remain such until at a subsequent election, called, as herein provided, to vote on the question of whether the sale of alcoholic liquors shall be licensed therein, a majority of the votes cast on that question are in favor of license. It shall thereupon cease to be no-license territory within the meaning of this act.

Licenses in such territory become void.

§ 12. No license, permit or other authority to sell or distribute alcoholic liquors in no-license territory shall be issued except to registered pharmacists and to manufacturers of such liquors, and all such existing licenses or permits, except those of registered pharmacists and manufacturers, shall immediately become void when the territory becomes no-license territory; but all holders of such licenses, permits or other authority shall, upon a surrender thereof, be entitled to a rebate of the proportion of license fee paid therefor for the unexpired term for which the same was granted.

Unlawful to sell liquor.

§ 13. It shall be unlawful for any person, corporation, firm, company, association or club, as principal, agent, employee or otherwise, within the boundaries of any no-license territory to sell, furnish, distribute or give away any alcoholic liquors except as provided in section 16 hereof.

Unlawful to conduct place where liquor is sold.

§ 14. It shall be unlawful for any person, corporation, firm, company, association or club, within any no-license territory to keep, conduct or establish, as principal or agent, any place where alcoholic liquors are sold, served or distributed, or are kept for the purpose of sale or distribution, except as provided in section 16 hereof; and every day that such place shall be kept, established or conducted shall constitute a separate offense.

Unlawful to solicit orders for liquor.

§ 15. It shall be unlawful for any person, corporation, firm, company, association or club, within any no-license territory, to solicit orders, take orders or make agreements for the sale or delivery of alcoholic liquors; provided, that this shall not apply to the taking of such orders from a registered pharmacist at his place of business, or to the taking of orders for alcoholic liquors on the premises where stored or manufactured, under the conditions stated in section 16 hereof.

What acts not unlawful.

§ 16. Nothing in this act shall be interpreted as rendering it unlawful to keep alcoholic liquors for distribution, or to sell or distribute such liquors, in no-license territory in the manner and for the purposes in this section provided:

First—The serving of such liquors by any person at his own home to members of his family or to his guests, as an act of hospitality, when no money or thing of value is received in return therefor, and when said home is not a place of public resort;

Second—The serving or dispensing of such liquors by any registered pharmacist for bona fide medicinal purposes only, upon a prescription issued, signed and dated by a duly licensed physician; provided, that the name of the person applying for the prescription and the name of the person for whose use the prescription is made shall be inserted therein by the physician issuing the same at the time the prescription is made or given, and that not more than one sale or furnishing is made upon such prescription, and that all such prescriptions are kept on file at the place of business of such pharmacist, open to public inspection; provided, further, that no such liquors so dispensed shall be drunk upon the premises where dispensed;

Third—The selling of alcohol by a registered pharmacist for other than beverage purposes; provided, that such pharmacist shall keep a record of such sales in which shall be entered the date of the sale, the quantity sold, the purpose for which purchased, and the signature of the person purchasing the same; such record to be open to public inspection;

Fourth—The selling of wine by a regularly licensed pharmacist for sacramental purposes only; provided, such wine is sold only to a regularly ordained minister of some religious denomination, or upon the written order of the local official board or governing body of a religious organization; provided, further, that such pharmacist shall keep a record of such sales in which shall be entered the date of the sale, the quantity sold, and the signature of the person purchasing the same; such record to be open to public inspection;

Fifth—The distributing of wine at the sacramental service of any religious organization;

Sixth—The keeping of alcoholic liquors at cellars, vaults or warehouses, receiving orders at such cellars, vaults or warehouses for said liquors, and the shipping of the same therefrom; provided, said liquors are not distributed or delivered to any person or place in no-license territory within the county in which such cellars, vaults or warehouses are located, except when delivered to a common carrier for shipment to a place outside of said no-license territory;

Seventh—The keeping of alcoholic liquors on the premises where manufactured, receiving orders at said premises for such liquors, and the shipping of the same from such premises; provided, said liquors are not distributed or delivered in no-license territory within the county in which such premises are located in quantities of less than two gallons, and are not delivered to any person or place in such territory within said county except as follows: (a) to a common carrier for shipment to a place outside of said no-license territory; (b) to other manufacturers of alcoholic liquors at the premises where they manufacture such liquors; (c) to cellars, vaults or warehouses where such liquors are stored or distributed as provided in the sixth paragraph of this section (d) to any person at his or her permanent residence; (e) to registered pharmacists at their place of business.

Physician may not prescribe for person not in actual need.

§ 17. No physician shall give to, or write for, any well person, or person not in actual need of said liquor as a medicine, any prescription for alcoholic liquors, either separately or compounded with other ingredients; and any physician who shall assist

in violating or evading any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be liable to the penalty provided in section 19 hereof.

Pharmacists to file monthly statements of liquors sold, etc.

§ 18. On or before the tenth day of each month every pharmacist in no-license territory who keeps or dispenses alcoholic liquors, shall file with the county clerk of the county, wherein his place of business is located, a sworn statement of the kind and quantity of such liquors he has received during the previous month, showing the date or dates on which it was received and from whom purchased; also a sworn statement of the liquors he has sold or dispensed during said previous month, showing the kind and quantity of liquors in each sale, the date, name of the purchaser, and, in case it was dispensed on a prescription, the name of the physician who issued the prescription. These statements shall be kept on file by the county clerk for at least two years, open to public inspection. Any pharmacist in no-license territory failing to file statements as herein provided, or filing false statements, shall be guilty of a misdemeanor, and upon conviction thereof shall be liable to the penalty provided in section 19 hereof.

Penalty for violation.

§ 19. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding six hundred dollars, or by imprisonment in the county jail not exceeding seven months, or by both such fine and imprisonment; but any person found guilty of violating any of the provisions of this act, by conviction for an offense committed after a previous conviction under this act, shall be punished by a fine not exceeding six hundred dollars nor less than one hundred dollars, and by imprisonment in the county jail not exceeding seven months, nor less than one month.

Places where liquor is sold in no-license territory declared nuisance. Right of search.

§ 20. All places where alcoholic liquors are sold or distributed, or are kept for sale or distribution, in violation of any of the provisions of this act, are hereby declared to be common nuisances, and shall be abated as such, and it shall be the duty of the district attorney to take action to abate such nuisances. It shall be the duty of the sheriff and any other peace officer having jurisdiction within any no-license territory to put persons suspected of violating any of the provisions of this act under police surveillance, and to use all legal means in detecting and convicting persons violating any of the provisions of this act. The right of search as given in chapter III of part II of title XII, of the Penal Code of the state of California, is hereby made applicable to all places where there is reasonable cause to believe any provision of this act is being violated. And all liquors taken from places operated or conducted in violation of the provisions of this act shall, upon conviction of such person or persons from whom such liquor has been taken, be destroyed upon order of the court in which such conviction has been had.

"Alcoholic liquors" defined.

§ 21. The term "alcoholic liquors," as used in this act, shall include spirituous, vinous and malt liquors, and any other liquor or mixture or liquors which contains one per cent, by volume, or more, of alcohol, and which is not so mixed with other drugs as to prevent its use as a beverage.

Police powers not limited.

§ 22. Nothing in this act shall be construed as putting any limitations, except such as are positively stated herein, upon the police powers now possessed by cities, towns and counties.

I. CONSTITUTIONALITY.

- 1-3. Delegation of legislative power.
- 3a. Same—Suspension of general laws.
- 3b. Encouragement of wine grape growing does not affect prohibition of act.
4. Unreasonableness.
5. Legislative power—Supervisory districts local option units.
6. Expression of legislative policy—Majority for license.
7. Uniformity of operation.
8. Grant of police power to electors direct—Not a delegation of legislative power.
9. Initiative not impaired.
10. Exercise of legislative power by initiative.
- 11-13. General law.

II. CONSTRUCTION AND APPLICATION.

14. Intention of act—No intention to interfere with sale of non-intoxicating liquors.
15. Same—Subdivisions to vote separately.
- 16, 17. Alcoholic content as test of intoxicating character.
18. Acts declared unlawful in section 15.
19. Distribution in no license territory.
20. Good faith of defendant not a defense.
21. Sale not purchase prohibited.
22. "Furnishing" liquor — Title of "Wyllie act" broad enough to cover.
23. Use at private residence—Ultimate destination not original sale.
24. Constitutional power of cities and counties not limited.
- 25-28. Conflict with county wide ordinance.
29. County ordinance not conflicting.
30. Supersedes county ordinance.
- 31-33. Exercise of constitutional power by municipality.
- 34, 35. Police power of municipality is not suspended or impaired.

III. PROCEDURE.

36. Petition—Clerk's certificate final.
- 36a. Equity jurisdiction of superior court for fraudulent acts in signatures to petition.
37. Election—Filing clerk's certificate.
38. Same—County prohibiting ordinance.
39. Same—Mandamus to compel rescinding of order.
40. Same—Premature declaration of "no license" territory.
41. Same—Presidential primary not a general election.
42. Election contest—Jurisdiction of superior court.
43. Election establishes status.

IV. EFFECT OF ADOPTION OF "NO LICENSE."

44. Power of board of supervisors.
45. Clubroom in "no license" territory.
46. "No license" territory—Solicitation for household use.
47. Solicitation of orders in "no license" territory.
48. Soliciting in "no license" territory.
49. Soliciting orders by mail—Venue.

50. Soliciting orders in "no license" territory for delivery outside.
51. Purchase outside, and bringing into "no license" territory, not prohibited.
52. Delivery in "no license" territory.

V. TRIAL. PLEADING. PRACTICE.

53. Continuance—Testimony of absent witness.
54. Complaint—Statement negating excepted classes not essential.
55. Information—Allegation of alcoholic content not necessary.
56. Same—"Sell and furnish."
- 57-61. Same—Sufficiency of.
62. Same—Failure to designate supervisory district.
63. Same—Averment as to "no license" character of territory necessary.
64. Indictment—Demurrer.
65. Same—Construed as charging "sale" only.

VI. EVIDENCE.

- 66-68. Proof of "no license" character of territory essential.
- 69, 70. Same—Prior sales.
71. Same—Character of liquor.
72. Same—Federal liquor license.
73. Same—Record of proceedings forming "no license" territory.
74. Same—Testimony of county clerk.
75. Same—Intent is immaterial.
76. Expert evidence as to character of liquor.
77. Judicial notice as to intoxicating character of wine.
78. Sale, not mere delivery.
- 79-82. Sufficiency of evidence to sustain conviction.

VII. INSTRUCTIONS.

83. Implied intent.
84. Possession of federal liquor license.
- 85, 86. Alcoholic content of liquor.
- 87, 88. Good faith of defendant.
- 88a. Giving away liquors.
89. Non-prejudicial error.

VIII. JUDGMENT.

90. Fine and imprisonment.

IX. WORDS AND PHRASES.

91. Definition of "alcoholic"—Rule of ejusdem generis.
92. "Solicit."
93. "Year."

I. CONSTITUTIONALITY.

1. Delegation of legislative power.—The Wyllie act is not unconstitutional as calling for the exercise of legislative functions by the voters of the districts, but such voters merely fix their administrative status.—Matter of Ellsworth, 165 Cal. 677, 684, 133 Pac. 272.

2. The electors exercise no legislative function under the Wyllie act, but merely determine whether they will avail themselves of the prohibitions of the act.—Matter of Ellsworth, 165 Cal. 677, 684, 133 Pac. 272.

3. The power to make laws conferred by

the constitution on the legislature can not be delegated by the legislature to the people of the state or to any portion of the people, but this does not apply to a statute which is made to depend upon the happening of a subsequent event as, for example, in the case of the local option law, upon the vote of the people specially interested.—Ex parte Beck, 162 Cal. 701, 704, 124 Pac. 543.

3a. Same—Suspension of general laws.—The local option act itself, and not the vote of the people, has the effect of suspending such general laws as the municipal corporation act, and county government act, as to the licensing and regulating of the sale of alcoholic liquors.—Ex parte Beck, 162 Cal. 701, 711, 124 Pac. 543.

3b. Encouragement of wine grape growing, does not affect prohibition of act.—Notwithstanding the legislative policy of the state of California to foster and encourage the growing of wine grapes and manufacture of wines therefrom, the board of supervisors of any county, in the exercise of its police power, may impose upon the sale within the county of vinous or other alcoholic liquors, any restrictions which are not in conflict with general laws; or it may prohibit such sale altogether.—In re Coombs, 169 Cal. 484, 490.

4. Unreasonableness.—The local option law is not invalid either on the ground of unreasonableness or that it involves the delegation of its power by the legislature.—Ex parte Beck, 162 Cal. 701, 708, 124 Pac. 543; In re Anixter, 22 Cal. App. 117, 134 Pac. 193.

5. Legislative power—Supervisory districts, local option units.—The legislature was authorized to declare a supervisory district a local option district notwithstanding the fact that it is not a political subdivision of the state.—Ex parte Beck, 162 Cal. 701, 710, 124 Pac. 543.

6. Expression of legislative policy—Majority for license.—It is no legal objection to the validity of the act that a majority of the votes cast must be in favor of the traffic in order to authorize it, the adoption of the majority vote being purely an expression of legislative policy.—Ex parte Beck, 162 Cal. 701, 712, 124 Pac. 543.

7. Uniformity of operation.—The act is uniform in operation although the traffic in intoxicating liquors may be allowed in some districts and prohibited in others, as the electors may indicate their desire.—Ex parte Beck, 162 Cal. 701, 712, 124 Pac. 543.

8. Grant of police power to electors direct—Not a delegation of legislative power.—The "Wyllie act" grants to the electors themselves the power which is granted to counties, cities, towns and townships by section 11, article XI, of the constitution, to deal with the same or similar questions, through their governing bodies, and is not a delegation of legislative power.—In re Anixter, 22 Cal. App. 117, 134 Pac. 193.

9. Initiative not impaired.—The right to legislate by initiative is not impaired by the circumstance that the voting body in-

cludes some electors residing in territory that will not be affected by the enactment.—Crippen v. Farrier, 166 Cal. 69, 71, 134 Pac. 1139.

10. Exercise of police power by initiative.—The police power over the sale of intoxicating liquors may be exercised as well by the initiative as by the legislative bodies.—Crippen v. Farrier, 166 Cal. 69, 71, 134 Pac. 1139.

11. General law.—The "Wyllie act" is a general law within the meaning of section 11, article XI, of the constitution.—In re Zany, 20 Cal. App. 360, 129 Pac. 295.

12. The "Wyllie act" is a general law in the truest sense.—In re Anixter, 22 Cal. App. 117, 134 Pac. 193.

13. The local option act is a general law, and is no less a general law on the ground, if true, that it does not operate in cities having freeholder charters.—Ex parte Beck, 162 Cal. 701, 711, 124 Pac. 543.

II. CONSTRUCTION AND APPLICATION.

14. Intention of act—No intention to interfere with sale of non-intoxicating liquors.—The legislature did not intend, in the passage of the "Wyllie act" to make it unlawful to sell non-intoxicating liquors, nor to contraband the traffic in spirituous vinous or malt liquors possessing no intoxicating quality.—People v. Strickler, 25 Cal. App. 60, 142 Pac. 1121.

15. Subdivisions to vote separately.—The "Wyllie act" intended to permit the various subdivisions of a county to vote separately on the subject of the liquor traffic, unaffected by the vote of other subdivisions.—In re Zany, 20 Cal. App. 360, 129 Pac. 295.

16. Alcoholic content as test of intoxicating character.—Alcoholic content of beer as establishing its character as an intoxicating liquor.—Jacob Hoffman Brewing Co. v. McElligott, 259 Fed. 321.

17. Alcoholic content as test of intoxicating character.—Jacob Ruppert v. Caffey, 251 U. S. 264, 64 L. ed. —, 40 Sup. Ct. 138.

18. Acts declared unlawful in section 15.—Three acts are declared unlawful in section 15 of the local option law of 1911, i. e., soliciting orders, taking orders, and making agreements for the sale or delivery of alcoholic liquors, and the words "for sale or delivery qualify all these acts."—People v. Winkler, 174 Cal. 133, 134, 162 Pac. 109.

19. Distribution in "no license" territory.—One who, by any means or method, or in any manner, gives, furnishes or distributes intoxicating liquors in "no license" territory to other persons, is guilty of a violation of the "Wyllie act."—People v. Bliss (Cal. App.), 182 Pac. 63.

20. Good faith of defendant not a defense.—It is no defense to a prosecution under the "Wyllie act" for selling alcoholic liquor in "no license" territory that defendant believed in good faith that the liquor contained less than one per cent alcohol by volume.—People v. Bickerstaff (Cal. App.), 190 Pac. 656.

21. Sale, not purchase, prohibited.—The local option act does not prohibit the pur-

chase of alcoholic liquors, but only the sale.—*People v. Winkler*, 174 Cal. 133, 136, 162 Pac. 109.

22. "Furnishing" liquor.—Title of "Wyllie act" is broad enough to cover the act of "furnishing" liquor within no license territory.—*People v. Joy*, 30 Cal. App. 36, 157 Pac. 507.

23. Use in private residence — Ultimate destination, not original sale.—Under paragraph 7 of section 13 of the "Wyllie act," the provision as to the use of liquor at a private residence refers to its ultimate destination and not to its original sale.—*Dini v. Byrnes*, 35 Cal. App. 112, 169 Pac. 411; *People v. Allen*, 37 Cal. App. 180, 174 Pac. 374; *People v. Tinney*, 37 Cal. App. 811, 175 Pac. 17; *People v. Epperson*, 38 Cal. App. 486, 176 Pac. 702.

24. Constitutional power of cities and counties not limited.—The police power of a city or county, and the authority thereunder to restrict or prohibit the sale of liquor are not limited by the fact that at a prior election held within two years under the local option law, a majority of the electors of the city or of one or more supervisorial districts of the county, may have voted in favor of license.—*Crippen v. Farrier*, 166 Cal. 69, 71, 134 Pac. 1139.

25. Conflict with county wide ordinance.—Where under the "Wyllie act," some districts in a county had voted "wet" and others had voted "dry," a county wide ordinance adopted by a county wide vote providing for a county wide regulation of the liquor traffic must necessarily conflict with the "Wyllie act."—*In re Zany*, 20 Cal. App. 360, 129 Pac. 295.

26. County ordinance conflicting with the "Wyllie act" is unconstitutional under section 11, article XI, of the constitution, which provides the counties may make and enforce local police regulations not in conflict with general law.—*In re Zany*, 20 Cal. App. 360, 129 Pac. 295.

27. A county ordinance which prescribes a maximum penalty of a fine of six hundred dollars and seven months' imprisonment is not in conflict with the local option act.—*In re Isch*, 174 Cal. 180, 184, 162 Pac. 1026; *In re Waite*, 174 Cal. 813, 162 Pac. 1028.

28. A county ordinance regulating the sale of alcoholic liquors in the county is not invalid because it may provide a different scheme for local option from that provided by the "Wyllie act," in view of the fact that that act only limits the powers of boards of supervisors in territory voted "dry," and the powers of the supervisors in other parts of the county is undiminished.—*In re Coombs*, 169 Cal. 484, 491, 147 Pac. 131.

29. County ordinance not conflicting.—An ordinance of the town of Winters making it unlawful "to solicit orders, take orders, or make agreements for the sale or delivery of any intoxicating liquors," within that town, is not in conflict with the "Wyllie act."—Application of *Anixter*, 166 Cal. 762, 763, 138 Pac. 353.

30. The act supersedes a county ordi-

nance prohibiting the sale of liquor.—*In re Lieritz*, 166 Cal. 298, 299, 135 Pac. 1129.

31. Exercise of constitutional power by municipality.—Where the "Wyllie act" has not been invoked and adopted by a town, that town may, under the direct grant of section 11, article XI, of the constitution, forbid the solicitation of orders for intoxicating liquors within its limits.—*In re Anixter*, 22 Cal. App. 117, 134 Pac. 193.

32. The "Wyllie act" was not designed by the legislature to have the effect of interfering with the constitutional right of local communities, through their duly constituted authorities to handle for themselves the retail liquor business, except in those cases where such communities adopt the provisions of said law for their guidance upon that question.—*In re Anixter*, 22 Cal. App. 117, 134 Pac. 193.

33. Construction of section 22 of the "Wyllie act."—Section 22, providing that "nothing in this act shall be construed as putting any limitation, except such as are positively stated herein upon the police powers of cities, towns and counties," must be construed so as not putting any limitation upon such police powers, except in the matter as to whether "the sale of alcoholic liquors shall be licensed" in any particular subdivision contemplated by the act.—*In re Zany*, 20 Cal. App. 360, 129 Pac. 295.

34. Police power of municipality is not suspended or impaired.—A vote for license under the "Wyllie act" does not impair the police power of the board of trustees of a municipality to regulate or prohibit the sale of alcoholic liquors, and since the board has the power the electors have the same power under the initiative and referendum act and under the constitution to do the same thing.—*Giddings v. Board of Trustees*, 165 Cal. 695, 698, 133 Pac. 479.

35. There is in the act no forbidden suspension of the police power granted by the constitution to counties, cities and towns.—*Ex parte Beck*, 162 Cal. 701, 713, 124 Pac. 543.

III. PROCEDURE.

36. Petition—Clerk's certificate final.—As to all matters pertaining to or within the proper scope of his duty under the act in the examination of the petition under the "Wyllie act," the decision of the clerk is final.—*City of Watts v. Superior Court*, 36 Cal. App. 692, 173 Pac. 183; *People v. Bliss* (Cal. App.), 182 Pac. 63.

36a. Equity jurisdiction of superior court for fraudulent acts in signatures to petition.—The superior court in the exercise of its equity jurisdiction may enjoin an election under the "Wyllie act," where it appears that there were fraudulent acts committed in affixing names to the petition the elimination of which would reduce the signatures thereto below the required number.—*City of Watts v. Superior Court*, 36 Cal. App. 692, 173 Pac. 183; *People v. Bliss* (Cal. App.), 182 Pac. 63.

37. Election—Filing clerk's certificate referred to in section 4 of the "Wyllie act"

within the time prescribed in the act is essential, and in the absence of such filing, no duty is incumbent on the board of trustees, to call an election under the act.—*Mills v. Board of Trustees*, 35 Cal. App. 424, 169 Pac. 1052; *People v. Pera*, 36 Cal. App. 292, 171 Pac. 1091; *City of Watts v. Superior Court*, 36 Cal. App. 692, 173 Pac. 183.

38. **Same.**—The existence of a county prohibitory ordinance is no bar to the holding an election under the "Wyllie act."—*Application of Lieritz*, 166 Cal. 298, 300, 135 Pac. 1129.

39. **Same.**—Mandamus will lie to compel a board of supervisors to rescind an order calling an election, in connection with a presidential primary, under the "Wyllie act" and to call a special election under that act.—*Bigelow v. Board of Supervisors*, 18 Cal. App. 715, 124 Pac. 554.

40. **Same.**—Premature declaration of "no license" territory.—An election under the Wyllie law is not void because the supervisors announced the result of the election and declared a district "no license territory" without waiting ninety days.—*Application of Lieritz*, 166 Cal. 298, 301, 135 Pac. 1129.

41. **Same.**—Primary election to choose nominees for president is not a general election within the meaning of the "Wyllie act."—*Bigelow v. Board of Supervisors*, 18 Cal. App. 715, 124 Pac. 554.

42. **Election contest.**—Jurisdiction of superior court.—An election contest in an election under the "Wyllie act" is a special case within the meaning of section 5, article VI, of the constitution fixing the original jurisdiction of the superior courts.—*Roche v. Superior Court*, 30 Cal. App. 255, 157 Pac. 830.

43. **Election establishes status.**—An election under the "Wyllie act" merely establishes a status or condition determining the sentiment of the electors of the city, town or district, and the law operates upon but does not establish this status.—*People v. Mueller*, 168 Cal. 521, 524, L. R. A. 1915B, 788, 143 Pac. 748.

IV. EFFECT OF ADOPTION OF "NO LICENSE."

44. **Power of board of supervisors.**—Where one of the territorial districts under the "Wyllie act" vote no license, the sale of alcoholic liquors can not be authorized even by license, but where it votes for license, the board of supervisors, or other legislative body has still the power to disregard this expression and regulate or prohibit such sale.—*Matter of Ellsworth*, 165 Cal. 677, 685, 133 Pac. 272.

45. **Clubroom in "no license" territory.**—Where a club in "no license" territory, buys alcoholic liquor, and its officials dispense the same at its room to its members, it is guilty of a violation of section 14 of the "Wyllie act," and is not a mere agent within the meaning of the decision in *People v. Winkler*, 174 Cal. 133 [162 Pac. 109].—*People v. Tinney*, 37 Cal. App. 811, 175 Pac. 17.

46. **"No license" territory.**—Solicitation

for household use, of orders for alcoholic liquors in "no license" territory is intended to be, and is, prohibited by the "Wyllie act."—*Golden & Co. v. Justice Court*, 23 Cal. App. 778, 140 Pac. 49.

47. **Solicitation of orders in "no license" territory.**—The legislature intended to prevent and penalize the solicitation of orders for alcoholic liquors in "no license" territory for delivery in that territory, however the offense might be committed, whether in person or by an agent or through the mail.—*Golden & Co. v. Justice Court*, 23 Cal. App. 778, 140 Pac. 49.

48. **Soliciting orders in "no license" territory.**—The gravamen of the offense is the solicitation of the orders, and it is not material where the sale is consummated, whether in the territory or outside.—*Golden & Co. v. Justice Court*, 23 Cal. App. 778, 140 Pac. 49.

49. **Soliciting orders by mail.**—Venue.—The offense is complete on the receipt of the letter by the person to whom it is addressed, and the venue of the offense is, therefore, in the county where it is received.—*Golden & Co. v. Justice Court*, 23 Cal. App. 778, 140 Pac. 49.

50. **Soliciting orders in no license territory for delivery outside.**—Soliciting orders in "no license" territory for delivery without its boundaries is not prohibited by the "Wyllie act."—*Golden & Co. v. Justice Court*, 23 Cal. App. 778, 140 Pac. 49.

51. **Purchase outside, and bringing into no license territory, not prohibited.**—The local option law does not prohibit one from purchasing alcoholic liquors outside of no license territory and bringing it into such territory for their own consumption, and since this can be done personally it can be done by an agent.—*People v. Winkler*, 174 Cal. 133, 136, 162 Pac. 109.

52. **Delivery in no license territory can not be made under the "Wyllie act"** by seller doing business in license territory, notwithstanding the liquor is to be used at the purchaser's residence to be served to the purchaser's guests at such residence.—*Dini v. Byrnes*, 35 Cal. App. 112, 169 Pac. 411; *People v. Allen*, 37 Cal. App. 180, 174 Pac. 374; *People v. Tinney*, 37 Cal. App. 811, 175 Pac. 17; *People v. Epperson*, 38 Cal. App. 486, 176 Pac. 702.

V. TRIAL. PLEADING. PRACTICE.

53. **Continuance.**—**Testimony of absent witness.**—Intent of the accused in a prosecution under the "Wyllie act" is not material, and the denial of a continuance to enable defendant to produce a witness whose testimony goes to intent alone, is not error.—*People v. Allen*, 37 Cal. App. 180, 174 Pac. 374.

54. **Complaint.**—**Statement negating excepted classes not essential.**—In a prosecution under the "Wyllie act" the complaint need not allege that defendant is not within any of the excepted classes.—*In re Lieritz*, 166 Cal. 298, 301, 135 Pac. 1129.

55. **Information.**—**Allegation of alcoholic content not necessary.**—It is unnecessary in a prosecution for a violation of the "Wyllie

act" to allege in the information that the wine alleged to have been sold contained one per cent or more of alcohol, by volume.—*People v. Mueller*, 168 Cal. 526, 528, 143 Pac. 750.

56. Same—"Sell and furnish."—An information charging that defendant did "sell and furnish" alcoholic liquors in "no license" territory, does not charge two separate offenses.—*People v. Epperson*, 38 Cal. App. 486, 176 Pac. 702.

57. Information—Sufficiency of.—An information should charge that the offense was committed in a certain supervisory district or unit, but it is sufficient if it merely charges in the language of the statute that it was committed in "no license" territory.—*People v. Ruiz*, 39 Cal. App. 593, 179 Pac. 691.

58. An information under the former charging the selling, furnishing, distributing, and giving away of alcoholic liquors in no license territory, charges a violation of the Wyllie law, notwithstanding a county ordinance prohibited the same acts in the same territory was in effect at the time of the election under the Wyllie law creating the "no license territory."—In *re Lieritz*, 166 Cal. 298, 299, 135 Pac. 1129.

59. An information under the "Wyllie act," charging defendant with the offense of "furnishing, distributing and giving away," alcoholic liquors in no license territory, is sufficient.—*People v. Joy*, 30 Cal. App. 36, 157 Pac. 507.

60. An information charging the keeping by defendant of liquor for sale containing less than one per cent of alcohol, fails to state a public offense under that statute.—*People v. Strickler*, 25 Cal. App. 60, 142 Pac. 1121.

61. Information charging the solicitation of orders in "no license" territory is sufficient to give jurisdiction to make a preliminary examination of the charge, notwithstanding the information fails to aver whether delivery of the liquor was to be made within or without such territory.—*Golden & Co. v. Justice Court*, 23 Cal. App. 778, 140 Pac. 49.

62. Same—Failure to designate supervisory district is not prejudicial where there was no proof that the sale charged was in wet territory.—*People v. Ruiz*, 39 Cal. App. 593, 179 Pac. 691.

63. Same—Averment as to "no license" character of territory necessary.—Information charging violation of "Wyllie act" in keeping and conducting a place of business for the sale and distribution of intoxicating liquors in "no license" territory should aver that such territory is "no license" territory.—*People v. Cavallini*, 29 Cal. App. 526, 156 Pac. 73.

64. Indictment—Demurrer.—An indictment which charges that defendant did on a certain day "take an order from, sell and deliver" alcoholic liquor is not demurrable on the ground that it charges more than one offense, and that the several offenses are not stated in separate accounts, since such indictment only charges a sale under section

13 of the local option act, the words "taking an order from" are surplusage.—*People v. Winkler*, 174 Cal. 133, 134, 162 Pac. 109.

65. Same—Construed as changing "sale" only.—An indictment charging that defendant did "take an order from, sell, and deliver" alcoholic liquor charges only the offense of selling under section 13, local option act, and does not charge the taking of an order for sale or delivery under section 15, the words "take an order from," being surplusage.—*People v. Winkler*, 174 Cal. 133, 134, 162 Pac. 109.

VI. EVIDENCE.

66. Proof of "no license" character essential.—In a prosecution for a violation of the "Wyllie act" (1911-599) the "no license" character of the territory must be proved as provided by the act itself, or by other sufficient evidence, and the court can not take judicial notice of the result of a local election to put the law in operation.—*People v. Mueller*, 168 Cal. 521, 523, L. R. A. 1915B, 788, 143 Pac. 748.

67. Where an information under the "Wyllie act" fails to aver that at the time the offense was alleged to have been committed, and the evidence failed to show, the territory in question was "no license" territory, evidence that defendant, prior to such date, kept a place of public resort where alcoholic liquors were sold and distributed was erroneously admitted.—*People v. Cavallini*, 29 Cal. App. 526, 156 Pac. 73.

68. The provision of section 10 of the "Wyllie act" that the minutes of the governing body showing the number of votes cast at an election shall be prima facie evidence that the territory in which such election was held is "no license" territory, providing such minutes do not show a majority vote in favor of license, was not intended to permit a collateral attack on the various steps of the proceedings under which a "no license" territory was created.—*People v. Clark*, 28 Cal. App. 670, 153 Pac. 719.

69. Same—Prior sales.—In a prosecution under the "Wyllie act" evidence of sales prior to that charged in the information is inadmissible.—*People v. Dial*, 28 Cal. App. 704, 153 Pac. 970.

70. Evidence of prior sale is admissible, in a prosecution under the "Wyllie act," to show the character of the place.—*People v. Pera*, 36 Cal. App. 292, 171 Pac. 1091.

71. Same—Character of liquor.—A witness in a prosecution for a violation of the "Wyllie act" who testifies that he knows the difference between the taste of whiskey, wine, and brandy, is qualified to testify that he tasted the liquor sold by defendant and that it was wine.—*People v. Mueller*, 168 Cal. 526, 528, 143 Pac. 750.

72. Same—Federal liquor license.—In a prosecution under the "Wyllie act" an application for a federal liquor license not shown to have been signed by defendant is erroneously admitted.—*People v. Pera*, 36 Cal. App. 292, 171 Pac. 1091.

73. Same—Record of proceedings forming "no license" territory.—Evidence of ir-

regularity in the proceedings culminating in the formation of "no license" territory under the "Wyllie act," rendering such purported formation ineffectual for any purpose, is inadmissible in a prosecution under that act for selling liquor in such "no license" territory.—*People v. Clark*, 28 Cal. App. 670, 153 Pac. 719.

74. Same.—Testimony of county clerk that a place of resort kept for the purpose of selling alcoholic liquors was outside any incorporated city or town, and was within a supervisorial district that had voted no license under the "Wyllie act" was sufficient to show that such place was in no license territory.—*People v. Pera*, 36 Cal. App. 292, 171 Pac. 1091.

75. Same — Intent is immaterial in a prosecution for a violation of the "Wyllie act," and a refusal to admit evidence which goes only to the intent of the accused is not error.—*People v. Pera*, 36 Cal. App. 292, 171 Pac. 1091; *People v. Allen*, 37 Cal. App. 180, 174 Pac. 374.

76. Expert evidence as to character of liquor.—The drinking of whiskey is of such common occurrence that it does not require an expert to pronounce upon it.—*People v. Allen*, 37 Cal. App. 180, 174 Pac. 374.

77. Judicial notice as to intoxicating character of wine.—The court will take judicial notice in a prosecution for a violation of the "Wyllie act" as to the character of wine, and that it is intoxicating, and that it contains more than one per cent of alcohol, by volume.—*People v. Mueller*, 168 Cal. 526, 528, 143 Pac. 750.

78. Sale not mere delivery.—Evidence held to sufficiently show that a transaction alleged to be a violation of the "Wyllie act" was a sale and not a mere delivery.—*People v. Frisbie*, 34 Cal. App. 519, 168 Pac. 143; *People v. Tinney*, 37 Cal. App. 811, 175 Pac. 17.

79. Sufficiency of evidence to sustain conviction.—Evidence examined and held sufficient to sustain a conviction in a prosecution for a violation under the "Wyllie act."—*People v. Pera*, 36 Cal. App. 292, 171 Pac. 1091.

80. Evidence examined and held sufficient to justify conviction under the "Wyllie act."—*People v. Sue Chung Kee*, 26 Cal. App. 732, 148 Pac. 529.

81. Evidence examined and held sufficient to sustain a conviction under the "Wyllie act."—*People v. Coates*, 32 Cal. App. 533, 163 Pac. 502.

82. Evidence held sufficient to sustain a conviction.—*People v. Ruiz*, 39 Cal. App. 593, 179 Pac. 691.

VII. INSTRUCTIONS.

83. Implied intent.—An instruction in a prosecution under the "Wyllie act" to the effect that where the commission of the unlawful act is shown the criminal intent is implied is not error.—*People v. Allen*, 37 Cal. App. 180, 174 Pac. 374.

84. Possession of federal liquor license.—An instruction that the possession of a federal liquor license does not legally operate to shield a defendant against a violation of the "Wyllie act" is correct as an abstract principle of law.—*People v. Pera*, 36 Cal. App. 292, 171 Pac. 1091.

85. Alcoholic content of liquor.—An instruction to the effect that the jury was not required to find that the liquor in question contained more than one per cent of alcohol by volume, was erroneous.—*People v. Bickerstaff* (Cal. App.), 190 Pac. 656.

86. It is error to refuse to instruct the jury in effect that the term "alcoholic liquor" as used in the "Wyllie act" means alcoholic liquor with one per cent by volume of alcohol, or more.—*People v. Bickerstaff* (Cal. App.), 190 Pac. 656.

87. Good faith of defendant.—It was not error to refuse an instruction to the effect that if the jury believed that defendant sold the liquor, believing in good faith that it contained less than one per cent by volume of alcohol, they should acquit him.—*People v. Bickerstaff* (Cal. App.), 190 Pac. 656.

88. Instruction, that if defendant purchased liquor outside of no license territory as the agent of another, having no interest in the liquor of his own and deriving no profit from the transaction itself, he was not guilty of "selling" such liquor to the prosecuting witness, should have been given in defendant's behalf.—*People v. Winkler*, 174 Cal. 133, 136, 162 Pac. 109.

88a. Giving away liquors.—In a prosecution under the "Wyllie act" for giving liquor to another in "no license" territory, an instruction that it was not necessary to warrant a conviction that the evidence should show that defendant actually handed the liquor to another person, but it was sufficient if it appeared beyond a reasonable doubt that defendant owned the liquor and placed it in a public place and in the immediate presence of such other persons with the intention that they should drink of it, correctly states the law, and was pertinent to the evidence.—*People v. Bliss* (Cal. App.), 182 Pac. 63.

89. Non-prejudicial error.—Error in instructing the jury in a prosecution under the "Wyllie act" that the place where the liquor was sold was "no license territory," was not prejudicial where defendant himself testified that the town was dry.—*People v. Mueller*, 168 Cal. 526, 529, 143 Pac. 750.

VIII. JUDGMENT.

90. Fine and imprisonment.—A judgment in a prosecution under the "Wyllie act" requiring the payment of a fine of \$600 and imprisonment of one month, and if the fine is not paid a further imprisonment of one day for each dollar of the fine remaining unpaid, is void as to the clause relating to the fine, and valid as to the clause relating to the imprisonment for one month.—*People v. Pera*, 36 Cal. App. 292, 171 Pac. 1091.

IX. WORDS AND PHRASES.

91. Definition of "alcoholic."—Rule of *ejusdem generis* held to apply to section 21 of the "Wyllie act," which attempts to define the term "alcoholic liquors" under the act.—*People v. Strickler*, 25 Cal. App. 60, 142 Pac. 1121.

92. "Solicit."—The word "solicit" in the "Wyllie act" implies personal petition or importunity addressed to a particular individual whether in person or through the mail, but does not imply the impersonal appeal of a newspaper advertisement.—*Golden & Co. v. Justice Court*, 23 Cal. App. 778, 140 Pac. 49.

93. "Year."—The word "year" usually means 365 days, but it is dependent upon the subject matter of the act in which it is used, and in the "Wyllie act," providing that no election shall be had thereunder within two years after a previous election, it means that if the question is submitted at a special election, it can not be submitted at an election thereafter within two years of 365 days each, but if submitted at a general election on November 5, 1912, it may be submitted at the general election on November 3, 1914, notwithstanding less than two years of 365 days have intervened.—*Hops v. Poe*, 25 Cal. App. 451, 143 Pac. 1072.

BUILDING NUISANCE ABATEMENT ACT.

ACT 2227—An act declaring all buildings and places nuisances, wherein or upon which any spirituous, vinous, malt or other alcoholic liquor is unlawfully sold, served or given away, or which are used for the purpose of unlawfully selling, serving or giving away such liquors; and providing for the abatement of such nuisances.

History: Approved April 28, 1915. In effect August 8, 1915. Stats. 1915, p. 236.

Unlawful sale of liquors, nuisance.

§ 1. Every building or place used for the purpose of unlawfully selling, serving or giving away any spirituous, vinous, malt or other alcoholic liquor, and every building or place wherein or upon which such liquors are unlawfully sold, served or given away, is a nuisance which shall be enjoined, abated and prevented as hereinafter provided, whether the same be a public or private nuisance.

District attorney or citizens may bring suit to abate.

§ 2. Whenever there is reason to believe that such nuisance is kept, maintained or exists in any county or city and county, the district attorney of said county or city and county, in the name of the people of the state of California, must, or any citizen of the state resident within said county or city and county, in his own name may, maintain an action in equity to abate and prevent such nuisance and to perpetually enjoin the person or persons conducting or maintaining the same, and the owner, lessee or agent of the building, or place, in or upon which such nuisance exists, from directly or indirectly maintaining or permitting such nuisance.

Abatement procedure. Writ of injunction.

§ 3. The complaint in such action must be verified unless filed by the district attorney. Whenever the existence of such nuisance is shown in such action to the satisfaction of the court or judge thereof, either by verified complaint or affidavit, and the court or judge is satisfied that the owner of the property has received written notice of the existence of such nuisance, signed by the complainant or the said district attorney at least two weeks prior to the filing of the complaint, the court or judge shall allow a temporary writ of injunction to abate and prevent the continuance or recurrence of such nuisance. On granting such writ the court or judge must require, except when it is granted on application of the people of the state, written undertaking on the part of the applicant, with sufficient securities, to the effect that he will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decides that the applicant was not entitled thereto.

Precedence of actions. Costs.

§ 4. The action when brought shall have precedence over all other actions, excepting criminal proceedings, election contests and hearings on injunctions. If the complaint is filed by a citizen, it shall not be dismissed by the plaintiff or for want of prosecution except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal ordered by the court. In case of failure to prosecute any such action with reasonable diligence, or at the request of the plaintiff, the court, in its discretion, may substitute any such citizen consenting thereto for such plaintiff. If the action is brought by a citizen and the court finds there was no reasonable ground or cause for said action, the costs shall be taxed against such citizen.

Plaintiff's costs, lien.

§ 5. If the existence of the nuisance be established in an action as provided herein, an order of abatement shall be entered as part of the judgment in the case, and plaintiff's costs in such action shall be a lien upon such building and place, enforceable and collectible by execution issued by order of the court.

Violation of injunction, contempt.

§ 6. Any violation or disobedience of any injunction or order expressly provided for by this act shall be punished as a contempt of court by fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment.

Fine, lien on building.

§ 7. Whenever the owner of a building or place upon which the act or acts constituting the contempt shall have been committed, or the owner of any interest therein, has been guilty of a contempt of court, and fined therefor in any proceedings under this act, such fine shall be a lien upon such building and place to the extent of the interest of such person therein, enforceable and collectible by execution issued by order of the court.

"Person" defined.

§ 8. The term "person," as used in this act, shall be held to mean and include individuals, corporations, associations, partnerships, trustees, lessees, agents and assignees.

INVENTORY.

See Kerr's Cyc. Political Code, § 4321.

CHAPTER 168.**INVESTMENT COMPANIES.**

References: See, generally, tit. "Corporations."

CONTENTS OF CHAPTER.

ACT 2235. "BLUE SKY LAW."

2236. "CORPORATE SECURITIES ACT."

"BLUE SKY LAW."

ACT 2235—An act to define investment companies, investment brokers, and agents; to provide for the regulation, supervision and licensing thereof; to provide penalties for the violation thereof; to create the office of commissioner of corporations, and making an appropriation therefor.

History: Approved May 28, 1913. In effect November 1, 1913.
Stats. 1913, p. 715. Amended June 3, 1915. In effect August 8, 1915.
Stats. 1915, p. 1135.

Title of act.

§ 1. This act shall be known as the "investment companies act."

Definitions: "investment company."

§ 2. (a) The term "investment company," when used in this act, includes every private corporation, association, copartnership and company, which shall within this state, sell, offer for sale, negotiate for the sale of or take subscriptions for any stock, stock certificate, bond or other evidence of indebtedness of any kind or character, issued or to be issued by itself, other than promissory notes not offered to the public by the maker thereof.

"Security."

(b) The term "security," when used in this act, includes the stock, stock certificates, bonds, and other evidences of indebtedness, other than promissory notes not offered to the public by the maker thereof, of an investment company.

"Investment broker," "contractor."

(c) The term "investment broker," when used in this act, includes every corporation, association, copartnership, company and person who shall within this state regularly engage in the business of selling, offering for sale or negotiating for the sale, as agent or contractor, of any security of more than one investment company. The term "contractor" means any one who undertakes to sell securities for an investment company for a commission or other consideration.

"Agent."

(d) The term "agent," when used in this act, includes every corporation, association, copartnership, company and person who shall within this state sell, offer for sale, negotiate for the sale of or take subscriptions for any security of an investment company, either as an employee on a salary basis or for a commission, if acting either for the investment company or an investment broker.

"Sale."

(e) The term "sale," when used in this act, means the original transfer of title of its own securities from an investment company for any valuable consideration.

Act not applicable to certain corporations.

§ 3. This act shall not apply to corporations, associations, copartnerships, companies, firms and individuals now or hereafter subject to the jurisdiction or authority of the railroad commission, nor to corporations now or hereafter organized under the laws of this state for the purpose of conducting the business of banking within this state, nor to corporations, associations, copartnerships, companies, firms and individuals after they have secured from the insurance commissioner or the bureau of building and loan supervision a certificate of authority or license to do business within this state, nor to corporations, associations, copartnerships or companies, subject to federal regulation or not organized for profit, nor to mutual water companies and irrigation districts, nor to the stocks, stock certificates, bonds or other evidences of

indebtedness of such corporations, associations, copartnerships, companies, firms or individuals. [Amendment of June 3, 1915. In effect August 8, 1915. Stats. 1915, p. 1135.]

Application for permission to sell securities. Filing fee.

§ 4. (a) Before selling, offering for sale, negotiating for the sale, or taking subscriptions for, any security of any kind or character, each investment company shall file in the office of the commissioner of corporations of this state, an application for permission so to do, together with a filing fee, as hereinafter prescribed, an itemized statement of its financial condition, in such form and detail as the commissioner of corporations may prescribe, a copy of all contracts which it proposes to make with or sell to the public, a certified copy of its charter, articles of incorporation or articles of association and all amendments thereto, and such additional information pertaining thereto as the commissioner of corporations may, from time to time, prescribe. Said filing fee shall be five dollars if the par or face value of said security amounts to twenty-five thousand dollars or less; ten dollars if the par or face value of said security amounts to over twenty-five thousand dollars and not over fifty thousand dollars; fifteen dollars if the par or face value of said security amounts to over fifty thousand dollars and not over seventy-five thousand dollars; twenty dollars if the par or face value of said security amounts to over seventy-five thousand dollars and not over one hundred thousand dollars; and twenty-five dollars if the par or face value of said security amounts to over one hundred thousand dollars.

Securities not for sale to public exempt.

(b) If the investment company does not desire to sell its securities to the public the commissioner of corporations may make his written finding to that effect. Upon the filing of said finding the investment company and its securities shall be exempt from the provisions of this act until the commissioner of corporations makes and files his order setting aside said finding. The commissioner of corporations shall have power to make his order setting aside said finding if he finds that the investment company is selling its securities to the public, or for other good cause.

Companies organized in other states. Attorney upon whom process may be served. Fee.

(c) If such company is organized or created under or by virtue of the laws of any other state, territory or government, it shall also file in the office of the commissioner of corporations a certified copy of the law or laws under which it is organized or incorporated, and all amendments thereto, and also, in such form as the commissioner of corporations may prescribe, its written instrument, irrevocable, appointing the commissioner of corporations or his successor in office its true and lawful attorney, upon whom all process in any action or proceeding against it may be served with the same effect as if said company were organized or created under the laws of this state and had been lawfully served with process therein. Service upon such attorney shall be deemed personal service upon such company. The commissioner of corporations shall forthwith forward by mail, postage prepaid to the person designated by such company by written instrument filed with the commissioner of corporations at the address given in said instrument, or, in case no such instrument has been filed, to the secretary of such company at its last known postoffice address, a copy of every process served upon him under the provisions of this section. For each copy of process, the commissioner of corporations shall collect the sum of two dollars, which shall be paid by the plaintiff or moving party at the time of such service, to be recovered by him as part of his taxable costs, if he succeeds in the suit or proceedings. Service shall not be deemed complete until said fee has been paid, and said copy of process mailed as hereinbefore directed.

Commissioner to examine company's affairs before issuing certificate. Certificate not recommendation. Refusing certificate. Unlawful to issue securities without certificate. Stock to directors. Temporary permit.

§ 5. It shall be the duty of the commissioner of corporations to examine the statement and other information so filed, and he may, if he deems it advisable, make, or have made, at applicant's cost as hereinafter in this act specified, a detailed examination, audit and investigation of the investment company's affairs, providing that the investment company may at its option, in writing, refuse to have such examination, audit or investigation made, whereupon the commissioner of corporations must reject the application. If he finds that the proposed plan of business of the investment company is not unfair, unjust, or inequitable the commissioner of corporations shall issue to the investment company a certificate, authorizing it to sell securities, as therein specified within this state, reciting that the company has complied with the provisions of this act, that detailed information concerning the investment company and its securities is on file in the office of the commissioner of corporations and that the investment company is authorized to sell said securities within this state on such conditions, if any, as the commissioner of corporations may in said certificate prescribe. Said certificate shall recite in bold type that the issuance of this certificate is permissible only and does not constitute a recommendation or indorsement of said securities. The commissioner of corporations may impose such conditions as he may deem necessary to the issue of said securities, and may, from time to time, for cause, rescind, alter or amend the certificate. If the commissioner of corporations finds that the proposed plan of business of the investment company is unfair, unjust, or inequitable or that it does not intend to do a fair and honest business, he shall refuse to issue the certificate and shall notify the investment company in writing of his decision. It shall be unlawful to issue any security to which this act is applicable unless a certificate or a temporary permit authorizing the issue thereof shall first have been secured from the commissioner of corporations as provided in this act; and it shall further be unlawful for any investment company, investment broker or agent as in this act defined, to sell, offer for sale, negotiate for the sale of or take subscriptions for any stock, stock certificate, bond or other evidence of indebtedness of any kind or character without exhibiting to the prospective purchaser or prospective purchasers of such securities, or any thereof, a copy of the certificate issued to such investment company in accordance herewith. A corporation may without applying for a certificate under the provisions of this act issue to each of its directors one share of stock for the purpose of qualifying as directors. The commissioner of corporations, if satisfied that the investment company intends to do a fair, just and equitable business, may, forthwith upon the filing of the statement and other papers required by section four of this act, issue to said investment company, upon such conditions as he may prescribe, a temporary permit to issue its securities pending the examination of said statement and other papers, and may, from time to time, for cause, rescind, alter or amend said temporary permit.

Investment brokers' permit. Fee.

§ 6. The provisions of sections four and five of this act, in so far as applicable, shall apply to investment brokers; provided, that the commissioner of corporations may, if he finds that the applicant has a good business reputation and deals only in good securities, issue to an investment broker a general permit entitling such investment broker to sell securities within this state, authorized by him, until the first of March following, when it will be necessary to secure a new general permit. For each such general permit the commissioner of corporations shall charge the sum of five dollars. Such general permit, however, shall be subject to revocation by the commis-

sioner of corporations at any time for cause appearing to him sufficient. The commissioner of corporations shall forthwith mail written notice of such revocation to the investment broker.

Certificates for investment brokers' agents. Fee.

§ 7. Any investment company or investment broker may appoint one or more agents, but it shall be unlawful for any such agent to do any business as specified in this act until he shall have secured from the commissioner of corporations a certificate authorizing him to represent such investment company or investment broker within this state until the first of March following, when it will be necessary to secure a new certificate. For each certificate the commissioner of corporations shall charge the sum of one dollar. Such certificate, however, shall be subject to revocation by the commissioner of corporations at any time for cause appearing to him sufficient.

Supervision and control of companies and brokers. Examination fee.

§ 8. The commissioner of corporations shall have general supervision and control, as provided in this act, over any and all investment companies and investment brokers, and all such investment companies and investment brokers shall be subject to examination by the commissioner of corporations or a duly authorized deputy at any time the commissioner of corporations may deem it advisable to have such examination made to carry out any provision of this act, and in the same manner and with the same powers as is now, or may hereafter be provided for the examination of state banks. Such investment company or investment broker shall pay to the commissioner of corporations, for each examination, a fee of ten dollars and traveling expenses for each day or fraction thereof that he or his deputy shall necessarily be absent from his office for the purpose of making such examination, and the failure or refusal of any investment company or investment broker to pay such fee upon the demand of the commissioner of corporations shall work a forfeiture of its or his rights to sell any further securities in this state until such fee shall have been paid to the commissioner of corporations, with interest at the rate of seven per cent from the time of the demand of the commissioner of corporations and an additional twenty-five per cent of such fee by way of penalty.

Advertisements, circulars, etc.

§ 9. It shall be unlawful for any investment company, investment broker or agent to issue, circulate or deliver any advertisement, pamphlet, prospectus, circular or statement or other document in regard to securities which it desires to sell in this state until after such investment company, investment broker or agent shall have been licensed to sell such securities as provided in this act. It shall be unlawful for any such licensed investment company, investment broker or agent to issue, circulate or deliver any such advertisement, pamphlet, prospectus, circular, statement or other document, unless the same shall be signed with the name of the investment company or investment broker and bear a serial number and a copy thereof shall first have been filed with the commissioner of corporations. The commissioner of corporations may for cause object to any such advertisement, pamphlet, prospectus, circular, statement or other document, whereupon it shall be unlawful for such investment company, investment broker or agent to further issue, circulate or deliver such advertisement, pamphlet, prospectus, circular, statement or other document.

Semi-annual reports.

§ 10. (a) Every investment company, until it shall have sold all the securities authorized by the commissioner of corporations and disposed of the proceeds thereof, shall file in the office of the commissioner of corporations, under date of December 31st and June 30th of each year, and within fifteen days after said dates, and also at such

other times as may be required by the commissioner of corporations, a report setting forth in such form as the commissioner of corporations may prescribe, the securities authorized by him and sold under the provisions of this act, the proceeds derived therefrom, the disposition of such proceeds and such other information concerning its affairs relating to the subject matter of this act, as the commissioner of corporations may require.

Broker's reports on securities.

(b) Every investment broker shall when called upon by the commissioner of corporations file in his office a report giving such information as he may call for, relating to the securities, the sale of which has been authorized under the provisions of this act.

Papers open to public inspection.

§ 11. All papers, documents, reports and other instruments in writing filed with the commissioner of corporations under this act shall be open to public inspection; provided, that if in his judgment the public welfare or the welfare of any investment company demands that any portion of such information be not made public he may withhold such information from public inspection for such time as in his judgment is necessary.

Appeal from commissioner's decision.

§ 12. An appeal may be taken from any decision of the commissioner of corporations under this act by filing with the clerk of the superior court of the state of California, in and for the city and county of San Francisco, a certified transcript of all papers in the office of the commissioner of corporations relating to such decision. It shall be the duty of the commissioner of corporations to make and certify to said transcript upon payment to him of a fee of ten cents for each folio and one dollar for the certification. The court shall upon such appeal be limited to a consideration of the question whether there has been abuse of discretion on the part of the commissioner of corporations in making such decision.

Penalty for false statement.

§ 13. Any person who shall knowingly or wilfully subscribe to or make or cause to be made any false statement or false entry in any book of any investment company or investment broker, or exhibit any false paper with the intention of deceiving any person authorized to examine into its affairs, or who shall make or publish any false or misleading statement of its financial condition or concerning the securities by it offered for sale, shall be guilty of a misdemeanor and shall be punishable by a fine not exceeding one thousand dollars or by imprisonment in a county jail not exceeding one year or by both such fine and imprisonment.

Penalty for company violating act.

§ 14. Any corporation, association, copartnership or company which violates or fails to comply with any of the provisions of this act, or which fails, omits or neglects to obey, observe or comply with any order, decision, demand or requirement, or any part or provision thereof, of the commissioner of corporations under the provisions of this act, is subject to a penalty of not less than five hundred dollars nor more than two thousand dollars for each and every offense, which penalty if unpaid after demand by the commissioner of corporations shall be recovered in an action brought in the name of the people of the state of California by the attorney general.

Penalty for person violating act.

§ 15. Every person who violates or fails to comply with any of the provisions of this act or who fails, omits or neglects to obey, observe or comply with any order,

decision, demand or requirement, or any part or provision thereof, of the commissioner of corporations under the provisions of this act in any case in which a different penalty is not specifically provided, is guilty of a misdemeanor and is punishable by a fine of not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

Corporation department created. Salary. Bond.

§ 16. There is hereby created a state corporation department. The chief officer of such department shall be the commissioner of corporations. He shall be appointed by the governor and hold office at the pleasure of the governor. He shall receive an annual salary of five thousand dollars, to be paid monthly out of the state treasury upon a warrant of the controller. He shall within fifteen days from the time of notice of his appointment take and subscribe to the constitutional oath or office and file the same in the office of the secretary of state and execute to the people of the state a bond in the penal sum of ten thousand dollars with corporate security or two or more sureties, to be approved by the governor of the state, for the faithful discharge of the duties of his office.

Deputies. Compensation. Total expenditure.

§ 17. The commissioner of corporations shall employ such clerks and deputies as he may need to discharge in proper manner the duties imposed upon him by law. Neither the commissioner of corporations nor any of his clerks or deputies shall be interested in any investment company, or investment broker, as director, stockholder, officer, member, agent or employee. Such clerks and deputies shall perform such duties as the commissioner of corporations shall assign to them. He shall fix the compensation of such clerks and deputies which compensation shall be paid monthly on the certificate of the commissioner of corporations, and on the warrant of the controller out of the state treasury; provided, however, that the total expenditures provided for in this act shall not exceed fifty thousand dollars per annum. Each deputy shall within fifteen days after his appointment take and subscribe to the constitutional oath of office and file the same in the office of the secretary of state.

Office of commissioner.

§ 18. The commissioner of corporations shall have his office in the city of Sacramento and he shall from time to time obtain the necessary furniture, stationery, fuel[,] light and other proper conveniences for the transaction of the business of the state corporation department, the expenses of which shall be paid out of the state treasury on the certificate of the commissioner of corporations and the warrant of the controller.

Corporation commission fund.

§ 19. A fund is hereby created to be known as the "corporation commission fund" and out of said fund shall be paid all the expenses incurred in and about the conduct of the business of the corporation department, including the salary of the commissioner and his clerks and deputies traveling expenses, furnishing rooms and rent. All moneys collected or received by the commissioner of corporations under and by virtue of the provisions of this act shall be delivered by him to the treasurer of the state, who shall deposit the same to the credit of said corporation commission fund. And all such fund so deposited or such part thereof as may be necessary for the purposes of this act are hereby appropriated to the use of the corporation commission fund for the purposes of this act. It shall be the duty of the commissioner of corporations semi-annually to certify under oath to the state treasurer and secretary of state the total amount of receipts and expenditures of the state corporation department for the six months preceding. All fees and payments of every description required by this

act to be paid to the commissioner of corporations shall be paid by him to the state treasurer on the first day of each week following their receipt by the commissioner of corporations.

Seal.

§ 20. The commissioner of corporations shall adopt a seal with the words "Commissioner of Corporations, State of California," and such other device as the commissioner of corporations may desire engraved thereon by which he shall authenticate the proceedings of his office. Copies of all records and papers in the office of the corporation department shall be received in evidence of all cases equally and with like effect as the originals.

Reports as evidence.

§ 21. Every official report made by the commissioner of corporations and every report, duly verified, of an examination made, shall be prima facie evidence of the facts therein stated for all purposes in any action or proceedings wherein any investment company or investment broker is a party.

Constitutionality of act.

§ 22. If any section, sub-section, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, sub-section, sentence, clause, and phrase thereof irrespective of the fact that any one or more other sections, sub-sections, sentences, clauses or phrases be declared unconstitutional.

Repeal of inconsistent acts.

§ 23. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Appropriation.

§ 24. The sum of ten thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated for the purpose of carrying this act into effect.

In effect.

§ 25. This act shall take effect November 1, 1913.

1. **Arkansas "blue sky law"—Declared constitutional and valid.**—The Arkansas "blue sky law" was held not to be violative of either federal or state constitutions, in placing restrictions and limitations upon the right of foreign corporations to do business in the state, and its regulatory provisions are not unreasonable, and it does not deprive the citizen of the right of freedom of contract, and is a proper exercise of the police power.—*Standard Home Co. v. Davis*, 217 Fed. 904.

2. **California "blue sky law"—Purpose.**—It was the purpose of the "blue sky law" to throttle in their infancy such schemes as depend upon false and fraudulent propaganda for their sale of worthless securities.—*Burns v. Bauer*, 37 Cal. App. 251, 174 Pac. 346.

3. **Florida "blue sky law"—Declared constitutional and valid.**—The Florida "blue sky law," declared constitutional and valid

in *Ex parte Taylor*, 68 Fla. 61, 66 So. 292, is distinguished from the West Virginia statute in several particulars.—*Bracey v. Darst*, 218 Fed. 432.

4. **Same—"Due process" not violated—"Equal protection" not denied.**—The Florida "blue sky law" does not deprive a local corporation of property without due process of law, and does not deny it the equal protection of the laws.—*Ex parte Taylor*, 68 Fla. 61, 66 So. 292.

5. **Iowa "blue sky law"—Unconstitutional.**—The Iowa "blue sky law" can not be justified as an inspection law, is not a proper exercise of the police power, imposes a burden on interstate commerce, and denies to citizens of other states privileges granted to citizens of Iowa.—*William R. Compton Co. v. Allen*, 216 Fed. 537.

6. **Michigan "blue sky law"—Neither tax nor license law.**—The Michigan "blue sky law" is neither a tax nor a license law, but in its dominant characteristics and effect is

prohibitory.—Alabama, etc., *Co. v. Doyle*, 210 Fed. 173.

7. **Same—Violates "due process" clause.**—The act deprives the plaintiffs of property as well as liberty without due process of law.—Alabama, etc., *Co. v. Doyle*, 210 Fed. 173.

8. **Same—Not within police power.**—Certain features of the Michigan "blue sky law" are held to have no real or substantial relation to the public welfare, and not to be within even the shadow of the police power.—Alabama, etc., *Co. v. Doyle*, 210 Fed. 173.

9. **Same—Denies "equal protection."**—In certain specified particulars the Michigan "blue sky law" deprives plaintiffs of the equal protection of the laws.—Alabama, etc., *Co. v. Doyle*, 210 Fed. 173.

10. **Same—Imposes burden on interstate commerce.**—The Michigan "blue sky law" imposes a burden on interstate commerce which is not merely indirect and incidental, inasmuch as it is not a legitimate exercise of the police power.—Alabama, etc., *Co. v. Doyle*, 210 Fed. 173.

11. **Same—Title covers subject.**—The broad language of the title of the Michigan "blue sky law" is capable of a construction which will cover all the provisions of the act, although it is doubtful whether one reading the title would suppose that it prohibited the sale of securities which were not fraudulent, but merely not worth the selling price.—Alabama, etc., *Co. v. Doyle*, 210 Fed. 173.

11a. **Same—Constitutionality sustained.**—The Michigan "blue sky law" was sustained over constitutional objections similar to those raised in *Hall v. Geiger-Jones Co.*, 242 U. S. 539, Ann. Cas. 1917C, 643, L. R. A. 1917F, 514, 61 L. ed. 480, 37 Sup. Ct. 217; *Hall v. Coultrap*, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217; *Hall v. Rose*, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217; *Caldwell v. Sioux Falls, etc., Co.*, 242 U. S. 559, 61 L. ed. 493, 37 Sup. Ct. 224, and *Merrick v. N. W. Halsey & Co.*, 242 U. S. 568, 61 L. ed. 498, 37 Sup. Ct. 227.

11b. **Same—Exchange of stock is sale.**—The exchange of stock of a subsidiary for stock in a holding company is a sale within the meaning of the "blue sky law."—*Edward v. Ioor*, 205 Mich. 617, 172 N. W. 620.

11c. **Same—Sale of stock without compliance with law void.**—A sale of stock in a foreign corporation in the state of Michigan, where the corporation has not complied with the act is void, and the purchaser is entitled to recover the price paid upon tender back of the stock.—*Edward v. Ioor*, 205 Mich. 617, 172 N. W. 620.

12. **Montana "blue sky law"—Constitutionality not determined.**—In a suit brought by a corporation whose plan of business on its face antagonizes sound, economic principles, and is designed to defraud its clients a court of equity will not determine the constitutionality of the Montana "blue sky law."—*National Mercantile Co. v. Keating*, 218 Fed. 477.

13. **Same—Intent of act.**—The intent of

the North Carolina statute is to protect our people, under the police power, from fraud and imposition by irresponsible non-resident parties.—*State v. Agey*, 171 N. C. 831, 88 S. E. 726.

14. **North Carolina "blue sky law."—Construed and applied.**—A foreign corporation organized for the purpose of selling small lots of land upon an agreement on their part to set the same out in figs, with certain guarantees of cultivation and number of plants per acre, and mutual stipulations as to payment of purchase price and conveyance, falls within the extent and meaning of the North Carolina "blue sky law."—*State v. Agey*, 171 N. C. 831, 88 S. E. 726.

15. **Ohio "blue sky law"—Legislative policy not open to review.**—The prevention of deception is within the competency of government, and the appreciation of the consequences of it is not open to review.—*Hall v. Geiger-Jones Co.*, 242 U. S. 539, Ann. Cas. 1917C, 643 L. R. A. 1917F, 514, 61 L. ed. 480, 37 Sup. Ct. 217; *Hall v. Coultrap*, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217; *Hall v. Rose*, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217.

16. **Same—Purpose of act.**—The name that is given the law indicates the evil at which it is aimed; that is "speculative schemes which have no more leases than so many feet of blue sky," or to stop the sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines, and other like fraudulent exploitations.—*Hall v. Geiger-Jones Co.*, 242 U. S. 539, Ann. Cas. 1917C, 643, L. R. A. 1917F, 514, 61 L. ed. 480, 37 Sup. Ct. 217; *Hall v. Coultrap*, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217; *Hall v. Rose*, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217.

17. **Same—Reason and extent both within competency of state.**—The reason and the extent of the law, and the control to which the individual transactions are subjected, are both within the competency of the state.—*Hall v. Geiger-Jones Co.*, 242 U. S. 539, Ann. Cas. 1917C, 643, L. R. A. 1917F, 514, 61 L. ed. 480, 37 Sup. Ct. 217; *Hall v. Coultrap*, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217; *Hall v. Rose*, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217.

18. **Same—Legislative policy.—Safeguards not inappropriate.—Individual inconvenience must yield to public welfare.**—The state has deemed it necessary to require that securities offered to its public shall be subjected to such safeguards as will assure their integrity, and the requirement is not unreasonable or inappropriate, and this can only be done through the information which may be furnished the public of the probity of those who deal in them, and whatever inconvenience may be caused by the necessary supervision or surveillance must yield to the public welfare.—*Hall v. Geiger-Jones Co.*, 242 U. S. 539, Ann. Cas. 1917C, 643, L. R. A. 1917F, 514, 61 L. ed. 480, 37 Sup. Ct. 217; *Hall v. Coultrap*, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217; *Hall v.*

Rose, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217.

19. Same—License feature.—The discretion of the commissioner to grant or refuse a license is qualified by his duty, and is subject to review, and in determining the validity of the law, the court must accord to him a proper sense of duty, and presume that the functions entrusted to him will be executed for the public interest, and not wantonly or arbitrarily to deny a license to or take away a license from a reputable dealer.—Hall v. Geiger-Jones Co., 242 U. S. 539, Ann. Cas. 1917C, 643, L. R. A. 1917F, 514, 61 L. ed. 480, 37 Sup. Ct. 217; Hall v. Coultrap, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217; Hall v. Rose, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217.

20. Same—Discriminations and classifications not unreasonable.—The various discriminations and classifications in the Ohio law relating to various kinds of securities, quantities and amounts issued by the same person, amounts of commissions on sales, securities of common carriers, and of corporations organized under the laws of the state, etc., are held to be proper, within the power of the state, and not a denial of equal protection of the laws.—Hall v. Geiger-Jones Co., 242 U. S. 539, Ann. Cas. 1917C, 643, L. R. A. 1917F, 514, 61 L. ed. 480, 37 Sup. Ct. 217; Hall v. Coultrap, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217; Hall v. Rose, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217.

21. Same—Same.—A state may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses, and it may do so none the less that the forbidden act does not differ in kind from those that are allowed; and if a class is deemed to present a conspicuous example of what the legislature seeks to prevent, the 14th amendment allows it to be dealt with although otherwise and merely logically not distinguishable from others not embraced in the law.—Hall v. Geiger-Jones Co., 242 U. S. 539 Ann. Cas. 1917C, 643, L. R. A. 1917F, 514, 61 L. ed. 480, 37 Sup. Ct. 217; Hall v. Coultrap, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217; Hall v. Rose, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217.

22. Same—Information as to securities.—Securities issued in other states and foreign countries are only affected by the requirement that information concerning them must be filed, and that those who deal in them within the states must have a license to do so.—Hall v. Geiger-Jones Co., 242 U. S. 539, Ann. Cas. 1917C, 643, L. R. A. 1917F, 514, 61 L. ed. 480, 37 Sup. Ct. 217; Hall v. Coultrap, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217; Hull v. Rose, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217.

23. Same—Burden on interstate commerce not imposed.—The act does not impose a burden upon interstate commerce, inasmuch as it only affects securities after their transportation to the state is ended and they have reached the hands of dealers, and interstate commerce is only inci-

dentally affected.—Hall v. Geiger-Jones Co., 242 U. S. 539, Ann. Cas. 1917C, 643, L. R. A. 1917F, 514, 61 L. ed. 480, 37 Sup. Ct. 217; Hall v. Coultrap, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217; Hall v. Rose, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217.

23a. Same—Regulation of business for public protection.—The law is a regulation of business, constrains conduct only to that end, the purpose being to protect the public against the imposition of unsubstantial schemes, and the securities based upon them.—Hall v. Geiger-Jones Co., 242 U. S. 539, Ann. Cas. 1917C, 643, L. R. A. 1917F, 514, 61 L. ed. 480, 37 Sup. Ct. 217; Hall v. Coultrap, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217; Hall v. Rose, 242 U. S. 539, Ann. Cas. 1917C, 643, L. R. A. 1917F, 514, 61 L. ed. 480, 37 Sup. Ct. 217.

24. South Dakota "blue sky law"—Constitutionality upheld.—For the reasons assigned in the cases of Hall v. Geiger-Jones Co., 242 U. S. 539, Ann. Cas. 1917C, 643, L. R. A. 1917F, 514, 61 L. ed. 480, 37 Sup. Ct. 217; Hall v. Coultrap, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217; Hall v. Rose, 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. 217, the constitutionality of the South Dakota "blue sky law" was sustained in the case of Colorado corporation seeking to raise capital on its stock, and dealers in the same.—Caldwell v. Sioux Falls, etc., Co., 242 U. S. 559, 61 L. ed. 493, 37 Sup. Ct. 224.

25. Oregon "blue sky law"—Constitutionality not decided.—Compliance with the laws of Oregon is a condition precedent to the right of a foreign corporation to do business in that state, and until such compliance is shown such corporation can have no proper or legal standing for doing or transacting business within the state, and it follows irresistibly that it has no standing to maintain a suit there.—National, etc., Co. v. Watson, 215 Fed. 929.

26. Same—Resistance to enforcement by taxpayer.—A taxpayer may resist the enforcement of an unconstitutional statute which increases his taxes, but he can not resist the enforcement of the "blue sky law," the purpose of which is to prevent fraud in the sale of stocks, where the expenditures would be derived from license fees, demanded from corporations as a condition of doing business.—McKinney v. Watson, 74 Ore. 220, 145 Pac. 266.

27. Same—Person without interest can not attack constitutionality.—Where the party attacking a state statute on the ground of its unconstitutionality has no interest, the question will not be considered.—McKinney v. Watson, 74 Ore. 220, 145 Pac. 266.

28. West Virginia "blue sky law"—Unconstitutional.—The West Virginia "blue sky law" was held unconstitutional because it abridged the right of the citizen of the United States to buy and sell property in the state, and thus deprived them of property without due process of law; because it denied them the equal protection of the law; and because it operated as a

restraint and burden upon interstate commerce.—*Bracey v. Darst*, 218 Fed. 482.

29. *Same—Same*.—The court held that the legislature may prevent foreign corporations from transacting business altogether, and may limit corporations, foreign and domestic, as to the kind of business they may transact in the state, and as to such corporations, it is not a question

of the police power, or of interstate commerce, but purely and simply the exercise of the sovereign power over artificial bodies, but no such power is vested in any legislature over the individual citizen, or over copartnerships or voluntary associations formed or organized by individual citizens to do business.—*Bracey v. Darst*, 218 Fed. 482.

“CORPORATE SECURITIES ACT.”

ACT 2236—An act providing for the regulation and supervision of companies, brokers, agents, and sales of securities as the same are therein defined, and to prevent fraud in the sale of securities; providing for the enforcement of said act and penalties for the violation thereof; and creating a state corporation department and the office of commissioner of corporations.

History: Approved May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 673. Amended May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 231.

Title.

§ 1. This act shall be known as the “corporate securities act.”

Words defined.

§ 2. Words used in this act in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter, and in the neuter, the masculine and feminine; the singular number includes the plural, and the plural, the singular; “writing” includes “printing” and “typewriting”; “oath” includes “affirmation”; the word “county” includes “city and county”; and “territory” includes “district.” The following words have in this act the signification attached to them in this section, unless otherwise apparent from the context.

1. The word “department” means the “state corporation department” created by this act.

2. The word “commissioner” means the “commissioner of corporations.”

“Company.”

3. The word “company” includes all domestic and foreign, private corporations, associations, joint stock companies, and partnerships, of every kind, and also trustees, as hereinafter defined; excepting therefrom:

(a) All national banking associations and other corporations organized and existing under and by virtue of the acts of the congress of the United States;

(b) All public utilities subject to the jurisdiction, control, and regulation of the railroad commission of this state;

(c) All corporations now or hereafter organized under the laws of this state for the purpose of conducting the business of banking within this state and all corporations transacting insurance business within this state;

(d) All corporations, associations, or societies transacting business under the supervision, examination, and license of the bureau of building and loan supervision; and

(e) Every corporation organized under the laws of this state exclusively for the purposes provided in any of the following titles, to wit: XIa, XII, XIIa, XIV, XXI, XXII, of Part IV, Division First, of the Civil Code, and in accordance with the provisions of such titles.

“Trust.”

4. The word “trust” as used in this act includes all voluntary trusts, as the same are defined in the Civil Code, expressly created by or declared in an instrument in writing, other than a will or a judicial writ, order, decree, or judgment, to carry on any business or to secure the payment or repayment of money.

5. The word "trustee," except as hereinafter used in subdivision nine of this section, includes only persons or companies executing trusts as hereinbefore defined.

"Security."

6. The word "security" includes:

(a) All shares or other interests or rights into which the capital, capital stock, or property of companies or rights of stockholders or members thereof are divided, including all treasury shares and shares of their own capital stock purchased or otherwise acquired by companies upon delinquent assessment sales or in any other lawful manner, and all certificates and other instruments issued by them or their authority, evidencing or representing such shares, interests, or rights;

(b) All bonds, debentures, and evidences of indebtedness issued by any company; and

(c) Any instrument issued or offered to the public by any company, evidencing or representing any right to participate or share in the profits or earnings or the distribution of assets of any business carried on for profit; excepting therefrom the following:

(1) Bills of exchange and promissory notes not offered to the public by the drawer, maker, or underwriter thereof, and all mortgages and deeds of trust of property situated in this state, executed to secure the payment thereof; and

(2) Any security listed in any standard manual of information, as to which the commissioner shall first make and file his written finding to the effect that such security is fully and accurately described in such manual and that a sale thereof will not, in his opinion, work a fraud upon the purchaser thereof; provided, that if such finding shall thereafter be vacated or set aside, such security shall not thereafter be deemed to be included within this exception.

"Sale."

7. A "sale," within the meaning of this act, includes every contract by which, for a pecuniary consideration, called a price, one transfers to another an interest in property, and also an exchange, a pledge, a hypothecation, and any transfer in trust or otherwise as security for the performance of an obligation, and also any issue of any security by a company; and the word "sell," as used in this act, includes every act by which such sale is made.

"Agent."

8. The word "agent" as used in this act means and includes every person or company employed or appointed by a company or a broker who shall, within this state, either as an employee or otherwise, for a compensation, sell, offer for sale, negotiate for the sale of, or take subscriptions for any security of any company of its own issue offered for sale by it.

"Broker."

9. The word "broker" as used in this act includes every person or company, other than an agent, who shall, in this state, engage, either wholly or in part, in the business of selling, offering for sale, negotiating for the sale of, or otherwise dealing in any security or securities issued by others, or of underwriting any issue of securities or of purchasing such securities with the purpose of reselling them or of offering them for sale to the public for a commission or at a profit; excepting therefrom the following:

(a) Any owner of any security who is not the issuer or an underwriter thereof, who sells or exchanges the same for his own account; provided, that such sale or exchange is not made in the course of repeated and successive transactions of like or similar character by him;

(b) Any trustee of a trust created by or declared in a will or a judicial writ, order, decree or judgment, who, in such capacity, lawfully disposes of any property;

(c) Any company transacting a banking or insurance business in this state, selling a security for an owner thereof or a broker, other than an underwriter thereof, at a commission of not more than two per cent of the par or face value thereof; provided, such sale is not made in the course of repeated and successive transactions of like or similar character by such company;

(d) One, not the issuer, who disposes of securities to a broker or to a purchaser who, as a part of his regular business, purchases such securities;

(e) Any pledge holder selling, in good faith and not for the purpose of avoiding the provisions of this act, and in the ordinary course of business, a security pledged with him as security for a bona fide debt.

“Actual fraud.”

10. The words “actual fraud,” as used in this act, are defined in section one thousand five hundred seventy-two of the Civil Code. [Amendment of May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 231.]

Permit to sell securities. Application. Commissioner appointed attorney.

§ 3. No company shall sell, except upon a sale for a delinquent assessment made in accordance with the provisions of Article II of Chapter II of Title I of Part IV of Division First of the Civil Code; or offer for sale, negotiate for sale of, or take subscriptions for any security of its own issue until it shall have first applied for and secured from the commissioner a permit authorizing it so to do. Such application shall be in writing, shall be verified as provided in the Code of Civil Procedure for the verification of pleadings, and shall be filed in the office of the commissioner. In such application the applicant shall set forth the names and addresses of its officers, the location of its office, an itemized account of its financial condition, the amount and character of its assets and liabilities, a detailed statement of the plan upon which it proposes to transact business, a copy of any security it proposes to issue, a copy of any contract it proposes to make concerning the same, a copy of any prospectus or advertisement, or other description of such securities, then prepared by or for it for distribution or publication, and such additional information concerning the company, its condition and affairs as the commissioner may require. If the applicant is a partnership or an unincorporated association or joint stock company, it shall file with its application a copy of its articles of partnership or association, and all other papers pertaining to its organization. If the applicant is a trustee, it shall file with its application a copy of all instruments by which the trust is created and in which it is accepted, acknowledged, or declared. If the applicant is a corporation, it shall file with its application a copy of all minutes of any proceedings of its directors or stockholders or members relating to or affecting the issue of such securities, and also a copy of its articles of incorporation and of its by-laws and of any amendments thereto. If the applicant is a corporation or association organized under the laws of any other state, territory, or government, it shall also file with its application a certificate, executed by the proper officer of such state, territory, or government not more than thirty days before the filing of such application, showing that such applicant is authorized to transact business in such state, territory, or government; and also, in such form as the commissioner may prescribe, its written instrument, irrevocably appointing the commissioner and his successor in office its true and lawful attorney upon whom all process in any action or proceeding against it may be served, with the same effect as if said corporation or association were organized or created under the laws of this state and had been lawfully served with process therein.

Examination of application. Permit issued. Permit to sell security.

§ 4. Upon the filing of such application, it shall be the duty of the commissioner to examine it and the other papers and documents filed therewith, and he may, if he deems it advisable, make or have made a detailed examination, audit, and investigation of the applicant and its affairs. If he finds that the proposed plan of business of the applicant is not unfair, unjust, or inequitable, that it intends to fairly and honestly transact its business, and that the securities that it proposes to issue and the methods to be used by it in issuing or disposing of them are not such as, in his opinion, will work a fraud upon the purchaser thereof, the commissioner shall issue to the applicant a permit authorizing it to issue and dispose of securities, as therein provided, in this state, in such amounts and for such considerations and upon such terms and conditions as the commissioner may in said permit provide. Otherwise, he shall deny the application and refuse such permit and notify the applicant in writing of his decision. Every permit shall recite in bold type that the issuance thereof is permissive only and does not constitute a recommendation or indorsement of the securities permitted to be issued. The commissioner may impose such conditions as he may deem necessary to the issue of such securities, and shall have the power to establish such rules and regulations as may be reasonable or necessary to insure the disposition of the proceeds of such securities in the manner and for the purposes provided in such permit, and may, from time to time for cause, amend, alter, or revoke any permit issued by him, or temporarily suspend the rights of the applicant under such permit.

Certificate of agent or broker.

§ 5. No person or company shall act as an agent or broker until such person or company shall have first applied for and secured from the commissioner a certificate, then in effect, authorizing such person or company so to do. Every such certificate shall expire on the thirty-first day of December next after its issuance, unless sooner revoked. To secure such certificate, the applicant shall make and file in the office of the commissioner an application therefor in writing, verified by or in behalf of the applicant. In such application, the applicant shall set forth, in addition to such other information as may be required by the commissioner:

1. The name and address of the applicant, and, if it be a corporation, association, or joint stock company, the name and address of each of its managing officers and agents, and, if it be a partnership, the name and address of each of the partners;

2. A succinct statement of facts showing that the applicant, and its managing officers and agents, if it be a corporation, or members, if it be a partnership, have a good business reputation;

3. If the applicant is a broker, the general plan and character of the business of the applicant.

Fee.

For filing such application, the applicant shall pay a fee as hereinafter provided. If the applicant is a corporation or association organized under the laws of any other state, territory, or government, it shall file with its application a copy of its articles of incorporation or association, together with a certificate executed by the proper officer of such state, territory, or government not more than thirty days before the filing of such application, showing that such applicant is authorized to transact business in such state, territory, or government, and also, in such form as the commissioner may prescribe, its written instrument, irrevocably appointing the commissioner and his successor in office its true and lawful attorney upon whom all process in any action or proceeding against it, arising out of or founded upon the actual fraud of such appli-

cant in the sale of securities within this state, may be served with the same effect as if said corporation or association were organized or created under the laws of this state and had been lawfully served with process therein.

Certificate issued.

§ 6. The commissioner shall examine such application, and shall make such further investigation of the applicant and its affairs as he shall deem advisable. If, from such examination, the commissioner shall be satisfied of the good business reputation of the applicant and of its officers or members, if any, he shall issue such certificate. Otherwise, he shall refuse the same and deny the application and notify the applicant of his decision. The commissioner may at any time revoke any broker's or agents certificate issued by him if he shall find that the holder thereof is of bad business repute, or has violated any provision of this act, or has engaged, or is about to engage in any fraudulent transaction.

Advertisements submitted to commissioner.

§ 7. No person, partnership, association, or corporation, other than a broker holding a broker's certificate, then in effect, shall issue, circulate, or publish any advertisement, pamphlet, prospectus, or circular concerning any security, to be issued by any company, that such person, partnership, association, or corporation desires or proposes to sell, until the company proposing to issue such security shall have first secured from the commissioner a permit authorizing it to issue or sell such security; nor shall any company, broker, or agent, or any other person, issue, circulate, or publish any advertisement, pamphlet, prospectus, or circular concerning any security sold or offered for sale by it, unless the name of the company, broker, agent, or person issuing, circulating, or publishing the same shall be subscribed thereto, and a true copy thereof shall have been first filed in the office of the commissioner, or deposited in a United States post office, properly enclosed in a sealed envelope, addressed to the commissioner at Sacramento, California, with the postage duly prepaid thereon; nor shall any company, broker, or agent, or any other person, issue, circulate, or publish any such advertisement, pamphlet, prospectus, or circular after notice in writing given to it by the commissioner, that, in his opinion, the same contains any statement that is false or misleading or otherwise likely to deceive a reader thereof.

Report by company on sale of securities.

§ 8. Every company authorized by the commissioner to sell securities shall thereafter, at such times as it may be required by the commissioner, make and file in the office of the commissioner a report, setting forth, in such form as the commissioner may prescribe, the securities sold by it under the authority of any permit issued by him, the proceeds derived therefrom, the disposition of such proceeds, and such other information concerning its property, officers, or affairs, relating to or affecting the value of such securities, as the commissioner may require.

Statement by broker on sale of securities.

§ 9. Every broker shall, at such times as it may be required by the commissioner, make and file in the office of the commissioner a true and correct statement concerning any security sold or offered for sale by such broker, showing the name and location of the principal office of the issuer of such security; the names of its managing officers, if it is a corporation, or of its members, if it is a partnership; its assets, liabilities, and issued capital stock, at the close of its fiscal year then last ended, or at a later date; its gross income, expenses, and fixed charges for the year next preceding such date, or for such time as such issuer of such security has transacted business, if for less than

one year, and the approximate price at which such broker has sold or proposes to sell such security, together with such other information, of which the broker may have knowledge, as the commissioner may require.

Papers open to public inspection.

§ 10. All papers, documents, reports, and other instruments in writing filed with the commissioner under this act shall be open to public inspection; provided, that if, in his judgment, the public welfare or the welfare of any company, broker, or agent demands that any portion of such information be not made public, he may, in his discretion, withhold such information from public inspection for such time as in his judgment is necessary. The commissioner may at any time give, issue, or make public any information concerning any company or any contracts, stocks, bonds, or other securities sold or offered for sale within this state, if in his judgment the giving, issuing, or publishing of the same will be of public interest or advantage or will tend to prevent the fraudulent sale of such securities.

Review of orders, etc., of commissioner.

§ 11. Every order, decision, permit or other official act of the commissioner shall be subject to review, in accordance with the provisions of Chapter I of Title I of Part III of the Code of Civil Procedure; and any party aggrieved by any such order, decision, or permit of the commissioner may appeal therefrom to the superior court of the county of Sacramento, by serving upon the commissioner a notice of such appeal, a demand in writing for a certified transcript of all the papers on file in his office affecting or relating to such decision, and the payment of the fee therefor, within sixty days after the making of any such order, permit, or decision. Thereupon, the commissioner shall, within ten days, make and certify such transcript, and the appellant shall, within five days thereafter, file the same and the notice of appeal with the clerk of said court. Upon the hearing of such appeal, the burden of proof shall lie upon the appellant, and the court shall receive and consider any pertinent evidence, whether oral or documentary, concerning the action of the commissioner from which the appeal is taken, but shall be limited to a consideration and determination of the question whether there has been an abuse of discretion on the part of the commissioner in making such order, decision, or permit.

Securities void.

§ 12. Every security issued by any company, without a permit of the commissioner authorizing the same then in effect, shall be void, and every security issued by any company, with the authorization of the commissioner but not conforming in its provisions to the provisions, if any, which it is required by the permit of the commissioner to contain, shall be void.

Penalty for company violating act.

§ 13. Every company which shall directly or indirectly issue or cause to be issued any security contrary to the provisions of this act, or of the constitution of this state, or in nonconformity with a permit of the commissioner authorizing the same, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose or purposes, if any, specified in such permit, or to any purpose specified in such permit in excess of any amount limited in such permit to be used for such purpose, shall be guilty of a public offense and shall be punishable by a fine not exceeding ten thousand dollars.

Penalty for officers, etc.

§ 14. Every officer, agent or employee of any company, and every other person, who knowingly authorizes, directs, or aids in the issue or sale of, or issues or executes, or

sells, or causes or assists in causing to be issued, executed, or sold, any security, in nonconformity with a permit of the commissioner then in effect authorizing such issue, or contrary to the provisions of this act, or of the constitution of this state, or who, in any application to the commissioner, or in any proceeding before him, or in any examination, audit, or investigation made by him or his authority, knowingly makes any false statement or representation, or who, with knowledge of its falsity, files or causes to be filed in the office of the commissioner any false statement or representation concerning such company or the property which it then holds or proposes to acquire, or concerning its officers or its financial condition or other affairs, or concerning its proposed plan of business, or who, with knowledge of the falsity of any such statement or representation, issues, executes, or sells, or causes to be issued, executed, or sold, any security, without first informing the commissioner of the falsity of such statement in writing, or who, directly or indirectly, knowingly applies, or causes or assists in causing to be applied, the proceeds or any part thereof, from the sale of any security to any purpose contrary to the provisions of the permit authorizing the issue of such security, or to any purpose specified in such permit in excess of any amount limited in such permit to be used for such purpose, or who, with knowledge that any security has been issued or executed in violation of any of the provisions of this act, sells or offers the same for sale, or who, with knowledge that any advertisement, pamphlet, prospectus, or circular concerning any security contains any statement that is false or misleading, or otherwise likely to deceive a reader thereof, issues, circulates, or publishes the same, or shall cause the same to be issued, circulated, or published, or who, in any other respect wilfully violates, or fails to comply with any of the provisions of this act or who, in any other respect, wilfully violates or fails, omits, or neglects to obey, observe, or comply with any order, permit, decision, demand, or requirement, or any part or provision thereof of the commissioner under the provisions of this act, is guilty of a public offense and shall be punished by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding two years, or by a fine not exceeding five thousand dollars, or by both such fine and imprisonment.

State corporation department created.

§ 15. There is hereby created a state corporation department. The chief officer of such department shall be the commissioner of corporations. He shall be appointed by the governor and hold office at the pleasure of the governor. He shall receive an annual salary of five thousand dollars, to be paid monthly out of the state treasury upon a warrant of the controller. He shall within fifteen days from the time of notice of his appointment take and subscribe to the constitutional oath of office and file the same in the office of the secretary of state and execute to the people of the state a bond in the penal sum of ten thousand dollars with corporate security or two or more sureties, to be approved by the governor of the state, for the faithful discharge of the duties of his office.

Clerks and deputies. Duty of attorney general.

§ 16. The commissioner shall employ such clerks and deputies as he may need to discharge in proper manner the duties imposed upon him by law. The attorney-general shall render to the commissioner opinions upon all questions of law, relating to the construction or interpretation of this act or arising in the administration thereof, that may be submitted to him by the commissioner, and shall act as the attorney for the commissioner in all actions and proceedings brought by or against him under or pursuant to any of the provisions of this act. Neither the commissioner nor any of his clerks or deputies shall be interested in any company which shall have applied for or secured a permit to sell securities, or in any broker, or agent as a director, stockholder, officer, member, agent, or employee. Such clerks and deputies shall perform such

duties as the commissioner shall assign to them. He shall fix the compensation of such clerks and deputies, which compensation shall be paid monthly, on the certificate of the commissioner and on the warrant of the controller, out of the state treasury. Each deputy shall, within fifteen days after his appointment, take and subscribe to the constitutional oath of office, and file the same in the office of the secretary of state.

Powers of commissioner.

§ 17. The commissioner shall at all times have the power to administer oaths and to make an examination or investigation of the books, records, accounts, and other papers, and of the business of any company, broker, or agent permitted or authorized by him to sell securities, to make dividends, to create debts, to divide, withdraw, or pay to the stockholders, or any of them, any part of its capital stock, or to increase or reduce its capital stock. In any examination, audit, or investigation made or hearing conducted by him, he shall have the power to take the testimony of any witness and to issue subpoenas requiring the attendance upon such examination, audit, investigation, or hearing in any part of the state of witnesses and the production of books, documents, and other things under their control, and in any such case to take or cause to be taken the deposition of any witness residing within or without this state. All of the provisions of Chapter II of Title III of Part IV of the Code of Civil Procedure, relating to the means of production of evidence out of court, shall be applicable to any examination, investigation, or hearing under this act. No person shall be excused from testifying or from producing any book, document, or other thing under his control upon any such examination, audit, investigation, or hearing upon the ground that his testimony, or the book, document, or other thing required of him, may tend to incriminate him, or may have a tendency to subject him to punishment for a felony, or to a penalty or forfeiture; but no person shall be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which he shall have been so compelled to testify under oath, or to produce such documentary or other evidence; provided, that no person so testifying shall be exempt from prosecution or punishment for perjury if committed by him in his testimony. The authority to make or conduct any such examination, audit, investigation, or hearing, including the authority to administer oaths, and to subpoena witnesses and take their testimony, may be delegated by the commissioner to any deputy or examiner appointed by him for that purpose. Such appointment shall be made by an instrument in writing, signed by the commissioner under his official seal, and upon such examination, audit, investigation, or hearing, the same shall be produced by such deputy or examiner at any time upon demand therefor.

Service of process.

§ 18. In any action or proceeding commenced or prosecuted in this state against any corporation or association which shall have appointed the commissioner its attorney, as provided in section three of this act, and in any action or proceeding commenced or prosecuted in this state, arising out of or founded upon the actual fraud of any corporation or association which shall have appointed the commissioner its attorney, as provided in section five of this act, service of process may be made upon the commissioner. In any such case, the commissioner shall forthwith forward by mail, postage prepaid, to the person designated by such corporation or association by an instrument in writing duly executed by it and filed with the commissioner, at the address stated in such instrument, or, if no such designation has been made, to the secretary of such corporation or association at its last known post-office address, a copy of such process; whereupon, and upon the payment of the fee herein provided for, service of such process upon such company shall be deemed to be complete and to be personal service upon such corporation or association, with the same effect as if said

corporation or association were organized or incorporated under the laws of this state and had been lawfully served with process therein. The certificate of the commissioner, under his official seal, of such service, shall be competent and sufficient proof thereof.

Offices.

§ 19. The commissioner shall have his principal office in the city of Sacramento, and may establish branch offices in the city and county of San Francisco and in the city of Los Angeles, and he shall from time to time obtain the necessary furniture, stationery, fuel, light, and other proper conveniences for the transaction of the business of the department; the expenses of which shall be paid out of the state treasury on the certificate of the commissioner and the warrant of the controller.

Fees.

§ 20. The commissioner shall charge and collect the following fees:

1. For filing any application for a permit to issue securities, ten dollars, plus—

One twentieth of one per cent of the amount of any excess of the aggregate value of the securities sought to be issued over twenty thousand dollars and not exceeding fifty thousand dollars;

One twenty-fifth of one per cent of such amount in excess of fifty thousand dollars and not exceeding one hundred thousand dollars;

One fiftieth of one per cent of such amount in excess of one hundred thousand dollars and not exceeding five hundred thousand dollars; and

One one-hundredth of one per cent of such amount in excess of five hundred thousand dollars.

The value of such securities shall be deemed to be their par or face value, if they have a par or face value; otherwise, the price at which the company proposes to sell or issue the same, or the value, as alleged in the application, of the consideration (if other than money) to be received in exchange therefor.

2. For filing any application for a permit or other authority to make dividends, create debts, or to divide, withdraw, increase, reduce or pay to the stockholders, or any of them, the capital stock, or any part thereof, the same amount that would otherwise be chargeable or collectible if such application were for a permit to issue securities; provided, that in any such case the value shall be determined by the amount of dividends made, debts created, or capital stock divided, withdrawn, increased, reduced, or paid.

3. For filing any application for a broker's certificate, five dollars.

4. For filing any application for an agent's certificate, one dollar.

5. For any examination, audit, or investigation, ten dollars per day or fraction thereof, if made by the commissioner, or the actual amount of the salary or other compensation, not exceeding ten dollars per day, paid to any deputy or other employee of the commissioner, if made by a deputy or other employee, for each day or fraction thereof that such commissioner, deputy, or other employee shall necessarily be absent from his office for the purpose of making such examination, audit, or investigation, plus the actual amount of traveling expenses reasonably incurred in the performance of such work.

6. For copies of papers and records not required to be certified or otherwise authenticated by the commissioner, ten cents for each folio.

7. For certified copies of official documents, orders, and other papers filed in his office; for making and mailing copies of process served upon him under the provisions of section eighteen of this act, and for transcripts on appeal, fifteen cents for each folio and one dollar for each certificate under seal affixed thereto.

8. For certificate of service and mailing of process served upon the commissioner under the provisions of section eighteen of this act, two dollars.

No fees shall be charged or collected for copies of papers, records, or official docu-

ments furnished to public officers for use in their official capacity or for the reports of the commissioner in the ordinary course of distribution; but the commissioner may fix a reasonable charge for publication issued under his authority.

“Corporation commission fund.”

All fees charged and collected under this section shall be paid at least once each week, accompanied by a detailed statement thereof, into the treasury of the state to the credit of a fund to be known as the “corporation commission fund,” which fund is hereby created.

Appropriated for use of commissioner. Revolving fund.

§ 21. All moneys which shall be paid into the state treasury and credited to the “corporation commission fund” are hereby appropriated to be used by the commissioner in carrying out the provisions of this act; and the controller shall draw his warrant on said fund from time to time in favor of the commissioner for the amounts expended under his direction, and the treasurer shall pay the same. The commissioner may, with the consent of the board of control, withdraw from said fund a sum not exceeding one thousand dollars, to be used as a revolving fund where cash advances are necessary. The commissioner must account for the sum withdrawn for said revolving fund at any time upon demand of the board of control.

Seal.

§ 22. The commissioner shall adopt a seal bearing the following inscription: “Commissioner of Corporations State of California.” The seal shall be affixed to all writs, orders, permits, and certificates issued by him, and to such other instruments as he shall direct. All courts shall take judicial notice of said seal.

Copies of orders, etc.

§ 23. The commissioner may execute in duplicate any order, finding, or permit issued by him, and each of such parts shall be deemed to be an original. An original of every such order, finding, or permit shall be retained and preserved by him in his office. Copies of all documents, orders, and permits made, executed, or issued by the commissioner, and of all papers filed in his office, when certified by the commissioner under his official seal, shall be received in evidence in all cases in like manner and with the same effect as the originals. Any order or permit issued by the commissioner, or a copy thereof certified by the commissioner under his official seal, to be a true copy of the original order or permit, may be recorded in the office of the county recorder of the county in which is located the principal place of business of the company affected thereby or in which is situated any property of such company, and such record shall impart notice of such order or permit, and of all its provisions, to all persons. A certificate under the seal of the commissioner that any such order or permit has not been amended, altered, revoked, or suspended may also be recorded in the same offices and with like effect.

Official reports prima facie evidence.

§ 24. Every official report made by the commissioner, and every report, duly verified, made to him by any deputy, clerk, or other person employed by him, of any examination, audit, or investigation made by him or under his direction, and copies of such reports, certified by the commissioner, shall be prima facie evidence of the facts therein stated for all purposes in any action or proceeding wherein any company, broker, agent, or the commissioner is a party.

Subscription for shares prior to incorporation. Election of officers prior to issuing shares.

§ 25. Neither this act nor any provision hereof shall be deemed to prohibit subscriptions for shares of a corporation made prior to the incorporation thereof and set forth in its articles of incorporation; but such subscriptions shall be deemed to have been made and accepted upon the condition that such corporation, when incorporated, shall with reasonable diligence apply for and secure from the commissioner a permit authorizing the issue of the shares so subscribed for, in accordance with such subscriptions. The directors or trustees named in the articles of incorporation may, prior to the issue of any shares, organize by the election of a president, who must be one of their number, a secretary and a treasurer; and such directors, or a majority of them, or such president and secretary may, in the name of and in behalf of the corporation, present an application to the commissioner as herein provided.

Acts continued.

§ 26. This act, in so far as it does not add to, take from, or alter an act entitled "An act to define investment companies, investment brokers, and agents; to provide for the regulation, supervision and licensing thereof; to provide penalties for the violation thereof; to create the office of commissioner of corporations, and making an appropriation therefor," approved May 28, 1913, as amended by an act entitled "An act to amend section three of an act entitled 'An act to define investment companies, investment brokers, and agents; to provide for the regulation, supervision and licensing thereof; to provide penalties for the violation thereof; to create the office of commissioner of corporations, and making an appropriation therefor,' approved May 28, 1913," approved June 3, 1915, shall be construed as a continuation thereof.

Decisions, etc., continued in force.

All decisions, orders, rules, findings, certificates, or permits heretofore made or issued, and acts done by the commissioner, shall continue in force and have the same effect as if they had been lawfully made, issued, or done under the provisions of this act.

Appeals not affected. Examination, etc., continued to final determination.

This act shall not affect any appeal pending from any decision of the commissioner, or any proceeding to which he, in his official capacity, is a party; but the same may be prosecuted or defended with the same effect as if this act had not been passed. Any examination, audit, or investigation undertaken, commenced, or prosecuted prior to the taking effect of this act may be conducted to a final determination in the same manner and with the same effect as if it had been undertaken, commenced, or prosecuted under the provisions of this act, and in the manner herein provided. No action or proceeding, either civil or criminal, or cause of action arising under any law of this state shall abate by reason of the passage of this act, but actions or proceedings may be commenced and prosecuted upon such causes in the same manner and with the same effect as if this act had not been passed.

Foreign and interstate commerce.

§ 27. Neither this act nor any provision hereof shall apply to or be construed as a regulation of commerce with foreign nations or among the several states, except in so far as the same may be permitted under the provisions of the constitution and the acts of the congress of the United States.

Constitutionality.

§ 28. If any section, subsection, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the

remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more other sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Repealed.

§ 29. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

CHAPTER 169.

INYO COUNTY.

References: Boundaries, see Kerr's Cyc. Political Code, § 3922.

County government, see Kerr's Cyc. Political Code, §§ 4000, et seq.

Fees, salaries, etc., see Kerr's Cyc. Political Code, §§ 4276, 4287, et seq.

Highways, see Kerr's Cyc. Political Code, §§ 2618, et seq.

Notaries public, see Kerr's Cyc. Political Code, §§ 791-793.

School funds, apportionment of, see Kerr's Cyc. Political Code, § 1858.

School teachers, see Kerr's Cyc. Political Code, § 1696.

CONTENTS OF CHAPTER.

ACT 2242. TRESPASSING ANIMALS.

TRESPASSING ANIMALS.

ACT 2242—An act to protect growing crops growing in the county of Inyo.

History: Approved March 28, 1872, Stats. 1871-72, p. 668.

This act extended the provisions of the act of 1872 to Inyo county.—See Act 5245.

Code commissioners' comment: The code commissioners say of this act that it was

repealed by the general estray law of 1897; but see editor's note to chapter on "Estrays."

CHAPTER 170.

IRRIGATION AND IRRIGATION DISTRICTS.

References: Bonds of irrigation districts, investments in by banks, insurance companies, trust companies, etc., see Kerr's Cyc. Political Code, § 3480.

Bonds of irrigation districts, legal investment for mortgage insurance companies, see Kerr's Cyc. Civil Code, § 453ee.

Bonds of irrigation districts, investment in of funds of insurance companies, see Kerr's Cyc. Civil Code, § 421.

Irrigation flumes, rights and liabilities of owners in common, see Kerr's Cyc. Civil Code, §§ 842, 843.

Irrigation canals, obstruction of public highways by, see Kerr's Cyc. Civil Code, § 551.

Malicious injury to works, see Kerr's Cyc. Penal Code, §§ 592, 607.

Water rights, acquisition of, see Kerr's Cyc. Civil Code, §§ 1410, et seq.

Water and canal corporations, see Kerr's Cyc. Civil Code, §§ 548, et seq.

See, generally, tits., "Canals"; "Drainage Districts"; "Conservation"; "Levee Districts"; "Reclamation Districts"; "Storm Water Districts"; "Water Commission"; "Water Companies"; "Water Districts"; "Waters."

CONTENTS OF CHAPTER.

ACT 2258. IRRIGATION DISTRICT ACT OF 1872.

2259. "WRIGHT ACT."

2266. "CALIFORNIA IRRIGATION DISTRICT ACT"—"BRIDGEFORD ACT."

2266a. IRRIGATION DISTRICTS OF OVER 500,000 ACRES.

2266b. "THE CALIFORNIA IRRIGATION ACT" OF 1919.

2266c. DISTRICT CO-OPERATION WITH FEDERAL RECLAMATION SERVICE.

2266d. CONTRACTS WITH FEDERAL RECLAMATION SERVICE.

2266e. DEFINING "PRIVATE IRRIGATION PLANT."

2266f. DISTRICT CO-OPERATION WITH ADJOINING DISTRICTS IN OTHER STATES.

2266g. DRAINAGE BY IRRIGATION DISTRICTS.

2266h. DEVELOPMENT OF ELECTRIC POWER.

- 2266j. ASSESSMENT OF STATE LAND.
- 2267. COUNTY IRRIGATION DISTRICTS.
- 2267a. VALIDATION OF COUNTY IRRIGATION DISTRICTS.
- 2267b. "COUNTY POWER PUMPING DISTRICT ACT."
- 2267c. DISSOLUTION OF IRRIGATION DISTRICTS ACT OF 1919.
- 2267d. DISSOLUTION OF IRRIGATION DISTRICTS ACT OF 1903.
- 2268. FUNDING ACT OF 1897.
- 2268a. LEGALIZING IRRIGATION BONDS.
- 2268b. REFUNDING ACT OF 1919.
- 2271. IRRIGATION BONDS AS LEGAL INVESTMENTS.
- 2272. PAYMENT OF ASSESSMENTS IN INSTALLMENTS.
- 2273. RELEASE OF LIENS UPON CANCELLATION OF BONDS VOLUNTARILY SURRENDERED.
- 2274. REDEMPTION OF PROPERTY SOLD FOR DELINQUENT ASSESSMENTS.
- 2275. LEASING WATER FOR POWER DEVELOPMENT.
- 2276. CONTRACTS FOR WATER FOR IRRIGATION.
- 2278. DECLARING IRRIGATION A PUBLIC USE.
- 2279. "OAKDALE IRRIGATION DISTRICT"—VALIDATION.
- 2280. "WEST SIDE IRRIGATION DISTRICT."
- 2280a. "WEST SIDE IRRIGATION DISTRICT"—VALIDATION.
- 2281. "MODESTO IRRIGATION DISTRICT."
- 2282. "MODESTO IRRIGATION DISTRICT"—VALIDATION.
- 2283. "TURLOCK IRRIGATION DISTRICT"—VALIDATION.
- 2284. "SOUTH SAN JOAQUIN IRRIGATION DISTRICT"—VALIDATION.
- 2285. "IMPERIAL IRRIGATION DISTRICT"—VALIDATION.
- 2285a. "IMPERIAL IRRIGATION DISTRICT"—LEGALIZING BONDS.
- 2285b. "IMPERIAL IRRIGATION DISTRICT"—PURCHASE OF BONDS OF CALIFORNIA DEVELOPMENT COMPANY.
- 2286. "SAN YSIDRO IRRIGATION DISTRICT"—VALIDATION.
- 2287. "ANDERSON-COTTONWOOD IRRIGATION DISTRICT"—VALIDATION.
- 2288. "LA MESA, LEMON GROVE, AND SPRING VALLEY IRRIGATION DISTRICT"—VALIDATION.
- 2289. "WATERFORD IRRIGATION DISTRICT"—VALIDATION.
- 2290. "CARMICHAEL IRRIGATION DISTRICT"—VALIDATION.
- 2291. "HAPPY VALLEY IRRIGATION DISTRICT"—VALIDATION.
- 2292. "PARADISE IRRIGATION DISTRICT"—VALIDATION.
- 2293. "STRATFORD IRRIGATION DISTRICT"—VALIDATION.
- 2294. "TERRA BELLA IRRIGATION DISTRICT"—VALIDATION.
- 2294a. "LINDSAY-STRATHMORE IRRIGATION DISTRICT"—VALIDATION.
- 2294b. "BAXTER CREEK IRRIGATION DISTRICT"—VALIDATION.
- 2294c. "PRINCETON-CODORA-GLENN IRRIGATION DISTRICT"—VALIDATION.
- 2294d. "RED ROCK CREEK IRRIGATION DISTRICT"—VALIDATION.
- 2294e. "TRANQUILLITY IRRIGATION DISTRICT"—VALIDATION.
- 2294f. "FAIR OAKS IRRIGATION DISTRICT"—VALIDATION.
- 2294g. "JACINTO IRRIGATION DISTRICT"—VALIDATION.

IRRIGATION DISTRICT ACT OF 1872.

ACT 2258—An act to promote irrigation.

History: Approved April 1, 1872, Stats. 1871-72, p. 945.

Code commissioners' note: "Seems necessarily inconsistent with the Wright act, 1887, p. 29, chapter XXXIV [Act 2259], but that statute, in § 46, declares that none of its provisions shall be construed as repeal-

ing or modifying the provisions of any act relating to irrigation or water commissioners; also, with statute of 1897, p. 254, which also contains same reservations as to its repealing effect."

‘WRIGHT ACT.’

ACT 2259—An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water for irrigation purposes.

History: Approved March 7, 1887, Stats. 1887, p. 29. Amended (1) February 16, 1889, Stats. 1889, p. 15; (2) March 20, 1891, Stats. 1891, p. 142; (3) March 20, 1891, Stats. 1891, p. 147; (4) March 31, 1891, Stats. 1891, p. 244; (5) March 11, 1893, Stats. 1893, p. 175; (6) March 25, 1893, Stats. 1893, p. 516; (7) March 31, 1897, Stats. 1897, p. 240. Supplemented (1) February 16, 1889, Stats. 1889, p. 18; (2) February 16, 1889, Stats. 1889, p. 21; (3) March 16, 1889, Stats. 1889, p. 212; (4) March 23, 1893, Stats. 1893, p. 276; (5) March 25, 1893, Stats. 1893, p. 520; (6) March 26, 1895, Stats. 1895, p. 127; (7) April 1, 1897, Stats. 1897, p. 394. This act, as well as all amendatory and supplemental acts, except the supplementary act of 1897 (Act 2268), were repealed as to inconsistent provisions by the act of 1897 (Act 2266).

I. CONSTITUTIONALITY.

1. Wright act is constitutional.—The Wright act is not violative of either the constitution of the United States or of the state of California.—In re Central Irr. Dist., 117 Cal. 382, 49 Pac. 354.

1a. Same.—The act is constitutional and the districts are public corporations.—Crall v. Poso Irr. Dist., 87 Cal. 140, 26 Pac. 797.

2. Same—“Due process.”—If the landowner is allowed a hearing before the assessment becomes final the creation of the lien is not a taking of property without due process of law.—In re Madera Irr. Dist., 92 Cal. 296, 27 Am. St. Rep. 106, 14 L. R. A. 755, 28 Pac. 272, 675.

2a. Same—Same.—The act violates due process and can not be sustained under the power of assessment for local improvements, where the supervisors are given no power of adjudicating the merits and the landowners given no opportunity to contest the validity of the petition, or the proceedings thereunder the proposed result of which is the taking of private property.—Bradley v. Fallbrook, etc., Dist., 68 Fed. 948.

2b. Same—Adjudication by supervisors—Opportunity of landowners to contest.—The fatal defect in the foundation of the proceedings under the act arising from failure to give the supervisors the power of adjudicating the merits of the petition and the landowners an opportunity to contest its validity, is not cured by the provision allowing the landowner to be heard as to valuation, or by the confirmation act (Stats. 1889, p. 212) in which the supervisors are authorized to institute special proceedings to determine the validity of the proceedings.—Bradley v. Fallbrook, etc., Dist., 68 Fed. 948.

3. Same—Not special legislation.—Section 32 of the Wright act is not special legislation and is constitutional.—Escondido High School v. Escondido Seminary, 130 Cal. 128, 62 Pac. 401.

4. Same—Organization and government of districts—Condemnation of private property.—The provisions as to organization and government of districts, and the provisions as to the condemnation of private

property, etc., are constitutional.—Turlock Irr. Dist. v. Williams, 76 Cal. 360, 18 Pac. 379.

4a. Same—Taking of private property for private use.—The taking of private property in irrigation districts under this act for the purpose of furnishing water to the landowners alone, and not for general use of all inhabitants of the district on equal terms is not a taking for a public use such as to justify the exercise of eminent domain.—Bradley v. Fallbrook, etc., Co., 68 Fed. 948.

5. Same—Same.—The Wright act is constitutional, within the enacting power of the legislature and its provisions as to the organization of districts, and the making of assessments are valid.—In re Madera Irr. Dist., 92 Cal. 296, 27 Am. St. Rep. 106, 14 L. R. A. 755, 28 Pac. 272, 675.

5a. Same—Upheld in view of California decisions.—The supreme court of the United States will not hold the Wright act unconstitutional in view of the repeated decisions of the supreme court of California upholding that act.—Fallbrook, etc., Dist. v. Bradley, 164 U. S. 112, 41 L. ed. 369, 17 Sup. Ct. 56.

5b. Same—Decisions of state courts.—Decisions of state courts that state legislation on the subject of irrigation districts violates the federal constitution are entitled to great respect, but do not relieve the federal courts from the duty of exercising an independent judgment with reference to the subject.—Bradley v. Fallbrook, etc., Dist., 68 Fed. 948.

5c. Same—Fourteenth amendment.—The Wright act does not violate any of the rights guaranteed by the fourteenth amendment to the federal constitution.—Fallbrook, etc., Dist. v. Bradley, 164 U. S. 112, 41 L. ed. 369, 17 Sup. Ct. 56.

6. Same—Subdivision 7, section 30.—Subdivision 7 of section 30 of the Wright act may be reasonably construed as referring to proceedings other than those as to which the tax deed is prima facie evidence, and so construed it is constitutional and valid.—Escondido High School v. Escondido Seminary, 130 Cal. 128, 62 Pac. 401.

7. Same—Power to hypothecate property as additional security for bonds.—The pro-

vision of section 17 of the Wright act, which purports to authorize the directors of an irrigation district to pledge the property of the district by mortgage, deed of trust, or otherwise, as additional security for the payment of its bonds, is unconstitutional and invalid.—*Merchants, etc., Bank v. Escondido Irr. Dist.*, 144 Cal. 329, 77 Pac. 937.

8. **Same**—Section 18, article XI, of the constitution, does not apply.—The provision of section 18, article XI, of the constitution, requiring a two-thirds vote to authorize an indebtedness of a public corporation does not apply to irrigation districts, and the Wright act is not obnoxious to that provision.—*In re Madera Irr. Dist.*, 92 Cal. 296, 27 Am. St. Rep. 106, 14 L. R. A. 755, 23 Pac. 272, 675.

9. **Confirmatory act of 1889 is constitutional and valid**.—The confirmatory act of 1889 (Stats. 1889, p. 212) is constitutional and valid.—*People v. Linda Vista Irr. Dist.*, 128 Cal. 477, 61 Pac. 86.

10. **Same**—Determination of rights of property in advance of controversy.—The supplemental act of 1889 (Stats. 1889, p. 212) is not unconstitutional on the ground that it authorizes a court to hear and determine what will be the rights of the parties interested in the bonds, in advance of any controversy as to such rights.—*Cullen v. Glendora Water Co.*, 113 Cal. 503, 39 Pac. 769, 45 Pac. 822, 1047.

11. **Act of 1889—Provision as to new trials, unconstitutional**.—The unconstitutionality of the provision of the supplemental act of 1889 (Stats. 1889, p. 212) relating to motions for new trial does not affect the other provisions of the act so far as they apply to a class of special proceedings distinguished from all other classes by attributes which reasonably require the peculiarities of practice provided.—*Cullen v. Glendora Water Co.*, 113 Cal. 503, 39 Pac. 769, 45 Pac. 822, 1047.

11a. **Same**—No longer federal question—Removal of cause.—The Wright act has been adjudged constitutional by the supreme court of the United States, and its constitutionality is no longer a federal question authorizing the removal of a cause raising the question of such constitutionality to the federal court.—*People v. Brown Valley, etc., Dist.*, 119 Fed. 535.

II. QUASI PUBLIC CORPORATION.

12. **Nature of irrigation district**.—An irrigation district organized under this act is a quasi public corporation, in that they are organized for a public use and for a public purpose, and for the general public benefit.—*Turlock Irr. Dist. v. Williams*, 76 Cal. 360, 18 Pac. 379.

13. **Same**.—Irrigation districts are public corporations.—*Central Irr. Dist. v. De Lappe*, 79 Cal. 357, 21 Pac. 825.

14. **Same**.—An irrigation district organized under the Wright act is a public corporation and its officers are state officers.—*In re Madera Irr. Dist.*, 92 Cal. 296, 27 Am. St. Rep. 106, 14 L. R. A. 755, 23 Pac. 272, 675.

15. **Same**.—An irrigation district is a public corporation and its officers are public officers.—*Boehmer v. Big Rock Irr. Dist.*, 117 Cal. 19, 49 Pac. 908; *Perry v. Otay Irr. Dist.*, 127 Cal. 565, 60 Pac. 40.

16. **Same**—Can not be dissolved by judicial action, in absence of statutory authority.—An irrigation district organized under the Wright act is a public corporation, and can not be dissolved by the court on the ground of misuser in the absence of a statute conferring the power to dissolve it on that ground.—*People v. Selma Irr. Dist.*, 98 Cal. 206, 32 Pac. 1047.

17. **Same**—Power to sell lands unnecessary to scheme.—An irrigation district organized under the Wright act is a public corporation and acquires title to all the property purchased for the district or vesting in it by operation of law, in trust for the purposes set forth in the act, and where some of such lands have become unnecessary to the irrigation scheme, because of a change in the plans, the district has no power to sell such lands, and they are exempt from execution, levy and sale, equally with the other lands of the district.—*Tulare Irr. Dist. v. Collins*, 154 Cal. 440, 97 Pac. 1124.

18. **Same**—Record of boundaries constructive notice.—Upon its organization an irrigation district under the Wright act became prima facie a quasi municipal corporation, with defined boundaries established and recorded, and the record thereof constituted constructive notice of its boundaries.—*Fogg v. Perris Irr. Dist.*, 154 Cal. 209, 97 Pac. 316; *People v. Perris Irr. Dist.*, 154 Cal. 209, 97 Pac. 316.

III. PROCEDURE.

18a. **Construction**.—The proceedings for the formation of irrigation districts under the act are to be liberally construed to effect their purpose.—*Central Irr. Dist. v. De Lappe*, 79 Cal. 351, 21 Pac. 825.

a. Petition.

19. **Who may be signers**—Owners of agricultural lands.—Signers of a petition to form an irrigation district under the Wright act must be bona fide owners of agricultural lands, and owners of town lots are not qualified to sign the petition.—*In re Central Irr. Dist.*, 117 Cal. 382, 49 Pac. 354.

20. **Same**—Full proprietorship and dominion.—An owner within the meaning of the Wright act in fixing the qualifications of those who may sign a petition for the organization of an irrigation district under that act, is one who has full proprietorship and dominion over land in the district proposed to be organized.—*Fallbrook Irr. Dist. v. Abila*, 106 Cal. 355, 39 Pac. 794.

21. **Same**—Owners of residence lots in towns and cities.—Whether the owners of small residence lots in towns and cities, and several tenants in common, are qualified to sign a petition to organize an irrigation district, considered but not decided.—*Fallbrook Irr. Dist. v. Abila*, 106 Cal. 355, 39 Pac. 794.

22. **Same**—Married woman owning com-

munity property.—A married woman is not qualified to sign a petition to organize an irrigation district under the Wright act, as the owner of community property.—*Fallbrook Irr. Dist. v. Abila*, 106 Cal. 355, 39 Pac. 794.

23. Same.—Holder of mere certificate of purchase of school land.—A holder of a mere certificate of purchase of school land, on which he has paid twenty per cent of the purchase price is not qualified, as a freeholder, to sign a petition for the organization of an irrigation district under the Wright act.—*Fallbrook Irr. Dist. v. Abila*, 106 Cal. 355, 39 Pac. 794.

23a. Where signers are not bona fide owners.—Where a majority of those who signed the petition for the formation of an irrigation district under the Wright act were not bona fide freeholders in the district, but only temporarily so for the purpose of signing and presenting the petition, that fact would be sufficient to declare the organization invalid in a confirmatory proceeding, but would not render the organization of the district void, but only voidable, and the court would not be deprived of jurisdiction to render a confirmatory decree, nor would it be sufficient to set aside the confirmatory decree.—*Fogg v. Perris Irr. Dist.*, 154 Cal. 209, 97 Pac. 316; *People v. Perris Irr. Dist.*, 154 Cal. 209, 97 Pac. 316.

23b. Where petition signed by less than required number of qualified signers.—Where a petition to organize an irrigation district under the Wright act was signed by only fifty-one persons, if any two of such persons were not qualified, a motion granting a new trial of a proceeding under the confirmatory act confirming such organization must be approved on appeal.—*Fallbrook Irrigation Dist. v. Abila*, 106 Cal. 355, 39 Pac. 794.

b. Boundaries.

24. Sufficiency — Definiteness. — The boundaries of the proposed district need not be set forth in the petition with greater particularity than is required for the creation of a political district or a municipal corporation, and if the boundaries as given are not too indefinite to be capable of location, and do not fail to embrace a definite and distinct territory, the supervisors acquire jurisdiction.—*In re Madera Irr. Dist.*, 92 Cal. 296, 27 Am. St. Rep. 106, 14 L. R. A. 755, 28 Pac. 272, 675.

25. Same — Same. — If the landmarks called for in the petition can be found on the ground the description is sufficiently definite, in the absence of evidence that such landmarks can not be found, and if it does not appear that the description in the order calling the election varies from or is less definite than that in the petition.—*Cullen v. Glendora Water Co.*, 113 Cal. 503, 39 Pac. 769, 45 Pac. 822, 1047.

26. Same.—A description of the boundaries of the district by metes and bounds, which would be sufficient in a deed, is sufficient in an order establishing the boundaries.—*Central Irr. Dist. v. De Lappe*, 79 Cal. 351, 21 Pac. 825.

27. Public land situated within boundaries, non-assessable.—The public lands of the United States situated within the exterior boundaries of an irrigation district is not a part of the district, subject to assessment for its proportion of the liabilities of the district, and neither the state nor its agencies can impose a tax, assessment or liability upon it, and so long as it remains public land no liability can be created by the state or district against it.—*Nevada National Bank v. Poso Irr. Dist.*, 140 Cal. 344, 73 Pac. 1056.

28. Incorporation of public land does not invalidate organization.—The incorporation of public land in an irrigation district organized under the Wright act does not render the organization invalid.—*Cullen v. Glendora Water Co.*, 113 Cal. 506, 39 Pac. 769, 45 Pac. 822, 1047.

29. City or town may be included.—An irrigation district organized under this act may include a city or town.—*Board of Directors v. Tregea*, 88 Cal. 334, 26 Pac. 237.

30. Inclusion of city or town does not invalidate organization.—The inclusion of a municipal corporation in an irrigation district organized under the Wright act does not invalidate the organization.—*In re Madera Irr. Dist.*, 92 Cal. 296, 27 Am. St. Rep. 106, 14 L. R. A. 755, 28 Pac. 272, 675.

31. Board may make changes.—Inclusion of lands does not invalidate organization.—The board is empowered by section 2 of the act to make such changes in the boundaries as they think proper, and where they include lands upon the application of owners, not made in writing, the organization of the district is not invalidated.—*Central Irr. Dist. v. De Lappe*, 79 Cal. 351, 21 Pac. 825.

32. Same.—Exclusion does not invalidate organization, even though excluded lands may be susceptible of cultivation.—The exclusion of lands by the board, although they may be susceptible of irrigation does not invalidate the organization, although in a proper proceeding the owners of such lands might have them reincluded.—*Central Irr. Dist. v. De Lappe*, 79 Cal. 351, 21 Pac. 825.

33. Same.—Decision of board as to benefits conclusive.—The decision of the board of supervisors as to whether lands will or will not be benefited by irrigation is final and conclusive, and may not be reviewed by the courts.—*Board of Directors, etc. v. Tregea*, 88 Cal. 334, 26 Pac. 237.

34. Same.—Identity of district not destroyed by exclusion.—The identity of the district is not destroyed by the exclusion of part of the lands therefrom, and if, at the time of such exclusion, the district owed no indebtedness, the inclusion would violate no constitutional rights.—*Board of Directors v. Tregea*, 88 Cal. 334, 26 Pac. 237.

35. Same.—Effect of change.—When the boundaries of an irrigation district are changed by regular and valid proceedings for that purpose such change became a matter of record, and a subsequent notice

of the hearing of confirmatory proceedings which designated the district by its name, was sufficient.—*Fogg v. Perris Irr. Dist.*, 154 Cal. 209, 97 Pac. 316; *People v. Perris Irr. Dist.*, 154 Cal. 209, 97 Pac. 316.

c. Notice of Hearing of Petition.

36. Provision as to publication of notice mandatory.—The provision as to publication of notice of hearing of petition is mandatory, and compliance therewith is jurisdictional.—*In re Central Irr. Dist.*, 117 Cal. 382, 49 Pac. 354.

37. Notice must be signed and authenticated.—The notice of hearing of the petition must bear a proper authentication and a mere unsigned and unauthenticated notice is invalid.—*In re Central Irr. Dist.*, 117 Cal. 382, 49 Pac. 354.

38. Petition and notice may be included in one paper.—The petition for the formation of an irrigation district under the Wright act, and the notice of the hearing of the petition may be included in a single document, sufficient in form as a notice and as a petition, and it may be published as a notice, and presented to the board as a petition.—*Fogg v. Perris Irr. Dist.*, 154 Cal. 209, 97 Pac. 316.

39. Defect in notice cured by actual knowledge.—A defect in the notice of hearing of the petition can not be cured by proof of actual knowledge, but it must be a notice issued as the statute requires, and by the persons authorized to issue it.—*In re Central Irr. Dist.*, 117 Cal. 382, 49 Pac. 354.

40. Slight mistakes in notice, unimportant.—Slight mistakes in the spelling of names in the publication of the petition, are entirely unimportant.—*Central Irr. Dist. v. De Lappe*, 79 Cal. 351, 21 Pac. 825.

41. Only petitioners empowered to publish notice.—The petitioners themselves are the only ones empowered by the act to publish the notice of hearing of the petition, and the board of supervision have no power to do so.—*In re Central Irr. Dist.*, 117 Cal. 382, 49 Pac. 354.

d. Bond Accompanying Petition.

42. If bond not invalid, determination of supervisors as to its sufficiency is conclusive.—If the bond accompanying the petition is not invalid, and binds those who signed it, the determination of the board of supervisors as to its sufficiency is conclusive, though it may be informal.—*In re Madera Irr. Dist.*, 92 Cal. 296, 27 Am. St. Rep. 106, 14 L. R. A. 755, 28 Pac. 272, 675.

43. Condition for payment of all costs includes required condition.—Where the bond was conditioned upon the payment of all costs in any event, it included the required condition that the bondsmen should pay the costs "in case said organization shall not be effected."—*Central Irr. Dist. v. De Lappe*, 79 Cal. 351, 21 Pac. 825.

44. Where bond merely defective, board may order filing of new bond.—Where the bond required by the statute was defective merely the board was empowered to order the filing of a new bond, and to continue the hearing for that purpose, and, since

neither bond nor petition need be filed before the petition is present, the new bond would "accompany" the petition on its presentation within the meaning of the statute.—*Central Irr. Dist. v. De Lappe*, 79 Cal. 351, 21 Pac. 825.

45. Reference to petition held sufficient.—A bond that recites two names as petitioners, who signed the bond but did not sign the petition, the bond being filed with the petition, which was the only petition present, is sufficient for the purpose of identification.—*Central Irr. Dist. v. De Lappe*, 79 Cal. 351, 21 Pac. 825.

e. Assessments.

46. Directors vested with exclusive power to levy assessments.—The Wright act has vested the board of directors with the exclusive right to levy assessments and to determine the percentage to be levied upon the property of the district, and the assessment must be uniform upon all the property, and it is not within the province of the court to declare the amount which is to be raised, or to determine the percentage for which the assessment should be levied.—*Boscowitz v. Thompson*, 144 Cal. 724, 78 Pac. 290.

47. Same power vested in directors to levy of assessments as is vested in supervisors as to levy of taxes.—The Wright act confers upon the directors the same power to levy assessments for current expenses, and for the care, operation, management and improvement of the irrigation works, as are possessed by boards of supervisors, and the proposition to levy the assessment must be submitted to and approved by the property owners.—*Tregea v. Owens*, 94 Cal. 317, 29 Pac. 643.

48. Exorbitant assessments—Relief of landowner.—If an assessment is exorbitant the landowner must pay the amount the board of directors had power to levy before he is entitled to equitable relief, that amount being equally a matter of computation as exact as that showing that the levy was higher than the board had power to make.—*Quint v. Hoffman*, 103 Cal. 506, 37 Pac. 514, 777.

48a. Same—Land can be required to bear only its proportion of cost of improvement.—Land subject to assessment under the Colorado act (copy of Wright act) can be required to bear only its proportion of the cost of the improvement, and lands that have paid an assessment can not be assessed a second time to make up a deficiency caused by the failure of some lands to pay.—*Norris v. Montezuma, etc.*, Dist., 240 Fed. 825.

49. Levy for different purposes in one order.—A levy for different purposes may be incorporated in one order.—*Cooper v. Miller*, 113 Cal. 238, 45 Pac. 325.

49a. Mistake in name of owner—Assessment not void or voidable.—An assessment made by an irrigation district on property belonging to the "regents of the Escondido seminary" made to the "Escondido seminary," is not void or voidable, in view of the provisions of section 32 of the Wright

act.—Escondido High School v. Escondido Seminary, 130 Cal. 128, 62 Pac. 401.

49b. Single parcel of five lots covered by livery stable.—For the purposes of assessment and taxation for irrigation district purposes under the Wright act five entire lots upon which a livery stable extended over each, should be held to be a single parcel of land and so assessed.—Cooper v. Miller, 113 Cal. 238, 45 Pac. 325.

49c. Poles, wires and other appliances of telegraph company not assessable.—Poles, wires and other appliances, constituting a telegraph line passing through an irrigation district upon the right of way of a railroad company, but owned by a telegraph company, constitute personal property, and are not subject to taxation by the district.—Western Union, etc., Co. v. Modesto Irr. Co., 149 Cal. 662, 9 Ann. Cas. 1190, 87 Pac. 190.

50. Assessment not a tax.—The assessment is not a tax and is not subject to constitutional provisions respecting taxation, and it may be levied on the property within the district without deducting existing mortgages.—Tregea v. Owens, 94 Cal. 317, 29 Pac. 643.

51. Exemption of municipalities.—The exemption of municipalities from taxation relates to state and county taxes and not to assessments for public improvements under general laws.—San Diego v. Linda Vista Irr. Dist., 108 Cal. 189, 35 L. R. A. 33, 41 Pac. 291.

52. Same—Not extended beyond property used for governmental property.—Implied exemption of the property of a municipality from taxation should not be extended to property not held or used for municipal or governmental purposes.—San Diego v. Linda Vista Irr. Dist., 108 Cal. 189, 35 L. R. A. 33, 41 Pac. 291.

53. Same—Pueblo lands of municipality.—An assessment upon the pueblo lands of a city is not a tax within the meaning of section 1, article XIII of the constitution exempting the property of municipal corporations from taxation, such lands being susceptible of cultivation and of benefit from irrigation, and such lands may be sold for unpaid assessments.—San Diego v. Linda Vista Irr. Dist., 108 Cal. 189, 35 L. R. A. 33, 41 Pac. 291.

54. Assessments to pay to interest on bonds—Discretion of directors.—Section 22 of the Wright act allows the directors a reasonable discretion in assessments to pay interest on bonds, and does not confine them to the exact amount of the interest.—Escondido High School v. Escondido Seminary, 130 Cal. 128, 62 Pac. 401.

55. Same—Same.—Section 22 of the Wright act authorized an assessments sufficient to raise the annual interest upon the outstanding bonds, and the board has a certain discretion as to the amount to be raised, and the courts will not interfere with its action unless it can be shown that it has abused its discretion.—Boscowitz v. Thompson, 144 Cal. 724, 78 Pac. 290.

56. Same—Same.—It is not necessary to

their validity that the method adopted for the assessments, and their collection, must be assimilated to and follow the constitutional mode for the assessment and collection of taxes.—Turlock Irr. Dist. v. Williams, 76 Cal. 360, 18 Pac. 379.

57. Same—Same—Assessment in amount larger than amount of interest.—Levy of assessment to pay interest will be enjoined where the amount of the assessment is so largely in excess of the amount of the interest as to make it appear that the directors abused their discretion.—Hughson v. Crane, 115 Cal. 404, 147 Pac. 120.

58. Same—Same—Same.—The power of the board of directors to levy an assessment to pay interest on bonds is not restricted to the levy of the exact amount of the interest, but they have a discretion in the matter which will not be interfered with except in case of abuse.—Hughson v. Crane, 115 Cal. 404, 147 Pac. 120.

59. Assessment under section 37—Special election.—An assessment levied for the purpose specified in section 37 of the Wright act, without calling a special election, is invalid.—Tregea v. Owens, 94 Cal. 317, 29 Pac. 643.

59a. Suit to compel assessment to be made—Demand necessary.—A demand is a prerequisite to a suit to compel the levy of an assessment to pay a judgment on the bonds of an irrigation district.—Board of Supervisors v. Thompson, 122 Fed. 860, 59 C. C. A. 70.

59b. Same—Judgment conclusive.—In a suit for writ of mandamus to compel the levy of a tax to pay bonds of an irrigation district, a judgment is conclusive against the board of supervisors and against the property owners, as to all questions which were or might have been litigated.—Board of Supervisors v. Thompson, 122 Fed. 860, 59 C. C. A. 70.

f. Election.

60. Publication of call for election.—The act does not specify the number of times the election proclamation is required to be published, but only that it shall be published three weeks before election.—Central Irr. Dist. v. De Lappe, 79 Cal. 351, 21 Pac. 825.

61. Election notice—Posting.—Notice of a special election under section 15 may be properly given as that section provides to the exclusion of the provision of section 5 as to posting of the general notice at the office of the board.—Board of Directors, etc., v. Tregea, 88 Cal. 334, 26 Pac. 237.

62. Election precincts—No division intended.—The legislature intended no division of the district when the election is to be by the district at large.—Cullen v. Glendora Water Co., 113 Cal. 503, 39 Pac. 769, 45 Pac. 822, 1047.

63. Same—Establishment by election notice.—It is sufficient that the election precincts are established by the election proclamation, which is published three weeks before election.—Central Irr. Dist. v. De Lappe, 79 Cal. 351, 21 Pac. 825.

g. Sales for Delinquent Assessments.

64. Sale directed by court is invalid and vests no title.—The Wright act gives to the collector authority to sell the property in case of non-payment of the assessment levied thereon by the board, but a sale by him in satisfaction of an amount directed by the court is unauthorized and would vest no title in the purchaser.—*Boscowitz v. Thompson*, 144 Cal. 724, 78 Pac. 290.

65. Tax deed offered in evidence—Presumptions.—Where a tax deed is offered in evidence and no evidence whatever upon the subject of an election for the levy of the tax for special purposes is offered, it is presumed that the election was held according to law and the levy authorized.—*Cooper v. Miller*, 113 Cal. 238, 45 Pac. 325.

66. Same—Same.—It is presumed that official duty was performed, and that where a tax sale was advertised for Sunday, the collector kept within section 26 of the statute, and postponed the sale to Monday, as the law allowed him to do.—*Baxter v. Vineland Irr. Dist.*, 136 Cal. 185, 68 Pac. 601.

66a. Act of de facto collector in sale of lands regarded as official.—A collector who is acting as such is a de facto officer of an irrigation district, even though he may be disqualified as a de jure officer, and in a proceeding to set aside tax sales of land sold for unpaid assessments to pay interest on bonds of the district, his acts must be regarded as official acts.—*Baxter v. Vineland Irr. Dist.*, 136 Cal. 185, 68 Pac. 601.

66b. Purchasers of bonds take with notice of the statute.—Purchasers of bonds of an irrigation district take with notice of the law under which they were issued and can not recover where it appears on the face of the bonds that they were not issued in conformity with the act.—*Wright v. East Riverside, etc., Dist.*, 138 Fed. 313, 70 C. C. A. 603.

66c. Deed prima facie evidence of validity of assessment.—If a tax deed executed by the collector of an irrigation district recites the matter recited in the certificate of sale, and is duly acknowledged or proved, it is under section 30 of the Wright act, prima facie evidence of the validity of the assessment and levy, and of the regularity of the proceedings for the sale and the deed.—*Cooper v. Miller*, 113 Cal. 238, 45 Pac. 325.

See, also, *Rollins v. Wright*, 93 Cal. 395, 29 Pac. 58.

66d. Deed is prima facie evidence of title in grantee.—A tax deed executed by the tax collector of an irrigation district organized under the Wright act, upon a sale for a delinquent tax levied by the board of directors of the district, is, under section 30, of the act prima facie evidence of title in the grantee.—*Cooper v. Miller*, 113 Cal. 238, 45 Pac. 325.

IV. BONDS.

67. Discrepancy in date does not invalidate.—The bonds of an irrigation district are not invalid because nominally

dated at a different time from their real or legal date.—*Stowell v. Rialto Irr. Dist.*, 155 Cal. 215, 100 Pac. 248.

68. Rule as to effect of recital of compliance with statute.—The rule that the recital in the bonds of an irrigation district of compliance with the statute protects only a bona fide purchaser without further inquiry and not a purchaser who took the bonds with actual knowledge which, in connection with the provisions of the statute, establishes their illegality.—*Leeman v. Perris Irr. Dist.*, 140 Cal. 540, 74 Pac. 24.

69. Issue of bonds is discretionary.—The issue of the bonds is discretionary, and the directors may issue such portion of the bonds and sell them at such times as they think best.—*Board of Directors, etc., v. Tregea*, 88 Cal. 334, 26 Pac. 237.

69a. Validity of bonds not affected by subsequent exclusion of territory.—The exclusion of territory subsequent to organization can not affect the validity of the bonds issued by a district.—*Herring v. Modesto, etc., Dist.*, 95 Fed. 705.

69b. Discretion of supervisors to issue bonds—Determination of benefits.—The Wright act commits to the supervisors, on the application for the organization of a district, the determination of the question of benefits, and in the absence of fraud or bad faith, their decision is conclusive, and the question can not be raised by the district as a defense to its obligation on the bonds issued by it.—*Herring v. Modesto, etc., Dist.*, 95 Fed. 705.

70. Issue of bonds does not depend on source of water supply.—The issue of bonds does not depend upon the source of the water supply, or plans for obtaining it, and the directors may change their plans and obtain a diminished supply from a source other than that provided for in the original plan, if the interests of the district will be subserved thereby.—*Board of Directors v. Tregea*, 88 Cal. 334, 26 Pac. 237.

70a. Bonds negotiable—Void when issued in violation of statute.—The bonds of an irrigation district are negotiable, but where issued in violation of statute they are void.—*Rialto Irr. Dist. v. Stowell*, 246 Fed. 294, 159 C. C. A. 24.

71. Negotiability not affected.—The fact that installments of principal were made payable only upon the surrender of the coupons does not affect its negotiability.—*Stowell v. Rialto Irr. Dist.*, 155 Cal. 215, 100 Pac. 248.

72. Disposition of bonds—Two available modes.—The only modes in which an irrigation district organized under the Wright act can dispose of its bonds, are the modes prescribed by section 12, to exchange them for property purchased for construction purposes, at par, and that prescribed in section 16 to sell them in the open market, at 90 per cent, for cash.—*Hughson v. Crane*, 115 Cal. 404, 47 Pac. 120.

73. Same—Affairs intended to be conducted on money basis, not on credit.—The intention of the Wright act was that the

affairs of an irrigation district should be conducted on a money basis, and not on credit.—*Hughson v. Crane*, 115 Cal. 404, 47 Pac. 120.

74. Same—Void unless issued for supplies at par or cash at 90 per cent.—Irrigation district bonds, negotiable in form (1887-29) issued in exchange for supplies for the district at ninety cents on the dollar, are void in the hands of the original purchaser and of subsequent holders with notice, as issued in violation of the provision of the act requiring the bonds, when not exchanged for property at par, to be sold for cash at ninety cents on the dollar.—*Ham v. Grapeland Irrigation District*, 172 Cal. 611, 613, 159 Pac. 201.

75. Same—Valid though the district made a bad bargain.—Bonds issued in exchange for property at par, are issued for a legal consideration, even though the district made a bad bargain.—*Ham v. Grapeland Irrigation District*, 172 Cal. 611, 618, 158 Pac. 207.

76. Same—Bonds issued for construction work at 90 per cent illegally issued.—Bonds issued to a contractor, at 90 per cent of par value, to pay for the construction of a dam are illegally issued.—*Hughson v. Crane*, 115 Cal. 404, 147 Pac. 120.

77. Same—Illegal contract.—A contract of an irrigation company whereby it delivered its bonds to a water company in return for water stock of the company, and never got any part of any canal, canals, or water works, or real property, or any tangible property at all whatever, and received a mere personal promise to allow it to rent certain water, the company remaining the owner of the pipe line which it laid, and the district acquiring no control or ownership thereof or of any other property, and by the terms of the contract never became entitled to any such property or control, is void.—*Stimson v. Alessandro Irr. Dist.*, 135 Cal. 389, 67 Pac. 496, 1034.

77a. Same—Issued for water system prior to latter's construction.—By the use of the phrase "works constructed and being constructed by private owners," the legislature clearly indicated an intention to authorize the acquisition of water systems by negotiation prior to their completion.—*Stowell v. Rialto Irr. Co.*, 155 Cal. 215, 100 Pac. 248.

78. Same—Same.—A contract of an irrigation company organized under the Wright act to pay for water rights and pipes to convey the water, entered into prior to the completion of the means of supply, with bonds of the company, does not render the contract one for the payment of construction works with bonds.—*Stowell v. Rialto Irr. Dist.*, 155 Cal. 215, 100 Pac. 248.

79. Same—Same—Authorized under section 12.—A contract of an irrigation district organized under the Wright act to take and pay for certain water rights together with pipe lines needed for the reception and distribution of the water, with bonds of the district, when the property for delivery and conveyance, was author-

ized under section 12 of the act.—*Stowell v. Rialto Irr. Dist.*, 155 Cal. 215, 100 Pac. 248.

80. Form of bonds.—The bonds should be in such form as to permit them to be paid in installments in the percentage specified in the statute, but a failure in this respect, by making the entire issue, instead of each bond, so payable, does not invalidate the bonds.—*In re Madera Irr. Dist.*, 92 Cal. 296, 27 Am. St. Rep. 106, 14 L. R. A. 755, 28 Pac. 272, 675.

81. Public lands not bound in hands of grantees of the United States.—The sale and conveyance by the United States of public land in private ownership can not operate to charge it with liability upon bonds of an irrigation district, existing prior to such conveyance, without the consent of the United States or its grantee.—*Nevada National Bank v. Poso Irr. Dist.*, 140 Cal. 344, 73 Pac. 1056.

82. Judicial knowledge of financial history.—The court takes judicial knowledge of the financial history of irrigation bonds.—*Hughson v. Crane*, 115 Cal. 404, 47 Pac. 120.

82a. Estoppel of district to deny validity of bonds.—Where an irrigation district (1887-29) has the power, upon the performance of certain conditions precedent, to issue bonds, and its officers charged with the duty to ascertain and determine as to the performance of such conditions, certify that they are performed, the district is estopped to plead non-performance.—*Ham v. Grapeland Irrigation Dist.*, 172 Cal. 611, 618, 158 Pac. 207.

82b. Same—Recital of bond—Bond in hands of president of district.—A recital in the bonds of an irrigation district that they were issued "by authority of, and pursuant to, and after a full compliance with, all the requirements of," the Wright act, estops the district from asserting that no estimate or determination of the amount of money required, or that the bonds were not disposed of in the manner or for the purposes prescribed in the act.—*Miller v. Perris, etc., Dist.*, 99 Fed. 143. Even though in the hands of the president of the district.—*Perris, etc., Dist., v. Thompson*, 116 Fed. 332, 54 C. C. A. 336.

82c. Same—De facto corporation.—Where an irrigation company issued and sold its bonds, used the proceeds for the construction of its works, and then repudiated its obligations on that ground that it had never been legally organized and had no power to issue the bonds, it was held that common honesty demanded that a debt thus incurred should be paid, and that if anything could constitute a de facto corporation the irrigation company in such a case was, and that its de jure existence could be questioned only by the state.—*Tulare, etc., Dist., v. Shepard*, 185 U. S. 1, 46 L. ed. 773, 22 Sup. Ct. 531.

82d. Collateral attack—De facto corporation.—An irrigation district organized under the Wright act is at least a de facto corporation, in view of the fact that the

supreme court of California has repeatedly upheld its constitutionality, and the legality of its organization can not be attacked collaterally for the purpose of defeating its obligations.—*Herring v. Modesto*, etc., Dist., 95 Fed. 705.

82c. Suit on bonds—Benefits received immaterial.—An allegation in the answer of an irrigation district to a suit on its bonds that the district derived no benefit from the work is immaterial and constitutes no defense.—*Herring v. Modesto*, etc., Dist., 95 Fed. 705.

82f. Same—Verified answer—Proof of execution or confirmation of bonds not required.—Section 447, Code of Civil Procedure.—Where the answer of an action against an irrigation district on its bonds was not verified, and the complaint set out copies of the bonds, which bore the seal of the district, and were introduced in evidence, the plaintiff was not required, in view of section 447, Code of Civil Procedure, to further prove their execution or their confirmation under the confirmation act.—*Perris*, etc., Dist. v. Thompson, 116 Fed. 832, 54 C. C. A. 336.

82g. Same—Date of issue—Signature.—Whether bonds of an irrigation district are treated as "issued" on the date, or on delivery, they were void, in the first case, because not signed by the "then secretary," and in the second case, because antedated so as to make them payable within a shorter period than the law provides.—*Wright v. East Riverside*, etc., Dist., 138 Fed. 312, 70 C. C. A. 603.

82h. Suit by taxpayers—Defects in issue of bonds.—The taxpayers in an irrigation district can not maintain a suit to restrain an action against the district on its bonds on the ground that the bonds were void, that the officers served in the action were not the officers of the district, that it had no officers, especially where it was not shown that application to the board of supervisors under section 10 of the act, to appoint directors had been made.—*Quinton v. Equitable*, etc., Co., 196 Fed. 314, 116 C. C. A. 134.

82i. Suit by holder of less than entire issue of bonds. The holder of less than the entire issue of a series of municipal bonds is not prevented by that fact from maintaining an action for their enforcement.—*Perris*, etc., Dist. v. Thompson, 116 Fed. 832, 54 C. C. A. 336.

82j. Remedy of judgment bondholder is mandamus to compel assessment.—The remedy of the holder of irrigation bonds, after judgment and return of execution unsatisfied, was mandamus to compel the levy of assessment on the property of the district, and not a suit in equity for a receiver.—*Marra v. San Jacinto*, etc., Dist., 131 Fed. 780.

82k. Statute of limitations.—Each irrigation bond of a district under the Wright act is a district obligation, and is barred after four years from maturity, notwithstanding the provision as to the levy of a sufficient amount to pay off bonds at the

expiration of twenty years.—*Curtis v. Rialto*, etc., Dist. (Cal. App.), 187 Pac. 116.

V. CONFIRMATORY ACT OF 1889.

a. Constitutionality.

83. The title of the confirmatory act of 1889 (Stats. 1889, p. 212) is sufficiently comprehensive to include the provision for ascertaining the validity of the organization of the district as a necessary condition precedent to the testing of the validity of the bonds issued by the district.—*People v. Linda Vista Irr. Dist.*, 128 Cal. 477, 61 Pac. 86.

84. New trial provisions of section 4 unconstitutional.—The provision of section 4 of the supplemental act of 1889 (Stats. 1889, p. 212) that motions for new trial must be made on the minutes of the court is obnoxious to subdivision 3, section 25, article IV, of the constitution, inhibiting special laws regulating the practice in courts of justice, and such a motion on a bill of exceptions made under the code provisions, will be considered on appeal.—*Cullen v. Glendora Water Co.*, 113 Cal. 503, 39 Pac. 769, 45 Pac. 822, 1047.

85. Jurisdiction of superior court.—The proceeding for the confirmation of the organization of an irrigation district is judicial and properly committed to the superior court for determination.—*Title*, etc., Co. v. Kerrigan, 150 Cal. 289, 320, 119 Am. St. Rep. 199, 8 L. R. A. (N. S.), 682, 88 Pac. 356.

b. Construction.

86. Act must be construed as a whole.—The supplementary act of 1889 (Stats. 1889, p. 212) must be construed as a whole with reference to its manifest purpose, and as allowing the proceeding to be commenced as soon as the resolution has been adopted, and before bonds have been issued.—*Board of Directors*, etc., v. Tregear, 88 Cal. 334, 26 Pac. 237.

87. Independent act, not part of Wright act.—The supplementary act of 1889 (Stats. 1889, p. 212) is an independent statute, not a part of the Wright act, and not amendatory of it, and section 3 of the Wright act as amended in 1891, limiting the time in which an action may be commenced or a defense made affecting the validity of the organization to two years, has no application to the act of 1889.—*In re Central Irr. Dist.*, 117 Cal. 382, 49 Pac. 354.

88. Special proceeding.—A proceeding brought under the act of 1889 (p. 212) for the confirmation of the organization of the district is a special proceeding, and in the nature of a proceeding in rem to determine its status and its power to issue bonds.—*Crall v. Poso Irr. Dist.*, 87 Cal. 140, 26 Pac. 797.

89. Proceeding in rem.—The proceeding for confirmation under the act of 1889 (Stats. 1889, p. 212) is one in rem, and the decree while it is in force is conclusive upon the state as well as all others, that all steps for the proper organization of the district were properly taken, and the contrary can not be shown in quo war-

ranto.—People ex rel. Fogg v. Perris Irr. Dist., 132 Cal. 289, 64 Pac. 399, 773.

90. **Same.**—The proceeding under the act of 1889 (Stats. 1889, p. 212) are in rem, and, for the protection of investors, must bind not only the parties appearing, but all the world.—Board of Directors, etc., v. Tregea, 88 Cal. 334, 26 Pac. 237.

91. **Same.**—The proceeding to confirm the regularity of the proceedings in the organization of an irrigation district is a proceeding in rem, authorized for the express purpose of fixing the legal status of the district, and the decree concluded the whole world upon all the questions involved, and was properly admitted in evidence in an action to condemn a right of way for an irrigation pipe line to establish the facts therein determined.—Rialto Irr. Dist. v. Brandon, 103 Cal. 384, 37 Pac. 484.

92. **Section 3 of Wright act not applicable.**—The provisions of section 3 of the Wright act limiting the bringing of actions affecting the validity of the organization of an irrigation district to two years after the making and entry of the order, has no application to suits under the confirmatory act of 1889 (Stats. 1889, p. 212), or to suits to set aside a judgment of confirmation for fraud.—People v. Perris Irr. Dist., 142 Cal. 601, 76 Pac. 381.

93. **Only applicable to bonds sold to invest in water system.**—The confirmatory act of 1889 (Stats. 1889, p. 212) refers only to bonds sold to invest in a water system, under the authority of section 16 of the Wright act, and not to those issued under section 12 for the purchase of other property, and the court is without jurisdiction under the confirmatory act to make a confirmatory decree as to any bonds except those referred to in section 16.—Stimson v. Alessandro Irr. Dist., 135 Cal. 389, 67 Pac. 496, 1034.

c. Notice.

94. **All persons in district bound to take notice.**—All persons in the district are bound to take notice of the specific allegations of the petition under the act of 1889 (Stats. 1889, p. 212), and appear and object or be forever precluded from questioning the validity of the bonds.—88 Cal. 334, 26 Pac. 237.

95. **Publication of notice and filing petition sufficient.**—Under the act of 1889 (Stats. 1889, p. 212), the publication of a notice of the filing of the petition is sufficient to confer jurisdiction upon the superior court to render a judgment affirming the regularity of the organization of the district, the legality of its orders, and the validity of its bonds, and such judgment will be binding upon the lands of the district and their owners.—Board of Directors, etc., v. Tregea, 88 Cal. 334, 26 Pac. 237.

96. **Sufficiency of notice.**—The notice required by the act of 1889 (Stats. 1889, p. 212) is sufficient if it state the filing of the petition, and the substance of the prayer thereof, and in other respects conforms to the statute.—Board of Directors, etc., v. Tregea, 88 Cal. 334, 26 Pac. 237.

97. **Same—Contents.**—The notice of the hearing of the petition for confirmation under the act of 1889 (Stats. 1889, p. 212), need not contain a specific description of the lands of the district, nor of any owner thereof, nor of its boundaries.—Fogg v. Perris Irr. Dist., 154 Cal. 209, 97 Pac. 316; People v. Perris Irr. Dist., 154 Cal. 209, 97 Pac. 316.

98. **Notice is due process.**—The notice containing the statement that the proceedings were for the purpose of confirming the proceedings for the sale of the bonds of the district was due process of law to inform any landowner affected and interested.—Fogg v. Perris Irr. Dist., 154 Cal. 209, 97 Pac. 316; People v. Perris Irr. Dist., 154 Cal. 209, 97 Pac. 316.

99. **Constructive service by publication.**—Constructive service by publication and posting as provided by the Wright act is sufficient to give the court jurisdiction of a proceeding under the act of 1889 (Stats. 1889, p. 212).—Crall v. Poso Irr. Dist., 87 Cal. 140, 26 Pac. 797.

d. Effect of Judgment or Decree.

100. **Properly includes injunction.**—A judgment of confirmation under the act of 1889 (Stats. 1889, p. 212) properly includes an injunction declaring all persons interested in the organization of the district from disputing, denying or disclaiming any facts which might have been disputed in the proceeding.—In re Madera Irr. Dist., 92 Cal. 296, 27 Am. St. Rep. 106, 14 L. R. A. 755, 28 Pac. 272, 675.

100a. **Conclusive on all questions.**—A judgment under the confirmation act is conclusive of all the questions involved therein. (Former opinion in 85 Fed. 693, explained and reaffirmed).—Miller v. Perris, etc., Dist., 99 Fed. 143.

101. **Binding on all the world.**—The proceeding under the confirmatory act of 1889 (Stats. 1889, p. 212) is one in rem, and the judgment therein is binding upon the whole world, including the state, is res adjudicata, and constitutes a bar to subsequent quo warranto proceedings against the district, attacking the validity of the organization of the district.—People v. Linda Vista Irr. Dist., 128 Cal. 477, 61 Pac. 86.

101a. **After confirmatory judgment, subsequent quo warranto judgment—Validity of bonds not affected.**—A judgment against an irrigation district, in an action by the state, declaring void the organization of the district, does not affect the validity of its bonds, issued after judgment in favor of its validity under the confirmation act.—Miller v. Perris, etc., Dist., 99 Fed. 143.

102. **Confirmatory decree is conclusive.**—A confirmatory decree under the act of 1889 (Stats. 1889, p. 212) is merely evidence of the validity of the organization of the district, conclusive only so long as it is unimpeached, and a suit to set it aside for fraud is an attack only upon the evidence of such judgment, and not a direct attack upon the validity of the organization of the district.—People v. Perris Irr. Dist., 142 Cal. 601, 76 Pac. 381.

103. Judgment is a bar.—A judgment in an action under the act of 1889 (Stats. 1889, p. 212) rendered upon constructive service is a bar to a suit to enjoin the sale of the bonds of the district brought by one constructively served, and mere defects in the organization can not be reviewed in such suit.—*Crall v. Poso Irr. Dist.*, 87 Cal. 141, 26 Pac. 797.

104. Impeached for fraud only.—A confirmation decree can only be impeached for fraud in a direct proceeding for the purpose.—*People ex rel Fogg v. Perris Irr. Dist.*, 132 Cal. 289, 64 Pac. 399, 773.

105. Validity of proceedings does not depend on decree.—The validity of the proceedings for the organization of a district does not depend upon the decree of confirmation under the act of 1889 (Stats. 1889, p. 212), but upon the regularity of the proceedings under the Wright act.—*People v. Perris Irrigation Dist.*, 142 Cal. 601, 76 Pac. 381.

105a. Necessarily involves inquiry into validity of original organization.—An adjudication under the confirmatory act of 1889 (Stats. 1889, p. 212) necessarily involved and required an inquiry into the validity of the original organization.—*Fogg v. Perris Irr. Dist.*, 154 Cal. 209, 97 Pac. 316; *People v. Perris Irr. Dist.*, 154 Cal. 209, 97 Pac. 316.

106. First decree void, second decree.—If it be conceded that a first confirmatory decree, confirming the validity of the proceedings up to a certain point, is void, a second valid decree conclusively adjudicating and establishing the validity of the proceedings to organize the district and to issue and sell the bonds thereof, as well as the legal existence of the district under the Wright act, will protect the bondholders under the first decree, as effectively as would that decree, and will render harmless any error of the court in holding the first decree valid.—*Fogg v. Perris Irr. Dist.*, 154 Cal. 209, 97 Pac. 316; *People v. Perris Irr. Dist.*, 154 Cal. 209, 97 Pac. 316.

107. Void bonds can not be confirmed.—Void bonds of an irrigation district can not be confirmed in a proceeding under the act of 1889 (Stats. 1889, p. 212), and a judgment of confirmation in such a proceeding is itself void for want of jurisdiction.—*Stimson v. Alessandro Irr. Dist.*, 135 Cal. 389, 67 Pac. 496, 1034.

108. Rights of purchasers in good faith of bonds afterwards declared in confirmatory proceedings null and void.—Where bonds of an irrigation district were issued and sold to bona fide purchasers, and afterwards in a proceeding under the confirmation act the organization of the district was held illegal and void, the rights of such purchasers will be left for determination in a proper action to which they may be parties.—*In re Central Irr. Dist.*, 117 Cal. 382, 49 Pac. 584.

108a. Rights of purchasers in good faith protected.—Where an irrigation district was properly organized, and the is-

sue of the bonds were within the authority of the board, and the only question in an attack upon their validity related to certain irregularities in the records and in conducting the elections, purchasers of the bonds "without any notice whatever" of any informity in said bonds, or of any irregularity or fraud connected with the issuance thereof, are protected from such irregularities.—*Baxter v. Vineland Irr. Dist.*, 136 Cal. 185, 68 Pac. 601.

108b. Assessments to pay interest on bonds confirmed by act, but decree set aside eight years after.—Where bonds of an irrigation district were confirmed in 1890, and the confirmation decree was not set aside until eight years later, valid assessments might be levied to pay interest on bonds that had passed into the hands of bona fide holders in the interval.—*Haese v. Heitzeg*, 159 Cal. 569, 114 Pac. 816.

VII. ACTIONS.

a. Parties.

109. One who took bonds with knowledge of invalidity.—One who knew at the time he took the bonds of an irrigation district that they were issued in violation of the Wright act can not maintain a suit upon same.—*Leeman v. Perris Irr. Dist.*, 140 Cal. 540, 74 Pac. 24.

110. District necessary party, when.—In an action to restrain the levy of an assessment to pay illegal bonds of an irrigation district and to restrain further issue of bonds, the district is a proper and a necessary party, and the directors are proper parties for the purpose of reaching and restraining the corporation.—*Sechrist v. Rialto Irr. Dist.*, 129 Cal. 640, 62 Pac. 261.

111. Collector represents the district for defensive purposes, not for affirmative relief.—In an action by landowners against the collector to enjoin him from selling land for an unpaid assessment to pay interest on bonds, the collector represents the district for defensive purposes alone, and not for the purpose of affirmative relief; nor can the intervening bondholders because of their interest in the success of the defendant, have affirmative relief upon a cross-complaint seeking to enforce a lien against the lands.—*Boscowitz v. Thompson*, 144 Cal. 724, 78 Pac. 290.

112. Bondholders not necessary parties, when.—The bondholders were not necessary parties in an action to cancel tax sales of land sold to pay interest assessments on the bonds, attacking the validity of the bonds, but they had such an interest as made them proper parties, especially as they alleged that the defendants would not defend the action in good faith.—*Baxter v. Vineland Irr. Dist.*, 136 Cal. 185, 68 Pac. 601.

112a. District as a party.—Under the provisions of section 14 of the Wright act giving the directors of a district the right to "appear and defend" implies the liability to be sued.—*Boehmer v. Big Rock Irr. Dist.*, 117 Cal. 19, 49 Pac. 908.

b. Complaint.

113. Eminent domain proceedings to condemn pipe line sufficiently alleges existence of public use.—Complaint in eminent domain proceedings to condemn a right of way for a pipe line for an irrigating district held sufficient to show a public use.—*Rialto Irr. Dist. v. Brandon*, 103 Cal. 334, 37 Pac. 484.

114. Taxpayers need not allege demand upon directors to bring action.—The taxpayers of an irrigation district are not required to make demand upon the directors to bring the action before bringing action to cancel the bonds of the district, and need not allege such demand in their complaint.—*Sechrist v. Rialto Irr. Dist.*, 129 Cal. 640, 62 Pac. 261.

115. Fraud must be pleaded specifically.—If a landowner relies upon fraud to set aside the order of the board, he must plead the facts constituting the fraud.—*Board of Directors, etc., v. Tregoe*, 88 Cal. 334, 26 Pac. 237.

c. Burden of Proof.

116. Burden on plaintiff in action to cancel tax sales.—In an action to cancel tax sales of land sold for unpaid assessments of an irrigation company to pay interest on its bonds, the burden is on the plaintiff to sustain the allegations of the complaint.—*Baxter v. Vineland Irr. Dist.*, 136 Cal. 185, 68 Pac. 601.

d. Judgment.

117. Lien of bondholders.—Whatever lien the bondholders may have against the lands in an irrigation district exists by virtue of the statute under which the bonds were issued, and the assessment levied, and not by reason of any equity in their behalf, or by virtue of any contract between them, and a court of equity can not decree such a lien, unless the statute declares it, and provides for its enforcement, in which case it can only be enforced in the mode provided.—*Boskowitz v. Thompson*, 144 Cal. 724, 78 Pac. 290.

118. Injunction against sale of lands for unpaid assessments, without adjudicating validity of assessment.—It was improper in an action to enjoin the sale of lands of an irrigation district brought by landowners, who were contesting the validity of the assessment, and in which the bondholders were intervening and seeking affirmative relief by declaring a lien on the land for the interest due on bonds held by them, for the court to decree that so much of the lands be sold as was required to pay the interest on the bonds held by the intervenors, without determining whether the original assessment was void, and disregarding the rights of other bondholders, who did not intervene.—*Boskowitz v. Thompson*, 144 Cal. 724, 78 Pac. 290.

119. Court may protect bondholders in action to cancel bonds.—In an action to cancel the bonds of a district, where the directors and the district and properly made defendants, the court may protect the

equities of the bondholders, while granting the relief sought.—*Sechrist v. Rialto Irr. Dist.*, 129 Cal. 640, 62 Pac. 261.

e. Execution.

120. Rule not applicable to lands of irrigation district.—The principle that only so much of the property of a quasi public corporation as is necessary to the exercise of the quasi public functions of a corporation are exempt from execution, does not apply to the lands of a public corporation held, as in the case of the lands of an irrigation district, under an express trust, where the land can not be sold, nor any execution sale made, without a direct violation of the terms of the trust.—*Tulare Irr. Dist. v. Collins*, 155 Cal. 440, 97 Pac. 1124.

f. Collateral Attack.

121. Question as to whether district de jure or de facto immaterial.—It is immaterial whether an irrigation district organized under the Wright act is a corporation de jure or de facto upon an attack upon its organization collaterally.—*Quint v. Hoffman*, 103 Cal. 506, 37 Pac. 514, 777.

122. Supervisors want of jurisdiction, only ground.—The organization of an irrigation district under the Wright act can not be collaterally attacked in a suit to enjoin the sale of lands for an assessment, on the ground that the board of supervisors acted without jurisdiction in effecting such organization.—*Quint v. Hoffman*, 103 Cal. 506, 37 Pac. 514, 777.

123. Attack on validity of bonds in action to cancel sales of lands for delinquent assessment to pay interest.—An attack upon the validity of the bonds of an irrigation district, in a suit to cancel tax sales of land sold to pay an assessment for interest on the bonds, is a collateral attack, and is not changed to a direct attack by allegations of the bondholders in intervention that they were purchasers without notice of any infirmity in the bonds, and that they were in fact legal and valid obligations of the district.—*Baxter v. Vineland Irr. Dist.*, 136 Cal. 185, 68 Pac. 601.

VII. MISCELLANEOUS.

124. Power to mortgage implies right of foreclosure and sale.—Section 17 of the Wright act purporting to authorize the directors of an irrigation district to mortgage or convey by deed of trust, all the property of the district as additional security for its bonds must be construed to imply the right of foreclosure and sale, and not merely as authorizing a change in the custodian of a public use.—*Merchants, etc., Bank v. Escondido Irr. Dist.*, 144 Cal. 329, 77 Pac. 937.

125. Power of eminent broad enough to cover condemnation of pipe lines.—The provisions of the Wright act relating to the condemnation of property, are broad enough to include pipe lines, conduits, flumes, etc., for the purpose of conveying water, even though not necessarily included in the terms "ditches and canals."—*Rialto Irr. Dist. v. Brandon*, 103 Cal. 334, 37 Pac. 484.

126. **Duty of collector to turn over money collected.**—It is the duty of the collector of an irrigation district to turn over to the treasurer the money collected by him for assessments, and this duty is not affected by the question as to the legality or illegality of such assessments.—*Perry v. Otay Irr. Dist.*, 127 Cal. 565, 60 Pac. 40.

127. **Claim of collector for salary can not be set off against collection.**—The claim of a collector of an irrigation district for salary as such collector can only be paid out of the treasury of the district after allowance by the board and upon a warrant therefor properly drawn, as any other claim.—*Perry v. Otay Irr. Dist.*, 127 Cal. 565, 60 Pac. 40.

128. **Same.**—The collector of an irrigation district can not offset the amount of his unpaid salary as such collector against the amount of assessments collected by

him.—*Perry v. Otay Irr. Dist.*, 127 Cal. 565, 60 Pac. 40.

129. **Assessed owner of land not entitled to use of water outside of district.**—An assessed owner of land in an irrigation district organized under the Wright act is not entitled to the use of the water of the district on lands outside the district.—*Jenison v. Redfield*, 149 Cal. 500, 37 Pac. 62.

130. **Rule of forfeiture for non-user not applicable to irrigation districts.**—The rule as to forfeiture of charter for non-user has no application to a public corporation.—*People v. Selma Irr. Dist.*, 98 Cal. 206, 32 Pac. 1047.

131. **Powers of directors.**—The directors of an irrigation district have only the powers expressly given or implied as necessary to carry out the purposes of the act.—*Stimson v. Alessandro Irr. Dist.*, 135 Cal. 389, 67 Pac. 496, 1034.

“CALIFORNIA IRRIGATION DISTRICT ACT”—“BRIDGEFORD ACT.”

ACT 2266—An act to provide for the organization and government of irrigation districts, and to provide for the acquisition or construction thereby of works for the irrigation of the lands embraced within such districts, and, also, to provide for the distribution of water for irrigation purposes.

History: Approved March 31, 1897, Stats. 1897, p. 254. Amended (1) March 28, 1901, Stats. 1901, p. 815; (2) February 28, 1905, Stats. 1905, p. 27; (3) February 11, 1909, Stats. 1909, p. 12; (4) February 22, 1909, Stats. 1909, p. 46; (5) March 19, 1909, Stats. 1909, p. 429; (6) March 19, 1909, Stats. 1909, p. 461; (7) April 19, 1909, Stats. 1909, p. 998; (8) April 22, 1909, Stats. 1909, p. 1062 (9) April 22, 1909, Stats. 1909, p. 1075; (10) March 26, 1911, Stats. 1911, p. 509; (11) April 26, 1911, Stats. 1911, p. 1111; (12) January 2, 1912, Stats. 1911 (ex. sess.), p. 135; (13) January 2, 1912, Stats. 1911 (ex. sess.), p. 139; (14) January 25, 1912, Stats. 1911 (ex. sess.), p. 248; (15) April 22, 1913; in effect August 10, 1913, Stats. 1913, p. 59; (16) June 13, 1913; in effect August 10, 1913, Stats. 1913, p. 781; (17) June 16, 1913; in effect August 10, 1913, Stats. 1913, p. 993; (18) May 26, 1915; in effect August 8, 1915, Stats. 1915, p. 836; (19) June 8, 1915; in effect August 8, 1915, Stats. 1915, p. 1291; (20) June 8, 1915; in effect August 8, 1915, Stats. 1915, p. 1326; (21) June 9, 1915; in effect August 8, 1915, Stats. 1915, p. 1367; (22) May 18, 1917; in effect July 27, 1917, Stats. 1917, p. 751; (23) May 24, 1917; in effect July 27, 1917, Stats. 1917, p. 915; (24) May 11, 1919; in effect July 22, 1919, Stats. 1919, p. 472; (25) May 16, 1919; in effect July 22, 1919, Stats. 1919, p. 660; (26) May 16, 1919, Stats. 1919, p. 714. This last amendment was submitted to the people by referendum at the general election of November 2, 1920. and adopted. It went into effect December 9, 1920.

ORGANIZATION.

§ 1. A majority in number of the holders of title or evidence of title to lands susceptible of irrigation from a common source and by the same system of works, including pumping from subsurface or other waters, such holders of title or evidence of title representing a majority in value of said lands, may propose the organization of an irrigation district, under the provisions of this act; or the organization of such an irrigation district may be proposed by not less than five hundred petitioners, each petitioner to the number of at least five hundred to be an elector residing in the proposed district or the holder of title or evidence of title to land therein; provided, that the said petitioners must include the holders of title or evidence of title to not less than twenty per cent in value of the lands included within the proposed district. The lands proposed to be included within any such irrigation district need not consist of contiguous parcels. Any holder of land under a possessory right acquired by entry or purchase from the United

States or the state of California shall be deemed to be a holder of evidence of title to said land within the meaning of this act. The county assessment roll of the county in which any lands included within such proposed irrigation district are situated, which assessment roll has been last equalized at the time of the first publication of said petition as provided in section two of this act, shall be conclusive evidence as to the value of said lands and the holders of title or evidence of title to said lands. If any parcel of land is assessed on any assessment roll to unknown or fictitiously named owners, or to unnamed owners in addition to any owner or owners named thereon, said parcel of land shall be deemed for any of the purposes of this act, to have but one owner in addition to any owner or owners whose true name or names may be purported to be given on such assessment roll. The holder of title or evidence of title to an undivided interest in any land affected by any of the provisions of this act may sign any petition provided for in this act, and such undivided interest shall be counted and valued as though it were a separate interest, and if the assessment roll shall fail to indicate the extent of any such undivided interest, the holders of title or evidence of title whose undivided interests in any land are not specifically defined shall be deemed to have equal shares therein. Guardians, executors, administrators or other persons holding property in a trust capacity under appointment of court may sign any petition provided for in this act, when authorized by an order of court, which order may be made without notice. A certificate of acknowledgment taken before a notary public or justice of the peace of any state, or an affidavit by any person in the presence of whom such petition was signed, shall be sufficient evidence of the genuineness of such signature and of the fact of place of residence of any petitioners under this act. [Amendment of May 16, 1919. Stats. 1919, p. 714. Submitted by referendum at the general election of November 2, 1920, and adopted; in effect December 9, 1920.]

This section was also amended March 26, 1911, Stats. 1911, p. 509; June 9, 1915, Stats. 1915, p. 1367; May 18, 1917. Stats. 1917, p. 751.

§ 2. In order to propose the organization of an irrigation district, a petition signed by the requisite majority of holders of title or evidence of title to lands within the proposed district or by at least five hundred petitioners, as provided in section one of this act, shall be presented to the board of supervisors of the county in which the lands within the proposed district, or the greater portion thereof, are situated. Said petition shall set forth generally the boundaries of the proposed district and also shall state generally the source or sources (which may be in the alternative) from which said lands are proposed to be irrigated, and shall pray that the territory embraced within the boundaries of the proposed district may be organized as an irrigation district under the provisions of this act. The petition may consist of any number of separate instruments, and must be accompanied with a good and sufficient undertaking, to be approved by the board of supervisors, in double the amount of the probable cost of organizing such district, conditioned that the sureties shall pay all of said costs in case said organization shall not be effected. Said petition shall be presented at a regular meeting of said board and shall be published for at least two weeks before the time at which the same is to be presented in some newspaper of general circulation printed and published in the county where said petition is presented together with a notice stating the time of the meeting at which the same will be presented; and if any portion of the lands within said proposed district lie within another county or counties, then said petition and notice shall be published, as above provided, in a newspaper published in each of said counties. When contained upon more than one instrument, one copy only of such petition need be published, but the names attached to all of said instruments must appear in such publication. On or before the day on which said petition is presented to said board of supervisors, a copy of said petition shall be filed in the office of the state engineer. Signatures to the petition may be withdrawn at any time before the publication

is commenced as in this section required, by filing a declaration, signed by the petitioner, with the board of supervisors before which the petition is to be presented, stating that it is the intention of the petitioner to withdraw therefrom, which declaration shall be acknowledged in the same manner as conveyances of real estate are required to be acknowledged. When said petition is presented, said board of supervisors shall hear the same and shall proceed to determine whether or not said petition complies with the requirements hereinbefore set forth and whether or not the notice required herein has been published as required, and must hear all competent and relevant testimony offered in support of or in opposition thereto. Said hearing may be adjourned from time to time for the determination of said facts, not exceeding two weeks in all. No defect in the contents of the petition or in the title to or form of the notice or signatures, and no lack of signatures thereto, or to the petition as published, shall vitiate any proceedings thereon; provided, such petition or petitions have a sufficient number of qualified signatures attached thereto. The determination of the board shall be expressed by resolution. If it shall determine that any of the requirements hereinbefore set forth have not been complied with, the matter shall be dismissed, but without prejudice to the right of the proper number of persons to present a new petition covering the same matter or to present the same petition with additional signatures, if such additional signatures are necessary to comply with the requirements of this act. If the board of supervisors shall determine that the petitioners have complied with the requirements hereinbefore set forth, it shall cause a copy of the resolution so declaring to be forwarded to the state engineer. Upon receiving a copy of said resolution, the state engineer shall make or cause to be made such preliminary investigation as may be practicable, with a view to determining the feasibility of the project proposed to be undertaken. He shall report as soon as practicable, but at all events within ninety days from the date of the adoption of the said resolution, in writing, on the matter to the board of supervisors from which the copy of said resolution was received, except that upon receiving a written request from the state engineer, the board of supervisors may at any meeting before the expiration of said ninety days grant to the state engineer not more than ninety days additional time in which to make said report. If the state engineer shall report within the time specified herein that the supply of water available for the use of the proposed district, or that may be acquired by any practicable means, including the condemnation of existing rights, is not sufficient or that the project is not feasible for any other reason or reasons, the hearing of the matter shall be continued for not more than two months and shall then be dismissed unless the board of supervisors shall be petitioned in writing by three-fourths of the holders of title or evidence of title to land within said proposed district to grant said petition; provided, that if the board of supervisors is not so petitioned, it may modify the plans for the proposed district in accordance with recommendations by the state engineer. If after receiving an adverse report from the state engineer the board of supervisors shall be petitioned as aforesaid or shall decide to modify the plans for the proposed district in accordance with recommendations by the state engineer, it shall, at the time to which the hearing of said matter shall have been continued, set a time for the final hearing thereof. If the continuance of the matter is not compelled by an adverse report as aforesaid, the board of supervisors, at its first regular meeting after the receipt of a report from the state engineer, or at the first regular meeting after the expiration of the time allowed for the making of such report if no such report has been received, shall set a time for a final hearing of the matter. In any case the time set for the final hearing as aforesaid shall not be less than one week from the meeting at which said time was set; provided, that notice of the time of such final hearing shall be given by registered mail to such party as shall have been designated for that purpose by the petitioners, or by publication for at least three days in one daily newspaper published in the county in which the lands

within the proposed district, or the greater portion thereof are situated. A failure to give such last mentioned notice, however, shall not affect the validity of subsequent proceedings. On a final hearing herein provided for, the board may adjourn from time to time, but at no time for a longer period than three days until a determination of the matter is reached. On said final hearing said board shall make such changes in the proposed boundaries as it may deem advisable and shall define and establish such boundaries, but said board shall not modify said boundaries so as to exclude from such proposed district any territory which is susceptible of irrigation from any of the sources proposed, unless said board shall decide to modify the plan for such proposed district, as herein provided, nor shall any lands which will not, in the judgment of said board, be benefited by irrigation by means of said systems or works be included within such proposed district. Lands already irrigated and riparian lands may be included in the district if in the judgment of the board of supervisors such land will be benefited, or if the water used thereon or the rights to the use of water thereon should, in the judgment of the board of supervisors, be taken or acquired for the district. Any person whose lands are susceptible of irrigation from any of the proposed sources may, upon his application, in the discretion of said board, have such lands included within said proposed district. [Amendment of May 16, 1919, Stats. 1919, p. 714; submitted on referendum at the general election of November 2, 1920, and adopted. In effect December 9, 1920.]

This section was amended February 11, 1909, Stats. 1909, p. 12; March 26, 1911, Stats. 1911, p. 509; June 13, 1913, Stats. 1913, p. 993; May 18, 1917, Stats. 1917, p. 751.

Duty of state engineer.

§ 2a. The state engineer shall have authority, and it shall be his duty, to give information so far as may be practicable to persons contemplating the organization of irrigation districts under the provisions of this act. Whenever the department of engineering shall deem it in the public interest that preliminary surveys and field investigations of proposed irrigation district projects shall be made at the expense of the state, the state engineer shall make such surveys and field investigations of such proposed irrigation district projects, and, pending the completion of such surveys and investigation, the state water commission shall have authority to withhold from appropriation any unappropriated waters likely to be needed therefor. [New section added May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 755.]

Order reaffirming conclusions.

§ 3. Upon the final hearing of said petition or said matter, the board of supervisors shall make an order reaffirming its conclusions as to the genuineness and sufficiency of the petition and notice hereinbefore provided for, reciting that a report regarding the proposed district has been made by the state engineer and is on file with the other records of the board, and describing the boundaries of the proposed district as defined and established by said board. Said order shall be entered in full upon the minutes of said board. At said final hearing no evidence shall be heard against the genuineness or sufficiency of said petition or notice unless it shall be shown to the satisfaction of said board that new evidence which, if uncontradicted, would disprove the genuineness or sufficiency of said petition or notice has been discovered since said board adopted the resolution declaring that said petition and notice complied with all the requirements of this act. In case any new evidence is admitted, full opportunity shall be given for the introduction of evidence in rebuttal thereof. [Amendment approved June 16, 1913, Stats. 1913, p. 996.]

Finding of board to be conclusive.

§ 4. A finding of the board of supervisors in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except,

the state of California upon suit commenced by the attorney general. Any such suit must be commenced within one year after the order of the board of supervisors declaring such district organized as herein provided, and not otherwise. [Amendment approved January 2, 1912. Stats. 1911, p. 139, extra session.]

Division in districts, and election of directors.

§ 5. If, on said final hearing, the boundaries of the proposed district are defined and established, said board shall make an order dividing said district into five divisions, as nearly equal in size as may be practicable, which shall be numbered first, second, third, fourth and fifth, and one director shall be elected for each division by the electors thereof; provided, that if so requested in said petition, the board may order that there shall be only three divisions in said district, and that only three directors be elected, and that the directors may be elected by the district at large, or by divisions, as such petition shall provide, but in any event such directors shall be elected to represent separate divisions and shall be residents of the respective divisions they are elected to represent. [Amendment of June 9, 1915. In effect August 8, 1915. Stats. 1915, p. 1368.]

Election on organization. Publication of notice.

§ 6. Said board of supervisors shall then give notice of an election to be held in such proposed district, for the purpose of determining whether or not the same shall be organized under the provisions of this act. Such notice shall describe the boundaries so established, and shall designate a name for the proposed district, and said notice shall be published for at least three weeks previous to such election, in a newspaper published within the county in which the petition for the organization of the proposed district was presented; and if any portion of such proposed district is within another county or counties, then such notice shall be published for the same length of time in a newspaper published in each of said counties. Such notice shall require the electors to cast ballots, which shall contain the words "Irrigation District—Yes," or "Irrigation District—No," or words equivalent thereto, and also the names of persons to be voted for at said election. For the purposes of said election the board of supervisors must establish a convenient number of election precincts in said proposed district, and define the boundaries of the same. Such election shall be conducted as nearly as practicable in accordance with the general election laws of the state, but no particular form of ballot shall be required.

Officers to be elected. Consolidation of offices.

§ 7. At such election there shall be elected a board of directors, and an assessor, tax collector, and treasurer; provided, that where a consolidation of officers as hereinafter provided for is deemed advisable in the organization of a district, the petitioners may request in their petition for organization such consolidation, and the board of supervisors calling the election shall in its order therefor announce such consolidation, and then only one person shall be elected to fill the several offices so consolidated.

Qualifications of electors.

§ 8. No person shall be entitled to vote at any election held under the provisions of this act unless he possesses all the qualifications required of electors under the general election laws of the state.

§ 9. The board of supervisors shall meet on the second Monday succeeding such election, and shall proceed to canvass the votes cast thereat, and if upon such canvass it appears that a majority of all the votes cast are "irrigation district—yes," said board shall, by an order entered on its minutes, declare the territory duly organized as an irrigation district, under the name theretofore designated, and shall declare the per-

sons receiving respectively the highest number of votes at said election to be duly elected. [Amendment of May 26, 1919, Stats. 1919, p. 714. Submitted on referendum at the general election of November 2, 1920. In effect December 9, 1920.]

Order to be filed with county recorder. Organization complete when.

§ 10. Said board shall then cause a copy of such order, duly certified, to be immediately filed for record in the office of the county recorder of any county in which any portion of the lands embraced in such district are situated, and must also immediately forward a copy thereof to the clerk of the board of supervisors of each of said last-mentioned counties, and no board of supervisors of any county in which any portion of the lands embraced in such district are situated shall, after the date of the organization thereof, allow another district to be formed including any portion of said lands, without the consent of the board of directors of the district in which they are situated. From and after such filing, the organization of such district shall be complete.

Election may be contested. Appeal.

§ 11. Such election, on organization, may be contested by any person owning property within the proposed district liable to assessment. The directors elected at such election shall be made parties defendant. Such contest shall be brought in the superior court of the county where the petition for organization is filed; provided, that if more than one contest be pending they shall be consolidated and tried together. The court having jurisdiction shall speedily try such contest, and determine, upon the hearing, whether the election was fairly conducted and in substantial compliance with the requirements of this act, and enter its judgment accordingly. Such contest must be brought within twenty days after the canvass of the vote and declaration of the result by the board of supervisors. The right of appeal is hereby given to either party to the record within thirty days from entry of judgment. The appeal must be heard and determined by the supreme court within sixty days from the time of filing the notice of appeal.

Tenure of office.

§ 12. The officers elected at the election hereinbefore provided for shall immediately enter upon their duties as such, upon qualifying in the manner for such officers herein provided. Said officers shall hold office respectively until their successors are elected and qualified.

DUTIES AND POWERS OF THE BOARD OF DIRECTORS.

Duties and powers of board of directors. Organization. Salary of secretary.

§ 13. The directors of any district created after the passage of this act, on the first Tuesday after their election, after they shall have qualified, shall meet and classify themselves by lot into two classes, as nearly equal in number as possible, and the term of office of the class having the greater number shall expire at the next general February election in this act provided for; and the term of office of the class having the lesser number shall terminate at the next general February election thereafter. After such classification, said directors shall organize as a board, shall elect a president from their number, and appoint a secretary, who shall each hold office during the pleasure of the board. The salary of the secretary and the amount of the bond to be given by him for the faithful performance of his duties shall be fixed by the board of directors.

Board of directors, monthly meetings. Special meetings. Quorum.

§ 14. The board of directors shall hold a regular meeting on the first Tuesday of each month at the place selected as the office of the board; provided, that the board may, by resolution duly entered upon its minutes, fix any other time as the time for its

regular monthly meeting, but no change in the time of holding regular meetings of the board shall be made until after the resolution proposing such change has been published once a week for two successive weeks in a newspaper published in the county in which the office of the district is kept. Such special meetings of the board of directors may be held as may be required for the proper transaction of the business of the district, but a special meeting must be ordered by a majority of the board. The order must be entered of record, and five days notice thereof must by the secretary be given to each director not joining in the order. The order must specify the business to be transacted, and no other business than that specified in the order may be transacted at such special meeting, unless all the members are present and consent to the consideration of any business not specified in said order. All meetings of the board must be public and three members shall constitute a quorum for the transaction of business; provided, however, that when the board consists of three members only, then in such case two shall constitute a quorum for the transaction of business, but on all questions requiring a vote, except a motion to adjourn or a motion to adjourn to a stated time, there shall be a concurrence of at least the number constituting a quorum. A smaller number of directors than a quorum may adjourn from day to day. All records of the board shall be open to public inspection during business hours. Whenever any act is required to be done or proceeding taken by this act, or by an act supplemental or amendatory thereto, on the first Tuesday in any month, such act may be done or proceeding had upon the day specified in the resolution hereinbefore referred to as the time for the regular meeting of the board of directors; provided, also, that when a day other than the first Tuesday in the month shall have been specified as the time for the regular meeting of the board of directors, thereafter the newly elected officers of the district shall take office at noon on the day fixed for the regular monthly meeting of said board in March and said board shall meet for reorganization and the transaction of any other business of the district in the afternoon of said day. [Amendment of May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 756.]

This section was also amended April 19, 1909, Stats. 1909, p. 998.

Publication of financial condition.

§ 14a. The board of directors at their regular monthly meeting in January of each year shall render and immediately thereafter cause to be published a verified statement of the financial condition of the district, showing particularly the receipts and disbursements of the last preceding year, together with the source of such receipts and purpose of such disbursements. Said publication shall be made at least once a week for two weeks, in some newspaper, published in the county where the office of the board of directors of such district is situated. [New section added May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 756.]

Powers of directors.

§ 15. The board of directors shall have the power and it shall be their duty to manage and conduct the business and affairs of the district; make and execute all necessary contracts; employ and appoint such agents, officers, and employees as may be required, and prescribe their duties. The board and its agents and employees shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation works and the line for canal or canals, and the necessary branches for the same on any lands which may be deemed best for such location. Said board shall also have the right to acquire, by purchase, lease, contract, condemnation, or other legal means, all lands, and waters, and water rights, and other property necessary for the construction, use, supply, maintenance, repair and improvements of said canal, or canals, and works, whether in this or in other states or in a foreign nation, including canals, and works constructed and being constructed by private owners, lands for

reservoirs for the storage of needful waters, and all necessary appurtenances, and also where necessary or convenient to said ends to acquire and hold the stock of other corporations domestic or foreign owning waters, canals, waterworks, franchises, concessions or rights. Said board may enter into, and do any acts necessary or proper for the performance of, any agreements with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might lawfully be acquired or owned by the irrigation district, and may acquire the right to store water in any reservoirs or to carry water through any canal, ditch or conduit not owned or controlled by the district, and may grant to any owner or lessee of the right to the use of any water the right to store such water in any reservoir of the district or to carry such water through any canal, ditch or conduit of the district. [Amendment of May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 661.]

This section was also amended March 26, 1911, Stats. 1911, p. 510; May 18, 1917, Stats. 1917, p. 751.

§ 15a. [New section added May 19, 1917. Stats. 1917, p. 755. Repealed May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 661.]

Dams. Conveyances.

§ 15b. The board of directors of any irrigation district may also construct the necessary dams, reservoirs, and works for the collection of water for said district, and do any and every lawful act necessary to be done, that sufficient water may be furnished to each landowner in said district for irrigation and domestic purposes; provided, that where, within irrigation districts mutual water companies have been organized to furnish water to certain specified lands within said districts, the board of directors of such districts are hereby authorized and empowered to contract for the delivery of water for such lands as lie within the boundary of said water companies, through said mutual water companies only. The said board is hereby authorized and empowered to take conveyances, leases, contracts or other assurances for all property acquired by it under the provisions of this act, in the name of such irrigation district, to and for the uses and purposes herein expressed, and to institute and maintain any and all actions and proceedings, suits at law or in equity necessary or proper in order to fully carry out the provisions of this act, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this act, or acquired in pursuance thereof. And in all courts, actions, suits or proceedings, the said board may sue, appear and defend in person or by attorneys, and in the name of such irrigation district. [New section added May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 758.]

Rules for use of water.

§ 15c. It shall be the duty of the board of directors of any irrigation district to establish equitable by-laws, rules and regulations for the distribution and use of water among the owners of said lands, which must be printed in convenient form for distribution in the district. Said board shall have power generally to perform all such acts as shall be necessary to fully carry out the purposes of this act. [New section added May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 758.]

Change election precincts. Lease canals.

§ 15d. The board of directors, when they deem it advisable for the best interests of the district, and the convenience of the electors thereof, may at any time, but not less than sixty days before an election to be held in the district, change the boundaries of the divisions or election precincts of the district or of both; provided, such changes

shall be made to keep each division as nearly equal in area and population as may be practicable. Such change of boundaries of the divisions and precincts must be shown on the minutes of the board. The board of directors of any irrigation district now or that may hereafter be organized in the state, shall also have the power, and such board is hereby vested with the authority, to lease the system of canals and works in the district, or any part thereof, whenever such leasing may be for the benefit of the district; provided, that when the directors of any irrigation district contemplate the leasing of the canals and works of such district, they shall give notice of such contemplation by publishing the same in some newspaper published in the county in which such irrigation district lies, at least three weeks prior to the making of any lease, and such lease shall be made to the highest bidder. But such board shall have the right to reject any and all bids. Such lease shall in no way interfere with any rights that may have been established by law, at the time such lease is made; and, further provided, that the board of directors shall require a good and sufficient bond to secure faithful performance of the lease by the lessees. [Formerly section 15½, amended and number changed. Amendment of May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 759.]

§ 15½. [Added March 28, 1901, Stats. 1901, p. 815. Amended March 28, 1911, Stats. 1911, p. 512. Number changed to 15d May 19, 1917, Stats. 1917, p. 759.]

Condemnation proceedings.

§ 16. In case of condemnation proceedings the board shall proceed, in the name of the district, under the provisions of title seven, part three of the Code of Civil Procedure of the state of California, and all pleadings, proceedings, and process in said title provided shall be applicable to the condemnation proceedings hereunder. [Amendment of May 1917. In effect July 27, 1917. Stats. 1917, p. 759.]

WATER REGULATION.

Public use.

§ 17. The use of all water required for the irrigation of the lands of any district formed under the provisions of this act, or the act of which this is supplementary or amendatory, and for domestic and other incidental and beneficial uses, within such district, together with the rights of way for canals and ditches, sites for reservoirs, and all other property required in fully carrying out the provisions of this act is hereby declared to be a public use, subject to the regulation and control of the state, in the manner prescribed by law. [Amendment approved March 28, 1911. Stats. 1911, p. 512.]

Apportionment of water.

§ 18. It is hereby expressly provided that all waters distributed for irrigation purposes shall be apportioned ratably to each land owner upon the basis of the ratio which the last assessment of such owner for district purposes within said district bears to the whole sum assessed upon the district; and any land owner may assign the right to the whole or any portion of the waters so apportioned to him; provided, that when any rates of toll and charges for the use of water are fixed by the board of directors, as provided in section fifty-five of this act, the water for the use of which such rates of toll and charges have been fixed shall be distributed equitably, as may be provided by the board of directors, among those offering to make the required payment therefor; and provided, further, that if an irrigation district has contracted to deliver, and is delivering, water to mutual water companies for distribution to territory served thereby, the water shall be apportioned on such a basis as the board of directors shall find to be just and equitable and for the best interests of all parties concerned. [Amendment of May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 661.]

GENERAL ELECTIONS.

Irrigation district officers to be elected.

§ 19. An election, which shall be known as the general irrigation district election, shall be held in each irrigation district on the first Wednesday in February in each odd-numbered year, at which a successor shall be chosen to each officer whose term shall expire in March next thereafter. The person receiving the highest number of votes for each office to be filled at such election shall be elected thereto. The elective officers of an irrigation district shall be as many directors as there are divisions in the district, and an assessor, a collector and a treasurer; provided, that if any two or more offices shall have been consolidated as provided in section seven or section twenty-seven hereof, only one person shall be elected to fill such consolidated offices. The term of office of each elective officer of an irrigation district elected at or after the general irrigation district election in one thousand nine hundred nineteen shall be four years, or until his successor is elected and has qualified. [Amendment of May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 759.]

This section was also amended June 8, 1915, Stats. 1915, p. 1326.

Official bonds.

§ 19a. Within ten days after receiving their certificates of election hereinafter provided for, said officers shall take and subscribe the official oath, and file the same in the office of the board of directors, and execute the bond hereinafter provided for. The assessor shall execute an official bond in the sum of five thousand dollars, and the collector an official bond in the sum of twenty thousand dollars, and the district treasurer an official bond in the sum of fifty thousand dollars; each of said bonds to be approved by the board of directors; provided, that the board of directors may, if it shall be deemed advisable, fix the bonds of the treasurer and collector, respectively, to suit the conditions of the district, the maximum amount of the treasurer's bond not to exceed fifty thousand dollars, and the minimum amount thereof not to be less than ten thousand dollars; and the maximum amount of the collector's bond not to exceed twenty thousand dollars, and the minimum amount of the collector's bond not to be less than five thousand dollars. Each member of said board of directors shall execute and official bond in the sum of five thousand dollars, which said bonds shall be approved by the judge of the superior court of said county where such organization was effected, and shall be recorded in the office of the county recorder thereof, and filed with the secretary of said board. All official bonds herein provided for shall be in the form prescribed by law for the official bonds of county officers and premiums thereon may be paid by the district; provided, that in case any district organized under this title is appointed fiscal agent of the United States or by the United States in connection with any federal reclamation project, each of said officers shall execute a further and additional official bond in such sum as the secretary of the interior may require, conditioned for the faithful discharge of the duties of his office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such appointment or authorization, and any such bond may be sued upon by the United States or any person injured by the failure of such officer or the district to fully, promptly and completely perform their respective duties. [New section added May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 760.]

If election be not held.

§ 19b. If an election is not held as herein provided, then upon the filing of a petition with the secretary of the board of directors of such district, signed by ten per cent of the electors residing within the boundaries of any such irrigation district, requesting that a special election be called for the election of such officers, the directors of such district shall thereupon call a special election thereof for the election of such

officers, such election to be held within not less than fifteen, nor more than thirty days after the filing of such petition. [New section added May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 760.]

Beginning of term. Organization.

§ 20. At noon of the first Tuesday in March next following their election, except as provided in section fourteen of this act, the officers who shall have been elected at the preceding general irrigation district election shall enter upon the duties of their respective offices. On the first Tuesday in March next following each election, the directors shall meet and organize as a board, elect a president and appoint a secretary, who shall each hold office during the pleasure of the board. [Amendment of May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 761.]

Notice of elections. Election officers.

§ 21. Fifteen days before any election held under this act, subsequent to the organization of any district, the secretary of the board of directors shall cause notices to be posted in three public places in each election precinct, of the time and place of holding the election, and shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place, to be determined by said board, specifying the polling places of each precinct. Prior to the time for posting the notices, the board must appoint for each precinct, from the electors thereof, one inspector and two judges, who shall constitute a board of election for such precinct. If the board fail to appoint a board of election, or the members appointed do not attend at the opening of the polls on the morning of election, the electors of the precinct present at that hour may appoint the board, or supply the place of an absent member thereof. The board of directors must, in its order appointing the board of election, designate the house or place within the precinct where the election must be held.

Officers of election board. Oaths, who may administer. Polls, opening of.

§ 22. The inspector is chairman of the election board and may administer all oaths required in the process of an election; and appoint judges and clerks, if, during the progress of the election, any judge or clerk cease to act. Any number of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election. The board of election of each precinct must, before opening the polls, appoint two persons to act as clerks of the election. Before opening the polls, each member of the board and each clerk must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The polls must be opened at 8 a. m. on the morning of the election, and be kept open until 4 p. m., when the same must be closed. [Amendment approved April 22, 1909. Stats. 1909, p. 1062.]

Ballots. Manner of voting.

§ 22a. The ballot used at the election shall be provided by the board of directors, and one of the clerks of election shall deliver, to each of the electors, one of the ballots so provided. The ballots shall have printed on them the names of all candidates whose names have been filed as provided in this act, with a voting square behind each name. The names shall be arranged in groups, alphabetically, under the designation of the office for which each person named is a candidate. Where more than one person is to be elected for an office of the same title, the words "Vote for (inserting the proper number)" shall be printed under the title of the office. Each elector shall stamp a cross, with a rubber stamp to be provided by the board of directors, in the square behind the name of each candidate he wishes to vote for. [New section approved April 22, 1909. Stats. 1909, p. 1062.]

Nominating petitions.

§ 22b. Not less than ten days before the election, any ten or more electors in the district may file with the board of directors a petition, requesting that certain persons, specified in such petition be placed on the ballot as candidates for the office named in the petition. The names proposed by the various petitions so filed, and no others, shall be printed on the ballots. But there shall be sufficient blank spaces left in which electors may write other names if they so desire. The petitions shall be preserved in the office of the secretary of the district. [New section approved April 22, 1909. Stats. 1909, p. 1063.]

Voting and counting of votes.

§ 23. Voting may commence as soon as the polls are opened, and may be continued during all the time the polls remain opened, and shall be conducted, as nearly as practicable, in accordance with the provisions of the general election laws of this state. As soon as all the votes are counted, a certificate shall be drawn up on each of the papers containing the poll lists and tallies, or attached thereto, stating the number of votes each one voted for has received, and designating the office to fill which he was voted for, which number shall be written in figures and in words at full length. Each certificate shall be signed by the clerk, judge, and the inspector. One of said certificates, with the poll list and the tally paper to which it is attached, shall be retained by the inspector, and preserved by him at least six months. The ballots shall be strung upon a cord or thread by the inspector, during the counting thereof, in the order in which they are entered upon the tally list by the clerks; and said ballots together with the other of said certificates, with the poll list and tally paper to which it is attached, shall be sealed by the inspector in the presence of the judges and clerks, and indorsed "Election returns of (naming the precinct) precinct," and be directed to the secretary of the board of directors, and shall be immediately delivered by the inspector, or by some other safe and responsible carrier designated by said inspector, to said secretary, and the ballots shall be kept unopened for at least six months; and if any person be of the opinion that the vote of any precinct has not been correctly counted, he may appear on the day appointed for the board of directors to open and canvass the returns, and demand a recount of the vote of the precinct that is so claimed to have been incorrectly counted.

Want of form, effect of. Canvass of votes.

§ 24. No list, tally paper, or certificate returned from any election, shall be set aside or rejected for want of form, if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election to canvass the returns. If, at the time of meeting, the returns from each precinct in the district in which the polls were opened have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until all the returns have been received, or until six postponements have been had. The canvass must be made in public and by opening the returns and estimating the vote of the district for each person voted for, and declaring the result thereof.

Duty of secretary. What records must show. Vacancies, how filled.

§ 25. The secretary of the board of directors must, as soon as the result is declared, enter in the records of such board a statement of such result, which statement must show: (a) The whole number of votes cast in the district, and in each division of the district; (b) the names of the persons voted for; (c) the office to fill which each person was voted for; (d) the number of votes given in each precinct to each of such persons; (e) the number of votes given in each division for the office of director, and the

number of votes given in the district for the offices of assessor, collector, and treasurer. The board of directors must declare elected the persons having the highest number of votes given for each office. The secretary must immediately make out and deliver to such person a certificate of election, signed by him, and authenticated with the seal of the board.

In case of a vacancy in the office of assessor, collector, or treasurer, the vacancy shall be filled by appointment of the board of directors; provided, that if said board of directors shall neglect or refuse to make such appointment within a period of forty days, then the board of supervisors of the county wherein the office of said board of directors is situated shall make such appointment. In case of a vacancy in the office of director, the vacancy shall be filled by appointment by the board of supervisors of the county where the office of such board of directors is situated, from the division in which the vacancy occurred. An officer appointed as above provided shall hold his office until the next regular election for said district, and until his successor is elected and qualified.

Qualifications of director.

§ 26. A director shall be a resident and freeholder of the irrigation district and a resident of the division which he is elected to represent. [Amendment of May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 761.]

Consolidation of offices.

§ 27. The board of directors may, in its discretion, consolidate any two or more of the offices of assessor, collector, and treasurer. The order of consolidation must be made at least thirty days prior to general election of the district, and shall take effect at the next succeeding election; provided, that the board of directors may, at least thirty days before a general election of the district, where the offices have been consolidated, segregate the same, each office to be filled at such election.

Number of directors.

§ 28. In any district the board of directors thereof must upon a presentation of the petition therefor, by a majority of the holders of title, or evidence of title, of said district, evidenced as above provided, order that on and after the next ensuing general election for the district, there shall be either three or five directors. [Amendment of May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 761.]

This section was also amended June 9, 1915, Stats. 1915, p. 1363.

Recall of officers. Petition for removal. Examination by secretary. Supplemental petition. Election. Nominations. Contents of ballot. Successor to officer removed.

§ 28½. The holder of any elective office of any irrigation district may be removed or recalled at any time by the electors; provided, he has held his office at least six months. The provisions of this section are intended to apply to officials now in office, as well as to those hereafter elected. The procedure to effect such removal or recall shall be as follows: A petition demanding the election of a successor to the person sought to be removed shall be filed with the secretary of the board of directors of such district, which petition shall be signed by registered voters equal in number to at least twenty-five per cent of the highest vote cast within such district for candidates for the office, the incumbent of which is sought to be removed, at the last general election in such district at which an incumbent of such office was elected, or, in the case of the removal of the incumbent of an office elected by a subdivision of such district, such petition shall be signed by a like percentage of qualified electors of such subdivision computed upon the total number of votes cast in such subdivision for all candidates for the office, the incumbent of which is sought to be removed, at the last general election in such subdivision at which an incumbent of such office was elected;

and said petition shall contain a statement of the grounds on which the removal or recall is sought, which statement is intended solely for the information of the electors. Any insufficiency of form or substance in such statement shall in nowise affect the validity of the election and proceedings held thereunder. The signatures to the petition need not all be appended to one paper. Each signer shall add to his signature his place of residence, giving the precinct, and if within a town having named streets and numbered houses, street and number. Each such separate paper shall have attached thereto an affidavit made by an elector of the district and sworn to before an officer competent to administer oaths, stating that the affiant circulated that particular paper and saw written the signatures appended thereto; and that according to the best information and belief of the affiant, each is the genuine signature of the person whose name purports to be thereunto subscribed and of a qualified elector of the district. Within ten days from the date of filing such petition, the secretary of the board shall examine and from the records of registration ascertain whether or not said petition is signed by the requisite number of qualified electors, and he shall attach to said petition his certificate showing the result of said examination. If by the said certificate the petition is shown to be insufficient, it may be supplemented within ten days from the date of such certificate, by the filing of additional papers, duplicates of the original petition except as to the names signed. The secretary shall, within ten days after such supplementing papers are filed, make like examination of a supplementing petition, and if a certificate shall show that all the names to such petition, including the supplemental papers, are still insufficient, no action shall be taken thereon; but the petition shall remain on file as a public record; and the failure to secure sufficient names shall be without prejudice to the filing later of an entirely new petition to the same effect. If the petition shall be found to be sufficient, the secretary shall submit the same to the board of directors without delay, whereupon the board shall forthwith cause a special election to be held within not less than thirty-five nor more than forty days after the date of the order calling such election, to determine whether the voters will recall such officer; provided, that if a general election is to occur within sixty days, from the date of the order calling for such election, the board may in its discretion postpone the holding of such election to such general election or submit such recall election at any such general election for officers of such district occurring not less than thirty-five days after such order. If a vacancy occur in said office after a recall petition is filed, the election shall nevertheless proceed as in this section provided. One petition is sufficient to propose a removal and election of one or more elective officials. One election is competent for the removal and election of one or more elective officials. Nominations for any office under such recall election shall be made in the manner prescribed by section 22b of this act.

There shall be printed on the recall ballot, as to every officer whose recall is to be voted on thereat, the following question: "Shall (name of person against whom the recall petition is filed) be recalled from the office of (title of the office)?" following which question shall be the words "Yes" and "No" on separate lines, with a blank space at the right of each, in which the voter shall indicate, by stamping a cross (X) his vote for or against such recall. On such ballots, under each such question, there shall also be printed the names of those persons who have been nominated as candidates to succeed the person recalled, in case he shall be removed from office by said recall election; but no vote shall be counted for any candidate for said office unless the voter also voted on said question of the recall of the person sought to be recalled from said office. The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for the office. If a majority of those voting on said question of the recall of any incumbent from office shall vote "No," said incumbent shall continue in said office. If a majority shall vote "Yes," said incumbent shall

thereupon be deemed removed from such office, upon the qualification of his successor. The election shall be conducted, canvass of all votes for candidates for said office shall be made and the result declared in like manner as in a regular election within such district. If the vote at any such recall election shall recall the officer, then the candidate who has received the highest number of votes for the office shall be thereby declared elected for the remainder of the term. In case the person who received the highest number of votes shall fail to qualify within ten days after receiving the certificate of election, the office shall be deemed vacant and shall be filled according to law. If the vote at any such recall election shall not recall the officer, no further petition for the recall of such officer shall be filed before the expiration of six months from the date of such first recall election. [New section added January 20, 1912, Stats. 1911, p. 135, extra session.]

TITLE TO PROPERTY.

Title to property vests in district. To be held in trust. Power of board as to.

§ 29. The legal title to all property acquired under the provisions of this act shall immediately and by operation of law vest in such irrigation district, and shall be held by such district, in trust for, and is hereby dedicated and set apart to the uses and purposes set forth in this act. And said board is hereby authorized and empowered to hold, use, acquire, manage, occupy and possess said property, as herein provided. The board of directors may determine by resolution duly entered upon their minutes that any property, real or personal, held by such irrigation district is no longer necessary to be retained for the uses and purposes thereof, and may thereafter sell such property; and a conveyance of any property held by an irrigation district, executed by the president and secretary thereof, in accordance with a resolution of the board of directors of such district, when sold for a valuable consideration, shall convey good title to the property so conveyed. [Amendment approved April 22, 1909. Stats. 1909, p. 1075.]

ISSUANCE OF BONDS.

Estimate of money needed for improvements. Interest on bonds may be included in estimate.

§ 30. For the purpose of constructing or purchasing necessary irrigation canals and works, and acquiring the necessary property and rights therefor, and for the purpose of acquiring waters, water rights, reservoirs, reservoir sites, and other property necessary for the purposes of said district, and otherwise carrying out the provisions of this act, or any other act under which said district is or may be authorized to acquire property or construct works, the board of directors of any such district must, as soon after such district has been organized as may be practicable, and also whenever thereafter the board of directors shall find that the construction fund raised by the last previous bond issue is insufficient, or that the construction fund has been exhausted by expenditures herein authorized therefrom and it is necessary to raise additional money for said purposes, estimate and determine the amount of money necessary to be raised. For the purpose of ascertaining the amount of money necessary to be raised for such purposes, or any of them, said board shall cause such surveys, examinations, drawings and plans to be made as shall furnish the proper basis for said estimate. Said surveys, examinations, drawings and plans, and the estimate based thereon may provide that the works necessary for a completed project shall be constructed progressively during a period of years. In the estimate of the amount of money necessary to be raised by the first issue of bonds in any district, the board of directors may include a sum sufficient to pay the interest on all of such bonds for three years or less. All such surveys, examinations, drawings and plans shall be made under the direction of

a competent irrigation engineer and shall be certified by him. [Amendment of May 19, 1919. In effect July 22, 1919. Stats. 1919, 662.]

This section was also amended March 28, 1911, Stats. 1911, p. 512; June 16, 1913, Stats. 1913, p. 996; May 18, 1917, Stats. 1917, p. 761.

Reports submitted to commission. Report of commission.

§ 30a. The board of directors shall then submit a copy of the said estimate and the said engineer's report to the commission authorized by law to approve bonds of irrigation districts for certification as legal investments for savings banks and for the other purposes specified in the act creating said commission. Said commission shall forthwith examine said report and any data in its possession or in the possession of said district and shall make such additional surveys and examinations at the expense of the district as it may deem proper or practicable, and as soon as practicable thereafter shall make to the board of directors of said district a report which shall contain such matters as, in the judgment of the said commission, may be desirable; provided, that it may state generally the conclusions of said commission regarding the supply of water available for the project, the nature of the soil proposed to be irrigated as to its fertility and susceptibility to irrigation, the probable amount of water needed for its irrigation and the probable need of drainage, the cost of works, water rights and other property necessary for a complete and satisfactory project, the proper dates of maturity for the bonds proposed to be issued and whether in its opinion it is advisable to proceed with the proposed bond issue. If the estimate of the amount of said bond issue shall have included any amount for the payment of interest on the bonds of such issue, as provided in section thirty of this act, and such estimate for the payment of interest, or any part thereof, is approved by the commission in said report, it shall be lawful for the board of directors, if the issuance of such bonds is thereafter authorized by vote of the electors of the district, to use for the payment of interest on any bonds of such issue so much of the proceeds of the sale of said bonds as may have been approved for that purpose in said report of the commission. [Amendment of May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 663.]

This was a new section added May 18, 1917, Stats. 1917, p. 762.

Report to board of directors. Order of amount of bonds.

§ 30b. If after such examination and investigation the said commission shall deem it advisable that the said plans be modified or that the amount of the bonds proposed to be issued be changed, or that certain conditions should be prescribed to insure the success of the project, or that in its opinion it is not advisable to proceed with the proposed bond issue, it shall so state in its report to the board of directors. After receiving said report, or if no report is received within ninety days after the submission of said estimate and engineer's report to said commission, said board of directors, if it shall determine and shall declare by resolution that the proposed plan of works or some modified plan recommended by said commission is satisfactory and that the said project or said modified plan is feasible, shall make an order determining the amount of bonds that should be issued in order to raise the money necessary therefor; and provided, further, that if any district shall issue bonds to carry out any plans approved by said irrigation district bond commission as herein provided it shall be unlawful for said district to make any material change in said plans thereafter without the consent of said commission. [Amendment of May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 663.]

This was a new section added May 18, 1917, Stats. 1917, p. 762.

Special election for bond issue.

§ 30c. After the making of the order specified in section thirty b of this act said board of directors may call a special election, at which shall be submitted to the electors

of such district possessing the qualifications prescribed by this act, the question whether or not the bonds of said district in the amount determined in said order of said board shall be issued, and said board must call such an election and submit said question upon receipt of a petition signed by a majority of the holders of title or evidence of title to lands within the district, representing, also, a majority in value of said lands, or by at least five hundred petitioners, each petitioner to the number of at least five hundred to be an elector residing within the district or a holder of title or evidence of title to lands therein, provided that said petitioners shall include the holders of title or evidence of title to not less than twenty per cent in value of said lands. In determining the value of any lands within an irrigation district and the holders of title or evidence of title to such lands for the purpose of determining the sufficiency of any petition required by this act after the organization of the district, the assessment roll of the district last equalized at the time of the presentation of such petition shall be conclusive evidence, but if no assessment roll of the district has theretofore been equalized, then the county assessment roll of the county within which any land within the district is situated, which county assessment roll has been last equalized at the time of the presentation of such petition, shall be conclusive evidence of such facts for such land. [Amendment of May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 664.]

This was a new section added May 18, 1917, Stats. 1917, p. 762.

Notice.

§ 30d. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notices must specify the time of holding the election, the amount of bonds proposed to be issued; and said election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act governing the election of officers; provided, that no informalities in conducting such an election shall invalidate the same if the election shall have been otherwise fairly conducted. [New section added May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 763.]

Questions on ballot. Ballots.

§ 30e. At said election questions as to the issuance of bonds may be submitted separately on the same ballot if estimates of the cost of the respective projects have been made and the irrigation district bond commission has reported thereon and the respective propositions have been stated in the notices of the election. At such election the ballots shall contain a general statement of the proposition or propositions to be voted on, including the amount of bonds proposed to be issued for each purpose, but no informality in such statement shall vitiate the election. Each proposition shall be followed by the words "Yes" and "No," on separate lines, with a small inclosed space after each of said words. The electors shall vote for or against any proposition by stamping a cross (X) in the voting space after the word "Yes" or "No" respectively. On the ballot shall be printed the following under the heading "Instructions to voters": "To vote for a proposition, stamp a cross (X) in the voting space after the word 'Yes' following the proposition. To vote against a proposition, stamp a cross (X) in the voting space after the word 'No' following the proposition." If two-thirds of the votes cast for and against any proposition are for "Yes," the board of directors shall cause bonds in the amount specified in such proposition to be issued; provided, that if said election shall have been called after the presentation of a petition therefor as provided in section thirty c of this act, the board of directors shall cause bonds in the amount specified in any proposition to be issued if a majority of the votes

cast for and against said proposition are for "Yes." If the number of votes for any proposition is less than the number required herein to authorize the issuance of the bonds provided for therein, the result of the vote on said proposition shall be entered of record, but said proposition may be again submitted to the electors of the district at a special election upon the presentation to the board of directors of a petition therefor signed as provided in section thirty c of this act. [Amendment of May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 664.]

This was a new section added May 18, 1917, Stats. 1917, p. 763.

Form of bonds. Interest. Life of bonds. May be paid at other periods.

§ 31. Subject to the provisions of this act, the board of directors shall prescribe the form of the bonds issued by the district and of the interest coupons to be attached thereto. An issue of bonds is hereby defined to be all the bonds issued in accordance with a proposal approved by the electors of the district. Each issue of the bonds of a district shall be numbered consecutively as authorized, and the bonds of each issue shall be numbered consecutively. The board of directors shall fix the date of said bonds, or may divide any issue into two or more divisions and fix different dates for the bonds of each respective division. The date of any bond must be subsequent to the election at which its issuance was authorized and prior to its delivery to a purchaser from the district. The date of issue of any bond authorized under this act or heretofore or hereafter issued in pursuance of this act shall be deemed to be the apparent date of the said bond appearing on the face thereof. Each bond shall be signed by the president and secretary of the board of directors of the district, who may be in office at the date of said bond or at any time thereafter prior to the delivery of said bond to the purchaser thereof from the district, and the seal of the district shall be impressed on each bond. The interest coupons shall also bear the signature of the secretary of the board of directors or a facsimile of such signature. The board of directors shall fix the denominations of said bonds, which shall not be less than one hundred dollars nor more than one thousand dollars. Said bonds shall bear interest at a rate to be fixed by the board of directors, but the rate shall not exceed six per centum per annum. The interest shall be payable on the first day of January and the first day of July of each year. The board of directors shall also designate the place or places at which said bonds or any of them and the interest thereon shall be payable. Each issue or each division of any issue of said bonds shall be payable in gold coin of the United States in twenty series as follows, to wit: at the expiration of twenty-one years from the date of any issue or any division of any issue of said bonds, two per centum of the whole amount of such issue or division; at the expiration of twenty-two years from said date, two per centum of the whole amount of such issue or division; at the expiration of twenty-three years from said date; three per centum of the whole amount of such issue or division; at the expiration of twenty-four years from said date, three per centum of the whole amount of such issue or division; at the expiration of twenty-five years from said date, four per centum of the whole amount of such issue or division; at the expiration of twenty-six years from said date, four per centum of the whole amount of such issue or division; at the expiration of twenty-seven years from said date, four per centum of the whole amount of such issue or division; at the expiration of twenty-eight years from said date, four per centum of the whole amount of such issue or division; at the expiration of twenty-nine years from said date, five per centum of the whole amount of such issue or division; at the expiration of thirty years from said date, five per centum of the whole amount of such issue or division; at the expiration of thirty-one years from said date, five per centum of the whole amount of such issue or division; at the expiration of thirty-two years from said date, five per centum of the whole amount of such issue or division; at the expiration of thirty-three years from said date, six per centum of the whole amount of such

issue or division; at the expiration of thirty-four years from said date, six per centum of the whole amount of such issue or division; at the expiration of thirty-five years from said date, six per centum of the whole amount of such issue or division; at the expiration of thirty-six years from said date, six per centum of the whole amount of such issue or division; at the expiration of thirty-seven years from said date, seven per centum of the whole amount of such issue or division; at the expiration of thirty-eight years from said date, seven per centum of the whole amount of such issue or division; at the expiration of thirty-nine years from said date, eight per centum of the whole amount of such issue or division; at the expiration of forty years from said date, eight per centum of the whole amount of such issue or division; provided, that if any bonds are not dated on the first day of January or the first day of July, they shall nevertheless be made payable on the first day of January or the first day of July next preceding the date on which they would become payable according to the foregoing schedule. Bonds of any issue may be made payable at the ends of other periods than are specified herein and the number of series may be more or less than twenty if the number of series and the length of the respective periods at the ends of which the respective amounts of bonds shall be made payable have been specified in the notice of the election at which the issuance of such bonds was authorized, or on the recommendation of the irrigation district bond commission, but in any event the bonds shall all be made payable on the first day of January or the first day of July next preceding the ends of the respective periods specified, unless said bonds are dated on the first day of January or the first day of July, and in no case shall the maturity of any bond be more than forty years from the date hereof, nor shall more than eight per centum of the total amount of any issue or division be made payable in any one year if the number of series is made more than twenty. Each bond shall be made payable at a given time for its full face value and not for a percentage thereof. [Amendment of May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 665.]

This section was also amended January 25, 1912, Stats. 1911 (ex. sess.), p. 248; June 16, 1913, Stats. 1913, p. 998.

Sale of bonds. Notice by publication.

§ 32. The board may sell said bonds from time to time in such quantities as may be necessary and most advantageous to raise money for the construction of said canals and works, the acquisition of said property and rights, or the acquisition of any water or water rights, and otherwise to fully carry out the objects and purposes of this act. Before making any sale the board shall, at a meeting, by resolution, declare its intention to sell a specified amount of the bonds, and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes, and notice of the sale to be given, by publication thereof at least three weeks in some newspaper published in the county where the office of the board of directors is located and in any other newspaper at its discretion. The notice shall state that sealed proposals will be received by the board at their office, for the purchase of bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds or any portion or portions thereof to the highest responsible bidder or bidders; provided, however, that they may reject any or all bids. [Amendment of June 16, 1913. Stats. 1913, p. 1000.]

This section was also amended March 28, 1911, Stats. 1911, p. 513.

§ 32a. [New section added May 19, 1917. Stats. 1917, p. 764. Repealed May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 667.]

Election on sale of bonds for less than par.

§ 32½. If any irrigation district bonds have been authorized before the time when this section shall go into effect but have not been sold and the board of directors of said district deems it desirable that said board be authorized to sell said bonds for less than

the par value thereof, said board may call a special election to submit to the voters of the district said proposition. Such election shall be held and notice thereof shall be given in the same manner as is provided in the case of special elections to authorize the issuance of bonds in irrigation districts. The proposition shall be stated in substantially the following form: "Shall the board of directors of.....(insert the name) irrigation district be authorized to sell bonds of the district for less than the par value thereof?" followed by the words "Yes" and "No," as provided in section 30 hereof. If at least two-thirds of the legal votes cast at such election are for "Yes," then the board of directors may sell any bonds authorized by said district before this section shall take effect to the highest responsible bidder or bidders, as is provided in the foregoing section. If less than two-thirds of the legal votes cast at such election shall be for "Yes" the result shall be entered of record. [New section approved June 16, 1913. Stats. 1913, p. 1000.]

Paid by annual assessment.

§ 33. Said bonds and the interest thereon shall be paid from revenue derived from an annual assessment upon the land within the district; and all the land within the district shall be and remain liable to be assessed for such payments as hereinafter provided. [Amendment of May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 764.]

ASSESSMENT FOR COMPLETION OF WORK.

Assessments to complete works. Notice of election. Ballots.

§ 34. In case the money raised by the sale of bonds issued be insufficient, or in case the bonds be unavailable for the completion of the plan of canal and works adopted, and the acquisition of the necessary property, waters and water rights therefor, and additional bonds be not voted, it shall be the duty of the board of directors to provide for the completion of said plan, and the acquisition of such necessary property, waters and water rights, by levy of assessments therefor; provided, however, that such levy of assessments shall not be made except first an estimate of the amount required for such purposes has been made by said board, and the question as to the making of said levy submitted to a vote of the electors of the district. Before such question is submitted the order of submission shall be entered in the minutes of the board, stating the amount to be levied and the purpose therefor, and if submitted at a special election said order shall, in addition, fix the day of election. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept once a week for at least three successive weeks. Such notices must specify the time of holding the election, and the amount of assessment proposed to be levied. Said election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act governing the election of officers; provided, that no informalities in conducting such an election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Assessment—Yes," or "Assessment—No," or words equivalent thereto. If a majority of the votes cast are "Assessment—Yes," the board of directors shall cause an assessment in the amount named in the order of submission to be levied; if a majority of the votes cast are "Assessment—No," the result of such election shall be so declared and entered of record. [Amendment approved March 28, 1911. Stats. 1911, p. 514.]

Duty of Assessor.

§ 35. The assessor must, between the first Monday in March and the first Monday in June, in each year, assess all real estate in the district, to the persons who own, claim

or have possession or control thereof, at its full cash value, as follows: He must prepare an assessment book, with appropriate headings, in which must be listed all such property within the district, in which must be specified, in separate columns, under the appropriate head: (1) the name of the person to whom the property is assessed, if the name is not known to the assessor, the property shall be assessed to "unknown owners"; (2) land by township, range, section or fractional section, and when such land is not congressional division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres and locality; (3) city and town lots, naming the city or town, and the number and block, according to the system of numbering in such city or town; (4) the cash value of real estate, other than city or town lots; (5) the cash value of city and town lots; (6) the total value of all property assessed; (7) the total value of all property after equalization by the board of directors; (8) such other things as the board of directors may require. Improvements on any lands or town lots within such districts shall be exempt from taxation for any of the purposes mentioned in this act. Any property which may have escaped the payment of any assessment for any year, shall, in addition to the assessment for the then current year, be assessed for such year with the same effect and with the same penalties as are provided for in such current year. The term improvements as used in this section includes trees, vines, alfalfa and all growing crops and all buildings and structures of whatever class or description erected or being erected upon said lands or city or town lots. [Amendment of May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 764.]

This section was also amended March 18, 1909, Stats. 1909, p. 461.

Deputies. Compensation.

§ 36. The board of directors must allow the assessor as many deputies, to be appointed by him, as will, in the judgment of the board, enable him to complete the assessment within the time herein prescribed. The board must fix the compensation of such deputies, which shall be paid out of the treasury of the district. The compensation must not exceed five dollars per day for each deputy, for the time actually engaged, nor must any allowance be made but for work done between the first Monday in March and the first Monday in August in each year.

Time for completion of assessment book. Time for equalizing assessments.

§ 37. On or before the first Monday in August in each year, the assessor must complete his assessment book, and deliver it to the secretary of the board, who must immediately give notice thereof, and of the time the board of directors, acting as a board of equalization, will meet to equalize assessments, by publication in a newspaper published in each of the counties comprising the district. The time fixed for the meeting shall not be less than twenty nor more than thirty days from the first publication of the notice: and in the meantime the assessment book must remain in the office of the secretary for the inspection of all persons interested.

EQUALIZATION OF ASSESSMENT.

Hearing as to and equalization of values. Duty of secretary.

§ 38. Upon the day specified in the notice required by the preceding section for the meeting, the board of directors, which is hereby constituted a board of equalization for that purpose, shall meet and continue in session from time to time, as long as may be necessary, not to exceed ten days, exclusive of Sundays, to hear and determine such objections to the valuation and assessment as may come before them; and the board may change the valuation as may be just. The secretary of the board shall be present during its sessions, and note all changes made in the valuation of property, and in the names of the persons whose property is assessed; and within ten days after the close

of the session he shall have the total values, as finally equalized by the board, extended into columns and added.

LEVY AND COLLECTION OF TAX.

Assessment for interest on bonds of irrigation district. Rentals, etc. Contracts for power or fuel. Unpaid warrants.

§ 39. The board of directors shall then, within fifteen days after the close of its session as a board of equalization, levy an assessment upon the lands within the district in an amount sufficient to raise the interest due or that will become due on all outstanding bonds of the district on the first day of the next ensuing January and the first day of the next ensuing July, or that the board of directors believes will become due on either or both of said dates, on bonds authorized but not sold; also sufficient to pay the principal of all bonds of the district that have matured or that will mature before the close of the next ensuing calendar year; also sufficient to pay in full all sums due or that will become due from the district before the time for levying the next annual assessment, on account of rentals, or charges for lands, water or water rights acquired by said district under lease or contract; also sufficient to pay in full all sums due or that will become due from the district, before the time for levying the next annual assessment, on account of contracts entered into by the district for power or fuel used or to be used for the pumping of water for the irrigation of land within the district; provided, the payment of the cost of such power or fuel has not been provided for by the levying of tolls or charges for the use of water or otherwise, also sufficient to pay in full the amount of all unpaid warrants of the district issued in accordance with this act and the amount of any other contracts or obligation of the district which shall have been reduced to judgment; also sufficient to raise such amount not exceeding two per centum of the aggregate value of the lands within the district according to the latest duly equalized assessment roll thereof, as the board of directors shall determine may be needed to be raised by assessment for any of the purposes of this act. [Amendment of May 11, 1919. In effect July 22, 1919. Stats. 1919, p. 472.]

This section was also amended February 22, 1909, Stats. 1909, p. 46; March 28, 1911, Stats. 1911, p. 514; April 22, 1913, Stats. 1913, p. 59; May 18, 1917, Stats. 1917, p. 765.

Duty of secretary.

§ 39a. The secretary of the board must compute and enter in a separate column of the assessment book the respective sums in dollars and cents to be paid as an assessment on the property therein enumerated. When collected, the assessment shall be paid into the district treasury and be apportioned to the several proper funds. [New section added May 19, 1917, In effect July 27, 1917. Stats. 1917, p. 765.]

Neglect to make assessment. Neglect of collector.

§ 39b. If as the result of the neglect or refusal of the board of directors to cause such assessment and levies to be made as in this act provided, then the duly equalized assessment made by the county assessor of the county or each of the respective counties in which the district is situated shall be the basis of assessment for the district, and the board of supervisors of the county in which the office of the board of directors of said district is situated shall cause an assessment roll of said district to be prepared, and shall make the levy required by this act, in the same manner and with like effect as if the same had been made by said board of directors and all expenses incident thereto shall be borne by such district and may be collected by suit at law, which shall be commenced by the district attorney of the county whose board of supervisors caused said assessment roll to be prepared, unless the amount of such expenses shall be paid within sixty days from the time when proper demand shall have been made therefor. In case of the neglect or refusal of the collector or treasurer of any irrigation district to perform the duties imposed by law, then the tax collector and the treasurer of the county

in which the office of the board of directors of such district is situated **must** respectively perform such duties and shall be accountable therefor upon their official bonds; but, in case any county tax collector shall collect any assessment for any irrigation district, he shall pay the same to the county treasurer, who shall place such money in special fund to the credit of the district and shall disburse the same to the proper persons for the purposes for which such assessments have been levied and shall not pay any part thereof to the treasurer of said district until said county treasurer shall be satisfied that all of the valid obligations for which such assessments were levied and for which payment has been demanded have been paid. [New section added May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 765.]

Duty of district attorney.

§ 39c. It shall be the duty of the district attorney of each county in which the office of any irrigation district is located to ascertain each year whether the duties relating to the levying and collection of assessments, as in this act provided, have been performed, and if he shall learn that the board of directors or any official of any such irrigation district has neglected or refused to perform any such duty, said district attorney shall so notify the board of supervisors or the county official required by this act to perform such duty in such case, and, unless such board of supervisors or such county official shall proceed to the performance of such duty within thirty days after the receipt of such notice the district attorney shall take such action in court as may be necessary to compel the performance of such duty, and said district attorney shall give such notice to other officials, and shall take such action, as may be necessary to secure the performance in their proper sequence of the other duties relating to the levying and collection of assessments, as in this act provided, that for the enforcement of the levying and collection of any assessment hereafter required to be levied and collected for the payment of any debt hereafter incurred, in case complaint shall be made to the attorney general of the state of California that the district attorney of any county has not performed any duty devolving upon him by the provisions of this section, or that he is not proceeding with due diligence or in the proper manner in the performance of any such duty, the attorney general shall make an investigation, and if it shall be found that such charge or charges are true, said attorney general shall take such measures as may be necessary to enforce the performance of the duties relating to the levying and collection of assessments, as in this act provided. [New section added May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 766.]

Extension of time.

§ 39d. If as the result of the neglect or refusal of any official or officials to perform any duty relating to the levying and collection of assessments, as in this act provided, it shall be impossible for such duty to be performed within the time required and such duty shall subsequently be performed, then the time within which all duties consequent upon the performance of such duty shall be performed shall be extended so as to allow the elapsing of the intervals required by this act to elapse between the performance of such duties, and the assessments herein provided for shall not become delinquent for at least thirty days after the first publication of the notice that such assessments are due and payable, as provided in section forty-one of this act. [New section added May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 767.]

Assessment of land omitted.

§ 39e. In the event any land within said district subject to assessment for the purposes of the district has not been assessed by the county assessor or does not appear upon the county assessment-roll adopted by said board of supervisors as the basis of assessment for the district, the land so omitted belonging to any person, association,

corporation, or municipality shall be forthwith assessed by the county assessor upon an order of the board of supervisors and a description of the property so omitted shall be written in the roll prepared for the purpose of district assessments. In such case, before any assessment is levied, the board of supervisors must meet and equalize said assessment with that of the assessment of other lands in said district. The same notice shall be given by the board of supervisors of such meeting for the purpose of equalizing the assessment to be made as herein directed as is provided in this act to be given by the board of directors of an irrigation district when the said board is to meet for the purpose of equalizing assessments. All the powers and duties respecting the collection of all assessment on possession of, claim to, or right to the possession of land now provided in sections three thousand eight hundred twenty, three thousand eight hundred twenty-one, three thousand eight hundred twenty-two, three thousand eight hundred twenty-three, three thousand eight hundred twenty-four, three thousand eight hundred twenty-five and three thousand eight hundred twenty-nine of the Political Code, as regards county assessors shall apply, so far as applicable to irrigation district assessors. [New section added May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 767.]

Unpaid tolls part of assessment.

§ 39f. Whenever any tolls and charges for the use of water have been fixed by the board of directors, it shall be lawful to make the same payable in advance, and in case any such tolls or charges remain unpaid at the time hereinbefore specified for levying the annual assessment the amount due for such tolls and charges may be added to and become a part of the assessment levied upon the land upon which the water for which such tolls or charges are unpaid was used. [New section added May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 768.]

Assessment a lien when.

§ 40. The assessment upon land is a lien against the property assessed from and after the first Monday in March for any year. [Amendment of May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 768.]

Notice that assessments are due. When delinquent.

§ 41. On or before the first day of November, the secretary must deliver the assessment book to the collector of the district, who shall within twenty days publish a notice in a newspaper published in each county in which any portion of the district may lie, that said assessments are due and payable and will become delinquent at 6 o'clock p. m. on the last Monday of December next thereafter, and that unless paid prior thereto ten per cent will be added to the amount thereof, and also the time and place at which payment of assessments may be made, which notice shall be published for the period of two weeks. The collector must attend at the time and place specified in the notice to receive assessments, which must be paid in gold and silver coin; he must mark the date of payment of any assessment in the assessment book opposite the name of the person paying and giving a receipt to such person, specifying the amount of the assessment and the amount paid, with the description of the property assessed. On the last Monday in December at six o'clock p. m. of each year, all unpaid assessments are delinquent and thereafter the collector must collect thereon, for the use of the district, an addition of ten per cent. [Amendment approved June 16, 1913. Stats. 1913, p. 1002.]

Suit against delinquent to collect assessment.

§ 41a. The board of directors may at any time after any assessment has become delinquent direct the collector not to proceed with the sale of any property on the delinquent list, but to bring suit against the delinquent in the proper court in the name of the district to enforce such collection. The provisions of the Code of Civil Procedure

relating to pleadings, proofs, trials and pleas are hereby made applicable to the proceedings herein provided for, and in such suit the district may recover the amount of said assessments together with the penalties and interests, provided in this act, and costs of suit. [New section added June 9, 1915. In effect August 8, 1915. Stats. 1915, p. 1368.]

PUBLICATION OF DELINQUENT NOTICE.

Duty of collector. Day of sale.

§ 42. On or before the first day of February, the collector must publish the delinquent list, which must contain the names of the persons and a description of the property delinquent, and the amount of the assessments and costs due opposite each name and description. He must append to and publish with the delinquent list a notice, that unless the assessments delinquent, together with costs and percentage, are paid, the real property upon which such assessments are a lien will be sold at public auction. The publication must be made once a week for three successive weeks, in a newspaper published in the county in which the property delinquent is situated; provided, that if any property assessed to the same person or corporation shall lie in more than one county, then such publication may be made in any county in which any portion of such property may lie. The publication must designate the time and place of sale. The time of sale must not be less than twenty-one or more than twenty-eight days from the first publication, and the place must be at some point designated by the collector, within the district; provided, however, that if there should occur any error in the publication of the sale of the delinquent property, which might invalidate a sale made thereunder, and such error is discovered prior to sale thereunder the collector shall at once republish the sale of the property affected by such error, making such republication conform to the provisions of this law, and the time of sale designated in such republication must not be less than twenty-one nor more than twenty-eight days from the first republication; and the place of sale must be at some point designated by the collector within the district, and stated in such republication.

SALE FOR DELINQUENT TAXES.

Sale for delinquent taxes. Sale of property for delinquent assessment.

§ 43. The collector must collect, in addition to the assessments due on the delinquent list, and ten per cent added, fifty cents on each lot, piece or tract of land separately assessed. On the day fixed for the sale, or some subsequent day to which he may have postponed it, of which he must give notice, the collector, between the hours of ten a. m. and three o'clock p. m., must commence the sale of the property advertised, commencing at the head of the list and continuing alphabetically, or in the numerical order of the lots or blocks, until completed. He may postpone the day of commencing the sales, or the sale, from day to day, but the sale must be completed within three weeks from the day first fixed; provided, that if any sale or sales shall be stayed by legal proceedings, the time of the continuance of such proceedings is not part of the time limited for making such sale or sales; and provided, further, that in any district where the validity of any assessment shall be in litigation at the time this act shall take effect, the sale of any property, whether it be involved in such litigation or not, may be postponed for a time not to exceed four months. [Amendment approved June 16, 1913. Stats. 1913, p. 1003.]

Rights of owner of realty. Resale in default of payment. District may purchase.

§ 44. The owner or person in possession of any real estate offered for sale for assessments due thereon may designate, in writing, to the collector, prior to the sale, what portion of the property he wishes sold, if less than the whole; but if the owner or possessor does not, then the collector may designate it and the person who will take

the least quantity of the land, or in case an undivided interest is assessed, then the smallest portion of the interest, and pay the assessments and costs due, including two dollars for the duplicate certificate of sale, is the purchaser. If the purchaser does not pay the assessments and costs before 10 o'clock a. m. the following day, the property on the next sale day must be resold for the assessments and costs. But in case there is no purchaser in good faith for the same on the first day that the property is offered for sale, then, when the property is offered thereafter for sale, and there is no purchaser in good faith for the same, the whole amount of the property assessed shall be struck off to the irrigation district within which such lands as situated as the purchaser, and the duplicate certificate delivered to the treasurer of the district, and filed by him in his office. No charge shall be made for the duplicate certificate where the district is the purchaser, and, in such case, the collector shall make an entry, "Sold to the district," and he shall be credited with the amount thereof in his settlement. An irrigation district as a purchaser at such sale, shall be entitled to the same rights as a private purchaser, and the title so acquired by the district, subject to the right of redemption hereinbefore provided, may be conveyed by deed, executed and acknowledged by the president and secretary of said board; provided, that authority to so convey must be conferred by resolution of the board entered on its minutes, fixing the price at which such sale may be made, and such conveyance shall not be made for a less sum than the reasonable market value of such property.

Certificate of sale.

§ 45. After receiving the amount of assessments and costs, the collector must make out in duplicate a certificate, dated on the day of sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for assessments, giving the amount and year of the assessment, and specifying the time when the purchaser will be entitled to a deed. The certificate must be signed by the collector, and one copy delivered to the purchaser, and the other filed in the office of the county recorder of the county in which the land is situated.

Record book of property sold for assessment.

§ 46. The collector, before delivering any certificate, must in a book enter a description of the land sold, corresponding with the description in the certificate, the date of the sale, purchasers' names, and amount paid, regularly number the description on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection, without fee, during office hours, when not in actual use. On filing the certificate with such county recorder the lien of the assessments vests with the purchaser, and is only divested by the payment to him, or to the collector for his use, of the purchase money, and two per cent per month from the day of sale until redemption.

REDEMPTION OF PROPERTY SOLD FOR DELINQUENT TAXES.

Redemption of property sold for delinquent taxes. Duty of county recorder. Deed to purchaser. Fee for deed.

§ 47. A redemption of the property sold may be made by the owner, or any party in interest, within five years from the date of purchase, or at any time thereafter before a deed has been made and delivered. Redemption must be made in gold or silver coin, as provided for the collection of state and county taxes, and when made to the collector he must credit the amount paid to the person named in the certificate, and pay it, on demand, to the person or his assignees. In each report the collector makes to the board of directors, he must name the person entitled to redemption money, and the amount due each. On receiving the certificate of sale, the county recorder must file it and make an entry in a book similar to that required of the collector. On the presen-

tation of the receipt of the person named in the certificate, or of the collector for his use, of the total amount of the redemption money, the recorder must mark the word "redeemed," the date, and by whom redeemed, on the certificate and on the margin of the book where the entry of the certificate is made. If the property is not redeemed within the time herein provided, the collector, or his successor in office, upon demand, must make to the purchaser, or his assignee, a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person redeemed the property during the time allowed by law for its redemption; provided, that where property has been sold to the district it may be redeemed as herein provided, at any time before the district has disposed of the same. The collector shall receive from the purchaser, for the use of the district, two dollars for making such deed. [Amendment approved March 19, 1909. Stats. 1909, p. 429. In effect immediately.]

Delinquent taxes not bar to dissolution. Deed of land sold for taxes to be made by county treasurer.

§ 47½. The five year period herein prescribed for the redemption of properties sold for delinquent taxes shall not operate as a bar to the dissolution of any irrigation district. If any land has been sold for delinquent taxes of a district in process of dissolution, or in a district which has been dissolved and the time allowed for redemption has not expired, the owner of such property or any one in interest may redeem the same by paying the amount due thereon, computed as provided in section 46 of this act, to the county treasurer, who must issue his receipt therefor, and upon the presentation of such receipt the county recorder must cancel the certificate of sale in the manner required in the preceding section. -

In the event any land has been sold for nonpayment of taxes as herein provided, and no redemption has been made within five years from the date of purchase in any district which may have been dissolved before the expiration of said redemption period, then a deed for the property sold and described in the certificate of sale must be made to the purchaser upon demand by the county treasurer of the county in which said irrigation district is or was situated. Such deed shall contain all the recitals of the certificate of sale, and in addition thereto, a recital that the district has been dissolved and a deed executed in pursuance of the authority given by this section. A deed so executed shall have the same force and effect as if executed by the collector of an irrigation district. [New section approved March 28, 1911. Stats. 1911, p. 516.]

Tax deed prima facie evidence of what. Conclusive evidence of what. Effect of deed.

§ 48. The matter recited in the certificate of sale must be recited in the deed, and such deed duly acknowledged or proved is prima facie evidence that: (a) The property was assessed as required by law; (b) the property was equalized as required by law; (c) that the assessments were levied in accordance with law; (d) the assessments were not paid; (e) at a proper time and place the property was sold as prescribed by law, and by the proper officer; (f) the property was not redeemed; (g) the person who executed the deed was the proper officer.

Such deed duly acknowledged or proved is (except as against actual fraud) conclusive evidence of the regularity of all the proceedings from the assessment by the assessor, inclusive, up to the execution of the deed. The deed conveys to the grantee the absolute title to the lands described therein free of all incumbrances, except when the land is owned by the United States, or this state, in which case it is prima facie evidence of the right of possession.

Assessment book or delinquent list is prima facie evidence of what.

§ 49. The assessment-book or delinquent list, or a copy thereof, certified by the collector, showing unpaid assessments against any person, or property, is prima facie

evidence of the assessment, the property assessed, the delinquency, the amount of assessments due and unpaid, and that all the forms of the law in relation to the assessment and levy of such assessments have been complied with.

Misnomer does not invalidate.

§ 50. When land is sold for assessments correctly imposed, as the property of a particular person, no misnomer of the owner, or supposed owner, or other mistake relating to the ownership thereof affects the sale, or renders it void, or voidable.

Settlements between secretary and collector.

§ 51. On the first Monday in each month, the collector must settle with the secretary of the board for all moneys collected for assessments, and pay the same over to the treasurer; and within six days thereafter he must deliver to and file in the office of the secretary a statement under oath, showing (a) An account of all his transactions and receipts since his last settlement; (b) that all money collected by him as collector has been paid. The collector shall also file in the office of the secretary, on said first Monday in each month, the receipt of the treasurer for the money so paid.

Redemption of bonds. Proposals for redemption of bonds. Investment in U. S. or State bonds.

§ 52. Upon presentation of any matured bond or any matured interest coupon of any bond of the district, the treasurer shall pay the same from the bond fund. If funds are not available for the payment of any such matured bond or interest coupon, it shall draw interest at the rate of seven per cent per annum from the date of its presentation for payment until notice is given that funds are available for its payment, and it shall be stamped and provision made for its payment as in the case of a warrant for the payment of which funds are not available on its presentation. Whenever the bond fund contains ten thousand dollars in excess of the amount necessary to pay all bonds and interest coupons of the district that have matured or that will mature before the time when any part of the next annual assessment to be levied in the district will become delinquent, the board of directors may advertise, in the manner hereinbefore provided for the sale of bonds, for the receipt of sealed proposals for the delivery to the district for redemption of any of its bonds not due. Said advertisement shall state the amount which may be used for the redemption of such bonds. Any such proposals shall be opened by the board in open meeting at the time named in said advertisement, and the offer or offers of such bonds at the lowest rate or rates shall be accepted, provided that no bonds shall be redeemed at more than the par value thereof except by unanimous vote of the directors. In case two or more proposals are equal and there is not sufficient money available to accept them all, the lowest numbered bonds shall have the preference. In case not enough bonds are offered for redemption at prices which the board of directors accepts, the board may invest any money available for redemption of bonds in bonds of the United States or of the state of California and shall hold the bonds so purchased as part of the bond fund until such time as the board may determine that it is for the best interests of the district that such bonds or any of them be sold. In case of the sale of any such bonds, the proceeds of the sale shall be deposited in the bond fund. [Amendment of May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 667.]

CONSTRUCTION OF WORKS.

Construction of works. Contracts for emergency works. Bond of contractor.

§ 53. After adopting a plan for such canal or canals, storage reservoirs, and works, as in this act provided for, the board of directors shall give notice, by publication thereof not less than twenty days in one newspaper published in each of the counties composing the district (provided a newspaper is published therein), and in such other

newspapers as they may deem advisable, calling for bids for the construction of such work, or of any portion thereof; if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice. Said notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and place for opening said proposals, which, at the time and place appointed, shall be opened in public; and as convenient thereafter the board shall let said work, either in portions or as a whole, to the lowest responsible bidder; or they may reject any or all bids and readvertise for proposals or may proceed to construct the work under their own superintendence; provided, that in case of emergency or urgent necessity for the construction, extension or repair of works for irrigation or drainage, the board of directors, by unanimous vote of those present at any regular or special meeting, may award contracts therefor without advertising for bids, but the cost of such work shall not exceed five hundred dollars and such additional amount as shall be equal to five cents for each acre of land in the district. Contracts for the purchase of material shall be awarded to the lowest responsible bidder. Any person or persons to whom a contract may be awarded shall enter into a bond, with good and sufficient sureties, to be approved by the board, payable to said district for its use, for twenty-five per cent of the amount of the contract price, conditioned for the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer, and be approved by the board. [Amendment of May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 668.]

Investigation by state engineer.

§ 53a. During the construction of any irrigation works to be paid for out of the proceeds of any bond issue which has been certified by the state irrigation district bond commission as provided in the act creating said commission, the state engineer shall have access to all plans, specifications, and records of such construction, and shall from time to time make such investigations and such reports to the board of directors of the district as he shall deem to be in the interest of the public or of the district. [New section added May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 768.]

Payment of claim. Duty of county treasurer. Duty of city treasurer.

§ 54. No claim shall be paid by the treasurer until allowed by the board, and only upon a warrant signed by the president, and countersigned by the secretary; provided, that the board may draw, from time to time, from the construction fund, and deposit in the county treasury of the county where the office of the board is situated any sum in excess of the sum of twenty-five thousand dollars. The county treasurer of said county is hereby authorized and required to receive and receipt for the same and place the same to the credit of said district, and he shall be responsible upon his official bond for the safekeeping and disbursement of the same, as in this act provided. He shall pay out the same, or any portion thereof, to the treasurer of the district only, and only upon the order of the board, signed by the president, and attested by the secretary. The said county treasurer shall report, in writing, on the second Monday in each month, the amount of money in the county treasury, the amount of receipts for the month preceding, and the amount or amounts paid out; said report shall be verified and filed with the secretary of the board. The district treasurer shall also report to the board, in writing, on the first Monday in each month, the amount of money in the district treasury, the amount of receipts for the month preceding, and the amount and items of expenditures, and said report shall be verified and filed with the secretary of the board.

Reports to be forwarded to state engineer.

§ 54½. During the construction of any work to be paid for out of the proceeds of the sale of any bonds of any irrigation district within this state, the secretary of the board of directors shall, within one week after each regular meeting of said board, forward to the state engineer copies of all reports made to said board as to the progress of said work and a statement of the amounts paid for the doing of any part of said work. Immediately after the publication of the statement of the financial condition of any irrigation district within this state, required by section 14 of this act to be made annually, the board of directors of said district shall cause a copy of said statement and a report stating the general condition of any works constructed or acquired by said district and whether or not the plan of irrigation adopted by the district is being successfully carried out and any other matters which the board may deem proper, to be forwarded to the state engineer, who shall examine said statement and report and make to said board such recommendations and comments as he may deem proper. The state engineer may at any time make or cause to be made an examination of the affairs of any irrigation district within this state or call upon the authorities of such district for such information as he may desire and make such report thereon as he may deem advisable. [New section approved June 16, 1913. Stats. 1913, p. 1000.]

Improvements to be paid for from construction fund. Toll may be fixed instead of assessments.

§ 55. The cost and expense of purchasing and acquiring property and constructing the works and improvements herein provided for, shall be wholly paid out of the construction fund; provided, however, that when any lands, waters, water rights or other property shall be acquired by the district by any lease or contract, under the terms of which the consideration or rental shall be payable in such installments that a like amount shall be payable in each year of the life of such lease or contract, then such rental or consideration shall be paid out of the funds derived from the levying of annual assessments, or from the collection of rates, tolls and charges fixed and collected as hereinafter provided for. For the purpose of defraying the expenses of the organization of the district, and of the care, operation, management, repair, and improvement of such portions of such canal and works as are completed and in use, including salaries of officers and employees, and installments of rental or consideration accruing under any lease or contract as hereinabove in this section mentioned, the board may in lieu (either in part or in whole) of levying assessments as herein provided for, fix rates of toll and charges, for irrigation and other public uses declared by this act, and collect the same from all persons using said canal for irrigation and other purposes. [Amendment approved March 28, 1911. Stats. 1911, p. 516.]

Right of way.

§ 56. The board of directors shall have power to construct the said works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume which the route of said canal or canals may intersect or cross, in such manner as to afford security for life and property; but said board shall restore the same, when so crossed or intersected, to its former state as near as may be, or in a sufficient manner not to have impaired unnecessarily its usefulness; and every company whose railroad shall be intersected or crossed by said works shall unite with said board in forming said intersections and crossings, and grant the privileges aforesaid; and if such railroad company and said board, or the owners and controllers of the said property, thing, or franchise so to be crossed, can not agree upon the amount to be paid therefor, or the points or the matter of said crossings or intersections, the same shall be ascertained and determined in all respects as is herein provided in respect to the taking of land. The right of way is hereby given, dedicated, and set apart to locate, construct,

and maintain said works over and through any of the lands which are now or may be the property of this state; and also there is given, dedicated, and set apart, for the uses and purposes aforesaid, all waters and water rights belonging to this state within the district.

GOVERNING DIRECTORS.

Compensation of directors.

§ 57. The directors when sitting as a board or acting under the orders of the board, shall each receive not to exceed four dollars per day and ten cents per mile for each mile actually traveled from his place of residence to the office of the board, and actual and necessary expenses paid while engaged in official business under the order of the board; provided, that in irrigation districts containing five hundred thousand acres or more the directors, in lieu of said per diem, shall each receive a salary of one hundred and fifty dollars per month. The board shall fix the compensation to be paid to all officers named in this act, to be paid out of the treasury of the district; provided, that said board shall, upon the petition of at least fifty freeholders within such district therefor, submit to the electors at any general election a schedule of salaries and fees to be paid hereunder, which may include the salary or per diem to be paid to the directors. Such petition must be presented to the board not less than twenty days nor more than forty days prior to a general election, and the result of such election shall be determined and declared in all respects as other elections are determined and declared under this act. [Amendment of June 9, 1915. In effect August 8, 1915. Stats. 1915, p. 1368.]

This section was also amended April 22, 1909, Stats. 1909, p. 1062.

Directors not to be interested in contracts.

§ 58. No director or any other officer named in this act shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor, and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

SPECIAL ASSESSMENTS.

Directors may call election on question of special assessment. Levy of assessment.

§ 59. The board of directors may at any time call a special election and submit to the qualified electors of the district the question whether a special assessment shall be levied for the purpose of raising money to be applied to any of the purposes of this act or of any act supplementary hereto. Such election must be called upon the notice prescribed, and the same shall be held and the result thereof determined and declared in all respects in conformity with the provisions of section thirty d of this act. The notice must specify the amount of money proposed to be raised, and the purpose or purposes for which it is intended to be used, and it may state that said assessment shall be levied in two or three annual installments and specify the amount of the installment to be levied in each year. At the special election the ballots shall contain the words "Assessment—Yes" or "Assessment—No," or words equivalent thereto. If a majority of the votes cast are "Assessment—Yes," the board of directors shall, at the time of the annual levy hereunder, levy a sum sufficient to raise the amount voted, or, if the notice of election shall have provided for levying said assessment in annual installments, the board of directors shall, at the time of the annual levy in each of the years specified in said notice, levy such assessment as shall raise the amount of the installment provided in said notice to be raised in said year; provided, however, that

in case of an unexpected emergency by which the flow of water in the canal or other supply is interrupted, the amount of the indebtedness, incurred in the repair of the works of said district, caused by such interruption, not to exceed in any one year forty thousand dollars, may also, in addition to the assessments hereinbefore provided for, be levied by the adoption of a resolution by at least four-fifths of the members of the board of directors, at the time of the levying of the annual assessment provided for in this act, without the submission of the question of such levy to a vote, as in this section hereinbefore provided. [Amendment of May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 668.]

This section was also amended April 26, 1911, Stats. 1911, p. 1111; May 18, 1917, Stats. 1917, p. 768.

Rate of assessments.

§ 60. The rate of assessments levied under the provisions of this act shall be ascertained by deducting fifteen per cent for anticipated delinquencies from the aggregate assessed value of the property in the district as it appears on the assessment roll for the current year, and then dividing the sum to be raised by the remainder of such aggregate assessed value. Special assessments shall be computed and entered by the secretary and collected as a part of the regular assessment levied hereunder, and, when collected, shall be paid into the district treasury for the purpose or purposes specified in the notices calling the respective elections at which they were voted. [Amendment of May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 669.]

INCURRING INDEBTEDNESS.

Power to incur indebtedness restricted.

§ 61. The board of directors or other officers of the district shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this act; and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void, except that for the purposes of organization, or for any of the purposes of this act, the board of directors may, before the collection of the first assessment, incur indebtedness in such sum or sums as shall amount to two thousand dollars, or, if the district shall contain more than four thousand acres, to one-half as many dollars as there are acres of land in the district, and may cause warrants of the district to be issued therefor, bearing interest at not more than seven per centum per annum, said rate to be fixed by the board of directors, and all such warrants must be made payable not later than the first day of January after the first assessment shall be levied in the district issuing such warrants; and provided, further, that nothing contained in this section shall be construed as limiting the right of the board to enter into any contract or lease for any lands, waters, water rights or other property, as in this act provided for, and by such lease or contract to bind the district for the payment of the rental or consideration specified in such lease or contract. [Amendment of June 9, 1915. In effect August 8, 1915. Stats. 1915, p. 1369.]

This section was also amended March 28, 1911, Stats. 1911, p. 517; June 16, 1913, Stats. 1913, p. 1001.

Warrants not paid to draw interest. Whenever there is money to pay warrants.

§ 61a. Whenever any warrant of the district payable on demand is presented to the treasurer for payment when funds are not available for the payment thereof, it shall thereafter draw interest at a rate to be determined by resolution of the board of directors, not, however, to exceed seven per centum per annum, until public notice is given that such funds are available. Upon the presentation of any such warrants for payment, other than warrants issued under the provisions of section 61 hereof, when funds of the district are not available to pay the same, the treasurer of the district shall endorse thereon the words "funds not available for payment," with the date of

presentation and shall specify the interest that such warrants shall thereafter bear and shall sign his name thereto. He shall keep a record showing the number and amount of each such warrant, the date of its issuance, the person in whose favor it was issued, and the date of its presentation for payment. Whenever there is sufficient money in the treasury to pay all such outstanding warrants or whenever the board of directors shall order that all such warrants presented for payment prior to a certain date, be made and there is sufficient money available for such payments, the treasurer shall give notice in some newspaper published in the district, or, if none is published therein, then in some newspaper published in the county in which the district or any portion thereof is situated, or, if none is published in such county, then the treasurer shall post such notice conspicuously in the place in which the board of directors of the district holds its regular meetings, stating that he is prepared to pay all warrants of the district for the payment of which funds were not available upon their original presentation, or all such warrants which were presented for payment prior to the date fixed by the board of directors, as the case may be, and no further description of the warrants entitled to payment shall be made in such notice. Upon the presentation of any warrant entitled to payment under the terms of such notice, the treasurer shall pay it, together with interest thereon at the rate specified by the board of directors, from the date of its original presentation for payment to the date of the first publication or posting of said notice, and all warrants for the payment of which funds are declared in said notice to be available shall cease to draw interest at the time of the first publication or posting of said notice. The treasurer shall enter in the record hereinbefore required to be kept, the dates of the payment of all such warrants, the names of the persons to whom payments are made and the amount paid to each person. [New section added June 9, 1915. In effect August 8, 1915. Stats. 1915, p. 1369.]

Directors may purchase irrigation works.

§ 61b. The board of directors of irrigation districts may acquire, by purchase or condemnation, the irrigation system, canals and works through which lands in such districts have been or may be supplied with water for irrigation, and may exchange bonds of such irrigation district for such system or canals or works or for any portion thereof, or for any interest therein or for the capital stock of any corporation owning such system or any portion thereof, upon such terms and conditions as the said board of directors may deem best. [Amendment of May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 769.]

This section was added June 8, 1915, Stats. 1915, p. 1291.

Determination of validity of bonds.

§ 61c. Where the board of directors of an irrigation district have exchanged bonds or have agreed to exchange bonds for property rights in any irrigation system or works or for any interest therein under the provisions of section sixty-one b of this act, the court shall, in any proceeding brought under the provisions of the last section, by its decree determine the validity of all bonds issued or to be issued under any contract or contracts for the exchange of bonds for property interests and by its decree shall determine whether the bonds provided for in said contracts, when delivered to the person or corporation entitled thereto under the terms of any such contract, shall constitute valid obligations of said irrigation district as against all persons. [New section added June 8, 1915. In effect August 8, 1915. Stats. 1915, p. 1291.]

GOVERNING THE USE OF WATER.

When the volume of water is insufficient.

§ 62. In case the volume of water in any stream or river shall not be sufficient to supply the continual wants of the entire county through which it passes, and sus-

ceptible of irrigation therefrom, then it shall be the duty of the water commissioners, constituted as hereinafter provided, to apportion, in a just and equitable proportion, a certain amount of said water upon certain or alternate weekly days to different localities, as they may, in their judgment, think best for the interest of all parties concerned, and with due regard to the legal and equitable rights of all. Said water commissioners shall consist of the chairman of the board of directors of each of the districts affected.

Full capacity of ditches.

§ 63. It shall be the duty of the board of directors to keep the water flowing through the ditches under their control to the full capacity of such ditches in times of high water.

§ 64. [Repealed May 24, 1917. In effect July 27, 1917. Stats. 1917, p. 915.]

Right of eminent domain.

§ 65. Nothing herein contained shall be deemed to authorize any person or persons to divert the waters of any river, creek, stream, canal, or ditch from its channel, to the detriment of any person or persons having any interest in such river, creek, stream, canal, or ditch, or the waters therein, unless previous compensation be ascertained and paid therefor, under the laws of this state authorizing the taking of private property for public uses.

EXEMPTION FROM TAXATION—CREATION OF FUNDS.

Exemption of property from taxation.

§ 66. The rights of way, ditches, flumes, pipe-lines, dams, water rights, reservoirs, and other property of like character, belonging to any irrigation district shall not be taxed for state and county or municipal purposes.

Funds created.

§ 67. The following funds are hereby created and established, to which the moneys properly belonging shall be apportioned, to wit: Bond fund, construction fund, general fund.

Unexpended money.

§ 67a. Whenever an object for which money has been specially provided by assessment or by bond issue has been accomplished and any money provided therefor remains unexpended, the same shall in the discretion of the board of directors be transferred to the general fund and thereafter be available for any of the purposes of this act. [New section added May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 769.]

GENERAL PROVISIONS.

Action to determine validity of bonds. Jurisdiction. Contest. Appeal.

§ 68. The board of directors may, at any time after the issue of any bonds or the levy of any assessment herein provided for, bring an action in the superior court of the county wherein is located the office of such board, to determine the validity of any such bonds or such levy of assessments; such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication of summons for at least once a week for three weeks in some paper of general circulation published in the county where the action is pending, such paper to be designated by the court having jurisdiction of the proceedings. Jurisdiction shall be complete within ten days after the full publication of such summons in the manner herein provided. Any one interested may at any time before the expiration of said ten days appear and by proper proceedings contest the validity of such bonds or assessments. Such action shall be speedily tried and judgment rendered declaring such matter so

contested either valid or invalid. Either party may have the right to appeal to the supreme court at any time within thirty days after the rendition of such judgment, which appeal must be heard and determined within three months from the time of taking such appeal.

Assessment payer may bring action.

§ 69. If no such proceedings shall have been brought by the board of directors, then, at any time within thirty days after the levy of any assessment or issue of any bonds under the provisions of this act, any district assessment payer may bring an action in the superior court of the county where the office of the board of directors is located, to determine the validity of any such assessment or such bonds. The board of directors shall be made parties defendant, and service of summons shall be made on the members of the board personally. Said board shall have the right to appear and contest such action. Such action shall be speedily tried, with the right of appeal to either party, within the time and manner herein provided for the bringing of actions by the board to determine such matters. Such appeal shall be heard and determined in the manner and within the time therein provided.

Consolidation of actions.

§ 70. If more than one action shall be pending at the same time concerning similar contests in this act provided for, they shall be consolidated and tried together.

Courts must disregard errors, etc. Rules of pleading. Costs.

§ 71. The court hearing any of the contests herein provided for, in inquiring into the regularity, legality, or correctness of such proceedings, must disregard any error, irregularity, or omission which does not affect the substantial rights of the parties to said action or proceeding. The rules of pleading and practice provided by the Code of Civil Procedure, which are not inconsistent with the provisions of this act, are applicable to all actions or proceedings herein provided for. The motion for a new trial of any such action or proceeding must be heard and determined within ten days from the filing of the notice of intention. The costs on any hearing, or contest herein provided for, may be allowed and apportioned between the parties, or taxed to the losing party, in the discretion of the court.

Contests.

§ 72. No contest of anything or matter herein provided shall be made other than within the time and manner herein specified, and in any such action all findings of facts or conclusions of said board of directors, or of the board of supervisors upon all matters shall be conclusive, unless such action was instituted within six months after such finding or conclusion was made. [Amendment of June 9, 1915. In effect August 8, 1915. Stats. 1915, p. 1370.]

Penalty for violation of duty.

§ 73. For any willful violation of any express duty herein provided for, on the part of any officer herein named, he shall be liable upon his official bond, and be subject to removal from office, by proceedings brought in the superior court of the county wherein the office of the board of directors of the district is located, by any assessment payer of the district.

EXCLUSION OF LANDS.

Boundaries may be changed. Existing rights not to be affected.

§ 74. The boundaries of any irrigation district now organized or hereafter organized under the provision of this act, may be changed, and tracts of land which were included within the boundaries of such district at or after its organization under the provisions

of said act, may be excluded therefrom, in the manner herein prescribed; but neither such change of the boundaries of the districts nor such exclusion of lands from the district shall impair or affect its organization, or its right in or to property, or any of its rights or privileges of whatever kind or nature; nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which said district was and may become liable or chargeable, had such change of its boundaries not been made, or had not such land been excluded from the district.

Petition of owners for exclusion of lands.

§ 75. The owner or owners in fee of one or more tracts of land which constitute a portion of an irrigation district may jointly or severally file with the board of directors of the district a petition, praying that such tract or tracts, and any other tracts contiguous thereto, may be excluded and taken from said district. The petition shall state the grounds and reasons upon which it is claimed that such lands should be excluded and shall describe the boundaries thereof, and also the lands of such petitioner or petitioners which are included within such boundaries; but the description of such lands need not be more particular or certain than is required when the lands are entered in the assessment-book by the county assessor. Such petition must be acknowledged in the same manner and form as is required in the case of a conveyance of land, and the acknowledgment shall have the same force and effect as evidence as the acknowledgment of such a conveyance.

Publication of filing of petition. What the notice shall state.

§ 76. The secretary of the board of directors shall cause a notice of the filing of such petition to be published for at least two weeks in some newspaper published in the county where the office of the board of directors is situated, and if any portion of such territory to be excluded lie within another county or counties, then said notice shall be so published in a newspaper published within each of said counties; or if no newspaper be published therein, then by posting such notice for the same time in at least three public places in said district, and in case of the posting of said notices, one of said notices must be so posted on the lands proposed to be excluded. The notice shall state the filing of such petition, the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition; and it shall notify all persons interested in, or who may be affected by such change of the boundaries of the district, to appear at the office of said board at a time named in said notice, and show cause, in writing, if any they have, why the change of the boundaries of said district, as proposed in said petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice.

Hearing of petition. Failure to show cause deemed assent. Expenses.

§ 77. The board of directors, at the time and place mentioned in the notice, or at the time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition, and all evidence or proofs that may or shall be introduced by or on behalf of the petitioner or petitioners, and all objections to such petition that may or shall be presented in writing by any person showing cause as aforesaid, and all evidence and proofs that may be introduced in support of such objections. Such evidence shall be taken down in shorthand, and a record made thereof and filed with the board. The failure of any person interested in said district, other than the holders of bonds thereof outstanding at the time of the filing of said petition with said board, to show cause, in writing, why the tract or tracts of land mentioned in said petition should not be excluded from said district, shall be deemed and taken as an assent by him to the exclusion of such tract or tracts of land, or any part thereof, from said district; and

the filing of such petition with said board, as aforesaid, shall be deemed and taken as an assent by each and all such petitioners to the exclusion from such district of the lands mentioned in the petition, or any part thereof. The expenses of giving said notice and of the aforesaid proceeding shall be paid by the person or persons filing such petition.

Power of board to exclude lands from irrigation district.

§ 78. If, upon the hearing of any such petition, no evidence or proofs in support thereof be introduced, or if the evidence fails to sustain said petition, or if the board deem it not for the best interest of the district that the lands, or some portion thereof, mentioned in the petition, should be excluded from the district, the board shall order that said petition be denied as to such lands; but if the said board deem it for the best interest of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, and if no person interested in the district show cause in writing why the said lands, or some portion thereof, should not be excluded from the district, or if, having shown cause, withdraws the same, or upon the hearing fails to establish such objections as he may have made, then it shall be the duty of the board to, and it shall forthwith, make an order that the lands mentioned and described in the petition, or some defined portion thereof, be excluded from said district; provided, that it shall be the duty of said board to so order, upon petition therefor as aforesaid, that all lands so petitioned to be excluded from said district shall be excluded therefrom, which can not be irrigated from, or which are not susceptible to, irrigation from a common source or by the same system of works with the other lands of said district, or from the source selected, chosen, or provided, or the system adopted for the irrigation of the lands in said district, or which are already irrigated, or entitled to be irrigated, from another source or by another system of irrigation works: provided, that no land irrigated by means of water, pumped from an underground source or sources shall be entitled to exclusion from any irrigation district on account of being so irrigated, if it shall be shown that such land is or will be substantially benefited by subirrigation from the works of said district or by drainage works provided or required by law to be provided by said district, but no owner of land in any irrigation district shall be required to pay any assessment, except for the payment of interest and principal due on bonds of the district, on any land in such district which, when the district was organized, was irrigated by means of water pumped from an underground source or sources and has continued each year to be irrigated exclusively by such means. [Amendment of May 26, 1915. In effect August 8, 1915. Stats. 1915, p. 836.]

This section was also amended February 23, 1905, Stats. 1905, p. 27; June 13, 1913, Stats. 1913, p. 781.

Assent of bondholders. Release from lien. Assent shall be recorded.

§ 79. If there be outstanding bonds of the district at the time of the filing of said petition, the holders of such outstanding bonds may give their assent, in writing, to the effect that they severally consent that the lands mentioned in the petition, or such portion thereof as may be excluded from said district by order of said board, or the decree of the superior court as hereinafter provided, may be excluded from the district; and if said lands, or any portion thereof, be thereafter excluded from the district, the lands so excluded shall be released from the lien of such outstanding bonds. The assent must be acknowledged by the several holders of such bonds in the same manner and form as is required in case of a conveyance of land, and the acknowledgment shall have the same force and effect as evidence as the acknowledgment of such conveyance. The assent shall be filed with the board, and must be recorded in the minutes of the board; and said minutes, or a copy thereof, certified by the secretary of said board,

shall be admissible in evidence, with the same effect as the said assent, and such certified copy thereof may be recorded in the office of the county recorder of the county wherein said lands are situated.

Change of boundaries of district to be recorded. Exclusion does not affect organization.

§ 80. In the event the said board of directors shall exclude any lands from said district upon petition therefor, it shall be the duty of the board of directors to make an entry in the minutes of the board, describing the boundaries of the district, should the exclusion of said lands from said district change the boundaries of said district, and for that purpose the board may cause a survey to be made of such portions of the district as the board may deem necessary; and a certified copy of the entry in the minutes of the board excluding any land, certified by the president and secretary of the board, shall be filed for record in the recorder's office of each county within which are situated any of the lands of the district; but said district, notwithstanding such exclusion, shall be and remain an irrigation district as fully, to every intent and purpose, as it would be had no change been made in the boundaries of the district, or had the lands excluded therefrom never constituted a portion of the district.

Office of director of excluded division made vacant.

§ 81. If the lands excluded from any district under this act shall embrace the greater portion of any division or divisions of such district, then the office of director for such division or divisions shall become and be vacant at the expiration of ten days from the final order of the board excluding said lands; and such vacancy or vacancies shall be filled by appointment by the board of supervisors of the county where the office of such board is situated, from the district at large. A director appointed as above provided, shall hold his office until the next regular election for said district, and until his successor is elected and qualified.

Division of district.

§ 82. At least thirty days before the next general election of such district, the board of directors thereof shall make an order dividing said district into three or five divisions, as the case may require, as nearly equal in size as may be practicable, which shall be numbered first, second, third, and so on, and one director shall be elected by each division. For the purposes of elections in such district, the said board of directors must establish a convenient number of election precincts, and define the boundaries thereof, which said precincts may be changed from time to time, as the board of directors may deem necessary.

Rights of guardian, administrator or executor.

§ 83. A guardian and executor, or an administrator of an estate, who is appointed as such under the laws of this state, and who, as such guardian, executor, or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward, or the estate which he represents, upon being thereto properly authorized by the proper court, sign and acknowledge the petition in this act mentioned, and may show cause, as in this act provided, why the boundaries of the district should not be changed.

Lands excluded not released from liability for indebtedness.

§ 84. Nothing in this act provided shall, in any manner, operate to release any of the lands so excluded from the district from any obligation to pay, or any lien thereon, of any valid outstanding bonds or other indebtedness of said district at the time of the filing of said petition for the exclusion of said lands, but upon the contrary, said lands shall be held subject to said lien, and answerable and chargeable for and with the payment and discharge of all of said outstanding obligations at the time of the

filing of the petition for the exclusion of said land, as fully as though said petition for such exclusion were never filed and said order or decree of exclusion never made; and for the purpose of discharging such outstanding indebtedness, said lands so excluded shall be deemed and considered as part of said irrigation district the same as though said petition for its exclusion had never been filed or said order or decree of exclusion never made; and all provisions which may have been resorted to to compel the payment by said lands of its quota or portion of said outstanding obligations, had said exclusion never been accomplished, may, notwithstanding said exclusion, be resorted to to compel and enforce the payment on the part of said lands of its quota and portion of said outstanding obligations of said irrigation district for which it is liable, as herein provided. But said land so excluded shall not be held answerable or chargeable for any obligation of any nature or kind whatever, incurred after the filing with the board of directors of said district of the petition for the exclusion of said lands from the said district; provided, that the provisions of this section shall not apply to any outstanding bonds, the holders of which have assented to the exclusion of such lands from said district, as hereinbefore provided.

INCLUSION OF LANDS.

Boundaries may be changed. Existing rights not affected.

§ 85. The boundaries of any irrigation district now organized or hereafter organized under the provisions of this act may be changed in the manner herein prescribed; but such change of the boundaries of the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature; nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable, had such change of its boundaries not been made.

Manner of procedure for inclusion of lands.

§ 86. The holder or holders, of title, or evidence of title, representing one-half or more of any body of lands adjacent to the boundary of an irrigation district, which are contiguous, and which, taken together, constitute one tract of land, may file with the board of directors of said district a petition, in writing, praying that the boundaries of said district may be so changed as to include therein said lands. The petition shall describe the boundaries of said parcel or tract of land, and shall also describe the boundaries of the several parcels owned by the petitioners, if the petitioners be the owners, respectively, of distinct parcels, but such descriptions need not be more particular than they are required to be when such lands are entered by the county assessor in the assessment-book. Such petition must contain the assent of the petitioners to the inclusion within said district of the parcels or tracts of land described in the petition, and of which said petition alleges they are, respectively, the owners; and it must be acknowledged in the same manner that conveyances of land are required to be acknowledged.

Notice of filing of petition.

§ 87. The secretary of the board of directors shall cause a notice of the filing of such petition to be given and published in the same manner and for the same time that notices of special elections for the issue of bonds are required by this act to be published. The notice shall state the filing of such petition and the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition; and it shall notify all persons interested in, or that may be affected by such change of the boundaries of the district, to appear at the offices of said board, at a time named in said notice, and show cause in writing, if any they have, why the change in the boundaries of said district, as proposed in said petition, should not be

made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioners shall advance to the secretary sufficient money to pay the estimated costs of all proceedings under this act.

Hearing of petition. Failure to appear deemed an assent.

§ 88. The board of directors, at the time and place mentioned in the said notice, or at such other time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition, and all the objections thereto, presented in writing by any person showing cause as aforesaid why said proposed change of the boundaries of the district should not be made. The failure by any person interested in said district, or in the matter of the proposed change of its boundaries, to show cause, in writing, as aforesaid, shall be deemed and taken as an assent on his part to a change of the boundaries of the district as prayed for in said petition, or to such a change thereof as will include a part of said lands. And the filing of such petition with said board, as aforesaid, shall be deemed and taken as an assent on the part of each and all of such petitioners to such a change of said boundaries that they may include the whole or any portion of the lands described in said petition.

Condition precedent.

§ 89. The board of directors to whom such petition is presented, may require, as a condition precedent to the granting of the same, that the petitioners shall severally pay to such district such respective sums, as nearly as the same can be estimated (the several amounts to be determined by the board), as said petitioners or their grantors would have been required to pay to such districts as assessments, had such lands been included in such district at the time the same was originally formed.

Change in boundaries. Inclusion of public lands.

§ 90. If the board of directors deem it for the best interest of the district that the boundaries of said district be changed and if no person interested in said district or the proposed change of its boundaries shows cause, in writing, why the proposed change should not be made, or, having shown cause, withdraws the same, the board may order that the boundaries of the district be so changed as to include therein the lands mentioned in said petition or some part thereof. The order shall describe the boundaries as changed and shall also describe the entire boundaries of the district as they will be after the change thereof as aforesaid is made; and for that purpose the board may cause a survey to be made of such portions of such boundary as is deemed necessary; provided, however, that any public land of the United States of America adjoining the boundaries of any irrigation district may be included within the boundaries of any such irrigation district by order or resolution of the board of directors of such district without any petition being filed asking for such inclusion; and provided, further, that when additional land is included within any irrigation district and the board of directors of such district finds either that such inclusion without condition would work an injury to the land already in the district either by an impairment of water right or by requiring a greater expense for furnishing water to the lands proposed to be included, the board may prescribe conditions upon such inclusion of land, either by providing for priority of right to water or for the payment of an additional annual charge or such other conditions as may to the board seem just. If such inclusion is upon petition of property owners all such property owners must sign and acknowledge an agreement with the district, specifying such conditions and describing the land so to be included. Such agreement must be recorded in the office of the county recorder of the county in which such lands are situated, together with a certified copy of the

order including such lands, and thereupon such lands shall become a part of such irrigation district subject to such conditions. [Amendment of June 9, 1915. In effect August 8, 1915. Stats. 1915, p. 1370.]

Resolution describing boundaries.

§ 91. If any person interested in said district or the proposed change of its boundaries shall show cause as aforesaid why such boundaries should not be changed and shall not withdraw the same or if the board of directors deem it not for the best interests of the district that the boundaries thereof be changed so as to include therein the lands mentioned in the petition or some part thereof, the board shall adopt a resolution to that effect. The resolution shall describe the exterior boundaries of the land which will be included within the boundaries of the district when changed, but before calling the election provided for in the next section, the board may require an undertaking, with sufficient sureties, from the petitioners that they will pay all of the cost of holding such election for the inclusion of such lands in case such inclusion should be denied. [Amendment of June 9, 1915. In effect August 8, 1915. Stats. 1915, p. 1371.]

Notice of election. Ballots.

§ 92. Upon the adoption of the resolution mentioned in the last preceding section, the board shall order that an election be held within said district, to determine whether the boundaries of the district shall be changed as mentioned in said resolution; and shall fix the time at which such election shall be held, and cause notice thereof to be given and published. Such notice shall be given and published, and such election shall be held and conducted, the returns thereof shall be made and canvassed, and the result of the election ascertained and declared, and all things pertaining thereto conducted in the manner prescribed by said act in case of a special election to determine whether bonds of an irrigation district shall be issued. The ballots cast at said election shall contain the words "For change of boundary," or "Against change of boundary," or words equivalent thereto. The notice of election shall describe the proposed change of the boundaries in such manner and terms that it can readily be traced.

Election, holding of. Time of and notice of. Ballots.

§ 93. If at such election a majority of all the votes cast at said election shall be against such change of the boundaries of the district, the board shall order that said petition be denied, and shall proceed no further in that matter. But if a majority of such votes be in favor of such change of the boundaries of the district, the board shall thereupon order that the boundaries be changed in accordance with said resolution adopted by the board. The said order shall describe the entire boundaries of said district, and for that purpose the board may cause a survey of such portions thereof to be made as the board may deem necessary.

Order of board to be recorded.

§ 94. Upon a change of the boundaries of a district being made, a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board, shall be filed for record in the recorder's office of each county within which are situated any of the lands of the district, and thereupon the district shall be and remain an irrigation district, as fully, and to every intent and purpose, as if the lands which are included in the district by the change of the boundaries, as aforesaid, had been included therein at the original organization of the district.

Recording petition in minutes.

§ 95. Upon the filing of the copies of the order, as in the last preceding section mentioned, the secretary shall record in the minutes of the board the petition afore-

said; and the said minutes, or a certified copy thereof, shall be admissible in evidence, with the same effect as the petition.

Rights of guardians, executors and administrators.

§ 96. A guardian, an executor, or an administrator of an estate, who is appointed as such under the laws of this state, and who, as such guardian, executor, or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward, or the estate which he represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition in this act mentioned, and may show cause, as in this act mentioned, why the boundaries of the district should not be changed.

Re-division of district.

§ 97. In case of the inclusion of any land within any district by proceedings under this act, the board of directors must, at least thirty days prior to the next succeeding general election, make an order re-dividing such district into three or five divisions, as the case may require, as nearly equal the size as may be practicable, which shall be numbered first, second, third, and so on, and one director shall thereafter be elected by each division. For the purposes of elections, the board of directors must establish a convenient number of election precincts in said districts, and define the boundaries thereof, which said precincts may be changed from time to time, as the board may deem necessary.

REDUCTION OF BONDED INDEBTEDNESS.

Reduction of bonded indebtedness. Authority of board of directors.

§ 98. Whenever the board of directors of an irrigation district heretofore organized, or hereafter organized under the provisions of this act, shall determine that the authorized bonded indebtedness of such irrigation district is greater than such district is liable to need to complete its system as planned, and there be no outstanding bonds, the board of directors may call a special election for the purpose of voting upon a proposition to reduce such bonded indebtedness to such sum as the board may determine to be sufficient for such purpose.

Special election. Ballots.

§ 99. Notice of the said election shall be given in the same manner as provided in section thirty of said act, in relation to calling special elections for issuance of bonds. The notice of election must state the amount of the authorized bonded indebtedness of such district, and the amount to which it is proposed to reduce the same; also, the date on which said election will be held, and the polling-places, as established, by said board of directors. The ballots cast at said election shall contain the words "For reducing bonds—Yes," or "For reducing bonds—No." When the vote is canvassed by the board of directors and entered of record, if a majority of the votes cast shall be "For reducing bonds—Yes," then in that event the board of directors shall only be empowered to issue or sell such amount of bonds as was stipulated in the said notice of such special election; but if a majority of said votes are not "For reducing bonds—Yes," then the authority to issue bonds shall remain the same as before said special election was held.

Assent of bondholders. Reduction does not affect order confirming validity of bonds.

§ 99½. In case there be outstanding bonds of any district desiring to take advantage of the provisions of this act concerning reduction of bonded indebtedness, the assent of such bondholders may be obtained to such reduction of the bonded indebtedness, in the same manner as provided in section 79 of this act. If such assent is obtained in the manner therein provided, then, and in that event, such district shall

be empowered to take advantage of all the provisions of this act, but not otherwise. No reduction of the bonded indebtedness, as in this act provided, shall in any manner affect any order of court that may have been made, adjudicating and confirming the validity of said bonds.

LEASE OF WATER.

Authority to lease granted.

§ 100. Whenever any irrigation district, heretofore organized, or hereafter organized under the provisions of this act, in the development of its works as by law provided, may have opportunity, without increased expenditure, to utilize the water by it owned or controlled, for mechanical purposes not inconsistent with the provisions of said act, the board of directors may lease the same, as in this act hereinafter provided.

Manner of procedure.

§ 101. Whenever the board of directors may desire to lease the use of water, as hereinbefore stated, they shall pass a resolution of intention to so lease the same. Immediately thereafter the secretary shall cause notice of such intention to be given by publication in one newspaper published in each county in which lands of the district are situated, for at least twenty days (provided, a newspaper is published therein, otherwise in any newspaper the board of directors may select), and, if the board thinks proper in such other newspapers as may be deemed advisable, calling for bids for the leasing of said water for the purposes hereinbefore mentioned. Said notice shall state that the board will receive sealed proposals therefor, that the lease will be let to the highest responsible bidder, stating the time and place of opening said proposals.

Same. Opening proposals. Leasing property. Rejecting bids and readvertising for proposals.

§ 102. At the time and place appointed the board shall proceed to open the proposals in public. As soon thereafter as may be convenient the board shall let said lease in portions, or as a whole, to the highest responsible bidder, or they may reject any or all bids, and readvertise for proposals for the same.

Rentals.

§ 103. The rental accruing upon said lease may vary from year to year, as shall be specified in said lease, and shall be payable semi-annually, on the thirteenth day of December and thirtieth day of June of each year. All moneys collected, as in this act provided, shall be paid into the treasury, and be apportioned to such funds as may be deemed advisable.

Length of lease. Forfeiture.

§ 104. The board shall have power, as in this act provided, to execute a lease for any period not exceeding twenty-five years. If at any time the rental shall not be paid on the days hereinbefore mentioned, the amount of such rental then due shall be doubled, and if not paid within ninety days thereafter, the said lease shall be forfeited to said district, together with any and all works constructed, owned, used, or controlled by said lessee.

Bond.

§ 105. Upon the letting of any lease, as in this act provided, the board may require the lessee to execute a bond for the faithful performance of the covenants of said lease, or give such other evidence of good faith as in their judgment may be necessary.

DESTRUCTION OF UNSOLD BONDS.**Election to vote upon, calling of.**

§ 106. Whenever there remains in the hands of the board of directors of any irrigation district heretofore organized, or organized under the provisions of this act, after the completion of its ditch system, and the payment of all demands against such district, any bonds voted to be issued by said district, but not sold, and not necessary to be sold for the raising of funds for the use of such district, said board of directors may call a special election for the purpose of voting upon a proposition to destroy said unsold bonds, or so many of them as may be deemed best, or may submit such proposition at a general election.

Holding of. Ballots.

§ 107. Such election shall be held in the same manner as other elections held under the provisions of this act. A notice of such election shall be given in the same manner as provided in section thirty of this act in relation to calling special elections for the issuance of bonds. The notice of election must state the amount of the bonded indebtedness of such district authorized by the vote of the district, the amount of the bonds remaining unsold, and the amount proposed to be destroyed, and the date on which such election is proposed to be held, and the polling-places as fixed by the board of directors. The ballots to be cast at such election shall contain the words "For destroying bonds—Yes," and "For destroying bonds—No," and the voter must erase the word "No" in case he favors the destruction of bonds, otherwise the word "Yes."

Two-thirds majority.

§ 108. When the vote is canvassed by the board of directors and entered of record, if a two-thirds majority of the votes cast should be found to be in favor of the destruction of said bonds, then the president of the board, in the presence of a majority of the members of the board, must destroy the bonds so voted to be destroyed; and the total amount of bonds so destroyed and canceled shall be deducted from the sum authorized to be issued by the electors of said district, and no part thereof shall thereafter be reprinted or reissued.

SAVING CLAUSES.**Existing districts and existing rights not affected.**

§ 109. Nothing in this act shall be so construed as to affect the validity of any district heretofore organized under the laws of this state, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature; but said districts are hereby made subject to the provisions of this act so far as applicable; nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for, or upon which it was or might become liable or chargeable had not this act been passed; nor shall it affect the validity of any bonds which have been issued but not sold; nor shall it affect any action which now may be pending.

Effect of statute on prior acts.

§ 110. Nothing in this act shall be construed as repealing or in any wise modifying the provisions of any other act relating to the subject of irrigation or water commissioners, except such as may be contained in the act, an act entitled an act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes, approved March seventh, eighteen hundred and eighty-seven, and the subsequent acts supplementary thereto, and amendatory thereof, all of which acts, so far as they may be inconsistent herewith, are hereby repealed.

Time of taking effect of statute.

§ 111. This act shall take effect from and after its passage and approval.

Title of act.

§ 112. This act may be referred to in any action, proceeding or legislative enactment as "the California irrigation district act." [Amendment of May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 669.]

This was a new section added May 18, 1917, Stats. 1917, p. 769.

1. Act is supplementary to Wright act.—The act of 1897 is referred to as an act supplementary to the Wright act.—Jenison v. Redfield, 149 Cal. 500, 89 Pac. 62.

I. CONSTITUTIONALITY.

1. Power of legislature to organize irrigation district without giving the landowners any voice.—The legislature might organize an irrigation district without giving the property owners any voice in the matter at all, and it may do so as provided in the act of 1897, by authorizing the property owners themselves to initiate the proceedings to form such a district by the presentation of a petition signed by a majority of those in the proposed district who appear on the last equalized assessment roll as land owners therein.—In re Bonds San Joaquin Irr. Dist., 161 Cal. 345, 119 Pac. 198.

2. Power of legislature to create irrigation districts by a statute passed without formal notice.—The legislature may create irrigation districts by a statute passed without any formal notice or hearing, or it may delegate the power to some local board.—Imperial Water Co. v. Board of Supervisors, 162 Cal. 15, 17, 120 Pac. 780.

3. Legislative power to make whoever it sees fit eligible as petitioners to form irrigation district.—The legislature may make such persons as it sees fit eligible as petitioners to an initiatory proposal to form a district, including owners of possessory rights.—Imperial Water Co. v. Board of Supervisors, 162 Cal. 15, 25, 120 Pac. 780.

4. Delegation of power to county officers.—The act is not unconstitutional on the ground that it delegates powers to or imposes duties upon certain county officers in connection with the assessment and collection of taxes of the district.—In re Bonds San Joaquin Irr. Dist., 161 Cal. 345, 119 Pac. 198.

5. Provisions of act as to assessments and bond issues not foreign to title.—The provisions of the act to test the validity of an assessment and bond issue are not foreign to the title of the act, and not void under section 24, article IV of the constitution.—In re Bonds San Joaquin Irr. Dist., 161 Cal. 345, 119 Pac. 198.

6. Provides protection to landowner.—The general machinery of the act provides ample protection to the landowner and every reasonable opportunity to correct specific abuses.—In re Bonds San Joaquin Irr. Dist., 161 Cal. 345, 119 Pac. 198.

7. Section 2 does not deny "due process."—The fact that section 2 in effect dispenses

with signatures to the notice does not constitute a denial of due process of law, inasmuch as due process requires substantially that the notice given should, under the circumstances, have a reasonable tendency to apprise the parties interested of the nature of the proceeding and the time and place of the hearing.—Imperial Water Co. v. Board of Supervisors, 162 Cal. 15, 23, 120 Pac. 780.

8. Provision for appeal to superior court unconstitutional.—Section 4 of the act of 1897 providing for an appeal directly to the superior court from the order of the board of supervisors granting an application to form an irrigation district is unconstitutional and void.—Chinn v. Superior Court, 156 Cal. 478, 105 Pac. 580.

9. Unconstitutionality of section 4 does not void whole act.—Section 4 of the act providing for an appeal to the superior court is not so important that it will be presumed that the legislature would not have enacted the rest of the act without it, and its invalidity does not, therefore, affect the validity of the act in such other portions.—Imperial Water Co. v. Board of Supervisors, 162 Cal. 15, 20, 120 Pac. 780.

10. Same.—The fact that the provision for appeal to the superior court from the determination of the board of supervisors has been declared unconstitutional, does not destroy the whole act, which would be valid without the provision.—In re Bonds San Joaquin Irr. Dist., 161 Cal. 345, 119 Pac. 198.

11. Amendment of 1911 made with knowledge of unconstitutionality of section 4.—The presumption is that the legislature had knowledge of the fact that section 4 had been declared unconstitutional when it amended the act of 1911, and it is implied from this fact that the legislature deemed the remaining portions valid, and did not consider section 4 so vital to the scheme that the law would not have been enacted without it.—Imperial Water Co. v. Board of Supervisors, 162 Cal. 15, 21, 120 Pac. 780.

12. Section 34 constitutional.—Section 34 of the act goes only to the method of invoking the action of the trustees for the calling of an election as to the incurring of indebtedness, and is constitutional.—In re Bonds San Joaquin Irr. Dist., 161 Cal. 345, 119 Pac. 198.

13. Section 39 constitutional.—Section 39 of the act is constitutional.—Nevada, etc., Bank v. Supervisors of Kern Co., 5 Cal. App. 638, 91 Pac. 122.

14. Enabling act of 1901 constitutional.—The enabling act of 1901 is held to be con-

stitutional.—Byington v. Sacramento, etc., Co., 170 Cal. 124, 131, 148 Pac. 791.

II. PROCEEDINGS.

a. Petition. Notice.

15. Notice need not be signed by all petitioners.—Section 2 does not require the notice of time of presentation of petition to be signed by all the petitioners, and expressly provides that a lack of signatures thereto shall not vitiate the proceedings, provided the petition itself has a sufficient number of signatures, and if any signatures are required to the notice it is sufficient if some of the petitioners have signed it.—Imperial Water Co. v. Board of Supervisors, 162 Cal. 15, 22, 120 Pac. 780.

16. Proof of publication of notice.—It is sufficient that the proof of publication of the notice and petition was made by the affidavit of the publisher of the newspaper in which it was made.—Imperial Water Co. v. Board of Supervisors, 162 Cal. 15, 24, 120 Pac. 780.

17. Signatures to petition.—A notice authorized by the petitioners and purporting to be signed by some of them for all, and regularly published as required by the act would be valid, whether the purported signatures of the petitioners thereto were actually written by the petitioners or some other person by their authority.—Imperial Water Co. v. Board of Supervisors, 162 Cal. 15, 23, 120 Pac. 780.

18. Time named in notice.—The notice need not specify that the petition will be presented at a "regular meeting" of the board, and a notice stating that it will be presented at a specified time is sufficient, if the time so presented is in fact the time of a regular meeting of the board.—Imperial Water Co. v. Board of Supervisors, 162 Cal. 15, 23, 120 Pac. 780.

19. Withdrawal of petitioners.—The petitioners for the organization of an irrigation district under the irrigation district act of 1897, may effectively withdraw from the petition at any time prior to the presentation of the petition to the board of supervisors on the date fixed in the published notice of presentation, with the result that at the date of such presentation they can no longer be considered as petitioners.—McAulay v. Board of Supervisors of Merced County, 178 Cal. 628, 174 Pac. 30.

b. Boundaries of District.

20. Municipality may be included.—A municipality may, under the constitution, be included within the boundaries of an irrigation district, and land therein assessed for district purposes.—La Mesa Homes Co. v. La Mesa, etc., Irr. Dist., 173 Cal. 121, 159 Pac. 593.

21. Same—Adoption of constitutional amendment did not impair liability for bonds of previously organized district.—The functions of a previously existing irrigation district were not impaired by the amendment of 1911 to section 19, article XI, of the constitution, and the liability of the property owners of a municipality within

the territory of such district for the bonds of the district was not affected thereby.—La Mesa Homes Co. v. La Mesa, etc., Irr. Dist., 173 Cal. 121, 125, 159 Pac. 593.

22. Lands irrigated from "another source."—A landowner who prior to the organization of the district, and afterwards, irrigated his lands exclusively from a pumping plan and well located on his own lands, and who has never derived any benefit from the irrigation works of the district, is entitled to have lands excluded therefrom, and the board of directors has no discretion to retain them.—Harelson v. South San Joaquin Irr. Dist., 20 Cal. App. 324, 128 Pac. 1010.

23. Same—"Another source."—The phrase "another source" in section 78 means, when considered in their natural signification, any source by which the lands are in fact being irrigated, and the legislature had in mind the landowner who had succeeded in providing means to irrigate his land, although limited to his own needs.—Harelson v. South San Joaquin Irr. Dist., 20 Cal. App. 324, 128 Pac. 1010.

24. Same—Participation of owner in formation of district.—Participation by a landowner in the election establishing the district does not estop him from thereafter filing a petition for the exclusion of his lands.—Harelson v. South San Joaquin Irr. Dist., 20 Cal. App. 324, 128 Pac. 1010.

25. Same—Remedy for refusal to exclude.—Mandate is the remedy for the refusal of the board of directors to exclude lands of a petitioner irrigated by means of a private pumping plant.—Harelson v. South San Joaquin Irr. Dist., 20 Cal. App. 324, 128 Pac. 1010.

c. Assessments.

26. Jurisdiction to levy assessment—Steps necessary to acquire.—Jurisdiction to levy an assessment under the irrigation district act of March 31, 1897, known as the Bridgeford act must be acquired and exercised in the manner laid down in the statute, but the legislature declare, as to steps not constitutionally necessary, that objections to steps taken must be made in a certain time and in a certain way, in order to affect the validity of the proceedings.—Imperial Land Co. v. Imperial Irr. Dist., 173 Cal. 660, 664, 161 Pac. 113.

27. Entry of order calling meeting to levy assessment not required.—The Bridgeford act does not require that the order calling a meeting to levy an assessment shall be entered in the record five days before the meeting.—Imperial Land Co. v. Imperial Irr. Co., 173 Cal. 660, 665, 161 Pac. 113.

28. Same.—A sufficient compliance with the requirement of section 14 of the Bridgeford act as to entry of record of order calling meeting to levy assessment, is a recital of the fact in the minutes of the meeting.—Imperial Land Co. v. Imperial Irr. Dist., 173 Cal. 660, 664, 161 Pac. 113.

29. Same—Failure to call meeting, mere irregularity.—The failure to enter the call

for a meeting to levy an assessment in full in the minutes, is at most an irregularity, which is cured by failure of an objecting landowner to bring an action attacking the validity of the assessment within 30 days after the levy.—*Imperial Land Co. v. Imperial Irr. Dist.*, 173 Cal. 660, 665, 161 Pac. 113.

30. Notice of levy not required.—Since the act provides for notice to the property owner of all the preliminary acts leading up to the assessment, giving him an opportunity to object to any of them, the act is not invalid because it does not provide for notice of levy of assessment, which is the final outcome of all the rest, since he might know it by the exercise of reasonable diligence, and since he has nothing to say with reference to it.—*Lahman v. Hatch*, 124 Cal. 1, 56 Pac. 621.

31. Publication of notice — Particular newspaper not shown.—Where the record does not show in what particular newspaper the notice of delinquency was published, testimony that a certain newspaper had been examined and that it had been found that the notice had been published in one issue only, can not overcome the prima facie showing through proof of the deed that the notice was published as required.—*Corson v. Crocker*, 31 Cal. App. 626, 161 Pac. 287.

32. Levy by resolution, not necessary.—It is not necessary under the act of 1897 to levy an assessment for district purposes by resolution.—*Corson v. Crocker*, 31 Cal. App. 621, 161 Pac. 287.

33. Levy by motion, sufficient.—Levy of assessment by motion instead of by resolution is a mere irregularity, of which advantage must be taken, by action within 30 days after levy.—*Imperial Land Co. v. Imperial Irr. Dist.*, 173 Cal. 660, 666, 161 Pac. 113.

34. Resolution, sufficient.—A resolution of the board of directors of an irrigation company "that it is necessary for the lawful purposes of said district for its fiscal year 1913-14, that the sum of \$28,935 be raised by special assessment for the general fund," is all that is required in the way of an estimate.—*Imperial Land Co. v. Imperial Irr. Dist.*, 173 Cal. 668, 161 Pac. 116.

35. Estimate and determination of amount.—When may invalidate assessment.—The failure of the directors to have an estimate and determination of the amount of money necessary to be raised before levying an assessment is a mere irregularity which is not available to invalidate the assessment unless the action is brought within the 30 days prescribed in section 69 of the act (Bridgeford act).—*Imperial Land Co. v. Imperial Irr. Dist.*, 173 Cal. 660, 665, 161 Pac. 113.

36. Description of land—Definiteness required.—Where the description of the land is not misleading and not calculated to mislead the owner, and is sufficient to enable

him to identify it as his land, it is sufficient.—*Corson v. Crocker*, 31 Cal. App. 626, 161 Pac. 287.

37. Same—Sufficient.—"Modesto B'k 123, lots 1 to 5 inclusive" in the assessment book under the heading "Description of property" is a sufficient description.—*Corson v. Crocker*, 31 Cal. App. 626, 161 Pac. 287.

38. Improvements need not be described.—The assessment need not describe the improvements, and it is sufficient if the land on which the improvements are located is described.—*Lahman v. Hatch*, 124 Cal. 1, 56 Pac. 621.

39. Extension on roll of total valuation.—The Bridgeford act does not require that the total valuation, as finally equalized by the board, should appear, extended and added within ten days after the close of the session of the board of equalization.—*Imperial Land Co. v. Imperial Irr. Dist.*, 173 Cal. 668, 161 Pac. 116.

40. Use of dollar mark at head of column sufficient.—The dollar mark appearing at the head of the column showing the value of all property assessed was applicable to all the figures appearing in that column, and it was not necessary to repeat the symbol before each valuation.—*Imperial Land Co. v. Imperial Irr. Dist.*, 173 Cal. 668, 161 Pac. 116.

41. Amendment by assessor to show description of improvements.—The amendment by the assessor of the assessment book, while in the hands of the board of equalization, the assessor taking the book away from Saturday afternoon to Monday morning for that purpose, by inserting a description of improvements on the land, is immaterial, does not affect the substantial rights of the persons assessed, and does not vitiate the assessment.—*Lahman v. Hatch*, 124 Cal. 1, 56 Pac. 621.

42. One levy sufficient to pay amounts due for previous years.—Where more than one installment of principal and interest have fallen due in previous successive years, one levy may be made to pay all.—*Nevada, etc., Bank v. Supervisors of Kern Co.*, 5 Cal. App. 638, 91 Pac. 122.

43. Petition to submit question of levy to electors—Effect of failure to act upon petition.—When a petition signed by fifteen per cent of the qualified voters of an irrigation district asking that a proposed levy of assessment should be voted on at an election for that purpose, the levy is stayed until the election is called and the requisite number of votes cast for it; but there is nothing in the act requiring the board of directors to call the election and no election is called in response to a sufficient petition, it is in substance an abandonment of the proceeding.—*Imperial Land Co. v. Imperial Irr. Dist.*, 26 Cal. App. 529, 147 Pac. 593.

44. Refusal of board to levy assessment—Remedy.—Upon the refusal of the board of directors of an irrigation district to levy an assessment to pay the interest on the bonded indebtedness, and the board of

supervisors, after a petition therefor, have refused to levy such assessment, the superior court of the county in which the district is situated has jurisdiction to compel the levy of such assessment, in the absence of a showing that the office of the board of directors is not within such county.—*Nevada, etc., Bank v. Supervisors of Kern Co.*, 5 Cal. App. 638, 91 Pac. 122.

45. Assessment roll need not be certified.—The assessment roll need not be certified by any person or officer of the district.—*Corson v. Crocker*, 31 Cal. App. 626, 161 Pac. 287.

d. Sale of Lands to Pay Delinquent Assessments.

46. Certificate of sale, sufficiency of.—A certificate of sale dated March 3, 1906, instead of February 20, 1906, the day of sale, is not void for that reason where it is stated therein that the property may be redeemed within twelve months from the former date.—*Bruschi v. Cooper*, 30 Cal. App. 682, 159 Pac. 728, 734.

47. Same.—The dating of the certificate of sale on the day of the sale is immaterial, where it recites the date of sale, and that the property may be redeemed, as provided, within one year from that date, and reciting the last day of redemption.—*Corson v. Crocker*, 31 Cal. App. 626, 161 Pac. 287.

48. Same—Tax deed—Misnomer.—A certificate of sale and a tax deed are both invalid where the name of the person assessed appeared in the assessment book as "D. Bruschie," and in the certificate of sale as "D. Bruscia."—*Bruschi v. Cooper*, 30 Cal. App. 682, 159 Pac. 728, 734.

III. ACTIONS.

49. Action to void assessment for want of jurisdiction.—Irregularity.—If the complaint in an action to restrain a sale of lands in an irrigation district does not show that plaintiff's assessment was altered, or that the general assessed value of lands in the district was lowered by the board of equalization, to plaintiff's injury, and does not show error in the original assessment which remained binding, upon the theory that the action of the board was void for want of jurisdiction, it is immaterial whether the board did or did not have jurisdiction.—*Lahman v. Hatch*, 124 Cal. 1, 56 Pac. 621.

50. Action for injunction against sale of land to pay void assessment.—A property owner to have an injunction against the sale of his land for nonpayment of an assessment under the Bridgeford act, on the ground of irregularities in the proceedings after the levy, looking to its collection, without first paying or offering to pay the amount justly due.—*Imperial Land Co. v. Imperial Irr. Dist.*, 173 Cal. 660, 667, 161 Pac. 113.

51. Action to void assessment for mere irregularities.—A landowner in an irrigation district organized under the Bridgeford act (March 31, 1897), may not attack the validity of an assessment for mere ir-

regularities which do not infringe his constitutional rights, nor for failure to comply with statutory requirements which the legislature might have dispensed with, unless by an action commenced within 30 days after the levy thereof, as required by sections 68 to 72 of the act.—*Imperial Land Co. v. Imperial Irr. Dist.*, 173 Cal. 660, 662, 161 Pac. 113.

52. Action to review proceedings.—Failure to make necessary allegations.—On a review of the proceedings to form an irrigation district, where the complaint does not aver that any of the signatures to the petition were false or forged, or that the persons making them were unauthorized to sign, where made by an agent, the mere fact that the evidence upon which the board found their authenticity is not incorporated in the record in detail, is insufficient ground upon which to declare the proceedings invalid.—*Imperial Water Co. v. Board of Supervisors*, 162 Cal. 15, 24, 120 Pac. 780.

53. Action under sections 68 and 72.—Purpose.—The action brought under sections 68 to 72, by the board of supervisors or property owner is solely for the purpose of inquiry into the validity of the bonds, and is not an inquiry into the proceedings for the organization of the district.—*Imperial Water Co. v. Board of Supervisors*, 162 Cal. 15, 19, 120 Pac. 780.

54. Same—Does not provide plain, speedy or adequate remedy.—The action provided for under sections 68 to 72 does not provide a plain, speedy or adequate remedy to determine the validity of the organization of a district, and no such remedy remains except certiorari.—*Imperial Water Co. v. Board of Supervisors*, 162 Cal. 15, 20, 120 Pac. 780.

IV. POWERS, DUTIES AND OBLIGATIONS OF DISTRICT AND ITS OFFICERS.

55. Creation of district a legislative act.—The creation of an irrigation district under the act of March 31, 1897 (254), is a legislative act.—*Imperial Water Co. v. Board of Supervisors*, 162 Cal. 15, 17, 120 Pac. 780.

56. Ascertainment of certain facts, after notice and hearing judicial in character.—Where the legislature delegates the power to form irrigation districts to a local board, and provides that it can be exercised only upon certain conditions and upon the ascertainment of certain facts by such board, after a notice and hearing to parties interested, the proceeding thus authorized is judicial in character.—*Imperial Water Co. v. Board of Supervisors*, 162 Cal. 15, 17, 120 Pac. 780.

57. District can not grant preferential rights.—An irrigation district can not grant preferential rights to the use of any part of its water.—*Byington v. Sacramento, etc., Co.*, 170 Cal. 124, 133, 148 Pac. 791.

58. Lease by district of all its properties.—Statute of 1901.—A lease by an irrigation district of all its properties, made under

the authority of the act of 1901, would have read into it the provisions of the statute, and thus the lessee would be compelled to assume the burden of continuing the supply.—*Byington v. Sacramento, etc., Co.*, 170 Cal. 124, 131, 148 Pac. 791.

59. Same—Same—Estoppel of lessee.—The assignee of the lease is estopped from denying the validity of the title under which it took possession of the demised premises.—*Byington v. Sacramento, etc., Co.*, 170 Cal. 124, 130, 148 Pac. 791.

60. Illegally organized district continues to be de facto district for certain purposes.—An irrigation district, after having been judicially declared to be illegally organized, is still a de facto district for the purpose of winding up its affairs, and it has sufficient vitality to make a lease under authority of the act of 1901 (815) of all its properties, water rights and uncompleted works; and the acts of an assignee of such lease are deemed to be a continuation of the

original dedication, and the water rights acquired under the lease are deemed a part of the original system, and the lands within the boundaries of such district must, on demand, be served with water for irrigation, before any of the appropriated water is taken to outside lands.—*Byington v. Sacramento, etc., Co.*, 170 Cal. 124, 128, 148 Pac. 791.

61. Contract—Failure of officers to comply with statutory requirements.—No liability is imposed upon an irrigation district by a contract entered into by its officers without complying with all the essential proceedings required by the act, and a bidder for proposed work is not estopped by failure to comply with his bid, from claiming the return of his check deposited with the bid, or from enjoining its payment, where the board of directors failed to comply with essential requirements in calling for bids.—*Healey v. Anglo-California Bank*, 5 Cal. App. 278, 90 Pac. 54.

IRRIGATION DISTRICTS OF OVER 500,000 ACRES.

ACT 2266a—An act to provide for the government of irrigation districts having an area of more than 500,000 acres and to enable such irrigation districts to construct levees and to protect the lands within such districts from damage resulting from floods and the overflow of rivers and for that purpose to provide additional powers for boards of directors within such irrigation districts.

History: Approved January 21, 1915. In effect immediately. Stats. 1915, p. 1.

Power of board of directors.

§ 1. The board of directors of irrigation districts having an area of more than 500,000 acres may expend such sums as may to them seem necessary for the protection of the canal system of such district or of lands within such districts from damage by flood and from the overflow of rivers and may contribute funds for that purpose to be expended by or jointly with the government of the United States of America, or other governments or persons benefited by the same protective work or works. The board of directors of any such irrigation district may also do all things necessary to insure such irrigation system and the lands within such district from any such damage by flood or overflow without first receiving a petition of land owners or freeholders for holding an election to authorize such expenditure.

Borrowing money.

§ 2. When the issuance of bonds of any such district has been authorized by vote of the electors of such district, for the purpose of protection against floods but have not been sold, the board of directors thereof may borrow for such purpose, at the rate of interest not exceeding seven per cent per annum, the amount of such authorized bond issue, but when such bonds have been sold, the amount borrowed under the provisions of this section must be repaid.

Borrowing for flood protection.

§ 3. In addition to the powers conferred by the last section, the board of directors of any such district shall have power to borrow for flood protection purposes, in any one year not to exceed two hundred thousand dollars at a rate of interest not greater than seven per cent per annum.

Assessments.

§ 4. The board of directors of any such irrigation district shall within fifteen days after the close of its session as a board of equalization, levy an assessment sufficient to raise the annual interest on any outstanding bonds of such district and for any year in which any bonds shall fall due, must increase such assessment to an amount sufficient to raise a sum sufficient to pay the principal of the outstanding bonds as they mature, also, sufficient to pay in full all sums due or that shall become due from the district before the time for levying the next annual assessment, also, sufficient to pay in full, the amount of any other contract or obligation of the district due or to become due within the succeeding twelve months and such further sum as, with the other revenue of the district, will meet the estimated current expenses of the district including cost of flood prevention for the succeeding twelve months.

How governed.

§ 5. Except as herein provided, every such irrigation district shall be governed by the provisions of an act of the legislature of the state of California, entitled, "An act to provide for the organization and government of irrigation districts and to provide for the acquisition or construction thereby of works for the irrigation of lands embraced within such districts, and also to provide for the distribution of water for irrigation purposes," approved March 31, 1897, and the acts amendatory thereof.

Urgency.

§ 6. This act is hereby declared to be an urgency measure, within the meaning of section 1, article IV of the constitution of the state of California, and shall take effect immediately.

The facts constituting such urgency are as follows: One irrigation district which will be affected and governed by the provisions of this act, and which contains a population of over thirty thousand people, is in serious danger of loss of life, and of a vast amount of property, by reason of threatened overflow of the Colorado river. There is no other public body authorized to make the expenditures necessary to secure protection from such threatened overflow and the protective work necessary in order to be effective, must be commenced before this act would take effect without the enactment of this section. It is therefore necessary for the immediate preservation of public safety, that this act take effect immediately.

"THE CALIFORNIA IRRIGATION ACT."

ACT 2266b—An act to be known as "the California irrigation act" providing for co-operation between the state of California and the United States, and independent proceedings, in the storage and diversion of water, the distribution thereof for irrigation and other beneficial uses and purposes, the generation and manufacture of electric power; creating an irrigation board, and providing for the formation of irrigation districts and conservation districts, and the conversion of irrigation districts, reclamation districts, drainage districts and other political subdivisions of the state organized for the purpose of promoting irrigation, reclamation and drainage, into irrigation districts under this act; and empowering said irrigation board to make and approve contracts and agreements, to construct reservoirs and other works, divert, distribute and sell water and lease and sell water rights, and generate, lease and sell electric power, to apportion to the constituent units of conservation districts the water and electric power to be produced and generated by conservation district works, to levy assessments, and issue bonds of irrigation districts and conservation districts; providing for the management, control and supervision of such irrigation districts and conservation districts and of the works constructed pursuant to this act; directing the state department of engineering relative to such works; and generally providing a policy relating to the storage, diversion and use of water and the manufacture or generation of electric power, and adopting a plan for providing revenues therefor; and repealing the California irrigation act approved June 4, 1915, and chapter 646 of the statutes of 1917, approved May 28, 1917, amendatory thereof.

History: Approved May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 671. Prior act of June 4, 1915. In effect August 8, 1915. Stats. 1915, p. 1173. Amended May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1068, repealed by the present act. The amending act of 1917 amended the title of the act of 1915, and all sections of the act except 15a, as to which no mention was made.

IRRIGATION BOARD.

Irrigation board created. Office. Officers. Compensation. Amounts paid by conservation districts.

§ 1. There is created a board to be known as the "irrigation board," which shall consist of three members, and shall constitute a body corporate and politic for the purpose of exercising the powers and performing the acts herein mentioned, and which shall have the power to sue and to be sued. Within thirty days of the date upon which this act takes effect the governor shall appoint the members of said board and the members so appointed shall serve for four years and until their successors have been appointed; provided, that the members of said board heretofore appointed under the California irrigation act approved June 4, 1915, shall serve out the terms for which they were appointed. Their successors shall be appointed, and all vacancies shall be filled by appointment in like manner. The office of the irrigation board shall be at the city of Sacramento; a branch office may be maintained in the city and county of San Francisco.

The irrigation board shall elect one of its members as president, and shall employ a secretary and such attorneys, engineers, superintendents, inspectors and other assistants as it may require, and shall fix the terms of their employment and compensation. Each member of the irrigation board shall receive as compensation the sum of ten dollars per day for each day employed by such member in the performance of duties under this act, and shall receive actual traveling expenses while engaged in such duties. All such salaries, compensation and expenses shall be payable out of any funds under the control of the irrigation board applicable to such payments. Where a conservation district has been formed, as hereinafter provided, the irrigation board shall apportion and certify to each district therein or component unit thereof, and

to each private corporation, mutual ditch company and mutual water company admitted to the benefits of such conservation district, an amount for its share of the general cost and expense of the maintenance and operation of the irrigation board in connection with such district, or component unit, or private corporation or mutual ditch company, or mutual water company, for the ensuing or previous year, and also such additional amounts as are necessary for the purpose of defraying the cost of all administrative, engineering and other legal expenses necessary for laying out the plans therefor, and such amounts shall be paid by each of such districts, or component units, to the state treasurer, and shall be deposited in a fund to be held and paid out for the account of said conservation district in the same manner as hereinafter provided for the funds of said conservation district.

Interest of state in water storage paramount.

§ 2. It is hereby declared that the state of California has a paramount interest in the storage and diversion of water, the irrigation of land and the production of electric power; that such storage, irrigation and production of electric power will make productive vast quantities of land that are comparatively unproductive and will increase production, property valuations and population in the state, make profitable the cultivation of small tracts and promote subdivision of larger tracts, and will promote the welfare and prosperity of all the people. The powers herein conferred upon the irrigation board are hereby declared to be police and regulatory powers and are necessary to the accomplishment of a purpose that is indispensable to the public interests.

Powers of irrigation board.

§ 3. The irrigation board shall have power to make, or cause to be made, examinations and surveys, to make or adopt plans, and estimate, or cause to be estimated, the cost of all projects for the storage or diversion of water within the state of California, the distribution of said water, and the generation of electric power in connection with such storage, and the sale and distribution of such power, and to make and enter into contracts for the construction and maintenance of works for such projects and the supervision and administration thereof. The irrigation board shall also have power to confer and make agreements with any authorized department, board or officer of the United States government, or with any irrigation district, reclamation district, or drainage district, or other political subdivision of the state organized to promote irrigation, reclamation or drainage, or with any water, power, irrigation or other company, or corporation, or association, or person, or persons, with reference to such projects and concerning examinations, surveys, works and plans in connection therewith. Any plan finally approved by the irrigation board (and when in any case the approval of any authorized department, board or officer of the United States government is necessary, it is also approved by such authorized department, board or officer) shall be the official plan approved by the state of California and authorized by it for the project involved therein, but such plan may be modified or changed from time to time thereafter in like manner as originally adopted or approved.

State engineering department to make surveys.

§ 4. The state department of engineering, or such engineer or engineers as may be appointed by the irrigation board, shall make such surveys, examinations, reports, plans and estimates as may be required by the board, either with or without the co-operation of the United States or any department thereof, whenever said board has under its control money available with which to pay the expenses in connection therewith. All such work and all supervision of construction shall be performed under such contracts and regulations as may be made or approved by the irrigation board or agreed upon between said board and the United States.

FORMATION OF DISTRICT.

Petition to organize irrigation district.

§ 5. Whenever the holders of title, or evidence of title, or of possessory rights to lands entered under the laws of the United States, or of the state of California, representing one-half or more of any body of land susceptible of irrigation (excepting lands embraced within the limits of incorporated cities or towns) desire to form an irrigation district under the provisions of this act, for the irrigation of said land, they may present to the irrigation board a petition signed by them, or their authorized agents, which petition shall set forth generally the boundaries of the proposed district, a description of the lands by legal subdivisions or other boundaries, the county in which they are situated, the number of acres in the proposed district, and in each tract with the names (if known) of the owners thereof, and designating as unsold any lands not reduced to private ownership; and also shall state generally the source or sources from which said lands are proposed to be irrigated, and the proposed name of the district, and shall pray that the territory within the boundaries of the proposed district may be organized as an irrigation district under the provisions of this act. The petition may consist of any number of separate instruments; and guardians, executors, administrators or other persons holding property in a trust capacity under appointment of court may sign any petition provided for in this act, when authorized by an order of court, which order may be made without notice. A certificate of acknowledgment taken before a notary public or justice of the peace of any state, or an affidavit by any person in the presence of whom such petition was signed, shall be sufficient evidence of the genuineness of such signature, and of the fact of residence of any petitioner and any fact going to the qualifications of any petitioner under this act.

Defects in petition.

No defect in the contents of the petition or in the title to or form of the notice or signatures, or the lack of signatures shall vitiate any proceedings thereon; provided, such petition or petitions have a sufficient number of qualified signatures attached thereto.

Evidence of title.

The certificate of the county assessor of the county wherein the lands described in the petition are situated that the titles and possessory rights of the respective signers thereto are as appear on the county assessment roll or rolls last equalized at the time of filing the petition, or of the register of the United States land office of the district in which said lands are situated, or of the surveyor general of the state of California, shall be sufficient evidence of the title or possessory right of any signer hereto, and where as to any tract the assessor is unable to make such certificate for the reason that it is assessed to an unknown owner or the assessment roll does not purport to give the true name or gives the names of a portion only of the owners, the actual owners of such property shall be considered the owners for all the purposes of this act and owners of undivided interests may sign for such interest.

Hearing. Notice of hearing.

The petition must be verified by the affidavit of one of the petitioners, and shall be filed with the irrigation board. Upon the receipt of such petition the irrigation board, or such person as said board may authorize to act in such cases, shall designate a time and place for the hearing of said petition, which date shall be not less than twenty days nor more than thirty days from the date of the filing of the petition with the board. The secretary of the irrigation board shall cause notice of said hearing to be published at least once a week for two successive weeks, prior to the time of said

hearing, in a newspaper of general circulation printed and published in each of the counties in which any of the lands intended to be embraced within such proposed irrigation district are situated. Such notice shall designate the time and place when and where said petition will be heard, and shall set forth the exterior boundaries of said proposed district.

Objections to creation of district. Order creating district. Copy of order with map to be filed. Approval of state engineer.

At the time and place designated in said notice any person owning land within the said proposed irrigation district, may appear and present written objections to the creation of such district. The irrigation board shall hear and receive such evidence as may be offered in support of the petition and in support of said written objections. The irrigation board may continue said hearing from time to time, by order entered upon its minutes, to the end that a full hearing may be had. Upon the final hearing of said matter, the irrigation board shall make an order approving said petition as originally presented, or as modified by such order, excluding from the district such lands as in the judgment of the irrigation board should be excluded, and upon the filing of such order with the irrigation board such irrigation district shall be deemed to be created. Upon application by any person whose lands are susceptible of irrigation from any of the proposed sources, the irrigation board, in its discretion, may order such lands included within said proposed district. The order shall describe the exterior boundaries of the district, as determined by the irrigation board, and also the exterior boundaries of any lands excluded therefrom, and shall be indorsed upon or attached to the petition, and be signed by the president and attested by the secretary of the irrigation board. A copy of the order creating such irrigation district, certified by such secretary, shall be filed in the office of the secretary of state, and a similarly certified copy of such order, together with a map showing the exterior boundaries of the district, and indicating the lands excluded therefrom, shall be filed in the office of the county recorder of each of the counties in which any of the lands within the said district are situated, and a properly certified copy of such order, together with the maps attached thereto, shall be received in all of the courts of this state as prima facie evidence of the organization of such district and of the boundaries thereof. Before the irrigation board makes such order, it may require that the project and proposed works be approved by the state engineer, or by such engineer or engineers as shall be designated by the irrigation board.

Board of directors. Proceeding to determine legality of district.

Each irrigation district created under the provisions of this act shall have a board of directors composed of owners of land within the district, elected by the owners of land in such district in the manner provided for the election of trustees of reclamation districts in section three thousand four hundred ninety-one of the Political Code of the state of California, except that such elections shall be called by and returns thereof made to the board of supervisors of the county in which the greater portion of the lands of the district are situated. Each such district shall have a board consisting of five directors; provided, that if so requested in the petition for the formation of said district, the irrigation board may order that there shall be only three directors. After the approval of the petition and the election of directors for the district, the directors shall adopt rules, not inconsistent with the laws of the state, for the government and control of the affairs of the district, which rules may be amended at any time by said board of directors.

The board of directors of any irrigation district created under this act may commence a proceeding in the superior court of any county, wherein a portion of the district is situated, to determine the legality of the existence of said district. The com-

plaint in said proceeding shall describe the district by name and the exterior boundaries thereof, and shall contain a prayer that such district be adjudged a legal irrigation district. The summons in such proceeding shall be served by publishing a copy thereof once a week for four successive weeks in a newspaper of general circulation published in each county where any part of such district is situated. Within thirty days after the last publication of said summons, any person who may be interested may appear and answer said complaint, in which answer the facts relied upon to show the invalidity of the district shall be set forth. If no answer shall be filed, the court must render judgment as prayed for in the complaint. If any answer shall be filed within said period, the court shall thereafter proceed as in other civil cases, but no district shall be adjudged invalid when it appears that such district has, for five years prior to the commencement of such proceeding, been performing its functions as an irrigation district under this act in good faith. The proceeding under this section is hereby declared to be a proceeding in rem, and the judgment rendered therein shall be conclusive against all persons whomsoever and against the state of California.

Converting districts into irrigation districts. Hearing. Order of irrigation board.

§ 6. Any irrigation district formed under the provisions of any other law or statute of this state, and any reclamation district or drainage district (excluding from any such district the area embraced within the limits of any incorporated city or town) susceptible of irrigation from any project adopted or approved by the irrigation board, may become an irrigation district under the provisions of this act upon presenting to the irrigation board a consent thereto signed by the holders of title, or evidence of title, of more than half of the lands embraced in said district (excepting lands within incorporated cities or towns). Upon the filing of such consent, the irrigation board shall fix a date for a hearing of the matter involved in such consent. The secretary of the irrigation board shall publish a notice of such hearing once a week for four successive weeks preceding the date fixed therefor in a newspaper of general circulation published in each of the counties in which any portion of said district is situated. At the time and place designated in said notice the irrigation board shall hear and receive such evidence as may be offered in support of the proposal to convert such district into an irrigation district under the provisions of this act and in support of any written objection thereto filed with the irrigation board. The irrigation board may continue said hearing from time to time, by order entered upon its minutes, to the end that a full hearing may be had. Upon the final hearing of said matter, the irrigation board shall make its order, providing that said district (excluding therefrom the territory embraced in incorporated cities or towns) shall thereafter be an irrigation district subject to all of the provisions of this act, or, in its discretion, said irrigation board may decline to make such order. If the irrigation board shall make an order converting such district into an irrigation district, all of the lands therein (except lands lying within the boundaries of incorporated cities or towns), shall become, and shall thereafter be, subject to all of the provisions of this act.

BOARD OF DIRECTORS.

Powers of board of directors. Action nullified by irrigation board. Compensation.

§ 6a. The board of directors of an irrigation district created under this act shall have power to elect one of its members president thereof; and, subject to the approval of the irrigation board, to employ engineers and others to survey, plan, locate and estimate the cost of the works necessary for the improvement of the lands of the district by irrigation, reclamation and drainage and thereafter subject to the approval of the irrigation board, to modify or change such original plan or plans, or adopt new supplemental or additional plan or plans; to acquire by purchase, condemnation or other legal means, necessary property and rights of way, and the right to take material for the con-

struction of all necessary works, including dams, canals, drains, sluices, bulkheads, water gates, embankments, levees and pumping plants, and to construct, maintain and keep in repair all works requisite and necessary to that end, and to do all other acts and things necessary or required for the irrigation, reclamation and drainage of the lands embraced in the district, and to carry out the purposes of this act. All of the acts and proceedings of such board of directors, however, shall be recorded in the minutes of said board, and copies thereof, certified by the secretary of said board as recorded, shall, within ten days after the passage or adoption of the same, be filed with the secretary of the irrigation board, and the irrigation board, within twenty days after such filing may, by order filed with its secretary, reject and nullify the action of the board of directors of such irrigation district, and upon the filing of a certified copy of such order of rejection or nullification with the secretary of such irrigation district, the said order of said irrigation district board shall be invalid and unenforceable for any purpose; but if such action of such irrigation district board shall not be so rejected or nullified within the period above provided, the same shall be and remain in full force and effect. The irrigation board may confirm and ratify any action of said irrigation district board at any time, and upon such confirmation and ratification such act or order of said irrigation district board shall be valid and effective for all purposes. The several members of the board of directors shall each be entitled to receive for actual and necessary services performed and for expenses incurred by them, respectively, for and in the interest of the district, such compensation as the irrigation board may determine to be just and reasonable, which shall constitute an indebtedness of the district, to be paid in the same manner and out of the same fund as other debts of the district; provided, that no warrant or order drawn for such purpose shall be valid until approved by the irrigation board.

CONSERVATION DISTRICTS.

Conservation districts. Rights of private corporations, etc., to share benefits.

§ 6b. The irrigation board shall have power to consolidate into single districts in the manner and for the purposes provided in this act, irrigation districts, reclamation districts, drainage districts and other political subdivisions of the state organized to promote irrigation, reclamation or drainage, which consolidated districts shall be known, and are herein referred to, as conservation districts; and, the purpose of the formation of such districts being primarily to provide for and promote the irrigation of the lands therein and in connection therewith and incidental thereto the reclamation and drainage of such lands, the legislature hereby expressly declares that every such conservation district, formed as herein provided, is and shall be an irrigation district within the meaning of section thirteen of article eleven of the constitution of the state of California, and within the meaning of every other provision of said constitution relating to irrigation districts. Such conservation districts shall be composed of two or more units all or any of which units may be irrigation districts, formed under the provisions of this or any other act or statute of this state, reclamation districts, drainage districts, or other political districts of the state organized to promote irrigation, reclamation or drainage, now or hereafter to be formed. The territory embraced within such units need not be contiguous in order to be embraced within the same conservation district, provided all or a portion of the territory embraced within said respective units is susceptible of irrigation from the works proposed to be constructed by said conservation district. Any private corporation engaged in the distribution of water to the public, for irrigation or other beneficial uses, or in the generation of hydroelectric power for sale to the public, and any mutual ditch company or mutual water company organized for the purpose of distributing water to the members or stockholders thereof, which private corporation, mutual ditch company or mutual water company is receiving or entitled to receive water from the same stream or streams for the storage or diversion

of whose waters it is proposed to construct the works of said conservation district, shall have the right, upon payment of its proportion of the cost of constructing, operating and maintaining such works, to share in all the benefits resulting from such construction, operation and maintenance, including its proportionate share of the water to be conserved thereby and the power to be generated and produced in connection therewith; provided, that nothing herein contained shall be deemed to confer upon said irrigation board, or upon any conservation district formed under the provisions of this act, the right to impair, or deprive any person, firm or corporation of any vested right in or to the waters of any stream or streams proposed to be stored or diverted by said conservation district, without due process of law.

Petition. Notice. Hearing.

Upon presentation to it of a petition signed by the respective governing boards of two or more of said units praying for the formation of a conservation district, the irrigation board shall fix a time and place for the hearing of such petition. The secretary of the irrigation board shall cause notice of said hearing to be given by publication once a week for four successive weeks in a newspaper of general circulation published in each county wherein any part of said petitioning districts are situated, and also by mailing a written notice of such hearing to the governing boards of such other districts or political subdivisions of the state and to such private corporations, mutual ditch companies and mutual water companies as may be designated by the irrigation board. At the time fixed by the irrigation board for such hearing, or at such other time to which the hearing may be adjourned, the irrigation board shall hear and receive evidence in support of any objections which may be filed in opposition thereto, and shall also receive applications from other districts to become a part of such conservation district and from private corporations, mutual ditch companies or mutual water companies to participate in the benefits of such conservation district. If there shall be presented at such hearing a written objection or objections signed by the owners of more than one-half of the lands in any such unit district the signing of such petition by the governing board of such unit district shall be deemed to be nullified and the irrigation board shall have no power to include such unit district within the proposed conservation district.

Territory included. Order creating district. Petition of district to be included.

The irrigation board shall include as a part of such conservation district the territory embraced within any district unit applying to be made part of the conservation district, which applying district shall be lawfully receiving or entitled to receive water from the same stream or streams whose waters are proposed to be stored or diverted by such conservation district, and shall admit to beneficial participation in said conservation district such private corporations, mutual ditch companies or mutual water companies likewise lawfully receiving or entitled to receive water and applying to the irrigation board to be admitted to such participation. The application of any unit district or private corporation, mutual ditch company or mutual water company, not so lawfully receiving or entitled to receive water, to be included as a part of said conservation district or to be permitted to share in the benefits thereof, may be approved or rejected by the irrigation board in its discretion. Upon the final hearing of said matter, the irrigation board shall make an order approving said petition, as originally presented, or as modified by such order. Such order shall describe said conservation district by exterior boundaries when the lands therein lie in one body, or by naming the unit districts embraced therein when said lands do not lie in one body, and shall also designate the private corporations, mutual ditch companies or mutual water companies, entitled to participate in the benefits of the works proposed to be constructed by said conservation district. Upon the filing of such order with the irrigation board such con-

servation district shall be deemed to be created. A certified copy of the order creating such conservation district shall be filed in the office of the secretary of state, and a certified copy thereof, together with a map showing the boundaries of the district, shall be filed in the office of the county recorder of each of the counties in which any of the lands within the said district are situated. A properly certified copy of such order, together with the map attached thereto, shall be received in all the courts of this state as prima facie evidence of the organization of such district in compliance with the provisions of this act, and of the boundaries thereof.

Petition of private corporation, etc. Hearing.

After the formation of a conservation district as herein provided, any irrigation district, reclamation district, drainage district, or other political subdivision of the state organized to promote irrigation, reclamation or drainage, theretofore existing and which was entitled to become a part of and unit in such conservation district at the time of its formation, and any such district or political subdivision of the state thereafter formed, any portion of the lands in which are receiving or entitled to receive water from the same stream or streams for the storage or diversion of whose waters said conservation district was formed, may, at any time prior to the making by the irrigation board of the order approving the apportionment as provided in section ten of this act, but not thereafter, file with the irrigation board a petition to be made a part of and unit in such conservation district. And any private corporation, mutual ditch company or mutual water company existing at the time of the formation of such conservation district, and at that time entitled to be admitted to participation in the benefits resulting from the construction of the works of such conservation district and any such private corporation, mutual water company or mutual ditch company thereafter organized and receiving or entitled to receive water from such stream or streams, may, at any time prior to the making by the irrigation board of the order approving the apportionment as provided in section ten of this act, but not thereafter, file with the irrigation board a petition to be admitted to such participation.

Upon the filing of any such petition, within the time hereinbefore limited, the irrigation board shall fix a time and place for the hearing thereof and give such notice of said hearing and cause such proceedings to be had and taken at such hearing and such order to be made and filed, and certified copies of such order to be filed, as in the case of a hearing upon a petition, for the original formation of a conservation district, and the right of such petitioning district or political subdivision to become a part of and unit in such conservation district or of such private corporation, mutual water company or mutual ditch company to be admitted to participation in the benefits resulting from the construction of the works thereof, shall be determined in the same manner as if such district or political subdivision or private corporation or mutual water company or mutual ditch company had presented its petition or application at the hearing of the petition for the original formation of such conservation district.

Proceeding to determine legality of district.

The irrigation board, or the governing body of any irrigation district, reclamation district, drainage district, or other political subdivision of the state organized to promote irrigation, reclamation or drainage, constituting a unit of said conservation district, or any private corporation, or mutual water company or mutual ditch company admitted to participation in the benefits of such conservation district, may commence a proceeding in the superior court of any county wherein a portion of said conservation district is situated to determine the legality of the existence of said conservation district. The complaint in said proceeding shall describe the district by name, and the exterior boundaries thereof, when the lands therein lie in one body, or by naming the unit districts embraced therein when said lands do not lie in one body, and shall contain

a prayer that such district be adjudged a legal conservation district. The summons in such proceeding shall be served by publishing a copy thereof once a week for four successive weeks in a newspaper of general circulation published in each county wherein any part of such district is situated. Within thirty days after the last publication of said summons any person who may be interested may appear and answer said complaint in which answer the facts relied upon to show the invalidity of the district shall be set forth. If no answer shall be filed the court must render judgment as prayed for in the complaint. If any answer shall be filed within said period the court shall thereafter proceed as in other civil cases, but no district shall be adjudged invalid when it appears that such district has, for five years prior to the commencement of such proceeding, been performing its functions as a conservation district in good faith. The proceeding under this section is hereby declared to be a proceeding in rem and the judgment rendered therein shall be conclusive against all persons whomsoever and against the state of California.

When works benefit overflowed land.

§ 7. When any of the works constructed under the provisions of this act serve the purpose of drainage, flood control or reclamation of swamp and overflowed lands within an irrigation or conservation district formed under the provisions of this act, the irrigation board may estimate the proportion of the cost of said construction, which may be properly charged to the lands benefited by such drainage, flood control or reclamation, and assessments may be levied in the manner herein provided upon the lands so benefited for the purpose of paying such proportion of said cost of construction, together with a reasonable portion of the expenses of maintenance and repair of such works.

RULES AND REGULATIONS.

Rules and regulations.

§ 8. The irrigation board may make and enforce any and all rules and regulations that in its opinion will promote the objects of this act, and may perform any act and exercise any power necessary to the accomplishment of the purposes herein expressed and full power is hereby conferred in the premises whether or not such powers are herein specially mentioned, and may sue and be sued in the same manner and with the same effect as a municipal corporation.

Member may conduct hearing.

§ 9. For the purpose of performing any duty under this act the irrigation board may appoint one of its members to conduct any hearing or investigation. Such member shall make a written report of his proceedings and shall state the evidence introduced at any hearing and his conclusions thereon. Upon such report, or upon such further inquiry as the irrigation board shall deem proper, the irrigation board may pass upon and decide any question under consideration at said hearing or investigation. The decisions of the irrigation board shall be final except as to questions, the determination of which are vested in the courts by this act or by the constitution of this state or by the constitution of the United States.

APPORTIONMENT OF WATER.

Apportionment of water. Lease of surplus water. Special board of apportionment. Oath. Notice. Hearing.

§ 10. Prior to making any assessment, to provide funds for the construction or purchase of any project for the construction or purchase of which any conservation district shall have been formed, there shall be apportioned as hereinafter provided, to each constituent district or unit under such project the proportion to which it is entitled of all water stored or to be stored or diverted or to be diverted by such project for the

irrigation of such conservation district, and of all power to be developed in connection therewith, which proportion of such water and power shall be forever applied to the purposes of said constituent district; provided, that any water or power that may be so apportioned and for which any constituent district or unit has not, to the full extent thereof, a beneficial use, may be leased by such district or unit, with the consent of the irrigation board, to any other territory within or without the said conservation district; the other districts or units, embraced in said conservation district to be entitled, however, to the first right to so lease such surplus water or power. The apportionment of water and power under this section shall be made by a special board of apportionment and confirmed by the irrigation board. The members of such special board of apportionment shall be three in number and shall be appointed by the irrigation board, subject, however, to the approval of two-thirds of the members of the advisory board hereinafter provided for. The members of such special board of apportionment shall be disinterested persons having no interest in any land within the conservation district within which such apportionment is to be made and not residing within such district. Before entering upon his duties each of the members of said special board of apportionment shall take and subscribe an oath that he is not in any manner interested in any real estate within said district, directly or indirectly; that he does not reside therein, and that he will perform the duties of a member of such board to the best of his ability. Said special board of apportionment shall determine, define and apportion to the several districts or units within said conservation district, and to the private corporations, mutual water companies and mutual ditch companies admitted to share in the benefits thereof, the amount and extent of the water to be produced, stored or diverted for the project contemplated by said conservation district and the amount and extent of the power to be produced or generated in connection therewith, and shall likewise determine, define and apportion the cost of the project, and shall make a report thereof to the irrigation board. Upon receiving such report the irrigation board shall fix a date for the hearing thereof, and notice to all persons in such conservation district shall be given by publication once a week for four successive weeks in a newspaper of general circulation published in each of the counties in which any portion of the said district is situated. Such hearing shall be held upon a date not less than sixty nor more than ninety days after the first publication of said notice, and affidavits of the publication of said notice in the manner herein provided shall be made and filed with the irrigation board before such hearing. In addition to the publication of such notice the secretary of the irrigation board shall mail a copy thereof to the governing boards of such other districts or political subdivisions of the state and to such private corporations, mutual ditch companies and mutual water companies as may be designated by the irrigation board. At the time set for the hearing the irrigation board shall hear and receive evidence in support of objections which may be presented to the apportionment so made, and shall thereupon make its order approving, modifying or rejecting such apportionment. Any person aggrieved by the order of the irrigation board may commence an action in the superior court of any county in which any part of said conservation district is interested to have said apportionment corrected, modified or annulled. Such action must be commenced within thirty days after said order has been made and filed in the office of the secretary of the irrigation board, and if not so commenced no action or defense shall thereafter be maintained attacking the legality of said apportionment in any respect.

Rates. Control of distribution of water apportioned.

All works constructed at the expense of any irrigation district created under this act, or for any component unit of a conservation district, or for which the same is assessed or charged for the repayment of moneys expended for construction, shall forever be devoted to the purposes of such constituent district or unit under the adminis-

tration of the irrigation board. No rates shall be charged by an irrigation district formed under the provisions of this act by a conservation district for the use of water for irrigation therein or for power developed in connection therewith, except for the just proportion of such irrigation district or the units of such conservation district, or of the private corporations, mutual water companies or mutual ditch companies entitled to or receiving the benefits of the construction and operation of the works of said conservation district, for the expenses of the governing bodies and employees thereof and of the maintenance, operation, repair and supervision of the works constructed for the benefit of such irrigation district or conservation district, and except for the repayment of moneys appropriated and paid as the cost of construction of the said works and the payment of bonds issued therefor and the interest thereon.

It shall be the duty of the irrigation board, and said board shall have power to do all things necessary to that end, to control and supervise the distribution of the water and power apportioned as herein provided to the units of a conservation district and to the private corporations, mutual water companies and mutual ditch companies admitted to share in the benefits thereof.

CONTRACT FOR REPAYMENT OF MONEY EXPENDED.

Power to contract for repayment of money expended.

§ 11. The irrigation board shall have power to contract with the United States and with the state of California for the repayment of moneys appropriated or expended in the construction of reservoirs, canals, ditches or other works necessary or convenient for any of the purposes herein mentioned. Such repayment shall be made from assessments upon the lands benefited by such works, or the proceeds of bonds issued thereon, from payments made by private corporations, mutual ditch companies or mutual water companies contributing their proportion of the cost of constructing, operating and maintaining such works as provided in section six b of this act, or from revenues derived by the irrigation board for water or power leased or sold by the irrigation board as provided in this act, or from either, all or any of said methods of repayment. The irrigation board may also deposit with the United States and with the state, bonds, notes, contracts, leases, agreements or other obligations for the payment of money, issued or executed by irrigation districts formed under the provisions of this act, or by conservation districts, or the component units of such conservation districts, the proceeds to be applied to said repayment upon such terms as may be agreed upon between the irrigation board and the United States or the state of California.

PURCHASE OF PROPERTY NEEDED.

Power to purchase land, etc., needed.

§ 12. The irrigation board shall have power to acquire within or without any irrigation district created under this act or any conservation district, from persons, associations or private corporations, by purchase, condemnation or other lawful means, any land, water, water rights, reservoirs, flumes, ditches, power lines, telegraph or telephone lines or other works or parts thereof necessary or convenient for the purposes herein mentioned, or necessary for the carrying out of any of the projects formed hereunder.

Advisory board.

§ 13. The chairmen or presiding officers of the governing bodies of the respective irrigation districts, reclamation districts, drainage districts and other political subdivisions of the state organized to promote irrigation, reclamation or drainage, constituting units of a conservation district created under this act, and of the private corporations, mutual water companies and mutual ditch companies contributing to the cost of constructing, operating and maintaining the works of such conservation district, shall

be and constitute an advisory board to consult with the irrigation board, and such advisory board shall perform such executive and administrative functions as may be determined from time to time by the irrigation board.

GENERAL POWERS OF IRRIGATION BOARD.

Power to make contracts. Apportionment of revenues.

§ 14. The irrigation board, except where special power is herein elsewhere conferred, shall have power to make, execute and carry out any agreements or contracts for the performance of any act or the construction of any works provided for in this act, and may make contracts for the sale or rental of unapportioned water or power for periods not to exceed forty years, upon such terms as the irrigation board shall prescribe. All revenues received by the irrigation board from such sales or rentals shall be apportioned to the districts constituting component parts of such conservation district and to the private corporations, mutual water companies and mutual ditch companies contributing to the construction of the project from which such revenues are derived. Such apportionment shall be made in the ratio of the respective amounts of assessments levied or charges made for the construction of the works in connection with which such revenues are derived.

Contracts between districts, etc.

For the purpose of carrying this act into effect and of accomplishing the ends and objects herein expressed, and the development and utilization of the water resources of this state, conservation districts, irrigation districts, formed under the provisions of this act, reclamation districts and other political subdivisions of the state organized to promote irrigation, reclamation or drainage, and private corporations organized for the purpose of selling or distributing water or electric power for domestic, irrigation, manufacture, or other beneficial uses and purposes, and mutual water companies and mutual ditch companies, may enter into contracts or agreements with each other or with other districts, political subdivisions, private corporations, associations or persons, for the development, appropriation or storage of water and the apportionment and distribution thereof, and the management, operation and maintenance of any works acquired pursuant to this section, and the division, distribution and payment of the cost and expense of such development, appropriation, storage, apportionment, distribution, management, operation and maintenance. And every and all such contract or contracts shall be valid and binding, in accordance with their terms and provisions respectively; provided, however, that before any such contract or contracts shall go into force or effect or become binding for any purpose, the same shall be submitted to and approved by the irrigation board; and provided, further, that where any such contract relates to or affects the sale, rental or distribution of water or electric power, or the beneficial use of water, by a public utility, the same shall, before it goes into force or effect or becomes binding, be submitted to and approved by the railroad commission of the state of California. And all such contracts approved as herein provided shall be binding and valid for all purposes, either in perpetuity or such term or terms as shall be specified or agreed upon therein or in the order or orders approving the same.

The provisions of this section are in aid of and in addition to other provisions of this act, and the same shall be construed and considered as so in aid of and in addition to, and not limited by or restricted by any of the other terms or provisions of this act. Nothing in this section contained shall be construed to affect or impair the organization or rights of mutual water companies or mutual ditch companies or the rights of the stockholders or members of such companies.

Surveys, etc., of conservation districts.

§ 15. The irrigation board shall, upon the organization of any conservation district as in this act provided, proceed to make or cause to be made, all necessary examinations, surveys, plans and estimates of cost for the storage, diversion and distribution of water and the generation of electric power in connection therewith, and the sale and distribution thereof as may be necessary or requisite to enable said board to ascertain and estimate the requirements and works necessary as aforesaid for the purposes of said conservation district and the probable cost and expense thereof, and in that connection may use and adopt all previous estimates, surveys and reports it may have collected adapted to that purpose, and may employ all necessary engineers and other assistants for the accomplishment of said purposes, and the cost thereof shall be deemed a part of the expense of said project and may issue warrants therefor and same shall bear interest from date of issue at the rate of six per cent per annum until paid, and shall be payable out of the funds of said district, and may be included in any bond issue authorized for the purposes of said district.

Such estimate as is above provided for shall be in such form as shall be approved by said irrigation board and shall be entered in the minutes of said board and shall constitute a part of the records of said board, and the same, or a copy thereof, certified by the secretary of said board, shall be admissible as evidence in any proceeding before any court, commission or tribunal of this state wherein the matters therein set forth shall be admissible in evidence.

Commissioners to assess land.

Whenever, for any of the purposes of this act, the irrigation board shall deem it necessary for the purposes of said district, or the levying of an assessment upon the property therein, or the issuance of bonds by said district, said board shall appoint three commissioners for such purpose or purposes. Such commissioners shall have no interest in any land in the district, either directly or indirectly, and each commissioner before entering upon his duties shall make and subscribe an oath that he is not in any manner interested directly or indirectly in any land in said district, and that he will perform the duties of commissioner to the best of his ability. Thereupon said commissioners shall proceed separately as to each unit within said district to view and assess upon the land within said district a sum sufficient to cover said estimated amount and shall apportion the same according to the benefits which will accrue to each unit within said district, and separately as to each tract of land within said unit. Such benefits to be estimated according to the benefits which will accrue to each tract of land in such unit by reason of the expenditure of said estimated sum, and shall estimate the same in gold coin of the United States.

Assessment roll.

Said commissioners shall prepare and certify a roll on which they shall state the name and address of the owner of each parcel of land in such unit, or if the name or address of any owner is unknown, then, that fact; also a description of each parcel of land by legal subdivisions or boundaries, and the total amount assessed against each parcel of land so described. No mistake in the name of the owner, or supposed owner of any parcel of land, shall invalidate the apportionment or assessment. A separate roll shall be made for the lands in each county where such unit includes land in more than one county. When completed said roll or rolls shall be filed with the irrigation board and certified copies of the particular roll for each county shall be filed with the county recorder of any county in which any lands within said unit may be, and each roll shall be open for inspection by the public for at least thirty days.

**Hearing objections. Approval of assessments. Lien. Annual levy. Additional levy.
Surplus used in retiring bonds.**

The irrigation board shall appoint a time and place not less than thirty days after said roll has been filed with said recorder or recorders when and where it will meet, within said conservation district for the purpose of hearing objection to said assessment and the apportionment thereof and notice of such hearing shall be published at least once a week for two successive weeks in some newspaper published in each county in which any lands within said district may be. At any time before or at the original date of such hearing, any person interested in any real estate upon which any charge has been apportioned and assessed, may file in the office of the secretary of said irrigation board written objections thereto, stating the grounds of such objections, which said statements shall be verified by the affidavit of such person or some other person who is familiar with the facts. Said irrigation board may postpone such hearing from time to time. At such hearing the irrigation board shall hear such evidence as may be offered touching the correctness of such assessment or the manner of its apportionment and may modify or amend the same and may reapportion all or any part of the entire assessment. No assessment or apportionment shall be increased except upon the hearing of objections thereto or after personal notice or notice by mail to the owner of the land upon which said increase is made. Said irrigation board must make and enter in its minutes an order approving said assessment and apportionment as finally fixed, and the decision of said irrigation board shall be final, and thereafter said assessment and apportionment shall be conclusive evidence of the validity of said assessment and apportionment, and no action or defense shall ever be maintained attacking the same in any respect. And the records of said irrigation board, or a copy thereof certified by its secretary, shall be received in evidence in all or any of the courts of this state, or before any board or tribunal authorized to hear or consider any matter wherein the same shall be admissible as evidence. No change shall be made in said assessment or apportionment after the consideration, approval and fixing thereof by said irrigation board, and all assessments upon the property of said district thereafter shall be levied in accordance therewith and consistent with the apportionment of benefits therein provided for and fixed, and if any assessments are called for or required in addition to the original amount estimated and apportioned for the purposes of said district, such additional amount shall be assessed, levied and raised in accordance with said apportionment and assessment of benefits so fixed in the first instance by said irrigation board. A certified copy of such assessment and apportionment roll as finally approved shall be filed in the offices of the county recorder of each county in which any land within said district is situated. Such assessment and apportionment shall thereafter constitute a first lien upon the land affected thereby until the full amount thereof is paid or until all bonds of the district issued thereon, together with the accrued interest, shall have been fully paid. The said irrigation board shall on the first Tuesday in May following the fixing and approval of said assessment and apportionment therein provided for, and annually thereafter on said date, levy an assessment, sufficient to raise the annual interest on the outstanding bonds of said district, and in any year in which any bonds shall fall due must increase such assessment to an amount sufficient to pay the principal of the outstanding bonds as they mature; also sufficient to pay in full all sums that may become due from the district before the time of collection of the next annual assessment, including an amount sufficient to pay in full the amount of any contract or obligation of the district which may come due during said year or may have been reduced to judgment. And to provide for and maintain a fund out of which the current and contingent obligations of said district can be paid in cash as they mature. In addition to the amounts estimated as necessary for the purposes aforesaid, a further levy of fifteen per cent additional shall be included and levied for the purposes of

meeting any additional amounts that may be required on account of delinquencies and to insure the payment of all of the bonded indebtedness, including the interest thereon and other obligations of said district at maturity. Whenever there is a surplus in the funds of said district over and above all requirements as herein specified for the payment of the bonded indebtedness and interest thereon and accrued obligations of said district, such a surplus may be used and applied in retiring the outstanding bonds, or any thereof, of said district. The secretary of the irrigation board must compute and enter in a separate column of the assessment book the respective sums in dollars and cents to be paid as an assessment upon the property therein enumerated. In so doing, said secretary shall enter the names of the owners of such lands and the descriptions thereof in accordance with the last assessment roll of the county in which the said lands are situated. Such assessment must be so levied and computed as to be in accordance with the apportionment and assessment of benefits herein provided for and so that all lands within said district shall be assessed and required to pay in accordance therewith.

Duty of county auditor.

The secretary of said board shall forthwith deliver a certified copy of that portion of said assessments so directed to be entered by him, so far as it applies or appertains to any land within any county situated within said district to the county auditor of such county, and such auditor shall accept and receipt for the same; and thereupon it shall be the duty of said auditor to include said assessment as an assessment against each parcel or tract of land therein described. It shall be the duty of said auditor to examine and ascertain as to any errors or discrepancies that may exist in said roll as to the ownership of, or the descriptions of, land as applied to any owner or owners thereof as compared with the assessment roll of the said county for such year, and if any such difference or discrepancies are found, it shall be the duty of said auditor to correct the same accordingly so that the said roll as to ownerships and descriptions of land and assessments thereof shall correspond to the assessment roll of said county and for such year. And it shall be his duty to audit, enter and certify the same to the tax collector of said county for collection in the same manner and form as county, school district and other taxes are included and certified by him to such tax collector, and all such assessments shall constitute a first lien upon the lands affected thereby as hereinbefore provided.

Additional clerical force for auditor.

The board of supervisors is hereby authorized and empowered to employ what extra clerical force is necessary to perform the additional duties herein prescribed for the auditor. Said extra clerks shall receive as compensation for the work herein provided a per diem not to exceed five dollars which shall be paid by the districts operating under the provisions of this act in proportion to the amount of work done for each and it shall be the duty of the clerk of said board to issue warrants payable to such clerks employed as herein provided out of the funds of the district, upon the presentation of a verified demand, approved by the auditor and the board of supervisors.

Duty of tax collector.

Upon receipt of the same from the auditor of such county it shall be the duty of the tax collector of said county to include the same as a separate entry and charge against the land therein described and to collect the same with the county, school district and other taxes so required to be collected by such county tax collector and to keep and deposit such district taxes in a separate fund, and when the same is collected it shall be the duty of such tax collector to pay the same over to the treasurer of such county at the same time and in the same manner as other taxes collected by him are paid over

to such treasurer, and it shall be the duty of such treasurer to receive the same as other taxes are received by him and after receipt thereof to keep the same in a separate fund; and upon receipt of same, or any part thereof, it shall be the duty of such county treasurer within thirty days thereafter to pay the same and all thereof to the treasurer of the state of California, who shall receive and keep the same and deposit the same in a separate fund to the credit of the said district, and to be paid out by him upon the order and approval of the said irrigation board.

Moneys received under contracts, etc., collected by irrigation board.

All moneys received under contracts, leases or other arrangements by such conservation district from any canal companies, mutual or other water companies, reclamation districts, or from any corporations, individuals, or other sources not herein otherwise provided for shall be collected by said irrigation board and by it deposited with the state treasurer, and thereafter to be disbursed as provided as to funds of such district under the order and direction of such irrigation board for the purposes and obligations of said district, including the payment and retirement of outstanding bonds with interest thereon.

Delinquent taxes.

From and after the time of the filing of such assessment roll of such district with the auditor of any county the taxes therein enumerated, levied and assessed, shall be regarded and treated as are the other taxes of said county or the school districts thereof, and the same shall be included in and considered a part of such taxes and the same shall become delinquent at the same time and in the same manner as such other taxes, and with respect to any delinquency or delinquent notices the same shall become delinquent and notice thereof shall be published with and at the same time and in the same manner as other delinquent taxes, and the same shall be similarly treated for all purposes of notice and sale thereof for such delinquent taxes, and shall be subject to redemption from such delinquent district taxes at the same time and in the same manner and through the same officials as are such other taxes. And any and all charges and penalties in connection with such delinquency and interest thereon and penalties in connection therewith shall be similarly charged and collected, and the amounts so collected on account of any such delinquent taxes or interest or penalties thereon shall be received by the county treasurer and paid over to the state treasurer in the same manner as is hereinabove provided, and in the event of the sale of any property for delinquent taxes of such counties or other delinquent taxes, said district taxes shall be included therein and said property shall be sold therefor in connection with and including such other taxes, and upon a redemption thereof or upon a sale of said lands the said district taxes shall be included therein and together with interest and penalties thereon the same shall be received and paid over to the county treasurer, and by him paid over to the state treasurer, as hereinbefore provided.

ISSUE OF BONDS.

Issue of bonds.

§ 16. At any time after the irrigation board shall have made the examinations, surveys, plans and estimates of cost for the storage, diversion and distribution of water, and for the other purposes enumerated in this act, and after the same has been entered in the minutes of said board and shall have also had assessed and apportioned upon the lands in said conservation district the charges and benefits and apportionments provided for in this act, and after such apportionment and assessment roll shall have been finally fixed and approved by the said board, and after the same has been entered in the minutes of the said board must, as soon as may be practicable, proceed and issue the bonds of said district for the purposes aforesaid.

Estimate of amount necessary.

The said board shall, in connection with the previous estimates made and adopted by it, estimate the amount of money necessary to be raised by such bond issue for the purposes of said district, as aforesaid, and shall ascertain and determine the same and enter its order to that effect in the minutes of said board. And whenever thereafter the construction fund has been exhausted by expenditures herein authorized, and it is necessary to raise additional money for such purposes, it shall be the duty of said board to estimate and determine the amount of money necessary to be raised for such additional purposes.

Examination by engineer. Special election. Evidence of ownership.

For the purposes of such bond issue, or additional bond issue, the said board shall be authorized to employ engineers and other assistants and make all such further examinations and estimates as may be necessary, to fix and determine such matters and the conclusion and estimates of said board shall be entered in its minutes. Said irrigation board shall by order entered in its records order a special election to be held at such places in said district as shall be designated by said irrigation board, and at least one such place shall be designated as a voting place in each unit of said conservation district at which said election there shall be submitted to the owners of land in said district the question of whether or not the bonds of said district shall be issued in the amount specified in the order of said board, and which amount shall be stated in the order for such special election. For all purposes of this act relating to signing petitions and voting at any election, and for all other purposes where the question of title to land claimed to be owned by such voter or owner is involved, the equalized assessment roll for the year last preceding in each county wherein any land of the said district is situated, shall be sufficient evidence of ownership of lands in the district, and the certificate of the register of the United States land office in which the lands are situated or of the surveyor general of the state of California, shall be sufficient evidence of possessory right in any lands in the district entered under the laws of the United States or of the state of California. Guardians, executors, administrators and other persons holding land in a trust capacity under appointment of court may sign any such petition and may vote without obtaining any special authority therefor. Said irrigation board shall at the time of calling the said election designate in its order the voting places at which said election shall be held and where votes shall be cast and shall designate three landholders of the district to act as a board of election at each voting place.

Notice.

Notice of such special election must be given by the irrigation board by posting notice thereof in at least three public places in each unit of the district at least twenty days prior thereto, and also by publishing such notice once a week for the same length of time in some newspaper of general circulation, published in each county in which any portion of said district may be situated, or if there be no newspaper published in any one of such counties, then in each county wherein such newspaper is published; and such notice must specify the time and place of holding said election and the aggregate face value of bonds proposed to be issued and the names of three landholders of said district to act as a board of election at each polling place. Affidavits of the publication and posting of such notice must be filed with the clerk of said irrigation board.

One vote for each acre.

At such election each owner of lands in the district shall be entitled to vote in person or by proxy, and shall have the right to cast one vote for each acre of real estate owned by him in the district, such ownership to be determined from the next preced-

ing assessment roll of the county or counties in which the lands of the district are situated and the irrigation board shall, prior to the election, cause to be prepared and certified and furnished to the board of election at each polling place, a true and correct copy of each of said next preceding assessment rolls so far as such assessment roll applies to any lands within such district, and shall likewise cause to be prepared and furnished lists certified by the register of the United States land office and the surveyor general of the state of California respectively showing the lands within the district entered upon under the laws of the United States and the state of California respectively, which said list, so far as disclosed by the records of said officers, shall contain the names of the persons entitled to possessory rights therein and the quantity of land held by each of said persons by virtue of said rights. Said certified rolls and certified lists shall be used by the board of election in determining the number of votes each voter is entitled to cast. Executors, administrators, special administrators and guardians may cast the vote of the estates represented by them. No person shall vote by proxy at such election unless authority to cast such vote shall be evidenced by an instrument in writing, duly acknowledged and certified in the same manner as grants of real property and filed with the board of election.

Ballots.

The ballots cast at such election shall contain the words "bond, yes" or "bonds, no" and also the name of the person casting the ballot, with the number of votes cast by him. A list of the ballots cast shall be made by the board of election containing the name of each voter, and, if the ballots be cast by proxy, the name of the person casting it and the number of votes cast by each and whether the same be cast for or against the issuing of bonds.

Oath of election officer.

If any person appointed as a member of the board of election shall fail to attend at the opening of the polls, the voters then present, voting individually, may appoint in his place any landholder in the district. Each member of said board of election must, before entering upon his duties, take and subscribe an official oath, to faithfully perform his duties as an officer of such election, which oath may be administered by an officer authorized to administer oaths, or by a landholder in the district.

Polls open.

The polls shall be kept open from ten o'clock a. m. of the day of election until five o'clock p. m. of that day.

Canvass of votes.

At the close of the polls the board of election shall at once proceed to canvass the votes and declare the result, and shall forward a certificate showing such result and the number of votes cast for and against the issuing of the bonds to the irrigation board and shall also deliver to the said irrigation board all ballots cast at such election and all documents and papers used at such election.

Order of irrigation board.

Said irrigation board shall, upon the receipt of such canvass and declaration of the result from the said board of election, proceed to examine the same and shall ascertain and declare the result as shown by such canvass and declaration, and shall enter an order in its minutes that the said proposition for the issuance of said bonds has been carried or defeated, as the case may be.

Result recorded.

Forthwith, upon the declaration of the result of said election by said irrigation board, the secretary of said board shall make a certified copy of the order of said board,

declaring the result of said election, and shall forward said certified copy or copies to the recorder or recorders of the counties in which any land of said conservation district may be situated, and the same shall forthwith be filed and recorded in said recorder or recorders' office, and shall impart notice to all interested persons as to the result of said election.

Contest of election. Hearing. Decision final. Bonds issued.

Any person owning property within the said district, liable to assessment, may contest such election, by filing a written contest specifying the grounds of his objections thereto, with said irrigation board, said written contest to be filed within thirty days after the declaration of the result of said election by said irrigation board, and if no such contest and objections be filed within thirty days, no such contest and objections shall thereafter be received or filed. Such written contest shall specify the ground or grounds of contest to said election, and upon the filing of the same with said irrigation board shall expeditiously set the said contest for hearing, and shall have the right to postpone the hearing for such time as may be necessary, but not otherwise, and shall expeditiously hear and determine the same. For the purposes of such hearing the board may by subpoena, signed by the secretary, under its seal, compel the attendance of witnesses and the production of evidence. Disobedience of such subpoena or of any lawful order of the board in the premises shall constitute a contempt of the authority of the board punishable by the board in accordance with title five of part three, of the Code of Civil Procedure, and shall also constitute a misdemeanor under section one hundred sixty-six of the Penal Code. Said irrigation board shall, upon the conclusion of said hearing of said contest, proceed forthwith to enter its order and decision thereon. Such decision on the part of said irrigation board shall be final, conclusive and binding upon all parties interested as to validity and as to result of such election and shall be subject to review only in event suit is brought by the said district or by some person or corporation or association authorized to bring the same to determine the question of the validity of the said bond issue, and in the determination and adjudication of the question of the validity of said bond issue, as hereinafter specified, the court may review and consider the validity of said election for the issuance of said bonds, but in such action the certificate and determination of said irrigation board shall be received and accepted by the court as prima facie evidence of the result as to the validity of said election and the regularity of the canvassing, counting and return of the votes cast at said election. If a majority of the votes cast at such an election is in favor of the issuance of bonds, the irrigation board after canvassing the returns and declaring the result of said election shall cause bonds in the amount stated in the order for the election to be issued, executed and delivered to the state treasurer of the state of California. Said bonds shall be of the denomination of not less than one hundred dollars nor more than one thousand dollars each; they shall be signed by the president of the irrigation board and attested by the secretary thereof, and shall be numbered consecutively in the order of their maturity, and shall bear interest at the rate not exceeding six per centum per annum, payable semiannually on the first day of January and the first day of July in each year, at the office of said state treasurer, upon the presentation of the proper coupons therefor. Coupons for each installment of interest shall be attached to said bonds and shall bear the facsimile signature of the state treasurer of the state of California.

Principal.

The principal of said bonds shall be made payable, by an order entered into the minutes of the irrigation board, upon the first day of July or the first day of January, and in such years as the irrigation board may prescribe. Said bonds shall be payable serially within forty years from their date in the manner following, to wit:

Amount payable yearly.

Not less than five per cent of the aggregate face value of the bonds issued shall be payable each year, beginning not later than the twentieth year from their date until the whole amount of said bonds have been paid.

Said irrigation board, subject to the provisions of this act, is authorized and empowered to take all such actions and make all such orders as may be necessary in connection with the issuance, sale and disposition of said bonds.

Form of bonds.

Said bonds may be substantially in the following form:

UNITED STATES OF AMERICA.
STATE OF CALIFORNIA.

No. \$.....
(Name of district) Conservation District No. for value received, hereby acknowledge itself indebted to and promises to pay to the holder hereof at the office of the state treasurer of the state of California, on the first day of, 19..., the sum of \$....., in gold coin of the United States of America, with interest thereon in like gold coin from date hereof until paid, at the rate of per cent per annum, payable at the office of said treasurer semiannually on the first day of January and the first day of July in each year on presentation and surrender of the interest coupons hereto attached. This bond is one of a series of bonds of like tenor and effect, except as to denomination and maturity, numbered from to, inclusive amounting in the aggregate to \$....., issued in accordance with the California irrigation act, pursuant to an election held in said district on the day of, 19..., authorizing its issuance, and is based upon and secured by a lien upon and a valuation and apportionment levied on the land in said district and filed in the office of the state irrigation board on the day of, 19.... And the said district does hereby certify and declare that said election was duly called and held upon due notice, and the result thereof was duly canvassed and ascertained, in pursuance of and in strict conformity with the laws of the state of California applicable thereto, and that all of the acts and conditions and things required by law to be done precedent to and in the issue of said bonds have been done and have been performed in regular and in due form and in strict accordance with the provisions of the law authorizing the issuance of such district bonds.

In testimony whereof, the said conservation district, acting by and through the irrigation board of the state of California, has caused this bond to be signed by the president of said irrigation board, and attested by the secretary thereof, with his seal of office affixed, this day of, 19....

By
President of said board.

Attest:
Secretary of said board.

Form of interest coupon.

And the interest coupon may be substantially in the following form:

No. \$.....
The state treasurer of the state of California will pay to the holder hereof on the day of, 19..., at his office in the city of Sacramento, state of California, the sum of \$..... in gold coin of the United States out of the funds of district for interest on bond of said district numbered
.....
State treasurer.

Sale of bonds by state treasurer. Action to determine if bonds are legal obligation.

The state treasurer shall place the bonds prepared pursuant to this act to the credit of the district and the irrigation board may in its discretion direct the state treasurer to sell the whole or any designated number of said bonds for the best price obtainable therefor, but in no event for less than ninety per cent of the face value of said bonds and the accrued interest thereon. Before making a sale of said bonds, notice shall be given by the state treasurer by publication at least once a week for three weeks in a newspaper of general circulation published in the city of Sacramento, and also one or more papers in said district, that he will sell a specified amount of said bonds, and stating the day, hour and place of such sale, and asking sealed proposals for the purchase of said bonds, or any part thereof. At the time appointed the state treasurer shall open the bids and award the bonds to the highest responsible bidder. He may reject any and all bids. Any sale by the state treasurer and delivery of the bonds thereunder shall be conclusive evidence in favor of the purchaser and all subsequent holders of the bonds that such sale was made upon due authority and notice. The proceeds of sale of said bonds shall be placed in the state treasury to the credit of said district, and a proper record of such transaction shall be made upon his books. At any time after said bonds shall have been delivered to the state treasurer, an action may be commenced in the superior court of the county within which is situated the largest area of land within said district by the irrigation board in the name of the district or by any unit of said district or by any person owning property within the said district liable to assessment. Such action shall be brought and prosecuted against the lands in said district and all persons owning the same or interested therein, to have it determined as to whether or not said bonds when sold will be a legal obligation of such district. It shall be sufficient to describe said lands as all lands in the district (naming it) without a more specific description. The summons shall be published once a week for three weeks in some newspaper of general circulation published in the county where the action is pending. Within thirty days after the first publication of summons any owner of land in such district, or any person interested, may appear and answer the complaint, which answer shall set forth the facts relied upon to show the invalidity of said bonds. The default of all defendants not so appearing may be entered. Such action shall be given precedence in hearing and trial over all other civil actions in such court and judgment rendered declaring such matter so contested either valid or invalid. Any party not in default may have the right to appeal to the supreme court within thirty days after entry of judgment and said appeal and the hearing thereof shall be expedited in said court. Judgment for the plaintiff in such proceedings shall be considered as a judgment in rem and shall be conclusive against said district and against all lands therein and all owners thereof and all other interested persons.

Warrants.

The irrigation board may draw warrants upon the state treasurer against the funds provided by sale of said bonds.

The money derived from the sale of any of said bonds shall be received by the state treasurer and shall by him be safely kept and placed to the credit of said district in a fund to be designated in the name of such district for the said district and may be drawn and expended upon warrants drawn against said fund as in this act provided.

Bonds legal investment.

Bonds of any district issued pursuant to the provisions of this act which are investigated and approved by any commission or officer now or hereafter authorized by the laws of this state to conduct such investigation and give such approval and by authority of which approval said bonds are declared to be legal investments for savings banks

may be lawfully purchased or received in pledge for loans by banks, trust companies, guardians, executors, administrators and special administrators, or by any public officer or officers of this state, or of any county, city, city and county or other municipal or corporate body within the state having or holding funds which they are allowed by law to invest or loan.

Additional bond issue.

If after said district has authorized the issuance and sale of a series of bonds under this act, it shall become necessary so to do, an additional bond issue or series of bonds may be authorized and sold and all proceedings shall be had and taken, and all procedure in connection with said second issue or series of bonds shall be had and taken in accordance with the provisions of this act as to the first issue of bonds; provided, that said second issue or series of bonds shall not be issued so as to in any manner interfere with the lien or security of the payment of the first issue of bonds, and said second issue or series of bonds shall, as to the lien thereof and as to the security of same, be subsequent and subordinate and subject to such first bond issue.

SURVEYS, ESTIMATES, ASSESSMENTS.

Surveys, etc., of irrigation district.

§ 17. The irrigation board shall, upon the organization of any irrigation district as in this act provided, proceed to make or cause to be made, all necessary examinations, surveys, plans and estimates of cost for the storage, diversion and distribution of water and the generation of electric power in connection therewith, and the sale and distribution thereof as may be necessary or requisite to enable said board to ascertain and estimate the requirements and works necessary as aforesaid for the purposes of said irrigation district and the probable cost and expense thereof, and in that connection may use and adopt all previous estimates, surveys and reports it may have collected adapted to that purpose, and may employ all necessary engineers and other assistants for the accomplishment of said purposes, and the cost thereof shall be deemed a part of the expense of said project, and may issue warrants therefor and same shall bear interest from date of issue at the rate of six per cent per annum until paid, and shall be payable out of the funds of said district, and may be included in any bond issue authorized for the purposes of said district.

Estimate to be matter of record. Commissioners to assess land. Assessment roll.

Such estimate as is above provided for shall be in such form as shall be approved by said irrigation board and shall be entered in the minutes of said board and shall constitute a part of the records of said board, and the same, or a copy thereof, certified by the secretary of said board, shall be admissible as evidence in any proceeding before any court, commission or tribunal of this state wherein the matters therein set forth shall be admissible in evidence.

Whenever, for any of the purposes of this act, the irrigation board shall deem it necessary for the purposes of said irrigation district, or the levying of an assessment upon the property therein, or the issuance of bonds by said irrigation district, said board shall appoint three commissioners for such purpose or purposes. Such commissioners shall have no interest in any land in the irrigation district, either directly or indirectly, and each commissioner before entering upon his duties shall make and subscribe an oath that he is not in any manner interested directly or indirectly in any land in said irrigation district, and that he will perform the duties of commissioner to the best of his ability. Thereupon said commissioners shall proceed to view and assess upon the land within said irrigation district a sum sufficient to cover said estimated amount and shall apportion the same according to the benefits which will accrue to each tract of land within said irrigation district, such benefits to be estimated

according to the benefits which will accrue to each tract of land in such irrigation district by reason of the expenditure of said estimated sum, and shall estimate the same in gold coin of the United States.

Said commissioners shall prepare and certify a roll on which they shall state the name and address of the owner of each parcel of land in such irrigation district, or if the name or address of any owner is unknown, then that fact; also a description of each parcel of land by legal subdivisions or boundaries, and the total amount assessed against each parcel of land so described. No mistake in the name of the owner, or supposed owner of any parcel of land, shall invalidate the apportionment or assessment. A separate roll shall be made for the lands in each county where such irrigation district includes land in more than one county. When completed said roll or rolls shall be filed with the irrigation board and certified copies of the particular roll for each county shall be filed with the county recorder of any county in which any lands within said irrigation district may be, and each roll shall be open for inspection by the public for at least thirty days.

Hearing. Objections. Evidence. Approval of assessment. Lien. Annual levy. Additional levy. Surplus used in retiring bonds.

The irrigation board shall appoint a time and place not less than thirty days after said roll has been filed with said recorder or recorders when and where it will meet, within the county in which the greater portion of said irrigation district is situated for the purpose of hearing objection to said assessment and the apportionment thereof and notice of such hearing shall be published at least once a week for two successive weeks in some newspaper published in each county in which any lands within said irrigation district may be. At any time before or at the original date of such hearing, any person interested in any real estate upon which any charge has been apportioned and assessed, may file in the the office of the secretary of said irrigation board written objections thereto, stating the grounds of such objections, which said statements shall be verified by the affidavit of such person or some other person who is familiar with the facts. Said irrigation board may postpone such hearing from time to time. At such hearing the irrigation board shall hear such evidence as may be offered touching the correctness of such assessment or the manner of its apportionment and may modify or amend the same and may reapportion all or any part of the entire assessment. No assessment or apportionment shall be increased except upon the hearing of objections thereto or after personal notice or notice by mail to the owner of the land upon which said increase is made. Said irrigation board must make and enter in its minutes an order approving said assessment and apportionment as finally fixed, and the decision of said irrigation board shall be final, and thereafter said assessment and apportionment shall be conclusive evidence of the validity of said assessment and apportionment, and no action or defense shall ever be maintained attacking the same in any respect. And the records of said irrigation board, or a copy thereof certified by its secretary, shall be received in evidence in all or any of the courts of this state, or before any board or tribunal authorized to hear or consider any matter wherein the same shall be admissible as evidence. No change shall be made in said assessment or apportionment after the consideration, approval and fixing thereof by said irrigation board and all assessments upon the property of said irrigation district thereafter shall be levied in accordance therewith and consistent with the apportionment of benefits therein provided for and fixed, and if any assessments are called for or required in addition to the original amount estimated and apportioned for the purposes of said irrigation district, such additional amount shall be assessed, levied and raised in accordance with said apportionment and assessment of benefits so fixed in the first instance by said irrigation board. A certified copy of such assessment and apportionment roll

as finally approved shall be filed in the office of the county recorder of each county in which any land within said irrigation district is situated. Such assessment and apportionment shall thereafter constitute a first lien upon the land affected thereby until the full amount thereof is paid or until all bonds of the irrigation district issued thereon, together with the accrued interest, shall have been fully paid. The said irrigation board shall on the first Tuesday in May following the fixing and approval of said assessment and apportionment therein provided for, and annually thereafter on said date, levy an assessment, sufficient to raise the annual interest on the outstanding bonds of said irrigation district, and in any year in which any bonds shall fall due must increase such assessment to an amount sufficient to pay the principal of the outstanding bonds as they mature; also sufficient to pay in full all sums that may become due from the irrigation district before the time of collection of the next annual assessment, including an amount sufficient to pay in full the amount of any contract or obligation of the irrigation district which may come due during said year or may have been reduced to judgment, and to provide for and maintain a fund out of which the current and contingent obligations of said irrigation district can be paid in cash as they mature. In addition to the amounts estimated as necessary for the purposes aforesaid, a further levy of fifteen per cent additional shall be included and levied for the purposes of meeting any additional amounts that may be required on account of delinquencies and to insure the payment of all of the bonded indebtedness, including the interest thereon and other obligations of said irrigation district at maturity. Whenever there is a surplus in the funds of said district over and above all requirements as herein specified for the payment of the bonded indebtedness and interest thereon and accrued obligations of said irrigation district, such a surplus may be used and applied in retiring the outstanding bonds or any thereof of said irrigation district. The secretary of the irrigation board must compute and enter in a separate column of the assessment book the respective sums in dollars and cents to be paid as an assessment upon the property therein enumerated. In so doing, said secretary shall enter the names of the owners of such lands and the descriptions thereof in accordance with the last assessment roll of the county in which the said lands are situated. Such assessment must be so levied and computed as to be in accordance with the apportionment and assessment of benefits herein provided for and so that all lands within said irrigation district shall be assessed and required to pay in accordance therewith.

Duty of county auditor.

The secretary of said board shall forthwith deliver a certified copy of that portion of said assessment so directed to be entered by him, so far as it applies or appertains to any land within any county situated within said irrigation district to the county auditor of such county, and such auditor shall accept and receipt for the same, and thereupon it shall be the duty of said auditor to include said assessment as an assessment against each parcel or tract of land therein described. It shall be the duty of said auditor to examine and ascertain as to any errors or discrepancies that may exist in said roll as to the ownership of or the descriptions of land as applied to any owner or owners thereof as compared with the assessment roll of the said county for such year, and if any such difference or discrepancies are found, it shall be the duty of said auditor to correct the same accordingly so that the said roll as to ownerships and descriptions of land and assessments thereof shall correspond to the assessment roll of said county and for such year. And it shall be his duty to audit, enter and certify the same to the tax collector of said county for collection in the same manner and form as county, school district and other taxes are included and certified by him to such tax collector, and all such assessments shall constitute a first lien upon the lands affected thereby as hereinbefore provided.

Extra clerical force for auditor. Duty of tax collector.

The board of supervisors is hereby authorized and empowered to employ what extra clerical force is necessary to perform the additional duties herein prescribed for the auditor. Said extra clerks shall receive as compensation for the work herein provided a per diem not to exceed five dollars which shall be paid by the districts operating under the provisions of this act in proportion to the amount of work done for each and it shall be the duty of the clerk of said board to issue warrants payable to such clerks employed as herein provided out of the funds of the districts, upon the presentation of a verified demand, approved by the auditor and the board of supervisors.

Upon receipt of the same from the auditor of such county it shall be the duty of the tax collector of said county to include the same as a separate entry and charge against the land therein described and to collect the same with the county, school district and other taxes so required to be collected by such county tax collector and to keep and deposit such irrigation district taxes in a separate fund, and when the same is collected it shall be the duty of such tax collector to pay the same over to the treasurer of such county at the same time and in the same manner as other taxes collected by him are paid over to such treasurer, and it shall be the duty of such treasurer to receive the same as other taxes are received by him and after receipt thereof to keep the same in a separate fund and upon receipt of same, or any part thereof, it shall be the duty of such county treasurer within thirty days thereafter to pay the same and all thereof to the treasurer of the state of California, who shall receive and keep the same and deposit the same in a separate fund to the credit of the said district, and to be paid out by him upon the order and approval of the said irrigation board.

Moneys received under contracts, etc., collected by irrigation board.

All moneys received under contracts, leases or other arrangements by such irrigation district from any canal companies, mutual or other water companies, reclamation districts, or from any corporations, individuals, or other sources not herein otherwise provided for, shall be collected by said irrigation board and by it deposited with the state treasurer, and thereafter to be disbursed as provided as to funds of such irrigation district under the order and direction of such irrigation board for the purposes and obligations of said irrigation district, including the payment and retirement of outstanding bonds with interest thereon.

Delinquent taxes.

From and after the time of the filing of such assessment roll of such irrigation district with the auditor of any county the taxes therein enumerated, levied and assessed, shall be regarded and treated as are the other taxes of said county or the school districts thereof and the same shall be included in and considered a part of such taxes and the same shall become delinquent at the same time and in the same manner as such other taxes, and with respect to any delinquency or delinquent notices the same shall become delinquent and notice thereof shall be published with and at the same time and in the same manner as other delinquent taxes and the same shall be similarly treated for all purposes of notice and sale thereof for such delinquent taxes, and shall be subject to redemption from such delinquent irrigation district taxes at the same time and in the same manner and through the same officials as are such other taxes. And any and all charges and penalties in connection therewith shall be similarly charged and collected, and the amounts so collected on account of any such delinquent taxes or interest or penalties thereon shall be received by the county treasurer and paid over to the state treasurer in the same manner as is hereinabove provided, and in the event of the sale of any property for delinquent taxes of such counties or other delinquent taxes, said irrigation district taxes shall be included therein and said property shall be sold therefor in connection with and including such other taxes, and upon a redemp-

tion thereof or upon a sale of said lands the said irrigation district taxes shall be included therein and together with interest and penalties thereon the same shall be received and paid over to the county treasurer, and by him paid over to the state treasurer, as hereinbefore provided.

Defraying expenses prior to making assessment. Ascertainment of assessment.

§ 17a. Upon the organization of an irrigation district hereunder and for the purpose of defraying expenses of such organization, and for any other purposes of this act, prior to the making of the assessment provided for in section seventeen, the directors may incur an indebtedness not exceeding one-half as many dollars as there are acres in the district, and upon the certification thereof to the irrigation board, such board shall cause warrants to issue therefor bearing interest at a rate to be fixed by the board of directors, not to exceed six per centum per annum, and thereafter it shall be the duty of the irrigation board to levy an assessment sufficient to pay said warrants upon all of the lands within the district, in the same manner and at the same time, so far as possible, as other assessments are provided to be levied (except as to the appointment of commissioners). Said assessment shall be ascertained by dividing the number of dollars due or to become due upon the warrants which have been issued by the number of acres in the district, and assessing to each acre the result so obtained. Such assessment roll shall be prepared and delivered to the county auditor or auditors by the secretary of the irrigation board as provided in section seventeen, and the said amount shall be collected by the tax collector of the county in the same manner as is provided for the collection of other assessments levied by the district.

Where an irrigation district is organized after the first Tuesday in May of any year, the irrigation board shall nevertheless, at the request of the board of directors of said district, cause an assessment to be levied payable at the same time as if levied prior to the first Tuesday in May as in this section provided, of an amount sufficient to defray the expenses of organization and other expenses of the district prior to the levying of the assessment provided for in section seventeen, not, however, to exceed the limit in this section specified.

ISSUE OF IRRIGATION DISTRICT BONDS.

Issue of bonds. Estimate of amount necessary. Examination by engineer. Special election. Evidence of ownership.

§ 18. At any time after the irrigation board shall have made the examinations, surveys, plans and estimates of cost for the storage, diversion and distribution of water, and for the other purposes enumerated in this act, and after the same has been entered in the minutes of said board and shall have also had assessed and apportioned upon the lands in any irrigation district organized under the provision of this act the charges and benefits and apportionments provided for in this act, and after such apportionment and assessment roll shall have been finally fixed and approved by the said board, and after the same has been entered in the minutes of the said board must, as soon as may be practicable, proceed and issue the bonds of said irrigation district for the purposes aforesaid.

The said board shall, in connection with the previous estimates made and adopted by it, estimate the amount of money necessary to be raised by such bond issue for the purposes of said irrigation district, as aforesaid, and shall ascertain and determine the same and enter its order to that effect in the minutes of said board. And whenever thereafter the construction fund of said irrigation district has been exhausted by expenditures herein authorized, and it is necessary to raise additional money for such purposes, it shall be the duty of said board to estimate and determine the amount of money necessary to be raised for such additional purposes.

For the purposes of such bond issue, or additional bond issue, the said board shall be authorized to employ engineers and other assistants and make all such further examinations and estimates as may be necessary, to fix and determine such matters and the conclusion and estimates of said board shall be entered in its minutes. Said irrigation board shall by order entered in its records order a special election to be held at such place or places in said irrigation district as shall be designated by said irrigation board, at which said election there shall be submitted to the owners of land in said irrigation district the question whether or not the bonds of said district shall be issued in the amount specified in the order of said board, and which amount shall be stated in the order for such special election. For all purposes of this act relating to signing petitions and voting at any election, and for all other purposes where the question of title to land claimed to be owned by such voter or owner is involved, the equalized assessment roll for the year last preceding in each county wherein any land of the said irrigation district is situated, shall be sufficient evidence of ownership of lands in the irrigation district. Guardians, executors, administrators and other persons holding land in a trust capacity under appointment of court may vote without obtaining any special authority therefor. Said irrigation board shall at the time of calling the said election designate in its order the voting place or places at which said election shall be held and where votes shall be cast and shall designate three landholders of the irrigation district to act as a board of election at each voting place.

Notice. One vote for each acre.

Notice of such special election must be given by the irrigation board by posting notice thereof in at least three public places in such irrigation district at least twenty days prior thereto, and also by publishing such notice once a week for the same length of time in some newspaper of general circulation, published in each county in which any portion of said irrigation district may be situated, or if there be no newspaper published in any one of such counties, then in each county wherein such newspaper is published; and such notice must specify the time and place of holding said election and the aggregate face value of bonds proposed to be issued and the names of three landholders of said irrigation district to act as a board of election at each polling place. Affidavits of the publication and posting of such notice must be filed with the secretary of said irrigation board.

At such election each owner of lands in the district shall be entitled to vote in person or by proxy, and shall have the right to cast one vote for each acre of real estate owned by him in the irrigation district, such ownership to be determined from the next preceding assessment roll of the county or counties in which the lands of the irrigation district are situated and the irrigation board shall, prior to the election, cause to be prepared and certified and furnished to the board of election at each polling place, a true and correct copy of each of said next preceding assessment rolls so far as such assessment roll applies to any lands within such irrigation district, which said certified roll shall be used by the board of election in determining the number of votes each voter is entitled to cast. Executors, administrators, special administrators and guardians may cast the vote of the estates represented by them. No person shall vote by proxy at such election unless authority to cast such vote shall be evidenced by an instrument in writing, duly acknowledged and certified in the same manner as grants of real property and filed with the board of election.

Ballots. Oath of election officers. Polls open. Canvass of votes. Order of irrigation board. Result recorded.

The ballots cast at such election shall contain the words, "bonds, yes" or "bonds, no" and also the name of the person casting the ballot, with the number of votes cast by him. A list of the ballots cast shall be made by the board of election containing the

name of each voter, and, if the ballots be cast by proxy, the name of the person casting it and the number of votes cast by each and whether the same be cast for or against the issuing of bonds.

If any person appointed as a member of the board of election shall fail to attend at the opening of the polls, the voters then present, voting individually, may appoint in his place any landholder in the irrigation district. Each member of said board of election must, before entering upon his duties, take and subscribe an official oath, to faithfully perform his duties as an officer of such election, which oath may be administered by any officer authorized to administer oaths, or by a landholder in the irrigation district.

The polls shall be kept open from ten o'clock a. m. of the day of election until five o'clock p. m. of that day.

At the close of the polls the board of election shall at once proceed to canvass the votes and declare the result and shall forward a certificate showing such result and the number of votes cast for and against the issuing of the bonds to the irrigation board and shall also deliver to the said irrigation board all ballots cast at such election and all documents and papers used at such election.

Said irrigation board shall, upon the receipt of such canvass and declaration of the result from the said board of election, proceed to examine the same and shall ascertain and declare the result as shown by such canvass and declaration, and shall enter an order in its minutes that the said proposition for the issuance of said bonds has been carried or defeated, as the case may be.

Forthwith, upon the declaration of the result of said election by said irrigation board, the secretary of said board shall make a certified copy of the order of said board, declaring the result of said election, and shall forward said certified copy or copies to the recorder or recorders of the counties in which any land of said irrigation district may be situated, and the same shall forthwith be filed and recorded in said recorder or recorders' office, and shall impart notice to all interested persons as to the result of said election.

Contest of election. Hearing. Decision final. Bonds issued.

Any person owning property within the said irrigation district, liable to assessment, may contest such election, by filing a written contest specifying the grounds of his objections thereto, with said irrigation board, said written contest to be filed within thirty days after the declaration of the result of said election by said irrigation board, and if no such contest and objections be filed within thirty days, no such contest and objections shall thereafter be received or filed. Such written contest shall specify the ground or grounds of contest to said election, and upon the filing of the same with said irrigation board it shall expeditiously set the said contest for hearing, and shall have the right to postpone the hearing for such time as may be necessary, but not otherwise, and shall expeditiously hear and determine the same. For the purposes of such hearing the board may by subpoena signed by the secretary under its seal compel the attendance of witnesses and the production of evidence. Disobedience of such subpoena or of any lawful order of the board in the premises shall constitute a contempt of the authority of the board punishable by the board in accordance with title five of part three of the Code of Civil Procedure, and shall also constitute a misdemeanor under section one hundred sixty-six of the Penal Code. Said irrigation board shall, upon the conclusion of said hearing of said contest, proceed forthwith to enter its order and decision thereon. Such decision on the part of said irrigation board shall be final, conclusive and binding upon all parties interested as to validity and as to result of such election and shall be subject to review only in the event suit is brought by the said irrigation district or by some person or corporation or association authorized to bring

the same to determine the question of the validity of the said bond issue, and in the determination and adjudication of the question of the validity of said bond issue, as hereinafter specified, the court may review and consider the validity of said election for the issuance of said bonds, but in such action the certificate and determination of said irrigation board shall be received and accepted by the court as prima facie evidence of the result as to the validity of said election and the regularity of the canvassing, counting and return of the votes cast at said election. If a majority of the votes cast at such an election is in favor of the issuance of bonds, the irrigation board shall after canvassing the returns and declaring the result of said election cause bonds of said irrigation district in the amount stated in the order for the election to be issued, executed and delivered to the state treasurer of the state of California. Said bonds shall be of the denomination of not less than one hundred dollars nor more than one thousand dollars each; they shall be signed by the president of the irrigation board and attested by the secretary thereof, and shall be numbered consecutively in the order of their maturity, and shall bear interest at the rate not exceeding six per centum per annum, payable semiannually on the first day of January and the first day of July in each year, at the office of said state treasurer, upon the presentation of the proper coupons therefor. Coupons for each installment of interest shall be attached to said bonds and shall bear the facsimile signature of the state treasurer of the state of California.

Principal.

The principal of said bonds shall be made payable, by an order entered into the minutes of the irrigation board, upon the first day of July or the first day of January, and in such years as the irrigation board may prescribe. Said bonds shall be payable serially within forty years from their date in the manner following, to wit:

Amount payable yearly.

Not less than five per cent of the aggregate face value of the bonds issued shall be payable each year, beginning not later than the twentieth year from their date until the whole amount of said bonds have been paid.

Said irrigation board, subject to the provisions of this act, is authorized and empowered to take all such actions and make all such orders as may be necessary in connection with the issuance, sale and disposition of said bonds.

Form of bonds.

Said bonds may be substantially in the following form:

UNITED STATES OF AMERICA.
STATE OF CALIFORNIA.

No..... \$.
Name of district..... Irrigation District.....
Organized under California irrigation act of 1919.

(Name of district) Irrigation District, for value received, hereby acknowledges itself indebted to and promises to pay to the holder hereof at the office of the state treasurer of the state of California, on the first day of.....19..... the sum of \$....., in gold coin of the United States of America, with interest thereon in like gold coin from date hereof until paid, at the rate of.....per cent per annum, payable at the office of said treasurer semiannually on the first day of January and the first day of July in each year on presentation and surrender of the interest coupons hereto attached. This bond is one of a series of.....bonds of like tenor and effect, except as to denomination and maturity, numbered from..... to..... inclusive, amounting in the aggregate to \$..... issued in accordance with the California irrigation act of 1919, pursuant to an election held in said district on the.....day of.....19..., authorizing its issuance

and is based upon and secured by a lien upon and a valuation and apportionment levied on the land in said irrigation district and filed in the office of the state irrigation board on the.....day of....., 19.....; and the said district does hereby certify and declare that said election was duly called and held upon due notice, and the result thereof was duly canvassed and ascertained, in pursuance of and in strict conformity with the laws of the state of California applicable thereto, and that all of the acts and conditions and things required by law to be done precedent to and in the issue of said bonds have been done and have been performed in regular and in due form and in strict accordance with the provisions of the law authorizing the issuance of such irrigation district bonds.

In testimony whereof, the said irrigation district, acting by and through the irrigation board of the state of California, has caused this bond to be signed by the president of said irrigation board, and attested by the secretary thereof, with his seal of office affixed, this.....day of....., 19.....

By.....
President of said board.

Attest:
.....
Secretary of said board.

Form of interest coupon.

And the interest coupon may be substantially in the following form:

No..... .. \$.....
The state treasurer of the state of California will pay to the holder hereof on theday of....., 19....., at his office in the city of Sacramento, state of California, the sum of \$..... in gold coin of the United States out of the funds of..... irrigation district..... for interest on bond of said irrigation district numbered.....
.....
State treasurer.

Sale of bonds by state treasurer. Action to determine if bonds are legal obligation.

The state treasurer shall place the bonds prepared pursuant to this act to the credit of the irrigation district and the irrigation board may in its discretion direct the state treasurer to sell the whole or any designated number of said bonds for the best price obtainable therefor, but in no event for less than ninety per cent of the face value of said bonds and the accrued interest thereon. Before making a sale of said bonds, notice shall be given by the state treasurer by publication at least once a week for three weeks in a newspaper of general circulation published in the city of Sacramento, and also one or more papers in the county in which the greater portion of said irrigation district is situated, that he will sell a specified amount of said bonds, and stating the day, hour and place of such sale, and asking sealed proposals for the purchase of said bonds, or any part thereof. At the time appointed the state treasurer shall open the bids and award the bonds to the highest responsible bidder. He may reject any and all bids. Any sale by the state treasurer and delivery of the bonds thereunder shall be conclusive evidence in favor of the purchaser and all subsequent holders of the bonds that such sale was made upon due authority and notice. The proceeds of sale of said bonds shall be placed in the state treasury to the credit of said irrigation district, and a proper record of such transaction shall be made upon his books. At any time after said bonds shall have been delivered to the state treasurer, an action may be commenced in the superior court of the county within which is situated the largest area of land within said irrigation district by the irrigation board in the name of the irrigation district or by any person owning property within the said irrigation district

liable to assessment. Such action shall be brought and prosecuted against the lands in said irrigation district and all persons owning the same or interested therein, to have it determined as to whether or not said bonds when sold will be a legal obligation of such irrigation district. It shall be sufficient to describe said lands as all lands in the irrigation district (naming it) without a more specific description. The summons shall be published once a week for three weeks in some newspaper of general circulation published in the county where the action is pending. Within thirty days after the first publication of summons any owner of land in such irrigation district, or any person interested, may appear and answer the complaint, which answer shall set forth the facts relied upon to show the invalidity of said bonds. The default of all defendants not so appearing may be entered. Such action shall be given precedence in hearing and trial over all other civil actions in such court and judgment rendered declaring such matter so contested either valid or invalid. Any party not in default may have the right to appeal to the supreme court within thirty days after entry of judgment and said appeal and the hearing thereof shall be expedited in said court. Judgment for the plaintiff in such proceedings shall be considered as a judgment in rem and shall be conclusive against said district and against all lands therein and all owners thereof and all other interested persons.

Warrants.

The irrigation board may draw warrants upon the state treasurer against the funds provided by sale of said bonds.

The money derived from the sale of any of said bonds shall be received by the state treasurer and shall by him be safely kept and placed to the credit of said irrigation district in a fund to be designated in the name of such irrigation district for the said irrigation district and may be drawn and expended upon warrants drawn against said fund as in this act provided.

Bonds legal investment.

Bonds of any irrigation district issued pursuant to the provisions of this act which are investigated and approved by any commission or officer now or hereafter authorized by a law of this state to conduct such approval and by authority of which approval said bonds are declared to be legal investments for savings banks may be lawfully purchased or received in pledge for loans by banks, trust companies, guardians, executors, administrators and special administrators, or by any public officer or officers of this state, or of any county, city, city and county or other municipal or corporate body within the state having or holding funds which they are allowed by law to invest or loan.

Additional bond issue.

If after said irrigation district has authorized the issuance and sale of a series of bonds under this act, it shall become necessary so to do an additional bond issue or series of bonds may be authorized and sold and all proceedings shall be had and taken, and all procedure in connection with said second issue or series of bonds shall be had and taken in accordance with the provisions of this act as to the first issue of bonds; provided, that said second issue or series of bonds shall not be issued so as to in any manner interfere with the lien or security of the payment of the first issue of bonds, and said second issue or series of bonds shall, as to the lien thereof and as to the security of same, be subsequent and subordinate and subject to such first bond issue.

MISCELLANEOUS.

Not applicable to counties with charter or city and county.

§ 19. Nothing in this act contained shall affect, or apply to, any irrigation, protection, flood control, conservation, or other improvement district situated wholly or in

part within any county which has adopted a charter pursuant to section seven and one-half of article eleven of the constitution of California, ratified and approved as provided therein, prior to June 4, 1915, or within any city and county; and said board shall have no power of jurisdiction within any of said districts or within such counties or city and county.

Stats. 1917, p. 1068, repealed. Proceedings initiated under former acts.

§ 20. The California irrigation act, approved June 4, 1915, and chapter six hundred forty-six of the statutes of 1917, approved May 28, 1917, amendatory thereof, are hereby repealed; but any petition circulated for signature pursuant to the provisions of said amendatory act and prior to the effective date of this act may be filed as though prepared pursuant to the provisions hereof, and any proceeding initiated under said amendatory act but not completed prior to the effective date of this act, may be completed hereunder, all proceedings subsequent to such effective date, however, to be in conformity with the provisions hereof; and any district organized under the provisions of the acts hereby repealed shall be subject in all respects to the provisions of this act; and provided, further, that such repeal shall not affect the tenure of office of the present members of the irrigation board and that neither such repeal nor anything in this act contained shall affect the right of said board to any funds heretofore appropriated for the use of said irrigation board, and all such funds heretofore appropriated shall be used by said board to the extent and for the purposes for which the same were appropriated.

DISTRICT CO-OPERATION WITH FEDERAL RECLAMATION SERVICE.

ACT 2266c—An act to authorize irrigation districts to co-operate and contract with the United States under the provisions of the federal reclamation laws for a water supply, or the construction, operation or maintenance of works, including drainage works, or for the assumption by the district of indebtedness to the United States on account of district lands; and to provide the manner and method of payments to the United States under such contract, and for the apportionment of assessments, and levy thereof, upon the lands of the district to secure revenue for such payments, and to provide for the judicial review and determination of the validity of the proceedings in connection with such contract.

History: Approved May 5, 1917. In effect July 27, 1917. Stats. 1917, p. 243.

Irrigation districts may co-operate with the United States.

§ 1. In addition to the powers with which irrigation districts have been vested under the act approved March 31, 1897, and acts amendatory thereof or supplementary thereto and acts of or to which said act is amendatory or supplementary, irrigation districts heretofore or hereafter organized under said acts shall have the following powers: To co-operate and contract with the United States under the federal reclamation act of June 17, 1902, and all acts amendatory thereof or supplementary thereto, or any other act of congress heretofore or hereafter enacted authorizing or permitting such co-operation, for purposes of construction of works, whether for irrigation or drainage, or both, or for the acquisition, purchase, extension, operation or maintenance of constructed works, or for a water supply, or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands.

Powers of board of directors. Transfer of bonds. Appointment as fiscal agent.

§ 2. The board of directors shall generally perform all such acts as shall be necessary to carry out the enlarged powers in this act enumerated. Said board may enter into any obligation or contract with the United States for the aforesaid purposes, and may provide therein for the delivery and distribution of water for the lands of such

district under the aforesaid acts of congress and the rules and regulations established thereunder. The contract may provide for the conveyance to the United States as partial consideration for the privileges obtained by the district under said contract, of water rights or other property of the district; and in case contract has been or may hereafter be made with the United States as herein provided, bonds of the district may be transferred to, or deposited with the United States, if so provided by said contract and authorized as hereinafter set forth, at not less than ninety-five per cent of their par value, to the amount to be paid by the district to United States or any part thereof; the interest, or principal, or both, on said bonds to be raised by assessment and levy as hereinafter prescribed, and to be regularly paid to the United States and applied as provided in said contract. Bonds transferred to or deposited with the United States may call for the payment of such interest not exceeding six per cent per annum, may be of such denomination, and may call for the repayment of the principal at such times as may be agreed upon between the board and the secretary of the interior. The contract with the United States may likewise call for the payment of the amount or amounts to be paid by the district to the United States or any part thereof at such times and in such installments and with such interest charges not exceeding the aforesaid rate as may be agreed upon, and for assessment and levy therefor as hereinafter provided. Moreover the board may accept on behalf of the district, appointment of the district as fiscal agent of the United States, or authorization of the district by the United States to make collection of moneys for or on behalf of the United States in connection with any federal reclamation project, whereupon the district shall be authorized so to act and to assume the duties and liabilities incident to such action, and the said board shall have full power to do any and all things required by the federal statutes now or hereafter enacted in connection therewith, and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto. Districts co-operating with the United States may rent or lease water to private lands, entrymen, or municipalities in the neighborhood of the district, in pursuance of contract with the United States.

Election on proposal to enter contract. Notice. Ballots.

§ 3. Any proposal to enter into a contract with the United States for the repayment of construction moneys, the cost of a water supply or the acquisition of property, and to issue bonds, if any be proposed, shall be voted upon at an election wherein proceedings shall be had in so far as applicable in the manner provided in the case of the ordinary issuance of district bonds. Said proposal, with such plans and estimates of cost as have been made in connection therewith, shall be submitted to the state engineer for his examination and report, and the proceedings in that regard shall be in accord with section thirty of the act approved March 31, 1897, as amended, in so far as the same may be applicable. Notice of the election herein provided for shall contain in addition to the information required in the case of ordinary bond election a statement of the maximum amount of money to be payable to the United States for construction purposes, cost of water supply and acquisition of property, exclusive of penalties and interest, together with a general statement of the property, if any, to be conveyed by the district as hereinabove provided. The ballots at such election shall contain a brief statement of the general purpose of said contract and the amount of the obligation to be assumed, as aforesaid, with the words "Contract—Yes," and "Contract—No," or "Contract and bonds—Yes," and "Contracts and Bonds—No," as the case may be. The board of directors may submit any such contract or proposed contract and bond issue if any, to the superior court of the county wherein is located the office of said board to determine the validity thereof and the authority of the board to enter into such contract, and the authority for and validity of the issuance and

deposit or transfer of said bonds; whereupon the same proceedings shall be had as in the ordinary case of the judicial determination of the validity of bonds and with like effect.

Distribution of water.

§ 4. All water, the right to the use of which is acquired by the district under any contract with the United States shall be distributed and apportioned by the district in accordance with the acts of congress applicable thereto, the rules and regulations of the secretary of the interior thereunder, and the provisions of said contract, and provision may be made in the contract between the district and the United States for the refusal of water service to any or all lands which may become delinquent in the payment of any assessment levied for the purpose of carrying out any contract between the district and the United States.

Rights of way conveyed.

§ 5. Any rights of way or other property owned or acquired by the district may be conveyed by the board to the United States in so far as the same may be needed for the construction, operation and maintenance of works by the United States for the benefit of the district under any contract that may be entered into with the United States pursuant to this act.

Payments by annual assessment.

§ 6. All payments due or to become due to the United States under any contract between the district and the United States, including such payments of interest and principal on bonds as may be required in connection with a deposit or transfer thereof to the United States, shall be paid, unless otherwise provided by contract, by revenue derived from annual assessments, apportioned as hereinafter prescribed, and levies thereof, upon such real property within the district as may be assessable for district purposes under the laws of the state, and such real property shall be and remain liable to be assessed and levied upon for such payments as herein provided. It shall be the duty of the board of directors annually to levy an assessment sufficient to raise the money necessary to meet all payments when due as provided in the contract. All money collected in pursuance of such contract by assessments and levies, or otherwise, shall be paid into the district treasury and held in a fund to be known as the "United States contract fund," to be used for payments due to the United States under any such contract. Public lands of the United States within any district shall be subject to assessment for all purposes of this act to the extent provided for by the act of congress approved August 11, 1916, entitled "An act to promote reclamation of arid lands," or any other law which may hereafter be enacted by congress in the same relation, upon full compliance therewith by the district. Nothing in this act contained shall be construed to relieve the district from obligation to pay as a district in case of default of any land, unless so provided by the said contract between the district and the United States.

Apportionment of assessment.

§ 7. The assessment required in any year to meet the payment due to the United States for all purposes under the contract as in this act provided may be apportioned in accordance with the benefits, and in the ascertainment of such benefits there shall be taken into account the provisions of the contract between the United States and the district, the federal laws applicable thereto, and the notices and regulations issued in pursuance of said laws, and in case such contract is for the assumption by the district as principal or guarantor of indebtedness to the United States theretofore existing on

account of district lands, there shall be further taken into account the provisions of existing contracts carrying such indebtedness and the amounts of such liens as may be released in pursuance of the contract between the United States and the district.

Change in boundaries.

§ 8. Where contract shall have been entered into between the United States and any irrigation district the district shall not be dissolved, nor shall the boundaries be changed, except upon written consent of the secretary of the interior filed with the official records of the district. If such consent be given and lands be excluded, the areas excluded shall be free from all liens and charges for payments to become due to the United States.

Acts in force.

§ 9. The provisions of the general irrigation district act, approved March 31, 1897, and acts amendatory thereof or supplemental thereto, shall be and remain in force as regards irrigation districts in this act referred to except in so far as herein modified expressly or by necessary implication; and nothing in this act shall be so construed as to affect irrigation district operations not related to co-operation with the United States. However, the provisions of section fifty-three of said act, approved March 31, 1897, shall not apply in case of any contract between an irrigation district and the United States.

CONTRACTS WITH FEDERAL RECLAMATION SERVICE.

ACT 2266d—An act authorizing and empowering irrigation and reclamation districts to enter into contracts with the United States reclamation service for the reclamation of lands within such districts under the provisions of the so-called "twenty year extension act."

History: Approved May 21, 1917. In effect July 27, 1917. Stats. 1917, p. 781.

Irrigation and reclamation districts may contract with the U. S. Reclamation Service.

§ 1. The board of trustees, or directors of any irrigation or reclamation district now organized under the provisions of the laws of the State of California, or of any irrigation or reclamation district hereafter organized under the laws of the state of California, may, in their discretion, whenever it is determined by such board that it is for the best interests of such districts, enter into a contract with the proper officers of the United States Reclamation Service for the reclamation, either by drainage or irrigation of lands within the boundaries of such district, or by preventing high water from overflowing the same, under the provisions of an act of congress approved August 13, 1914, entitled "An act extending the period of payment under reclamation projects, and for other purposes," which act is commonly known as the twenty year extension act, and from and after the execution of such contract, the amount of indebtedness created thereby shall be and become a lien upon the lands to be benefited by such reclamation work.

Payment of amounts due.

§ 2. The board of trustees or directors of any irrigation or reclamation district above mentioned, shall provide by a resolution duly adopted at a regular meeting, or special meeting of such board called for the purpose, for the payments of the amounts, to become due under the contract with the United States, according to the provisions of such contract, by assessment upon the lands, in such district, which are to be benefited by such work, such assessment to be collected by the tax collector of the county within which such lands are situated, the same as other taxes are collected, or by any other officer authorized by law to collect assessments within said district.

DEFINING "PRIVATE IRRIGATION PLANT."

ACT 2266e—An act defining a private irrigation plant and mutual water company and providing the conditions under which the owner of a private irrigation plant or a mutual water company may deliver water to others or others than its stockholders or members without becoming a public utility, and limiting such authority to the time the United States is a party to war or to a state of war; and declaring this act to be an urgency measure.

History: Approved May 5, 1917. In effect immediately. Stats. 1917, p. 281.

"Private irrigation plant." "Mutual water company."

§ 1. (a) The term "private irrigation plant," when used in this act, shall be construed to mean a water system which is not operated by a mutual water company as herein defined or by a public utility as defined in the public utilities act, approved December 23, 1911, and acts amendatory thereof, or in the act entitled "An act providing for the regulation of water companies, defining their powers and duties, defining the powers and duties of the railroad commission with reference thereto, and defining the conditions under which such water companies become subject to the provisions of the public utilities act and the railroad commission of the state of California," approved April 25, 1913.

(b) The term "mutual water company," when used in this act, means any private corporation or association organized for the purpose of delivering water solely to its stockholders or members at cost.

Water may be delivered to other than stockholders, when statement filed with railroad commission.

§ 2. For the sole purpose of increasing the output of agricultural products in this state during the time the United States is a party to war or to a state of war, the owner of any private irrigation plant or any mutual water company may at its option deliver water to others or others than its stockholders or members, with or without compensation, without becoming a public utility subject to the jurisdiction of the railroad commission of the state of California; provided, that no delivery of water to others than stockholders or members shall be authorized until the orders for water of all stockholders or members made in accordance with the constitution, by-laws, rules or regulations of such mutual water company have been filled; and provided, further, that the temporary service herein authorized shall not be construed as granting any right to render or receive such service more than six months after such war need has ceased; and provided, further, that after June first, one thousand nine hundred seventeen, no such temporary service of water shall be made unless a statement is first filed with the railroad commission stating the private irrigation plant or mutual water company rendering such service, the party receiving such service, the lands irrigated and the rate, if any, charged for such service.

Urgency measure.

§ 3. This act is hereby declared to be an urgency measure, and under the provisions of section one of article IV of the constitution of the state of California shall take effect immediately. The facts constituting such urgency are as follows: The United States is now in a state of war and there is a shortage of crops in this state and throughout the nation generally. It is therefore necessary for the immediate preservation of public safety that this act take effect immediately so that the use of water in the irrigated area and the resulting crop returns of the state may be increased to the maximum output without delay.

DISTRICT CO-OPERATION WITH ADJOINING DISTRICTS IN OTHER STATES.

ACT 2266f—An act to provide for co-operation in acquisition, construction and management of irrigation and drainage works between irrigation districts organized or existing under or by virtue of an act entitled "An act to provide for organization and government of irrigation districts and to provide for the acquisition thereby of works for the irrigation of the lands embraced within such districts, and also to provide for the distribution of water for irrigation purposes," approved March 31, 1897, and contiguous or adjoining districts in or organized under the laws of other states.

History: Approved May 23, 1917. In effect July 27, 1917. Stats. 1917, p. 905.

Irrigation districts may co-operate with districts in adjoining states.

§ 1. It shall be lawful for irrigation districts organized or existing under or by virtue of an act entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition or construction thereby of works for the irrigation of the lands embraced within such districts, and also to provide for the distribution of water for irrigation purposes," approved March 31, 1897, to enter into agreements with irrigation districts in adjoining states for the joint construction, acquisition, management and control of diverting, impounding or distributing works for irrigation or draining the lands within the boundaries of their respective districts.

Contracts.

§ 2. Such agreements may be evidenced by written contracts executed on behalf of their respective boards of directors or trustees, or by resolutions entered upon their respective minutes. Such contracts or certified copies thereof and certified copies of such resolutions shall be recorded in the office of the county recorder in each county in which is situated any of the lands of said districts or any of the reservoir sites or other real property owned by said districts or acquired under the provisions of this act.

Ownership of property.

§ 3. Such agreements may provide for joint or several ownership or ownership in common of the property, necessary or convenient for the purposes of this act and may provide for the terms and conditions under which or the respective proportions in which such property shall be held. Any rights or disputes arising out of or from said agreements may be tried before and enforced by any court of competent jurisdiction in the state.

Meetings held in adjoining state legal.

§ 4. Any meeting of the board of directors of any such district, held in conjunction with the board of directors of the co-operating district, in such district in the adjoining state, if duly and regularly called as required by law or if regularly adjourned to, shall be as lawful and valid as if held at the office of the board of directors of such district in this state.

Lawful to divert water from state.

§ 5. It shall be lawful, for the purposes of such co-operative action to divert water from this state for impounding in the adjoining state or otherwise for distribution to the lands of the co-operating districts regardless of the state in which such lands are situated or to divert water from such adjoining state for impounding or otherwise for distribution to the lands of such co-operating districts in this or the adjoining state.

Districts may hold property in adjoining state.

§ 6. So far as may be necessary for fully carrying out the purposes of this act such co-operating district in the adjoining state may hold title to property, in this state and such co-operating district in this state may hold title to property in the adjoining state.

DRAINAGE BY IRRIGATION DISTRICTS.

ACT 2266g—An act to provide for drainage by irrigation districts.

History: Approved March 18, 1907. Stats. 1907, p. 569.

Irrigation district may provide for drainage.

§ 1. Any irrigation district heretofore organized or hereafter to be organized under the laws relating to such districts may provide for any and all drainage made necessary by the irrigation provided for by such laws; and the officers, agents and employees of such districts shall have the same powers, duties and liabilities respecting such drainage, and the construction, repair, maintenance, management and control thereof as they now have or may hereafter have respecting such irrigation, and all laws respecting such irrigation or such irrigation districts shall be so construed, applied and enforced as to apply to such drainage as well as such irrigation.

Duty of board of directors.

§ 2. Whenever it appears necessary, or proper, or beneficial to the lands affected thereby, to drain such lands or any portion thereof on account of the irrigation which has been done, or which is intended to be done under such laws, whether for the purpose of more beneficially carrying on such irrigation, or to protect such districts from liability by reason of such irrigation, whether the irrigation works have already been constructed or not, it shall be the duty of the board of directors to provide for such drainage, and said board and its officers, agents and employees shall do all necessary and proper acts for the construction, repair, maintenance and management of drainage work for such purpose.

Time of taking effect of act.

§ 3. This act shall take effect immediately.

DEVELOPMENT OF ELECTRIC POWER.

ACT 2266h—An act to provide for the development of electric power by irrigation districts.

History: Approved May 21, 1919. In effect July 22, 1919. Stats. 1919, p. 778.

Irrigation districts may maintain electrical power plants.

§ 1. Any irrigation district heretofore organized or hereafter to be organized under the laws relating to such district may provide for the construction, operation, leasing and control of plants for the generation, distribution, sale, and lease of electrical energy, including sale to municipalities, corporations, public utility districts or individuals, of electrical power so generated; and said district, subject however to the conditions in this section contained, may make special appropriations of water for power purposes, as required by law; provided, however, that any use of water for generating such electrical power or energy at any given time of the year, which use is in excess of the water appropriated and beneficially used for irrigation purposes by such district at said period of the year, shall be subject to all prior existing appropriations by any municipal corporation, who or which is proceeding in good faith in the expenditure of money and the construction of works designed to divert the water appropriated; and the officers, agents, and employees of such districts shall have the same powers, duties and liabilities respecting such power and the construction, repair, maintenance, management, and control thereof as they now have or may hereafter have respecting such irrigation or such irrigation districts. The California irrigation district act shall be so construed, applied and enforced as to apply to such power as well as such irrigation.

Management of works.

§ 2. The board of directors of any irrigation district and its officers, agents, and employees, shall do all necessary and proper acts for the construction, repair, maintenance, and management of such electrical power works for such purposes.

Bonds.

§ 3. In case funds are not otherwise available the irrigation district may issue bonds for such purpose and all of the provisions of the California irrigation district act, relating to the issuance of bonds for other purposes in so far as the same are applicable to said bonds shall apply.

Repealed.

§ 4. All acts or parts of acts in conflict with any of the provisions of this act are hereby repealed.

ASSESSMENT OF STATE LAND.

ACT 2266j—An act to promote the reclamation of arid land and to provide that certain land belonging to the state of California, within the boundaries of an irrigation district shall be subject to the assessments levied in said district.

History: Approved May 25, 1917. In effect July 27, 1917. Stats. 1917, p. 936.

State lands within irrigation districts subject to assessment.

§ 1. Whenever there shall be included in any irrigation district organized and existing under the laws of this state, public lands belonging to the state subject to entry, or which have been entered, and for which no certificates of purchase have been issued, such lands are hereby made and declared to be subject to all of the provisions of law relating to the organization, government and regulation of irrigation districts to the same extent and in the same manner in which the lands of a like character held under private ownership are or may be subject to such law; provided, however, that nothing herein contained shall be construed as creating any obligation against the state of California to pay any of said charges, assessment or debt.

Notices served on surveyor general.

§ 2. All notices required by the act under which such district is organized shall, as soon as such notices are issued, be served upon the surveyor general of the state of California by mailing to his office a copy thereof enclosed in a sealed envelope with postage prepaid.

Assessment lien.

§ 3. No public lands which were unentered at the time any assessment was levied against the same by such irrigation district shall be sold for such assessment, but such assessment shall be and continue a lien upon such land, and no patent shall issue therefor until the applicant shall present a certificate from the proper district officer showing that no unpaid assessments or charges are due and delinquent against said land.

COUNTY IRRIGATION DISTRICTS.

ACT 2267—An act to provide for the formation, management and dissolution of county irrigation districts; for supplying the inhabitants thereof with water; for levying and collecting taxes on property in such districts; and for the issuance of county irrigation district bonds and the payment thereof.

History: Approved June 13, 1913. In effect August 10, 1913. Stats. 1913, p. 785. See editor's note.

Editor's note: The title of this act was amended June 5, 1915. In effect August 8, 1915, Stats. 1915, p. 1188, by inserting the

word "waterworks" in the place of the word "irrigation," where it appears. Twelve of the sixteen sections of the original act

were amended by the same act, and a new section added, making a "county water-works districts" law instead of a "county irrigation districts" law; in consequence of

which the new act will be found in full in the chapter on "water districts."—See, post, Act 5505.

VALIDATION OF COUNTY IRRIGATION DISTRICTS.

ACT 2267a—An act to validate the formation of certain districts formed under the provisions of an act entitled "An act to provide for the formation, management and dissolution of county irrigation districts; for supplying the inhabitants thereof with water; for levying and collecting taxes on property in such districts; and for the issuance of county irrigation district bonds and the payment thereof," approved June 13, 1913, and to validate the issuance and sale of certain bonds thereof.

History: Approved April 10, 1915. In effect August 8, 1915. Stats. 1915, p. 48.

County irrigation districts validated.

§ 1. In any district, organized, or attempted to be organized, under the provisions of an act entitled "An act to provide for the formation, management and dissolution of county irrigation districts; for supplying the inhabitants thereof with water; for levying and collecting taxes on property in such districts; and for the issuance of county irrigation district bonds and the payment thereof," approved June 13, 1913, or as the same may have been or shall be amended at the time this act becomes effective, where acts or proceedings have been taken for the purpose of the formation of such a district, and of authorizing the issuance and sale of bonds; and where the formation of such district and the authorization of such issue and sale of bonds shall have been approved by a majority vote of the qualified electors of such district voting upon the question of the formation of such district and the authorization of the issuance and sale of such bonds, all such acts and proceedings leading up to and including the formation of any such district and the authorization of the issuance and sale of any such bonds, are hereby legalized, ratified, confirmed, and declared validated to all intents and purposes, and the power of any such district and of the proper officers to issue and sell such bonds is hereby ratified, confirmed, and declared, and any such bonds already sold at not less than their par value are declared to be, and any such bonds hereafter sold at not less than their par value shall be, a legal and binding obligation of and against such district, having heretofore authorized the issuance and sale of such bonds, and the faith and credit of any such district is hereby pledged for the prompt payment and redemption of the principal and interest of said bonds of such district, in the manner provided in said act, or as the same may be amended.

"COUNTY POWER PUMPING DISTRICT ACT."

ACT 2267b—An act to provide for the formation, management and dissolution of county power pumping districts; for supplying the land owners and inhabitants thereof with water and with the power necessary to pump the same; for the levy and collection of taxes on property in such districts; and for the issuance of county power pumping district bonds and for the payment thereof.

History: Approved June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1483.

Name of act.

§ 1. This act shall be known and referred to as the "County Power Pumping District Act."

Land may be formed into district.

§ 2. Any area of land within this state, wholly within one county and outside of incorporated cities and towns, or containing the whole or any portion of one or more incorporated cities or towns and contiguous unincorporated territory, and not already

included within any irrigation district, in need of artificial irrigation and not already supplied with adequate facilities therefor and possessed of an available supply of sub-surface water, may be formed into a power pumping district and provisions made for obtaining power and pumping the waters necessary for the irrigation of such lands in the manner and under the proceedings hereinafter prescribed.

Petition for formation.

§ 3. A petition for the formation of such district may be presented to the board of supervisors of the county in which the proposed district is located, which petition shall be signed by not less than fifty per cent of the land owners within said district. The term "land owners," as herein used, shall include all freeholders and holders of possessory rights under any law of the United States or of the state of California.

The said petition shall contain:

- (1) The name and boundaries of the proposed district;
- (2) The source from which the lands therein are proposed to be irrigated;

Description of improvement.

(3) A general description of the improvement or improvements proposed for the purpose of supplying the district with water, and which improvement or improvements may embrace any or all of the following: (a) The construction, acquisition, operation and maintenance of electric or other power plants, together with all necessary transmission and distributing lines and equipment therefore; (b) the construction, acquisition, operation and maintenance of electrical transmission and distributing lines and equipment for the purpose of transmitting power to all points within such district, and the acquisition of electrical or other power by contact, rental or otherwise, from such plant or plants within said district; (c) the acquisition of power for such district by contract therefor, as provided in subdivisions 5 and 6 of section 12 hereof; (d) the acquisition, construction, installation, completion, extension, repair or maintenance of all plants, works, structures and appurtenances; (e) the acquisition, by purchase, condemnation, contract, lease or otherwise, of lands, rights of way, water, water rights and electric and water service necessary or convenient for such purpose; (f) the drilling, sinking and construction of wells for the development of sub-surface waters, and the installation of pumps and motors and all appliances necessary or convenient in connection therewith;

Estimate of cost.

(4) An estimate of the cost of the proposed improvement or improvements, including all incidental expenses in connection therewith; .

Election.

(5) A request that an election be called in the proposed district for the purpose of submitting to the qualified electors thereof the proposition of forming such district and incurring indebtedness, by the issuance of the bonds of such district, to pay the cost and expenses of the proposed improvement or improvements.

Map.

There must be filed with such petition: (a) A map showing the exterior boundaries of the proposed district, with relation to the territory immediately contiguous thereto, and plans and specifications of the proposed improvement; (b) a good and sufficient undertaking, to be approved by the board of supervisors, in double the amount of the probable cost of forming such district, conditioned that the sureties shall pay said cost in case the formation of such district shall not be effected.

Time for hearing.

§ 4. Such petition, together with the map and undertaking hereinabove described, must be presented at a regular meeting of said board of supervisors, and the board shall thereupon fix a time for hearing the same and protests of interested parties, not less than twenty-one nor more than thirty days after the date of presentation thereof. The clerk of the board shall thereupon cause notices of the filing and hearing of such petition to be posted in three of the most public places in the proposed district. Such notices shall be headed "Notice of the Formation of (here insert name) County Power Pumping District No. (here insert number of district)," in letters not less than one inch in length, and shall in legible characters state the fact and date of the filing of such petition, the day and hour set for hearing the same and the protests, briefly describe the proposed improvement or improvements, specify the exterior boundaries of the district, and refer to the said petition, map and plans and specifications for further particulars. The said clerk shall also cause a notice similar in substance to be published at least once a week for two consecutive weeks in a newspaper, designated by said board of supervisors, of general circulation printed and published in the county in which the proposed district is located. Said notices must be published and posted as above provided, at least ten days before the date set for the hearing of said petition.

Objection to formation.

§ 5. Any person objecting to the formation of the proposed district or the extent thereof, or the improvement or improvements proposed, or to the inclusion of his property in such district, may file a written protest with the clerk of said board at or before the time set for the hearing of such petition. The clerk of said board shall endorse on each protest the date of its reception by him, and at the time appointed for the hearing above provided for, shall present to said board all protests so filed with him. The said board shall hear said petition and protests at the time appointed or at any time to which the hearing thereof may be adjourned, and pass upon the same, and its decision thereon shall be final and conclusive. If any protest or protests against the formation of the proposed district or against the proposed improvements as a whole, be sustained, no further proceedings shall be had or taken pursuant to said petition, but a new petition for the same or a similar purpose may be filed at any time. If any protests be filed as against the extent of the proposed district, or against the inclusion therein of any specified property, the board shall have power to make such changes in the boundaries of the proposed district as it shall find to be proper and advisable, and shall define and establish such boundaries, and may upon written application of the owner thereof, at the same time include therein the lands of any contiguous land owner suitable for the purposes of the proposed district.

Jurisdiction acquired.

At the expiration of the time within which protests may be filed, if none be filed, or if protests be filed and after hearing be denied, said board shall be deemed to have acquired jurisdiction to further proceed in accordance with the provisions of this act. The determination of the board of supervisors as to whether the area of land embraced within such district is possessed of an available supply of sub-surface water, and as to whether said petition has been signed by the requisite number of land owners within said district, and as to whether all the requirements of section three of this act have been fully complied with, together with all its determinations upon questions of fact shall be final and conclusive.

Special election.

§ 6. The board of supervisors shall, by ordinance or resolution adopted at a regular or special meeting after having acquired jurisdiction to proceed, as above provided,

provide for and order the holding of a special election in the proposed district and the submission to the qualified voters thereof of the proposition to form such district and incur an indebtedness, by the issuance of bonds thereof, for the purposes set forth in said petition. The ordinance or resolution calling such special election shall also recite the objects and purposes for which the proposed indebtedness is to be incurred, the estimated cost of the proposed improvement or improvements, the amount of the principal of the indebtedness to be incurred therefor, and the rate of interest to be paid upon such indebtedness, and shall fix the date at which such election shall be held, the manner of holding the same, and the manner of voting for or against the proposition. The maximum rate of interest to be paid on such indebtedness shall be eight per cent per annum, payable semi-annually. Prior to calling such election the board of supervisors must cause such investigation to be made as shall be necessary to establish the fact that the proposed works can be constructed within the limits of the proposed bonded indebtedness and that there is available a sufficient supply of water.

Election procedure.

§ 7. For the purposes of said election the board of supervisors shall, in such ordinance or resolution, establish one or more precincts within the boundaries of the proposed district, designate a polling place in each precinct and appoint such officers of election as said board shall deem necessary. In all particulars not recited in such ordinance or resolution, such election shall be held as provided by law for the holding of general elections in such county. Said ordinance or resolution ordering the holding of such election shall, prior to the date set for such election, be published five times in a daily or twice in a weekly or semi-weekly newspaper of general circulation printed and published in said county and designated by the board of supervisors for that purpose. No other notice of such election need be given. If at such election two-thirds of the votes cast are in favor of the formation of the proposed district and incurring of the proposed bonded indebtedness, then the board of supervisors shall enter an order to that effect upon its minutes, declaring said district formed, and the said board of supervisors shall thereupon be authorized and empowered to issue, and shall issue the bonds of said district for the amount provided for in said proceedings, payable out of the funds of such district to be provided as in this act prescribed; provided, however, that the entire bonded indebtedness of any district formed under the provisions of this act, as represented by the par value of bonds issued and to be issued and outstanding hereunder at any time, shall not exceed an amount greater than two dollars per acre for each acre of land contained in said district, subject to the provisions of this act; provided, however, that in the event that the proposed improvement or improvements shall embrace the drilling, sinking and construction of wells for the development of sub-surface waters and the installation of pumps and motors and all appliances necessary or convenient in connection therewith, then the entire bonded indebtedness of such district so formed as represented by the par value of bonds issued and outstanding hereunder at any time may equal, but shall not exceed, an amount greater than ten dollars (\$10) per acre for each acre of land contained within said district.

Denominations, interest and condition of bonds.

§ 8. The board of supervisors, by an order entered upon its minutes, shall, subject to the provisions of this act, prescribe the denominations, interest and condition of said bonds and of the interest coupons attached thereto. Said bonds may contain appropriate provisions for their redemption prior to the maturity thereof. Said bonds shall be signed by the chairman of the board of supervisors, countersigned by the county auditor, and the seal of said county shall be affixed thereto. The interest coupons on said bonds shall be numbered consecutively and signed by the auditor of said county

by his engraved or lithographed signature. In case any such officer whose signature or countersignature appears on such bonds or coupons shall cease to be such officer before the delivery of such bonds to the purchaser, such signature or countersignature shall, nevertheless, be valid and sufficient for all purposes in like manner as though such officer had remained in office until the delivery of the bonds.

Sale of bonds.

§ 9. The board of supervisors may issue and sell the bonds of such district, authorized as hereinabove provided, at a price not less than the par value thereof, and the proceeds of sale of such bonds shall be placed in the county treasury to the credit of the proper district fund, and shall be applied to the purposes and objects mentioned in the ordinance or resolution ordering the holding of such bond election, as aforesaid.

Tax levy.

§ 10. The board of supervisors shall levy a tax each year, upon all the taxable property in such district, sufficient (in connection with any other funds available for that purpose under the provisions of this act), to pay the interest on said bonds that year, and to take care of the sinking fund provisions as provided in the bonds, and such proportion of the principal thereof as is to become due before the time for making the next general tax levy; provided, however, that if the maturity of the indebtedness created by the issue of such bonds be made to begin more than one year after the date of such issue, such tax shall be levied and collected at the time and in the manner aforesaid each year sufficient to pay the interest on such indebtedness as it falls due, and also (in connection with any other funds available as aforesaid), to constitute a sinking fund for the payment of the principal thereof on or before maturity. Such tax shall be levied and collected at the time and in the same manner as the general tax levied for county purposes, and when collected shall be paid into the county treasury and be used for the payment of the principal and interest on said bonds, and for a sinking fund, and for no other purposes. The principal and interest on said bonds shall be paid by the county treasury in the manner provided by law for the payment of principal and interest on bonds of such county.

Tax for maintenance, etc.

§ 11. The board of supervisors of any county wherein a district has been formed under the provisions of this act, shall have the power in any year after the establishment of such district, to levy a tax upon the taxable property in such district, sufficient to pay the cost and expenses of maintaining, operating, extending and repairing said system for the ensuing fiscal year. And said tax shall be levied and collected at the time and in the same manner as the general tax levied for county purposes, and the revenue derived from such tax shall be paid into the county treasury to the credit of the proper fund of such district, and the board of supervisors shall have power to control and order the expenditure thereof for the purposes aforesaid.

Power of supervisors.

§ 12. Said board of supervisors shall have the power, and it shall be its duty:

- (1) To manage and conduct the business and affairs of the district;
- (2) To make and execute all necessary contracts;
- (3) To employ and appoint such agents, officers and employees as may be required and prescribe their duties;
- (4) For the use of such district to acquire, by purchase, lease, contract, condemnation or other legal means, all the lands, water and water rights, and other property necessary for the construction, use, maintenance, repair and improvement of such plants, works and appurtenances;

(5) To obtain and acquire electricity or other power by contract, rental or otherwise, as may be needed for pumping water for said district from the source or sources of supply, including the distribution of such power to the land owners, to be used upon and within the lands of said district;

(6) To enter into a contract with any person, partnership or corporation engaged in the generation, manufacture, distribution or sale of electrical or other power, for the construction of all such transmission and distributing lines and equipment and appurtenances necessary or convenient to supply the said district with power, and for the acquisition from any such person, partnership or corporation of such electrical or other power as may be desirable for pumping and distributing water as contemplated by this act. Such contracts shall also provide that twenty-five per cent of all amounts collected or received by any such person, partnership or corporation from the said district or the consumers therein for power used by them, shall be set aside as fast as received and paid into the county treasury to the credit of the said district fund, and shall constitute a sinking fund for the redemption or payment of the bonds issued for the construction of such transmission and distributing lines and equipment and appurtenances. Whenever sufficient funds shall have been so paid to redeem or to pay said bonds, so issued for the purposes aforesaid, the said transmission and distributing lines and appurtenances shall thereupon be and become the property of such person, partnership or corporation which has in this manner paid for the same, and the board of supervisors shall have the power and it shall be its duty to execute all such conveyances and other instruments of transfer as may be necessary to vest the title to such transmission and distributing lines and appurtenances and equipment in such persons, partnerships or corporations;

(7) To drill, sink and construct wells and to install pumps and motors and all appliances necessary or convenient in connection therewith;

(8) To perform any and all other acts necessary or proper to accomplish the purposes of this act.

Dissolution of district.

§ 13. Any such district may be dissolved by the board of supervisors in the manner following: Upon receiving a petition signed by fifteen per cent or more of the free-holders and power consumers of such pumping district, requesting the dissolution thereof, the board of supervisors shall fix a date for the hearing of such petition, which shall be not less than ten days nor more than thirty days after the receipt of such petition, and shall, at least five days prior to the date so fixed, publish a notice of such hearing by one insertion in a daily, weekly or semi-weekly newspaper printed, published and circulated in said county. At the time appointed for such hearing or at any time to which the same may be adjourned, the board of supervisors shall hear and pass upon such petition and may grant or deny the same, and its decision shall be final and conclusive.

Special election.

If such petition be granted the board of supervisors shall, by ordinance or resolution, provide for and order the holding of a special election in such district, and the submission to the qualified voters thereof of the proposition to dissolve the same. The ordinance or resolution shall recite the filing of the petition for dissolution, and the approval of the same by the board of supervisors, and shall establish one or more precincts within the boundaries of the district, designate a polling place in and for each precinct, and appoint such officers of election as the board of supervisors shall deem necessary. In all particulars not recited in such ordinance or resolution, such election shall be held as provided by law for holding general elections in such county. Said ordinance or resolution, ordering the holding of such election, shall, prior to the date

set for such election, be published five times in a daily or twice in a weekly or semi-weekly newspaper printed and published in said county and designated by the board of supervisors for such purpose. No other notice of said election need be given. If at the time of said election a majority of the votes cast are in favor of the dissolution of such district, then the board of supervisors shall enter an order to that effect upon its minutes, declaring such district dissolved, and upon the entry of such order said district shall be dissolved; provided, however, that if at the time of the dissolution of said district there shall be any outstanding bonds or other indebtedness of said district, a tax for the payment of such bonds or other indebtedness shall be levied and collected in said district to pay such indebtedness, in like manner as though such district had not been dissolved.

This act an alternative method.

§ 14. This act shall not affect any other act or acts relating to the same or a similar subject, but is intended to provide an alternative method of procedure governing the subject to which it relates. When proceeding under the provisions of this act, its provisions and none other shall apply.

§ 15. The provisions of this act shall be liberally construed to effect the purposes thereof.

DISSOLUTION OF IRRIGATION DISTRICTS ACT OF 1919.

ACT 2267c—An act declaring the conditions upon which an irrigation district may be dissolved, prescribing the procedure therefor, and the winding up of the affairs of the district when dissolved.

History: Approved May 18, 1919. In effect July 22, 1919. Stats. 1919, p. 751.

Provisions for dissolution of irrigation districts.

§ 1. Any irrigation district organized under any of the laws of the state of California, providing for the organization of irrigation districts, which

(a) Has been organized more than three years and has failed and neglected to secure an adequate water supply and which does not have a reasonable prospect of securing an adequate water supply for the lands of the district, and has failed and neglected to obtain the approval of the state water commission of the water supply of said district and has failed and neglected to obtain the approval of the state engineer of the plans of said district, and has failed and neglected to construct or acquire a system of works or the financing thereof, and has failed and neglected to obtain the approval of the irrigation district bond commission; or

(b) Has been organized for more than ten years and for more than five years after the construction or acquisition of a system of works has failed and neglected to maintain such works, or for five years or more after such works have been constructed or acquired has failed and neglected to supply or make available, water for the irrigation of more than ten per cent of the lands of the district;

May be dissolved and annulled by the superior court of the county in which said district is located by proceedings in an action brought by the attorney general in the name of the people of the state of California, upon his own information. Before such an action can be commenced in the courts the attorney general shall publish for two consecutive weeks in some newspaper published in the county in which the greater portion of the district is located, a notice to all parties in interest that it is his intention to begin such action for the dissolution of said district. The rules of pleading and practice in the Code of Civil Procedure not inconsistent with the provisions of this act are made applicable to the proceedings herein provided.

Investigation by state engineer. Access to records. Report.

§ 2. Before the trial of the case the court may direct the state engineer to investigate all the affairs of said district; the water supply that may be obtained without prohibitive cost; the feasibility and practicability of irrigating all or a reasonable amount of the lands of said district; and all other matters which the court may direct, or the state engineer may deem pertinent as affecting the possible success or failure of the district as an irrigation enterprise and which may be necessary to enable the court to determine the question of dissolution.

For the purpose of making such investigation, the state engineer shall have access to all the records of the district, and all officers and employees and other persons in any manner connected with or employed by said district shall furnish such information as he may require which has already been obtained or determined, including maps, plans, estimates, field notes, and other data.

The state engineer shall report his findings and conclusions to the superior court as soon as practicable, but within ninety days unless a longer time be granted him by the court, but in no case to extend beyond the period of one hundred eighty days in all.

Upon dissolution county officers shall be ex-officio officers of district. Sale of property. Funds remaining after indebtedness is paid.

§ 3. Upon final judgment of dissolution in such action, the district in question shall be deemed dissolved and annulled. The court shall determine the amount of indebtedness outstanding against said district, including the costs of the court action herein provided for, and thereafter the appropriate county officers shall act as ex officio officers of the district; the records and papers of every kind belonging to the district shall be turned over to the proper county officers. The county treasurer shall perform the duties of the district treasurer; the county tax collector shall perform the duties of the district tax collector; the county assessor shall perform the duties of the district assessor; the county clerk shall perform the duties of the secretary of the board of directors; the board of supervisors shall perform the duties of the board of directors; they shall proceed to levy and collect such additional taxes as may be necessary upon the lands embraced within such district in the same manner and with the same procedure for nonpayment that county taxes are levied and collected for the purpose of paying such outstanding indebtedness not provided for by previous assessments. All property of every kind belonging to the district, including lands sold to the district for taxes, shall be sold as the court may direct and the proceeds together with all money on hand shall be used to pay off the indebtedness. All funds remaining after all outstanding indebtedness has been paid shall be apportioned and be paid to the assessment payers according to the last assessment roll.

Indebtedness no bar to dissolution.

§ 4. The outstanding indebtedness, whether of bonds, warrants, or otherwise, of any irrigation district shall not operate as a bar to dissolution by the superior court when provision is made for the payment of such indebtedness in the manner provided in section three of this act.

Intent of act.

§ 5. This act is designed to provide an alternative method for the dissolution of irrigation districts and shall not be deemed to repeal any other statute or statutes.

DISSOLUTION OF IRRIGATION DISTRICTS ACT OF 1903.

ACT 2267d—An act to provide for the dissolution of irrigation districts, the ascertainment and discharge of their indebtedness, and the distribution of their property.

History: Approved February 10, 1903, Stats. 1903, p. 3. Amended March 3, 1909, Stats. 1909, p. 139; December 24, 1911, Stats. 1911 (ex. sess.), p. 118; April 19, 1913. In effect August 10, 1913. Stats. 1913, p. 39. May 26, 1915. In effect August 8, 1915. Stats. 1915, p. 859.

Irrigation districts may be dissolved. In case of contract with United States.

§ 1. Any irrigation district organized under the provisions of an act entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March 7, 1887, and all acts supplementary thereto or amendatory thereof, including an act entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition or construction thereby of works for the irrigation of lands embraced within such districts, and also, to provide for the distribution of water for irrigation purposes," approved March 31, 1897, may be dissolved in the manner hereinafter provided; provided, that in case a contract authorized by law has been made between the district and the United States for the construction, operation and maintenance of the necessary works for the delivery of water or for a water supply, no such district shall be dissolved and no proceedings entertained by any court or otherwise looking to the dissolution of such district, until the written assent of the secretary of the interior be given to such dissolution. [Amendment of May 26, 1915. In effect August 8, 1915. Stats. 1915, p. 859.]

Manner of dissolution. Petition, what to contain.

§ 2. A majority in number of the holders of title, or evidence of title, to real property in any irrigation district, and a majority in value of said property according to the equalized assessment-roll of said district for the year last preceding upon which any assessment has been made, may propose the dissolution of said district by a petition signed by such majority, which petition shall set forth the amount of the outstanding bonds, coupons, and other indebtedness, if such there be, together with a general description of the same, and the holders, so far as known, showing the amount of each description of indebtedness and the ownership, so far as known, of the same. Also the estimated cost of the dissolution of said district. Said petition shall also state the assets of said district, including irrigation system, if any, dams, reservoirs, canals, franchises, water rights, a detailed statement of all the lands sold to the district for assessments, and the amount of the assessments on each parcel of land sold, also all assessments unpaid, and the amount upon each lot or tract of land, and all other assets of the district; and in case any proposition has been made by the holders of said indebtedness to settle the same, said proposition, together with any plan proposed to carry the same into execution, shall be included in said petition.

Proceedings under certain conditions.

§ 2½. In case an irrigation district has no indebtedness not barred by the statute of limitations and no assets, and has ceased to be a going concern and has no irrigation system by which it conveys water for irrigation or domestic purposes to any of the residents of such district, the petition for dissolution mentioned in section two of said act shall contain statements showing such facts and also that it is the desire of the signers of such petition to have said district dissolved, and such petition need not contain any other statement or allegation, and such petition need only be signed by two thirds of the qualified electors residing in such district, and by the holders of title

or evidence of title representing at least fifty per cent of the acreage within said district and not less than fifty per cent in value of all lands lying within the exterior boundaries of said district, the value of said lands to be determined by the last equalized assessment roll of said district, and such petition so signed and containing such statements and allegations shall be sufficient. In such case the plan of dissolution referred to in section 3 of said act need only show the facts that there is no district indebtedness not barred by the statute of limitations and that the district has disposed of all of its assets; provided, that the petition shall further recite the fact that an application will be made to the superior court for a decree of dissolution of said district under the provisions of said act. And in the case mentioned in this section, it shall not be necessary to obtain the assent of any holder of any evidence of indebtedness of said district barred by any statute of limitations of this state before the election, provided for in said section three, shall be called. [New section added December 24, 1911, Stats. 1911, p. 118 (extra session); probably superseded by section 2a, which was added in 1913.]

Statement of district having no assets. Special election. Ballot.

§ 2a. In case an irrigation district has no indebtedness not barred by the statute of limitations and no assets and has ceased to be a going concern and has no irrigation system by which it conveys water for irrigation or domestic purposes to any of the residents of such district, the petition for dissolution mentioned in section two of said act shall contain statements showing such facts and also that it is the desire of the signers of such petition to have said district dissolved, and such petition need not contain any other statement or allegation, and such petition need only be signed by two thirds of the qualified electors residing in such district, and by the holders of title or evidence of title representing at least fifty per cent of the acreage within said district and not less than fifty per cent in value of all lands lying within the exterior boundaries of said district, the value of said lands to be determined by the last equalized assessment-roll of said district, and such petition so signed and containing such statements and allegations shall be sufficient. In such case the plan of dissolution referred to in section three of said act may be entirely omitted and it shall not be necessary for the petitioners or persons signing such petition, or for the board of directors of such district to propose any plan for the dissolution of such district or any plan for the liquidation of its indebtedness or the distribution of its assets; provided, that the petition shall further recite the fact that an application will be made to the superior court of the state of California in and for the county in which the office of the board of directors of such district is required to be kept, for a decree of dissolution of said district under the provisions of said act. And in the case mentioned in this section, it shall not be necessary to obtain the assent of any holder of any indebtedness or evidence of indebtedness of said district barred by any statute of limitations of this state before the election provided for in said section three, shall be called. Upon the filing of said petition with the board of directors of said district said board shall call a special election at which shall be submitted to the electors of such district the question whether or not said district shall be dissolved. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days and also by publication of such notice in some newspaper published in the county where the office of the board of directors is required to be kept, once a week for at least three successive weeks before such election. Such notices must specify the time of holding the election, and the fact that it is proposed to dissolve the district. Said election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with provisions of law governing the election of officers in irrigation districts. At such election the ballot shall contain the words "Dissolution of the district—Yes" or "Dissolution of the

district—No,” or words equivalent thereto. It shall not be necessary in winding up the affairs of any district organized under the laws of this state to pay all or any portion of any debt or obligation of such district, for the enforcement of which debt or obligation a suit is barred by the laws of this state, nor to pay any bond, coupon, warrant or other indebtedness, claim or demand which shall be barred by the laws of this state prior to the filing of the petition for dissolution with the board of directors of such district. [New section approved April 19, 1913, Stats. 1913, p. 39. In effect August 10, 1913.]

Special election. Notice of election. Ballots.

§ 3. Upon the filing of said petition with the board of directors of said district said board shall call a special election, at which shall be submitted to the electors of such district the question whether or not said district shall be dissolved, its indebtedness liquidated, and its assets distributed in accordance with the plan so proposed, or in case no plan has been proposed, then in accordance with a plan which shall be proposed by said board of directors in the notice of the election, but no such election shall be called until the assent of all the known holders of valid indebtedness against the district shall be obtained or provision shall be made in said plan for the payment of such non-assenting holders. Notice of such election must be given by posting notices in three public places, in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors is required to be kept, once a week for at least three successive weeks before such election. Such notices must specify the time of holding the election, the fact that it is proposed to dissolve the district, and a brief summary of the plan proposed for liquidating its indebtedness and disposing of its assets. Said election shall be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions governing the election of officers in irrigation districts. At such election the ballot shall contain the words “Dissolution of the district—Yes,” or “Dissolution of the district—No,” or words equivalent thereto.

Validity of proceedings, how determined. Right of appeal.

§ 4. In case upon such canvass it is found and declared by said board of directors that two-thirds of the votes cast at such election shall be cast in favor of “Dissolution of the district—Yes,” then the said board of directors shall file a petition in the superior court of the county wherein is located the office of such board to determine the validity of the proceedings had and of the proposed plan for the dissolution of said district. Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication of a notice of the pendency of the proceeding for at least once a week for three weeks in some paper of general circulation published in the county where the action is pending; provided, that if the property of the district is situate in more than one county then the publication shall be made in one paper in each county wherein the same is situate, such paper or papers to be designated by the court having jurisdiction of the proceeding; jurisdiction shall be complete in thirty days after the completion of such notice in the manner herein provided. Any one interested may at any time before the expiration of said thirty days appear and contest the validity of the proceedings already had and of the plan proposed for the dissolution of said district, or any portion thereof, including the validity of any portion of the indebtedness set out in said petition, and the court may determine the validity of any sales for assessments, and may determine the amount of any assessment or assessments due upon the various parcels and lots of real estate within said district, and may determine the amount of any assessment or assessments theretofore paid upon the various parcels and lots of real estate herein, and may in said proceeding adjust and

determine the rights and liabilities of all parties. Such action shall be speedily tried and judgment rendered. Either party shall have the right to appeal at any time within thirty days after the entering of such judgment, and the appeal must be heard and determined within three months after the taking of such appeal.

Facts required by superior court. Costs of contests.

§ 5. Said petition to the superior court shall set forth the facts required to be set forth in the petition to the board of directors and all the proceedings therein, and at the hearing the court shall hear and determine the regularity, legality, and correctness of all proceedings, and in doing so shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties. The rules of pleading and practice in the Code of Civil Procedure not inconsistent with the provisions of this act are made applicable to the proceeding herein provided. The costs of any contest may be allowed and proportioned between the parties or taxed to the losing party in the discretion of the court, and no contest of any matter or thing herein provided for shall be made other than in the time and manner herein specified.

Assessment payer may bring action.

§ 6. If no such proceeding shall have been filed by the board of directors within thirty days after the canvass of said vote, then any district assessment payer may bring an action in the superior court of the county wherein the office of the board of directors is located. The board of directors shall be made parties defendant and notice shall be served on the members of the board personally, if they can be found in the state, if not, then service by publication as provided in section 4, shall be sufficient. Proceedings shall be had in the same manner and with the same effect as if brought by the board of directors.

Assets of district may be acquired by corporation.

§ 7. A corporation may be organized under general laws for the purpose of acquiring the assets of said district, including the irrigation system, if any, dams, reservoirs, canals, franchises and water rights, which corporation shall have all the powers, rights and franchises of corporate bodies organized under general laws, and in addition shall have such further powers as may be necessary to possess and carry on said irrigation system and exercise such franchise and water rights.

Power of court. Sale of assets.

§ 8. The court in its decree shall have power to make the orders necessary to carry out said proposition for the discharge of the indebtedness and distribution of the property of said district, including the right to apportion any indebtedness found due, and to declare said portions liens upon the various parcels and lots of land within the district, and may decree a sale of its assets in such manner as may effectuate said proposition and as the said court may judge best, either in one lot or in such parcels as may be provided, and may provide for conveyance of said irrigation system, including dams, reservoirs, canals, franchises and water rights, and also of any other assets of the district, including lands sold thereto and the assessments due it.

Assessments to be liens. Redemptions.

§ 9. The amounts of any assessment or assessments found due upon the various parcels and lots of real estate within said district, and the amounts for which sales have been made, which sales have been determined to be valid by said court, together with legal interest from the date of said sales and from the time when said assessments become delinquent, shall be liens respectively on the lots and parcels affected thereby, and the purchaser or purchasers at said sale may foreclose the same by action in the superior court, and shall in said action join all lots, assessments, and

sales which may have been purchased by him and which remain unredeemed. A redemption may be made at any time by payment of the amount due to the clerk of the court for the use of the district if before sale, and for the use of the purchaser if after sale, and the clerk shall thereupon enter a minute of said payment, which payment shall be in the discharge of said lien. Redemption from the lien created for any portion of the indebtedness can be had in this manner.

Disposition of surplus money.

§ 10. Whenever all the property of such irrigation district shall have been disposed of, and all the indebtedness and obligations thereof, if any there be, shall have been discharged, the balance of the money of said district shall be distributed to the assessment payers in said district upon the last assessment-roll in the proportion in which each has contributed to the total amount of said assessment, and the court shall enter a final decree declaring said district to be dissolved.

Indebtedness, schedule of.

§ 10½. In the petition mentioned in section 2 of this act it shall not be necessary to include in the schedule of indebtedness any bond, coupon, warrant or other indebtedness, claim or demand which shall have been barred by the laws of this state prior to the filing of said petition with the board of directors of said irrigation district, nor shall it be necessary in winding up the affairs of any district organized under the laws of this state to pay all or any portion of a debt or obligation of such district, for the enforcement of which debt or obligation a suit is barred by the laws of this state. [New section approved March 3, 1909, Stats. 1909, p. 139.]

§ 11. This act shall take effect immediately.

FUNDING ACT OF 1897.

ACT 2268—An act to provide for the issue and sale or exchange of funding bonds of irrigation districts organized under and in pursuance of an act of the legislature of the state of California entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March 7, 1887, to provide for the payment of such bonds, and for proceedings to test the validity of the same.

History: Approved April 1, 1897, Stats. 1897, p. 394. Amended March 16, 1901, Stats. 1901, p. 514. This act is probably to be treated as a supplement to the Wright act. See Act 2259.

Provision for payment of bonds of irrigation district.

§ 1. Whenever an irrigation district organized, under the provisions of an act entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March seventh, eighteen hundred and eighty-seven, or said act and the acts supplementary thereto, or amendatory thereof, has outstanding bonds, coupons, or other evidences of indebtedness, the payment thereof may be provided for by the issuance of new bonds, in the manner hereinafter prescribed.

Majority may act.

§ 2. A majority in number of the holders of title, or evidences of title to real property in any irrigation district, subject to assessment, such holders of title, or evidences of title, representing a majority in value of the real property of such district according to the equalized assessment-roll or rolls of such district for the year last preceding,

may propose the funding of such bonds, coupons, or other evidences of indebtedness. Said equalized assessment-roll or rolls shall be sufficient evidence of title for the purposes of this act.

Proceedings necessary to propose funding of bonds.

§ 3. In order to propose the funding of such bonds, coupons, or other evidences of indebtedness, a petition shall be presented to the board of directors of such irrigation district, signed by a majority in number of holders of title, or evidences of title to real property in such district, and representing a majority in value of the real property of said district, subject to assessment for district purposes, which petition shall set forth the amount of bonds, coupons, or other evidences of indebtedness proposed to be funded, together with a general description of same, also the total amount of the bonds sought to be issued (provided, that said amount shall in no case be greater than the total amount of bonds, coupons, and other evidences of indebtedness then outstanding and sought to have funded), together with a full and complete statement of the purposes for which such bonds are to be used. On presentation of such petition, the same shall be entered in full on the minutes of the board.

Election to authorize the issuing of bonds by irrigation districts to refund bonded debt. Two-thirds vote necessary.

§ 4. Immediately after the recording of said petition the board of directors shall call a special election, at which shall be submitted to the electors of such district the question whether or not the bonds of such district, in the amount set forth in said petition, shall be issued. Notice of such election must be given by the secretary of said district by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county, where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks before such election. Such notice must specify the time of holding the election, the amount of bonds proposed to be issued, the amount of bonds, coupons, or other evidences of indebtedness proposed to be refunded, together with a general description of the same. Said election shall be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions governing the election of officers; as provided by the law governing irrigation districts at the time of the holding of the election herein provided for; provided, that no informalities in conducting such an election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such an election the ballot shall contain the words "Bonds—Yes" or "Bonds—No," or words equivalent thereto. If two-thirds of the votes cast at such election are "Bonds—Yes," the board of directors shall direct and cause bonds in said amount to be issued. If more than one-third of the votes cast at such election are "Bonds—No," the result of such election shall be so declared. The result in either case shall be duly entered of record. [Amendment approved March 16, 1901. Stats. 1901, p. 514. In effect immediately.]

§§ 5, 6, 7, 8, 9, 10, repealed March 16, 1901. Stats. 1901, p. 515. In effect immediately.

Issue and payment of bonds, etc. Interest.

§ 11. If said bonds are directed to be issued as herein provided for, the board of directors shall cause the same to be issued. Said bonds shall be made payable in gold coin of the United States, and in twenty series, as follows, to wit: On the first day of January after the expiration of twenty years, five per cent of the whole amount of said bonds, and on the first day of January of each year thereafter, an equal amount of such bonds until all shall have been finally paid; that is, five per cent of the whole issue of bonds—not five per cent of each bond—each being wholly payable when due. Said

bonds shall bear interest at the rate of five per cent per annum, payable semiannually on the first day of January and July of each year. They shall be negotiable in form, and shall be of denominations of not less than one hundred dollars, nor more than five hundred dollars. Said bonds shall in all respects conform to the form of bonds prescribed by the laws governing irrigation districts at the time of their issue, except as herein otherwise provided.

Bonds not to be sold for less than par.

§ 12. It shall be unlawful to sell or exchange any of the bonds issued as herein provided, for less than their par value.

Duty of district treasurer.

§ 13. When bonds issued under this act shall be duly executed, they shall be deposited with the treasurer of the district, and his receipt shall be taken therefor, and he shall be charged with the same on his official bond, and shall have no power to deliver the same in exchange for any bonds or indebtedness proposed to be funded until the bonds or evidence of indebtedness proposed to be funded shall have been surrendered to him, and he shall have been ordered by the board of directors of the district, by an order duly entered on their records, to make such delivery. When such bonds have been exchanged for other bonds, coupons, or other evidences of indebtedness, the treasurer shall at once cancel such other bonds, coupons, or other evidences of indebtedness by writing across the face thereof "canceled," and the date of cancellation, and report the same with his monthly report to the board of directors of the district, designating the bond, coupon, or other evidence of indebtedness, so that it can be identified, the date of cancellation, and the person from whom it was received, together with the amount paid therefor, or the terms of exchange, in case there is an exchange.

Sale of bonds; powers of board.

§ 14. When said bonds are issued for the purpose of sale to the highest bidder, the board may sell said bonds from time to time, in such quantities as may be necessary and most advantageous, to raise money to pay bonds, coupons, or other evidences of indebtedness of the district which were outstanding at the time of the filing of said petition, and generally described therein. Before making any sale, the board shall at a meeting, by resolution, declare its intention to sell a specified amount of bonds, which resolution shall be entered in the minutes, and notice of the sale shall be given by publication thereof for at least three weeks in a newspaper published in the county in which the office of the board of directors is kept. The notice shall state that sealed proposals will be received by the board at its office for the purchase of bonds till the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of bonds to the highest responsible bidder, or may reject all bids; but said bonds shall in no event be sold for less than their par value, including accrued interest. All moneys realized from the sale of bonds issued under the provisions of this act shall be paid into the hands of the district treasurer, and by him kept in a separate fund, known as the funding fund, and shall be applied exclusively to the payment of bonds, coupons, or other evidences of indebtedness of the district outstanding at the time of filing the said petition, and described therein.

Levy of assessment to pay bonds.

§ 15. At the time fixed for the levying of assessments for other purposes authorized by the district irrigation law then in force, there shall be levied an assessment sufficient in amount to pay the principal and interest then due and unpaid on any bonds issued by authority of this act, and also the amount to become due on any such bonds during the year following such levy. The assessment so levied shall be computed and entered in the assessment-roll in the same manner and shall be collected at the same time and

in the same manner as other assessments authorized by the district irrigation law then in force, and when collected, shall be paid into the district treasury, for the purposes herein authorized; and all the provisions of said district irrigation law relating to the collection of assessments and the sale and redemption of property therefor shall be applicable to the assessments levied under this act.

Bonds not to be exchanged for less than par value.

§ 16. The bonds issued as herein provided for may be exchanged, at not less than their par value, for any of the indebtedness set out and described in the notice of the election authorizing the issuance of said refunding bond. A contract for such exchange may be made by the board of directors upon such terms as said board may deem advisable; provided, that they must receive not less than the par value for the bonds so exchanged. [Amendment approved March 16, 1901. Stats. 1901, p. 515. In effect immediately.]

Unnecessary bonds may be destroyed.

§ 17. Whenever there remains in the hands of the treasurer of any district any funding bonds voted to be issued by said district, but not used, and not necessary to be used for the funding purposes set out and described in the petition for the issuance of said bonds, then said board of directors, shall at a regular meeting, within three months after the completion of the funding, cause the same to be destroyed and a record to be made thereof, and the total amount of bonds so destroyed and canceled shall be deducted from the sum authorized to be issued by the electors of said district, and no part thereof shall be thereafter reprinted or reissued.

Bonds are a lien on property.

§ 18. Any bonds issued under the provisions of this act shall be a lien upon the real property of the district, and said bonds and the interest thereon shall be paid by revenue derived from an annual assessment upon the real property of the district, and all the real property in said district shall be and remain liable to be assessed for such payments as hereinbefore provided. [Amendment approved March 16, 1901. Stats. 1901, p. 515. In effect immediately.]

§ 19. This act shall take effect from and after its passage.

LEGALIZING IRRIGATION BONDS.

ACT 2268a—An act to legalize bonds issued and to be issued and sold by irrigation districts.

History: Approved May 26, 1915. In effect August 8, 1915, Stats. 1915, p. 837.

Irrigation district bonds legalized.

§ 1. In all cases subsequent to January 1, 1910, where the board of directors of any irrigation district in the state of California has passed a resolution calling an election for the purpose of submitting to the qualified electors of such irrigation district the question of whether or not bonds of such district should be issued for any purpose and where at such election four-fifths of all the qualified electors voting at such election shall have voted in favor of issuing such bonds and such board of directors shall have passed a resolution or order providing for the issuing of such bonds, the power of such irrigation district to issue such bonds and all the acts and proceedings of such irrigation district leading up to and including the issuance and sale or the proposed issuance and sale of such bonds are hereby legalized, ratified, confirmed and declared valid to all intents and purposes, and all such bonds sold either before or after the passage of this act are hereby legalized and declared to be legal and valid obligations of and against such irrigation district so issuing and selling the same.

REFUNDING ACT OF 1919.

ACT 2268b—An act to authorize irrigation districts to refund outstanding bonded indebtedness.

History: Approved May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1004.

Refunding bonded indebtedness of irrigation district.

§ 1. The board of directors of any irrigation district organized or existing under or subject to the provisions of the California irrigation district act approved March 31, 1897, as amended, providing for the organization and government of irrigation districts, that has an outstanding indebtedness evidenced by bonds lawfully issued prior to January 1, 1913, may, by a majority vote of the members of the board, submit to the electors of the irrigation district at any election the proposition of the issuance of new bonds for the purpose of refunding the bonds outstanding, as the same become due. Such election shall be held, and the vote thereon shall be the same as provided by the California irrigation district act for the issuance of other irrigation district bonds; provided, no petition therefor need be circulated or signed; and provided, further, that a majority of the votes of those voting on said proposition shall be sufficient to carry the same. Such bonds shall bear interest at a rate the same as or lower than the bonds to be refunded and no refunding bond shall have a later date of maturity than twenty years from the date of its issue.

Form. Sale.

§ 2. The refunding bonds shall be issued in substantially the manner and in the form required by law for the issuance of other bonds of the district. These bonds may be sold from time to time in the same manner as other bonds of the district, or, if the directors of the district and the holders of any of the bonds reaching maturity so elect, they may be exchanged in payment of the bonds so maturing as such bonds mature.

Tax levy to pay interest and principal.

§ 3. The board of directors shall cause to be assessed and levied each year upon the assessable property in the district, in addition to the levy authorized for other purposes, a sufficient sum to pay the interest on or any principal of such refunding bonds in the same manner as is provided in the California irrigation district act in the case of other bonds.

IRRIGATION BONDS AS LEGAL INVESTMENTS.

ACT 2271—An act relating to bonds of irrigation districts, providing under what circumstances such bonds shall be legal investments for funds of banks, insurance companies and trust companies, trust funds, state school funds and any money or funds which may now or hereafter be invested in bonds of cities, cities and counties, counties, school districts or municipalities, and providing under what circumstances the use of bonds of irrigation districts as security for the performance of any act may be authorized.

History: Approved June 13, 1913. In effect August 10, 1913. Stats. 1913, p. 778. Amended May 20, 1915. In effect August 10, 1915. Stats. 1915, p. 692. May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 582. May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1207. Prior act of March 9, 1911, Stats. 1911, p. 322, and of December 18, 1911, Stats. 911 (ex. sess.), p. 3, were superseded, if not repealed, by the present act.

Resolution declaring irrigation district bonds available.

§ 1. Whenever the board of directors of any irrigation district organized and existing under and pursuant to the laws of the state of California shall by resolution declare that it deems it desirable that any contemplated or outstanding bonds of said district,

including any of its bonds authorized but not sold, shall be made available for the purposes provided for in section 7 of this act, the said board of directors shall thereupon file a certified copy of such resolution with the commission hereinafter provided for.

Report of commission on affairs of district.

§ 2. Such commission, upon the receipt of a certified copy of such resolution, shall, without delay, make or cause to be made an investigation of the affairs of the district and report in writing upon such matters as it may deem essential, and particularly upon the following points:

(a) The supply of water available for the project and the right of the district to so much water as may be needed.

(b) The nature of the soil as to its fertility and susceptibility to irrigation, the probable amount of water needed for its irrigation and the probable need of drainage.

(c) The feasibility of the district's irrigation system and of the specific project for which the bonds under consideration are desired or have been used, whether such system and project be constructed, projected or partially completed.

(d) The reasonable market value of the water, water rights, canals, reservoirs, reservoir sites and irrigation works owned by such district or to be acquired or constructed by it with the proceeds of any of such bonds.

(e) The reasonable market value of the lands included within the boundaries of the district.

(f) Whether or not the aggregate amount of the bonds under consideration and any other outstanding bonds of said district, including bonds authorized but not sold, exceeds sixty per centum of the aggregate market value of the lands within said district and of the water, water rights, canals, reservoirs, reservoir sites, and irrigation works owned, or to be acquired or constructed with the proceeds of any of said bonds, by said district, as determined in accordance with paragraphs (d) and (e) in this section.

(g) The numbers, date or dates of issue and denominations of the bonds, if any, which the commission shall find are available for the purposes provided for in section 7 of this act, and, if the investigation has covered contemplated bonds, the total amount of bonds which the district can issue without exceeding the limitation expressed in paragraph (f) of this section.

Report filed with controller and secretary of district. When entitled to controller's certificate. Unlawful to issue bonds not entitled to certificate. Controller's record of bonds certified to.

§ 3. The written report of the investigation herein provided for shall be filed in the office of the state controller, and a copy of said report shall by the commission be forwarded to the secretary of the district for which the investigation shall have been made, and if said commission shall have found, as set out in said report, that the irrigation system of the district and the specific project for which the bonds under consideration are desired or have been used, whether such project be constructed, projected or partially completed, are feasible and that the aggregate amount of the bonds under consideration and any other outstanding bonds of said district, including bonds authorized but not sold, does not exceed sixty per centum of the aggregate market value of the lands within said district and of the water, water rights, canals, reservoir, reservoir sites, and irrigation works owned or to be acquired or constructed with the proceeds of any of said bonds by said district, the bonds of such irrigation district, as described and enumerated in said report filed with the state controller, shall be certified by the state controller, as hereinafter provided for. If the commission shall be notified by the

board of directors of any district whose irrigation system has been found in such report to be feasible that the district has issued bonds and the commission shall find that said bonds are for any project or projects approved in such report and that the amount of said bonds does not exceed the limitation stated in such report, the commission shall prepare and file with the state controller a supplementary report giving the numbers, date or dates of issue and denominations of said bonds, which shall then be entitled to certification by the state controller as hereinafter provided for. Subsequent issues or bonds may be made available for the purposes specified in this act upon like proceedings by said district, but, after any of the bonds of an irrigation district have been enumerated and described as entitled to certification by the state controller as herein provided for, it shall be unlawful for that district to issue bonds that will not be entitled to such certification. It is hereby made the duty of the state controller to provide for filing and preserving the reports mentioned in this section and, also, to make, keep and preserve a record of the bonds certified by him in accordance with the provisions of section four of this act, including the date of certification, the legal title of the district, the number of each bond, its par value, the date of its issue and that of its maturity.

Provisions directory.

§ 3a. The provisions of section two of this act as to the points upon which said commission shall report are directory merely and the board may authorize such certification when in their opinion, subject to the provisions otherwise contained in this act, their findings justify such action. [New section added May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 583.]

No expenditures without consent of commission.

§ 3b. Whenever the bonds of any irrigation district have been certified, as provided in this act, no expenditure of any kind shall be made from the construction fund of such district without the consent of the commission provided for in this act and no obligation shall be incurred chargeable against such fund without previous authorization of the commission nor shall any expense of any kind be incurred in excess of money actually provided by levy of assessment or otherwise. [New section added May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 583.]

Certification of irrigation district bonds by commission.

§ 3c. Whenever the surveys, examinations, drawings and plans of an irrigation district, and the estimate of cost based thereon, shall provide that the works necessary for a completed project shall be constructed progressively over a period of years in accordance with section thirty of the California irrigation district act, and in accordance with a plan or schedule adopted by resolution of the board of directors of the district, it shall not be necessary for the commission to certify at one time all of the bonds that have been voted for the said completed project; but such bonds may be certified from time to time as needed by the district. If the commission shall certify all of the bonds necessary for the said completed project, even if said project is to be constructed progressively over a period of years in accordance with the aforesaid resolution of the board of directors, the bonds so voted and certified shall only be sold after prior written approval of the commission. [New section added May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1207.]

Certification of irrigation bonds.

§ 4. Whenever any bond of an irrigation district organized and existing as aforesaid, including any bond authorized in any such district but not sold, which shall be eligible to certification by the state controller under section three of this act, shall be

presented to the state controller, he shall cause to be attached thereto a certificate in substantially the following form:

Form:

Sacramento, Cal., (insert date).

I,, controller of the State of California, do hereby certify that the within bond, No.....of issue No..... of the..... irrigation district, issued.....(insert date), is, in accordance with an act of the legislature of California approved....., a legal investment for all trust funds and for the funds of all insurance companies, banks, both commercial and savings, trust companies, the state school funds and any funds which may be invested in county, municipal or school district bonds, and it may be deposited as security for the performance of any act whenever the bonds of any county, city, city and county, or school district may be so deposited, it being entitled to such privileges by virtue of an examination by the state engineer, the attorney general and the superintendent of banks of the state of California in pursuance of said act. The within bond may also, according to the constitution of the state of California, be used as security for the deposit of public money in banks in said state.

.....
Controller of state of California.

In case of a change in the constitution or any of the laws of this state relating to the bonds of irrigation districts, the state controller shall, if necessary, modify the above certificate so that it shall conform to the facts.

Facsimile signature sufficient.

A facsimile of the controller's signature, printed or otherwise, impressed upon said certificate shall be a sufficient signing thereof; provided, that the imprint of the controller's seal thereon shall appear upon both the certificate and the bond over and through the printed signature. [Amendment of May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 692.]

Commission created.

§ 5. The attorney general, the state engineer and the superintendent of banks are hereby constituted the commission herein provided for, and said commission shall elect one of its members chairman and may employ such clerks and assistants as may be necessary for the performance of the duties herein imposed, and may fix the compensation to be paid to such clerks and assistants.

Expenses.

§ 6. All necessary expenses incurred in making the investigation and report in this act provided for shall be paid as the commission may require by the irrigation district whose property has been investigated and reported on by the said commission; provided, that the benefit of any services that may have been performed and any data that may have been obtained by any member of said commission or any other public official in pursuance of the requirements of any law other than this act, shall be available for the use of the commission herein provided for without charge to the district whose affairs are under investigation.

Bonds certified legal investments for trust funds, etc.

§ 7. All bonds certified in accordance with the terms of this act shall be legal investments for all trust funds, and for the funds of all insurance companies, banks, both commercial and savings, and trust companies, and for the state school funds, and whenever any money or funds may, by law now or hereafter enacted, be invested in bonds of cities, cities and counties, counties, school districts, or municipalities in the

state of California, such money or funds may be invested in the said bonds of irrigation districts, and whenever bonds of cities, cities and counties, counties, school districts or municipalities may by any law now or hereafter enacted be used as security for the performance of any act, bonds of irrigation districts under the limitations in this act provided may be so used. This act is intended to be and shall be considered the latest enactment upon the matters herein contained, and any and all acts in conflict with the provisions hereof are hereby repealed.

PAYMENT OF ASSESSMENTS IN INSTALLMENTS.

ACT 2272—An act to permit boards of directors of irrigation districts organized or existing under and by virtue of an act of the legislature, entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition or construction thereby of works for the irrigation of the lands embraced within such districts, and also to provide for the distribution of water for irrigation purposes," approved March 31, 1897; to provide for the payment in two installments of the assessments levied under and in accordance with the provisions of said act.

History: Approved March 19, 1909, Stats. 1909, p. 415.

Payment of assessments.

§ 1. It shall be lawful for boards of directors of irrigation districts, organized or existing under or by virtue of an act of the legislature, entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition or construction thereby of works for the irrigation of lands embraced within such districts and also, to provide for the distribution of water for irrigation purposes"; approved March 31, 1897; to provide for the payment of assessments levied in accordance with the provision of said act, in two installments.

May be payable in two installments.

§ 2. The directors of any such irrigation district may, whenever they shall so determine, and must upon a petition in writing, signed by a majority of the assessmen, payers within such district, pass a resolution providing that thereafter all assessments, except special assessments provided for by section 34 of said act of 1897, shall be payable in two installments, and in said resolution shall specify when such payments may be made.

Resolution for.

§ 3. Such resolution must be passed before the first Monday in August, and can not be rescinded to take effect during any year after the first Monday of March in that year.

When assessments become delinquent.

§ 4. Whenever the board of directors of such irrigation district shall have so determined, thereafter one-half of the assessments levied within such district shall become delinquent at 6 o'clock P. M. on the last Monday of December, and one-half thereof shall become delinquent at 6 P. M. on the last Monday of June next thereafter, provided that where an assessment has been levied as provided in section 34 of said act the whole of such assessment shall become delinquent on the last Monday in December.

Only effect of this act.

§ 5. When provision is made, as herein provided, for the payment of said assessments in two installments, the publication of the delinquent list provided for in said act, shall not be made before the first day of July, but must be made on or before the first day of August, and except as otherwise herein provided all of the provisions of said irrigation act or acts not inconsistent with this act relative to the assessment, pay-

ment and collection of assessments, notice of assessments, publication of delinquent list, and sale for delinquent assessment, and all other provisions relative to such assessments shall be applicable, and the only effect of this act shall be to permit the payment of such assessments in two installments, and to postpone the notice of sale and sale provided for in said act until after the first day of July, and when sale is made at the time herein specified it shall have the same effect as though made at the time and in the manner specified in said act of 1897.

RELEASE OF LIENS UPON CANCELLATION OF BONDS.

ACT 2273—An act to provide for the release of all claims and liens arising from irrigation district bonds and interest coupons voluntarily surrendered for cancellation, and to provide for the establishment of record of such release.

History: Approved May 1, 1911, Stats. 1911, p. 1460.

Petition to surrender irrigation district bonds.

§ 1. Whenever a holder of bonds and interest coupons issued by an irrigation district organized under the provisions of an act entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March seven, eighteen hundred and eighty-seven, and all acts supplementary thereto, or amendatory thereof, including an act entitled, "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition or construction thereby of works for the irrigation of the lands embraced within such districts, and, also, to provide for the distribution of water for irrigation purposes," approved March thirty-one, eighteen hundred and ninety-seven; shall desire to surrender such bonds and interest coupons and have the same canceled and discharged and released as a claim against said district and as a lien or charge thereon and against any of the land or property thereof or therein, and shall desire to have it established of record that said bonds and coupons and the said claims, liens and charges arising therefrom are canceled, discharged and released, he may file a petition for such purpose in the superior court for the county wherein is situated any of the land included in said district.

Proceeding in rem deemed commenced.

§ 2. By the filing of said petition, an action in the nature of a proceeding in rem against all persons interested in said bonds or coupons or any of them, shall be deemed commenced. Notice of said proceeding shall be given by filing a notice of the pendency of the proceeding in the office of the county recorder of each of the counties wherein is situated any of the land included in said district and by publication of a notice of the pendency of the proceeding once a week for at least four weeks in one newspaper published in each of the counties wherein is situated any of the land included in said district. The notice of the pendency of the proceeding shall contain the name of the petitioner, a description of the bonds and coupons with respect of which the proceeding is commenced, a brief description of the relief sought by the proceeding, the time when the proceeding will be heard by the court (which must not be earlier than thirty days after the last publication of said notice), and a notice to all persons interested in the proceeding requiring them to appear at such time at said court to show cause if any they have why the relief sought by the proceeding should not be granted.

Jurisdiction.

§ 3. Upon the completion of the said publication and at the time named in the notice for the hearing, the court shall have full and complete jurisdiction of the petitioner and of the said bonds and coupons and of all parties having or claiming any interest of any

kind in said bonds or coupons or any of them, for the purposes of said proceeding and shall have full and complete jurisdiction to render the judgment therein which is provided for by this act.

Hearing and judgment.

§ 4. Any person interested may at or before the time named in the notice for the hearing, appear and by answer filed to said petition contest the title of the petitioner to said bonds or coupons or any of them and the court shall order the entry of the default of all persons who shall have failed to so appear and answer. Thereupon or at such time to which the hearing may be continued, the court shall proceed and determine the ownership of said bonds and coupons and must in all cases require proof of the facts alleged in the petition. If the court finds that the petitioner is the owner of said bonds and coupons or some of them and that the allegations contained in the petition with respect of said bonds and coupons so owned by him are true, then the court shall by its judgment describe the bonds and coupons so owned by the petitioner and shall decree that they are surrendered, canceled, discharged and released as a claim against said district and as a lien or charge thereon and against any of the land or property thereof or therein and such judgment shall be conclusive and binding upon every person having or claiming any interest of any kind in said bonds or coupons or any of them and the said bonds or coupons shall thereupon be marked canceled by the clerk of said court and delivered by him into the possession of the said irrigation district whenever such district shall demand the same; and after said judgment, said bonds and coupons shall not comprise any claim, lien or charge against said district or any of the land or property thereof or therein.

Judgment recorded.

§ 5. A certified copy of the judgment in said proceeding shall be recorded in the office of the county recorder of each of the counties wherein is situated any of the land included in said district and shall constitute complete notice that said bonds and coupons have been surrendered, canceled, discharged and released and do not comprise any claim, lien or charge against said district or any of the land or property thereof or therein.

Procedure.

§ 6. Except as herein otherwise provided, all the provisions and rules of law relating to evidence, pleading, practice, new trials and appeals applicable to other civil actions, shall apply to the proceedings hereby authorized.

§ 7. This act shall take effect immediately.

REDEMPTION OF PROPERTY SOLD FOR DELINQUENT ASSESSMENTS.

ACT 2274—An act to provide for the redemption of property which has been heretofore sold to irrigation districts for delinquent assessments.

History: Approved March 10, 1891, Stats. 1891, p. 53.

Delinquent assessments. Who may redeem property. Certificates. Treasurer's receipt's.

§ 1. In all cases where property has heretofore been sold for delinquent assessments, under the provisions of the act of March seventh, eighteen hundred and eighty-seven, providing for the organization of irrigation districts, and an irrigation district has become the purchaser, and has not disposed of the same, the person whose estate has been sold, or his heirs, executors, administrators, or other successors in interest, may redeem such property by paying to the treasurer of the district wherein the property is situated the amount of assessments due thereon at the time of the sale, with interest thereon at the rate of two per cent per month; and also all assessments that were a lien upon said property at the time said assessments became delinquent; and also for

each year since the sale for which assessments on said property have not been paid, an amount equal to the percentage of assessments for that year, upon the value of said real estate assessed for the year of the sale, with interest from the first day of January of each of said years, respectively, at the same rate; and also all costs and expenses, and fifty per cent penalty, which may have accrued by reason of such delinquency and sale, and the costs and expenses of redemption, as herein specified. The board of directors of any district shall, on the application of any person desiring to redeem under the provisions of this act, make an estimate of the amount to be paid, and shall, by a resolution entered on their minutes, authorize the treasurer of the district, on the receipt of the amount determined by them, to give him triplicate certificates of the amount, specifying the several amounts thereof, one of which certificates shall be filed with the secretary of the district, one with the county recorder of the county in which the land is situated, and one with the treasurer of the district, to whom payment of the money shall be made, on the issuance of said certificates. The county recorder shall be paid by the redemptioner, for filing and recording said certificate, the sum of two dollars, and upon the filing of such receipt with the recorder any deed or certificate of sale that may have been made to the district shall become null and void; and all right, title, and interest acquired by the district under and by virtue of the assessment sale shall cease and determine. The receipt of the treasurer of the district herein provided for shall be recorded in the recorder's office of the county in which said property is situated, in the book of deeds, and the record thereof shall have the same effect as that of a deed of reconveyance of the interest conveyed by said deed or certificate of sale.

§ 2. This act shall take effect immediately.

LEASING WATER FOR POWER DEVELOPMENT.

ACT 2275—An act to provide for the leasing and disposition of water for generation of power for mechanical purposes, by irrigation districts organized or to be organized under and pursuant to an act entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March 7, 1887.

History: Approved March 23, 1893, Stats. 1893, p. 295. Probably to be treated as supplementary to the Wright act, and superseded, along with that act, by the Bridgeford act. See Act 2266, §§ 100-105.

Board of directors to lease.

§ 1. Whenever any irrigation district formed, or to be formed, under and pursuant to the provisions of an act entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March seventh, eighteen hundred and eighty-seven, in the development of its works, as in said act provided, may have opportunity, without increased expenditure, to utilize the water by it owned or controlled for mechanical purposes not inconsistent with the provisions of said act, the board of directors may lease the same, as in this act hereinafter provided.

Notice of intention to lease to be published. Contents of notice.

§ 2. Whenever the board of directors may desire to lease the use of water, as heretofore stated, they shall pass a resolution of intention to so lease the same. Immediately thereafter the secretary shall cause notice of such intention to be given by publication in one newspaper published in each county in which lands of the district are situated for at least twenty days (provided, a newspaper is published therein, otherwise in any newspaper the board of directors may select), and in such newspapers as may be deemed advisable, calling for bids for the leasing of said water for the purposes

hereinbefore mentioned. Said notice shall state that the board will receive sealed proposals therefor, that the lease will be let to the highest responsible bidder, stating the time and place of opening said proposals.

Opening bids and awarding proposals.

§ 3. At the time and place appointed the board shall proceed to open the proposals in public. As soon thereafter as may be convenient the board shall let said lease in portions, or as a whole, to the highest responsible bidder, or they may reject any or all bids, and readvertise for proposals for the same.

Rental. How payable. Moneys, how to be used.

§ 4. The rental accruing upon said lease may vary from year to year, as shall be specified in said lease, and shall be payable semi-annually, on the thirtieth day of December and thirtieth day of June of each year. All moneys collected, as in this act provided, shall be paid into the treasury, and be used in the manner provided in section 34 of said act, except that the period of ten years, as mentioned in said section 34 shall not be applicable to the provision of this act; provided, however, that if any coupons on any outstanding bonds of such district are at any time due and payable, and there shall for any reason not be sufficient funds in the interest fund to pay the same, the proceeds so collected, as in this act provided, may be used to pay the same.

Lease. Penalty for failure to pay rental.

§ 5. The board shall have power, as in this act provided, to execute a lease for any period not exceeding fifty years. If at any time the rental shall not be paid on the days hereinbefore mentioned, the amount of such rental then due shall be doubled, and if not paid within ninety days thereafter, the said lease shall be forfeited to said district, together with any and all works constructed, owned, used, or controlled by said lessee.

Board may require bond.

§ 6. Upon the letting of any lease, as in this act provided, the board may require the lessee to execute a bond for the payment of the rental, and proper performance of the said lease, or give such other evidence of good faith as in their judgment may be necessary.

§ 7. This act shall take effect immediately.

CONTRACTS FOR WATER FOR IRRIGATION.

ACT 2276—An act declaring upon what terms contracts between persons, companies, associations, or corporations furnishing water for irrigation to the consumers of such water shall be valid, and to provide that such contracts shall be deemed based upon sufficient consideration.

History: Approved March 16, 1901, Stats. 1901, p. 331.

Contracts to furnish water authorized.

§ 1. It is and shall be lawful for any person, company, association, or corporation, furnishing for sale, rental, or distribution any appropriated waters for purposes of irrigation, to enter into contracts with individual consumers of such water or with bodies of such consumers, relating to the sale, rental or distribution of such water, or any thereof, which contracts, subject to the restrictions hereinafter declared, shall be valid to all intents and purposes, any law or rule to the contrary notwithstanding.

Rate.

§ 2. No such contract shall provide for the sale, rental, or distribution of any such water at any rate exceeding the established rates fixed and regulated therefor by the

board of supervisors of the proper counties, or fixed and established by such person, company, association, or corporation, as provided by law.

Consideration.

§ 3. Nothing in this act contained shall be construed to authorize or make valid any contract not made for a valuable consideration; but an agreement on the part of such person, company, association, or corporation to sell, rent, or distribute any water to a consumer, without payment in advance therefor, or upon any other terms to which such consumer is not otherwise lawfully entitled, shall be deemed and taken to be a valuable and sufficient consideration for such contract.

Contract made prior to time supervisors fix rates.

§ 4. Nothing in this act contained shall affect any contract made prior to the time that the board of supervisors fix and establish the rates and regulations for and under which water shall be sold and supplied.

§ 5. This act shall take effect and be in force from and after its passage.

DECLARING IRRIGATION A PUBLIC USE.

ACT 2278—An act regarding irrigation and declaring the same to be a public use.

History: Approved May 1, 1911, Stats. 1911, p. 1407.

Power of eminent domain may be exercised to further irrigation.

§ 1. Irrigation in the state of California is hereby declared to be a public necessity and a public use, and the power of eminent domain may be exercised on behalf of such public use in accordance with the provisions of title VII, part III of the Code of Civil Procedure of the state of California. Provided, that any person, firm or corporation, exercising the power of eminent domain and in control of water appropriated for sale, rental or distribution, shall not, by this act, be relieved from the duty of furnishing water to irrigate the lands over which any right of way is obtained by condemnation for irrigation purposes as required by an act entitled, "An act to regulate and control the sale, rental and distribution of appropriated water in this state, other than in any city, city and county, or town therein and to secure the rights of way for the conveyance of such water to the places of use," approved March 12, 1885, or any other law now in force in this state.

Does not repeal act of 1885.

§ 2. This act shall not repeal or modify an act entitled, "An act to regulate and control the sale, rental and distribution of appropriated water in this state, other than in any city, city and county, or town therein, and to secure the rights of way for the conveyance of such water to the place of use," approved March 12, 1885, and other acts supplemental thereto and amendatory thereof, or shall the same be construed to alter or change the law of the state of California as to the duty of any person, firm or corporation in charge of a public use to furnish water.

§ 3. This act shall be in force from and after its passage.

1. Effect of act—"Irrigation" made a "public use."—The effect of the act is merely to amend section 1238 of the Code of Civil Procedure by adding "irrigation" to the "public uses" enumerated therein.—*Gravelly Ford & Co. v. Pope & Talbot Co.*, 36 Cal. App. 556, 178 Pac. 150.

2. Condemnation from private uses not authorized.—This act does not authorize condemnation for irrigation purpose by an individual for his private use but for the

use of the public only.—*Gravelly Ford Co. v. Pope & Talbot Co.*, 36 Cal. App. 556, 178 Pac. 150.

3. Same.—The power of eminent domain can not be used by a private person to promote private enterprises, no matter how necessary or advantageous it may be to their successors, or how beneficial to the public.—*Gravelly Ford Co. v. Pope & Talbot Co.*, 36 Cal. App. 556, 178 Pac. 150.

OAKDALE IRRIGATION DISTRICT—VALIDATION.

ACT 2279—An act to recognize and declare valid all proceedings in Oakdale irrigation district.

History: Approved April 12, 1915. In effect August 8, 1915. Stats. 1915, p. 56. Prior act of March 1, 1911, Stats. 1911, p. 262, superseded by the present act.

Oakdale irrigation district, validated.

§ 1. Oakdale irrigation district, as formed by the board of supervisors of Stanislaus county, state of California, and as now existing, is hereby recognized and declared valid, and all proceedings of organization and formation and the including of all lands since its organization and formation are hereby approved and declared valid.

“WEST SIDE IRRIGATION DISTRICT.”

ACT 2280—An act to create an irrigation district, to be called “The West Side Irrigation District,” embracing certain portions of the counties of San Joaquin, Stanislaus, Merced, and Fresno.

History: Approved March 25, 1878, Stats. 1877-78, p. 463.

“WEST SIDE IRRIGATION DISTRICT”—VALIDATION.

ACT 2280a—An act recognizing and declaring valid the West Side irrigation district and approving and declaring valid all proceedings on formation and organization of said district.

History: Approved March 20, 1917. In effect July 27, 1917. Stats. 1917, p. 15.

West Side irrigation district validated.

§ 1. The West Side irrigation district in the county of San Joaquin, state of California, as formed and organized by the board of supervisors of said county and as now existing, is hereby recognized and declared valid and all proceedings on formation and organization of said district are hereby approved and declared valid.

“MODESTO IRRIGATION DISTRICT.”

ACT 2281—An act to create an irrigation district, to be called the Modesto Irrigation District.

History: Approved March 30, 1878, Stats. 1877-78, p. 820.

“MODESTO IRRIGATION DISTRICT”—VALIDATION.

ACT 2282—An act to recognize and declare valid all proceedings in Modesto irrigation district.

History: Approved March 1, 1911, Stats. 1911, p. 262.

Modesto irrigation district.

§ 1. Modesto irrigation district as formed by the board of supervisors of Stanislaus county, state of California, and as now existing is hereby recognized and declared valid, and all proceedings on organization and formation are hereby approved and declared valid.

§ 2. This act shall take effect immediately.

“TURLOCK IRRIGATION DISTRICT”—VALIDATION.

ACT 2283—An act to recognize and declare valid all proceedings in Turlock irrigation district.

History: Approved March 1, 1911, Stats. 1911, p. 261.

Turlock irrigation district.

§ 1. Turlock irrigation district, as formed by the board of supervisors of Stanislaus county, state of California, and as now existing is hereby recognized and declared valid,

and all proceedings on organization and formation are hereby approved, and declared valid.

§ 2. This act shall take effect immediately.

"SOUTH SAN JOAQUIN IRRIGATION DISTRICT"—VALIDATION.

ACT 2284—An act to recognize and declare valid all proceedings in South San Joaquin irrigation district.

History: Approved March 1, 1911, Stats. 1911, p. 262.

South San Joaquin irrigation district.

§ 1. South San Joaquin irrigation district as formed by the board of supervisors of San Joaquin county, state of California, and as now existing is hereby recognized and declared valid, and all proceedings on organization and formation are hereby approved, and declared valid.

§ 2. This act shall take effect immediately.

"IMPERIAL IRRIGATION DISTRICT"—VALIDATION.

ACT 2285—An act validating the formation and organization, and determining the boundaries of Imperial irrigation district in the county of Imperial, state of California.

History: Approved December 24, 1911, Stats. 1911 (ex. sess.), p. 119.

Imperial irrigation district.

§ 1. Imperial irrigation district in the county of Imperial, state of California, as authorized by an affirmative vote of one thousand two hundred and ninety-eight qualified electors of the territory embraced within the boundaries of said district to three hundred and sixty-two votes against the organization thereof, and as formed and organized by the board of supervisors of said Imperial county and as now existing, is hereby recognized and declared valid and all proceedings on formation and organization thereof are hereby approved and declared valid.

Boundaries.

§ 2. The boundaries of said district are hereby declared to be as follows: Beginning at a point in the international boundary line between the United States and Mexico, said point being situated 200 feet westerly from Monument No. 217 and running thence north to the north line of section 10 in T. 17 S., R. 16 E., according to the U. S. resurvey; thence east one mile more or less to the quarter corner between sections 2 and 11 in said township; thence north one half mile more or less to the center of section 2; thence east one half mile more or less to the east line of said section 2; thence north one and one half miles more or less to the intersection of the east line of tract 51, with the north line of section 35, all in T. 16 S., R. 16 E., according to the U. S. resurvey. Thence east along the north line of said section 35, one half mile; thence north one mile more or less, to the southwest corner of tract 64 in said T. 16 S., R. 16 E.; thence east one half mile to the southeast corner of said tract 64; thence north along tract lines three miles to the southeast corner of tract 99, in said T. 16 S., R. 16 E.; thence west quarter mile to the southwest corner of said tract 99; thence north one mile, more or less, to the north line of section 2, of said township; thence west one mile more or less to the northwest corner of said section 2; thence north one mile to the northeast corner of section 34, in T. 15 S., R. 16 E.; thence west one half mile to the quarter corner between sections 27 and 34 of said township; thence north two miles to the quarter corner between sections 15 and 22 of said township; thence east one half mile to southeast corner of said section 15; thence north along section lines eight and one half miles to the quarter corner between sections 2 and 3 in T. 14 S., R. 16 E.; thence west one

half mile to the center of said section 3; thence north one half mile to the quarter corner between said section 3 and section 34 in T. 13 S., R. 16 E.; thence west one half mile; thence north one mile; thence west one half mile; thence north one mile; thence west one half mile; thence north two miles; thence west one mile; thence north to the northeast corner of section 6, in said T. 13 S., R. 16 E.; thence west to the quarter corner on the south side of section 36, in T. 12 S., R. 15 E., according to the 1856 survey; thence north one mile; thence west one mile; thence north one mile; thence west one half mile; thence north one mile; thence west one half mile; thence north one mile; thence west one half mile; thence north one mile; thence west one half mile; thence north one mile; thence west one half mile; thence north one mile; thence west one half mile; thence north one and one half miles; thence west one half mile; thence north one half mile; thence west one half mile; thence north one half mile to the quarter corner on the north side of section 3, T. 11 S., R. 14 E., according to the 1856 survey; thence west along township line six and one half miles, more or less to the northwest corner of section 3 in T. 11 S., R. 13 E., according to the 1856 survey; thence south four miles; thence west three miles; thence south five miles; thence west five miles; thence south three miles to the southwest corner of section 32 in T. 12 S., R. 12 E., according to the 1856 survey; thence east one half mile, more or less, to the northwest corner of section 4 in T. 13 S., R. 12 E., according to the U. S. resurvey; thence south one mile, more or less, to the southwest corner of said section 4; thence east one half mile; thence south one mile; thence east one half mile; thence south one mile; thence east one mile; thence south one half mile; thence east one half mile; thence south one and one half miles; thence east one half mile to the southeast corner of section 36 in T. 13 S., R. 12 E., U. S. resurvey; thence south one mile; thence east one half mile; thence south one half mile; thence east one half mile; thence south one half mile; thence east one half mile; thence south one mile; thence east one mile; thence south one mile; thence west one mile, more or less, to the canal known as the Thistle canal, and shown on the official map of Imperial county of date 1909, as "No. 8, high line canal (proposed)"; thence southeasterly along said canal to its intersection with the West Side main canal; thence westerly along said West side main canal, to its intersection with the Fern canal as shown on said official map; thence westerly and southwesterly along the west side of said Fern canal to its intersection with said West Side main canal; thence in a southerly direction along said West Side main canal, as shown on said official map, to its intersection with the boundary line between United States and Mexico; thence easterly along said boundary line to the point of beginning.

"IMPERIAL IRRIGATION DISTRICT"—LEGALIZING BONDS.

ACT 2285a—An act to legalize bonds issued and to be issued and sold by Imperial irrigation district.

History: Approved March 26, 1915. In effect immediately. Stats. 1915, p. 18.

Bonds of Imperial irrigation district validated.

§ 1. Bonds of Imperial irrigation district for the amount of three million five hundred thousand dollars, dated January 1, 1915, and issued by virtue of resolution of the board of directors of Imperial irrigation district passed November 2, 1914, and by virtue of an election held in said Imperial irrigation district on the 29th day of October, 1914, and all the acts and proceedings of said irrigation district leading up to and including the issuance and sale of said bonds are hereby legalized, ratified, confirmed and declared valid to all intents and purposes and all such bonds sold or exchanged

either before or after the passage of this act are hereby legalized and declared to be legal and valid obligations of and against said irrigation district.

Urgency.

§ 2. This act is hereby declared to be an urgency measure within the meaning of section one, article four of the constitution of the state of California and shall take effect immediately.

The facts constituting such urgency are as follows:

The bonds herein mentioned were authorized by vote of the electors of said district for the purpose of purchasing the irrigation system by which the people of said district are furnished with water for irrigation and domestic purposes and of protecting such irrigation system and thereby the people in it from destruction by flood of the Colorado river.

This district with its population of over thirty thousand people is in great danger of loss of life and property by such threatened overflow during the approaching summer. It is necessary for protection against such danger that said district be enabled to sell such bonds and owing to the many new features presented in this new district upon which no judicial precedents exist, it is impossible to sell the bonds herein mentioned unless they are validated.

The flood season of the Colorado river is the month of May and in order that the proceeds of such bonds may be available in time to meet such flood this act must take effect upon its passage. It is therefore necessary for the immediate preservation of public safety that this act take effect immediately.

“IMPERIAL IRRIGATION DISTRICT”—PURCHASE OF BONDS OF CALIFORNIA DEVELOPMENT COMPANY.

ACT 2285b—An act authorizing the Imperial irrigation district to acquire the irrigation system and works of the California Development Company and its subsidiary company and successors in California and Mexico by condemnation or purchase, and, in case of purchase, to exchange bonds of said district for such irrigation system and works or for property interests therein.

History: Approved May 4, 1915. In effect August 8, 1915. Stats. 1915, p. 343.

Imperial irrigation district authorized to acquire irrigation system of California Development Company.

§ 1. The Imperial irrigation district, in the county of Imperial, state of California, is hereby authorized to acquire, by condemnation or purchase, the irrigation system and works of the California Development Company in California and the capital stock of the Mexican corporation or corporations owning the portion of the irrigation system through which the lands in Imperial irrigation district are supplied with water, lying in the republic of Mexico. In case of purchase said irrigation district may exchange bonds for said irrigation system and works, or for the capital stock representing the ownership thereof, or of any part thereof, and the board of directors of said Imperial irrigation district is hereby authorized to enter into such contracts for the acquisition of said irrigation system and works, or for the capital stock representing the ownership thereof, as it may, in its discretion, deem for the best interests of said irrigation district, and it is also hereby authorized to enter into separate contracts with all or any of the judgment and other creditors or stockholders of said California Development Company and its subsidiary companies, and their successors in interest and with other persons or corporations owning property interests in said irrigation system and works through stock ownership or otherwise in the United States or in Mexico, and to provide in said contracts for the exchange of bonds of said Imperial irrigation dis-

trict for such property interests upon such terms and conditions as said board of directors may, in its discretion, deem for the best interest of said district; provided, however, that the whole amount of bonds so agreed to be exchanged shall not exceed three million dollars.

1. Irrigation system ordered sold.—The irrigation system of the California Development Company was ordered sold to the Imperial Irrigation District for \$3,000,000 of the bonds of the district.—In re Application of Southern Pacific Co., etc., 9 R. C. D. 746.

“SAN YSIDRO IRRIGATION DISTRICT”—VALIDATION.

ACT 2286—An act to organize and declare valid all proceedings in the San Ysidro irrigation district.

History: Approved April 14, 1913. In effect August 10, 1913. Stats. 1913, p. 25.

San Ysidro irrigation district validated.

§ 1. San Ysidro irrigation district as formed by the board of supervisors of San Diego county, state of California, and as now existing, is hereby organized and declared valid, and all proceedings in organization or formation are hereby approved and declared valid.

Boundaries.

§ 2. The boundaries of said district are hereby declared to be as follows: Beginning at a point 133.14 feet west of the quarter corner to section one, township 19 south, range 2 west and section 6, township 19 south, range 1 west, San Bernardino meridian, thence north along the subdivision line of said section 1, 2640 feet more or less to the line between townships 18 and 19 south, range 2 west; thence north along the subdivision line of section 36, township 18 south, range 2 west, 600 feet to a point; thence west 600 feet to a point; thence north 45 degrees, west 933.5 feet, more or less to the northwest corner of the southwest quarter of the southwest quarter of the southeast quarter of section 36; thence north along the north and south center line of section 36, 800 feet to a point; thence west 2640 feet more or less to a point on line between sections 35 and 36; thence north 522.80 feet to the quarter corner between sections 35 and 36; thence west 2640 feet more or less to the center of section 35; thence south along the center line of section 35, 1320 feet more or less to the eighth corner of said section 35; thence east along said subdivision line 1165 feet more or less to the northwest corner of the Levi Ware tract; thence south along the west line of said tract 600 feet more or less to the northerly line of the right of way of the San Diego southern railway; thence southeasterly along the northerly line of said right of way to a point 198 feet west of the line between sections 35 and 36; thence south 0 degrees 22 minutes west, 1355.75 feet, to the southwest corner of addition number 3 to San Ysidro, map on file in the county recorder's office of San Diego county, California; thence south 89 degrees 55 minutes east 950 feet more or less to the west line of “N” tract, San Ysidro subdivision; thence south along the west line of said “N” tract to the center line of section 1, thence east along the center line of section 1 to the place of beginning.

“ANDERSON-COTTONWOOD IRRIGATION DISTRICT”—VALIDATION.

ACT 2287—An act to recognize and declare valid all proceedings in Anderson-Cottonwood irrigation district.

History: Approved April 15, 1915. In effect August 8, 1915. Stats. 1915, p. 74.

Anderson-Cottonwood irrigation district validated.

§ 1. The Anderson-Cottonwood irrigation district as formed by the board of supervisors of the county of Shasta, state of California, and as now existing is hereby recognized and declared valid, and all proceedings on organization and formation are hereby approved and declared valid.

**"LA MESA, LEMON GROVE AND SPRING VALLEY IRRIGATION DISTRICT"—
VALIDATION.**

ACT 2288—An act to recognize and declare valid all proceedings in La Mesa, Lemon Grove and Spring Valley irrigation district.

History: Approved May 3, 1915. In effect August 8, 1915. Stats. 1915, p. 323.

La Mesa, Lemon Grove and Spring Valley irrigation district validated.

§ 1. La Mesa, Lemon Grove and Spring Valley irrigation district as formed by the board of supervisors of San Diego county, state of California, and as now existing, is hereby recognized and declared valid and all proceedings on organization and formation are hereby approved and declared valid.

"WATERFORD IRRIGATION DISTRICT"—VALIDATION.

ACT 2289—An act to recognize and declare valid all proceedings in and relative to the Waterford irrigation district and the organization thereof.

History: Approved May 21, 1915. In effect August 8, 1915. Stats. 1915, p. 1249.

Waterford irrigation district validated.

§ 1. The Waterford irrigation district, situated in the county of Stanislaus, as formed by the board of supervisors of said county of Stanislaus, state of California, and as now existing or as hereafter modified according to law is hereby recognized and declared valid, and all proceedings on organization and formation are hereby approved and declared valid, and said Waterford irrigation district is hereby declared to be a duly organized irrigation district.

1. Constitutionality—Delegation powers of public board.—To convey the legal title of the property of an irrigation district in trust to secure the bonds of a district would contravene the provisions of section 13, article XI, of the constitution, forbidding the delegation of the statutory powers of a public board.—*Merchants, etc., Bank v. Escondido Irr. Dist.*, 144 Cal. 329, 77 Pac. 937.

2. Irrigation districts—Public corporations—Private corporations.—Irrigation districts, as to their public functions, are to be classed as public corporations; and as to the private rights of the individual land-owners, they are private corporations.—*Merchants, etc., Bank v. Escondido Irr. Dist.*, 144 Cal. 329, 77 Pac. 937.

3. Election to authorize bond issue.—Nugatory.—A departure from the statute in calling an election for the issuance of bonds and in the notice, in the matter of the time of opening and closing the polls, renders the election nugatory.—*Fallbrook Irr. Dist. v. Abila*, 106 Cal. 365, 39 Pac. 794.

4. Bonds in proper form.—The bonds in

this case are in proper form.—*Central Irr. Dist. v. De Lappe*, 79 Cal. 351, 21 Pac. 825.

5. Statute of limitations—Cause of action to cancel bonds.—The statute of limitation does not begin to run against a cause of action to cancel the bonds of an irrigation district, from the date of the order for the issuance of the bonds, or from the date of the contract therefor, but from the date of the delivery of the bonds for a valuable consideration, and as to bonds delivered within the statute and bonds not issued, the action is not barred.—*Sechrist v. Rialto Irr. Dist.*, 129 Cal. 640, 62 Pac. 261.

6. Quo warranto—Rights of purchasers of bonds.—In quo warranto against an irrigation district the bona fide purchasers of bonds of the district may intervene and to unite with the district in defending the suit, and may avail themselves of all procedure and remedies to which the district was entitled, including the right of appeal.—*People ex rel. Fogg v. Perris Irr. Dist.*, 132 Cal. 289, 64 Pac. 399, 773.

"CARMICHAEL IRRIGATION DISTRICT"—VALIDATION.

ACT 2290—An act to recognize and declare valid all proceedings in Carmichael irrigation district.

History: Approved March 20, 1917. In effect July 27, 1917. Stats. 1917, p. 12.

Carmichael irrigation district validated.

§ 1. Carmichael irrigation district as formed by the board of supervisors of the county of Sacramento, state of California, and as now existing, is hereby recognized

and declared valid and all proceedings on organization and formation are hereby approved and declared valid.

“HAPPY VALLEY IRRIGATION DISTRICT”—VALIDATION.

ACT 2291—An act to recognize and declare valid all proceedings in Happy Valley irrigation district.

History: Approved May 23, 1917. In effect July 27, 1917. Stats. 1917, p. 906.

Happy Valley irrigation district validated.

§ 1. The Happy Valley irrigation district as formed by the board of supervisors of the county of Shasta, state of California, and as now existing, is hereby recognized and declared valid and all proceedings on organization and formation are hereby approved and declared valid.

“PARADISE IRRIGATION DISTRICT”—VALIDATION.

ACT 2292—An act to recognize and declare valid the Paradise irrigation district, and all proceedings in relation thereto and to the organization thereof.

History: Approved March 20, 1917. In effect July 27, 1917. Stats. 1917, p. 13.

Paradise irrigation district validated.

§ 1. Paradise irrigation district, situate in the county of Butte, as formed by the board of supervisors of said county, and as now existing or as the boundaries thereof may hereafter be modified according to law, is hereby recognized and declared a valid irrigation district with all the powers and authority vested in irrigation districts, and all proceedings on organization and formation thereof are hereby approved and declared valid.

“STRATFORD IRRIGATION DISTRICT”—VALIDATION

ACT 2293—An act to recognize and declare valid the Stratford irrigation district, and all proceedings in relation thereto and to the organization thereof.

History: Approved March 20, 1917. In effect July 27, 1917. Stats. 1917, p. 14.

Stratford irrigation district validated.

§ 1. Stratford irrigation district, situated in the county of Kings, as formed by the board of supervisors of said county, and as now existing or as the boundaries thereof may hereafter be modified according to law, is hereby recognized and declared a valid irrigation district with all the powers and authority vested in irrigation districts, and all proceedings on organization and formation thereof are hereby approved and declared valid.

“TERRA BELLA IRRIGATION DISTRICT”—VALIDATION.

ACT 2294—An act to recognize and declare valid the Terra Bella irrigation district, and all proceedings in relation thereto and to the organization thereof.

History: Approved March 20, 1917. In effect July 27, 1917. Stats. 1917, p. 14.

Terra Bella irrigation district validated.

§ 1. Terra Bella irrigation district, situate in the county of Tulare, as formed by the board of supervisors of said county, and as now existing or as the boundaries thereof may hereafter be modified according to law, is hereby recognized and declared a valid irrigation district with all the powers and authority vested in irrigation districts, and all proceedings on organization and formation thereof are hereby approved and declared valid.

"LINDSAY-STRATHMORE IRRIGATION DISTRICT"—VALIDATION.

ACT 2294a—An act to recognize and declare valid the Lindsay-Strathmore irrigation district, and all proceedings in relation thereto and to the organization thereof.

History: Approved March 20, 1917. In effect July 27, 1917. Stats. 1917, p. 15.

Lindsay-Strathmore irrigation district validated.

§ 1. Lindsay-Strathmore irrigation district, situate in the county of Tulare, as formed by the board of supervisors of said county, and as now existing or as the boundaries thereof may hereafter be modified according to law, is hereby recognized and declared a valid irrigation district with all the powers and authority vested in irrigation districts, and all proceedings on organization and formation thereof are hereby approved and declared valid.

"BAXTER CREEK IRRIGATION DISTRICT"—VALIDATION.

ACT 2294b—An act to recognize and declare valid all proceedings in Baxter creek irrigation district.

History: Approved May 4, 1917. In effect July 27, 1917. Stats. 1917, p. 227.

Baxter creek irrigation district validated.

§ 1. The Baxter creek irrigation district as formed by the board of supervisors of the county of Lassen, state of California, and as now existing, is hereby recognized and declared valid, and all proceedings on organization and formation thereof are hereby approved and declared valid.

"PRINCETON-CODORA-GLENN IRRIGATION DISTRICT"—VALIDATION.

ACT 2294c—An act to recognize and declare valid all the proceedings in Princeton-Codora-Glenn irrigation district.

History: Approved May 4, 1917. In effect July 27, 1917. Stats. 1917, p. 228.

Princeton-Codora-Glenn irrigation district validated.

§ 1. The Princeton-Codora-Glenn irrigation district as formed by the board of supervisors of the county of Glenn, state of California, and as now existing is hereby recognized and declared valid, and all the proceedings on organization and formation are hereby approved and in all respects declared valid.

"RED ROCK CREEK IRRIGATION DISTRICT"— VALIDATION.

ACT 2294d—An act to recognize and declare valid all proceedings in Red Rock creek irrigation district.

History: Approved April 21, 1919. In effect July 22, 1919. Stats. 1919, p. 124.

Red Rock creek irrigation district validated.

§ 1. Red Rock creek irrigation district, as formed by the board of supervisors of the county of Lassen, state of California, and as now existing, is hereby recognized and declared valid, and all proceedings on organization and formation are hereby approved and declared valid.

"TRANQUILLITY IRRIGATION DISTRICT"—VALIDATION.

ACT 2294e—An act to recognize and declare valid all proceedings in Tranquillity irrigation district.

History: Approved April 21, 1919. In effect July 22, 1919. Stats. 1919, p. 124.

Tranquillity irrigation district validated.

§ 1. Tranquillity irrigation district, as formed by the board of supervisors of the county of Fresno, state of California, and as now existing, is hereby recognized and declared valid, and all proceedings on organization and formation are hereby approved and declared valid.

"FAIR OAKS IRRIGATION DISTRICT"—VALIDATION.

ACT 2294f—An act to recognize and declare valid all proceedings in Fair Oaks irrigation district.

History: Approved April 8, 1919. In effect July 22, 1919. Stats. 1919, p. 37.

Fair Oaks irrigation district validated.

§ 1. Fair Oaks irrigation district, as formed by the board of supervisors of Sacramento county, state of California, and as now existing, is hereby recognized and declared valid, and all proceedings on organization and formation are hereby approved and declared valid.

"JACINTO IRRIGATION DISTRICT"—VALIDATION.

ACT 2294g—An act to recognize and declare valid all the proceedings in the Jacinto irrigation district.

History: Approved April 4, 1919. In effect July 22, 1919. Stats. 1919, p. 32.

Jacinto irrigation district validated.

§ 1. The Jacinto irrigation district as formed by the board of supervisors of the county of Glenn, state of California, and as now existing, is hereby recognized and declared valid, and all the proceedings on organization and formation are hereby approved and in all respects declared valid.

JACKSON.

See Act 3094, note.

CHAPTER 171.**JAPANESE.**

Reference: See, generally, Tit. "Allens."

CONTENTS OF CHAPTER.

ACT 2295. JAPANESE STATISTICS.

2296. JAPANESE STATISTICS.

JAPANESE STATISTICS.

ACT 2295—An act to provide for the gathering, compiling, printing and distribution of statistics and information regarding the Japanese of the state, and making an appropriation therefor.

History: Approved March 8, 1909, Stats. 1909, p. 227.

This act provided for the gathering of statistics by the state labor commissioner and appropriated \$10,000 to carry out the purpose of the act.

JAPANESE STATISTICS.

ACT 2296—An act to aid in the carrying out of the provisions of an act entitled, "An act to provide for the gathering, compiling, printing and distribution of statistics and information regarding the Japanese of the state, and making an appropriation therefor," making it the duty of certain officers to keep certain records and furnish such statistics and information.

History: Approved March 25, 1909, Stats. 1909, p. 719.

This act required certain officers to keep certain records.

CHAPTER 172.

JEWISH ORDER OF KESHER SHEL BARSEL.

CONTENTS OF CHAPTER.

ACT 2301. CONFERRING CORPORATE POWERS.

CONFERRING CORPORATE POWERS.

ACT 2301—An act concerning ancient Jewish order of Keshet shel Barsel.

History: Approved March 21, 1868, Stats. 1867-68, p. 201.

This act conferred corporate powers on the above order.

JOHNSON GRASS.

See tit. "Agriculture."

CHAPTER 173.

JUDGES OF THE PLAINS.

References: See, generally, tits. "Animals"; "Estrays"; "Trespassing Animals."

CONTENTS OF CHAPTER.

ACT 2306. JUDGES OF THE PLAINS.

JUDGES OF THE PLAINS.

ACT 2306—An act concerning judges of the plains (jueces del campo) and defining their duties.

History: Approved April 25, 1851, Stats. 1851, p. 515. Amended March 31, 1857, Stats. 1857, p. 158; April 25, 1863, Stats. 1863, p. 497. Continued in force by the codes. See Kerr's Cyc. Penal Code, § 23; Kerr's Cyc. Political Code, § 19. Probably repealed by the county government acts. See Kerr's Cyc. Political Code, §§ 4000, et seq. See editor's note.

Editor's note: This act provided for the appointment of judges of the plains. They were required to attend rodeos of cattle and also to settle disputes as to the ownership of animals. The act was continued in force by the codes, and has never been superseded or expressly repealed. It is probable, however, that the provisions of the county government acts relating to powers of supervisors, with the general re-

pealing sections of the acts, operate as an implied repeal, by leaving no power to appoint these very useful officials of a time that is past. Their activities have left little or no mark upon the judicial records of the state, even in those which relate to the early days. They are referred to in some of the early cases on trespassing animals, estrays and animals running at large. Beyond that there is practically nothing.

CHAPTER 174.

JUDGMENTS.

Reference: Actions and suits against the state, see tit. "State."

CONTENTS OF CHAPTER.

ACT 2311. PAYMENT OF JUDGMENTS AGAINST COUNTIES AND MUNICIPALITIES.

2312. RECOVERY OF JUDGMENTS AGAINST MUNICIPALITIES OF OVER 100,000 POPULATION.

PAYMENT OF JUDGMENTS AGAINST COUNTIES AND MUNICIPALITIES.

ACT 2311—An act to provide for the payment of judgments against counties, cities, cities and counties, and towns.

History: Approved March 23, 1901, Stats. 1901, p. 794.

Judgments against counties and municipalities, how to be paid.

§ 1. All final judgments now existing or that may be obtained hereafter against any county, city and county, city, or town of the state of California, shall be paid by the treasurer of such county, city and county, or town, as hereinafter provided.

Duties of officers.

§ 2. It shall be the duty of the county clerk to file with the auditor and to furnish the board of supervisors, town trustees, or other board or body authorized by law to levy taxes, a complete list of all existing final judgments against such county, city and county, city or town, of record in his office, at least fifteen days before the day on which any tax levy must by law be made.

Same. Judgments may be paid in installments.

§ 3. It shall be the duty of the auditor to examine and audit the final judgments so reported by the county clerk, and to certify the amount of such final judgments to the treasurer within five (5) days from the day on which such list of final judgments is filed with him. Thereupon, the board of supervisors, city council, town trustees, or other board of officers, as the case may be, having authority to levy taxes upon the taxable property of such county, city and county, city, or town, must include in the tax levy for the next fiscal year a rate or sum sufficient to pay all final judgments existing against such county, city and county, city, or town. The omission to include the amount of any existing final judgment in the tax levy for any year, shall not of itself invalidate the tax levy as made, but such omission or omissions must be included in the next tax levy; provided, that the board of supervisors or other board or officers having authority to levy taxes may provide for the payment of such final judgments when so audited by including in the tax levy for the next fiscal year an aliquot part or fraction of the amount of such judgments, and thereupon the treasurer shall pay to each judgment creditor a like aliquot part or fraction of the amount of the judgment of the creditor, and thereafter a like aliquot part or fraction of the amount of such judgments shall be levied and paid each successive year until the whole thereof shall be fully paid; but such fractional levy and payments shall in no case be less than one-tenth (1/10) of the whole amount of such judgments.

§ 4. This act shall take effect immediately.

1. Scope of act—Not construed as authorizing demand which would be violative of constitution.—The act of March 23, 1901 (Stats. 1901, p. 794), is not available for the enforcement of a demand against a municipality against the revenue and income of a fiscal year subsequent to that in which the liability on which the demand is based was incurred, and to hold otherwise would be to effect a violation of the provisions of section 18, article XI, of the constitution.—*Arthur v. City of Petaluma*, 175 Cal. 216, 224, 165 Pac. 698.

See, also, *San Joaquin L. & P. Co. v. City of Madera*, 175 Cal. 229, 165 Pac. 701.

2. Duty of city council—Inclusion of demand in tax levy.—The duty of the city council of a municipality under this act, to include the amount of a judgment against the city in the tax levy, depends upon the furnishing by the clerk, to the council, fifteen days before the day requires the levy to be made, of a report of the judgment, and if this is not done, and the report is not received until the day of the levy, provision must be made in the next year's levy.—*Arthur v. Horwege*, 28 Cal. App. 738, 153 Pac. 980.

RECOVERY OF JUDGMENTS AGAINST MUNICIPALITIES OF OVER ONE HUNDRED THOUSAND POPULATION.

ACT 2312—An act prescribing how judgments which may be recovered against any city and county of over one hundred thousand population shall be paid.

History: Approved March 26, 1895, Stats. 1895, p. 163.

Judgments against city and county of over 100,000 population to be paid out of the general fund.

§ 1. All existing judgments against any city and county of over one hundred thousand population shall be paid by the treasurer of such city and county, out of the or

any general fund thereof, after the same shall have been audited by the auditor, auditing officer, board, or other auditing officer or officers, and it is hereby made the duty of the board of supervisors and mayor of such city and county to include in the tax levy for any fiscal year a sum sufficient to pay existing judgments.

Time of taking effect.

§ 2. This act shall take effect and be in force immediately after its passage.

Apparently restricted to existing judgments.

JURORS.

See tit. "Fees."

CHAPTER 175.

JUSTICES' CLERK.

CONTENTS OF CHAPTER.

ACT 2324. JUSTICES' CLERK IN CITIES AND COUNTIES OF OVER 100,000 POPULATION.

2325. CLERK IN TOWNSHIP JUSTICE'S COURT.

JUSTICES' CLERK IN CITIES AND COUNTIES OF OVER 100,000 POPULATION.

ACT 2324—An act relating to the justices' courts in cities and counties of more than two hundred thousand population, and providing for the appointment of a justices' clerk and his assistants, prescribing their duties and fixing their compensation.

History: Approved March 25, 1903, Stats. 1903, p. 477.

Appointment of justices' clerk.

§ 1. The supervisors in every city and county of more than two hundred thousand population shall appoint a justices' clerk upon the written nomination and recommendation of the justices of the peace of said city and county or a majority of them, who shall hold office for four years and until his successor is in like manner appointed and qualified.

Oath of office and bond.

§ 2. Said justices' clerk shall take the constitutional oath of office, and give bond in the sum of ten thousand dollars for the faithful discharge of the duties of his office, and in the same manner as is or may be required of other officers of said city and county. A new or additional bond may be required by the supervisors of such city and county, whenever they may deem it necessary.

Appointment of assistants.

§ 3. The justices' clerk shall have authority to appoint one cashier, one chief deputy clerk, two deputy clerks and one messenger, for whose acts he shall be responsible on his official bond. The said appointees to hold office during the pleasure of said justices' clerk.

Authority of assistants.

§ 4. Said chief deputy clerk and said deputy clerks shall have authority to administer oaths, and take and certify affidavits in any action, suit or proceeding in the justices' courts in such city and county and generally to perform all acts which the justices' clerk himself might perform.

Salaries.

§ 5. Said justices' clerk and his appointees shall receive for their official services the following salaries and no other or further compensation, payable out of the treasury of such city and county, after being allowed and audited as other similar demands

are required by law to be allowed and audited: The said justices' clerk the sum of three thousand dollars per annum; the cashier and the chief deputy clerk each the sum of eighteen hundred dollars per annum; the deputy clerks fifteen hundred dollars per annum each; and the messenger twelve hundred dollars per annum.

Office hours.

§ 6. The said justices, justices' clerk and his said appointees shall be in attendance at their respective offices for the dispatch of official business, daily, except Sundays and holidays, from the hour of nine o'clock a. m. until five o'clock p. m.

Duty of justices' clerk.

§ 7. In all actions, suits, and proceedings commenced in the justices' court in such city and county, or before any of the justices of the peace thereof, the original process shall be returnable, and the parties summoned required to appear before one of the justices of the peace, to be designated by the justices' clerk, upon issuing such process.

To issue legal process in all kinds of actions.

§ 8. All legal process of every kind in actions, suits or proceedings in said justices' court shall be issued by the said justices' clerk.

Conflicting acts repealed.

§ 9. All other acts so far as they conflict with this act are hereby repealed.

§ 10. This act shall take effect immediately.

Editor's note: This act seems to have superseded the code provision on the same subject. See Kerr's Cyc. Code Civ. Proc., § 86. That section of the code was amended in 1915 (Stats. 1915, p. 58), which also amended § 85, so as to refer to cities and counties of over 400,000 population, so that,

since § 86 relates to justices' clerks in cities and counties mentioned in § 85, the code provides for justices' clerks in cities and counties of over 400,000 population, while the act does the same, in substantially the same phraseology, for cities and counties of more than 100,000.

CLERK IN TOWNSHIP JUSTICE'S COURT.

ACT 2325—An act to provide for the employment of a clerk by certain justices of the peace and to pay the salaries of such clerk.

History: Approved April 15, 1909, Stats. 1909, p. 906.

Clerk to township justice clerk.

§ 1. In cities of this state, where there are two justices of the peace, one of whom is the city justice of said city, and who is paid a salary and who is provided with a clerk and courtroom by said city and the other justice known as the township justice and whose compensation in civil cases is by fee and who is paid a salary by the county in lieu of fees for all criminal cases that the district attorney may try or examine in said township justice's court, the justice of the peace in and for said township justices' court is hereby entitled to and may appoint a clerk subject to the approval of the board of supervisors of the county to properly keep the records of his court and to do and perform such other work as the justice of said court may assign to such clerk.

Salary.

§ 2. The clerk of said township justice's court shall be paid an annual salary of twelve hundred dollars, to be paid monthly by the county in which said justice's court shall be located; said clerk's salary shall be audited, allowed and paid as the salaries of county officers are audited, allowed and paid.

JUSTICES OF THE PEACE.

See Kerr's Cyc. Political Code, § 4239.

Township justices' clerks in townships of 250,000 to 400,000 inhabitants.—See Kerr's Cyc. Code Civil Procedure, §§ 101, et seq.

CHAPTER 176.

JUTE GOODS.

Reference: See tits. "Advertisement"; "Insurance"; "Prisons"; Act 3608.

CONTENTS OF CHAPTER.

ACT 2331. SALE PRICE OF JUTE GOODS.

2332. INSURANCE OF JUTE GOODS.

2333. PERMANENT FUND FOR PURCHASE OF JUTE.

SALE PRICE OF JUTE GOODS.

ACT 2331—An act authorizing the state board of prison directors to fix the price, terms and conditions of sale at which jute bags should be sold for the state, providing for the prosecution and punishment for offenses under the same, and repealing an act entitled, "An act fixing the price, terms and conditions of sale at which jute goods shall be sold by the state, and providing for prosecution and punishment for offenses under the same," approved June 16, 1913, and all acts or parts of acts in conflict herewith.

History: Approved January 30, 1915. In effect immediately. Stats. 1915, p. 13. Prior act of February 27, 1893, Stats. 1893, p. 54. Amended March 20, 1905, Stats. 1905, p. 532. Repealed by the act of March 22, 1907, Stats. 1907, p. 857, which was amended March 10, 1909, Stats. 1909, p. 280, and repealed by the act of June 16, 1913, Stats. 1913, p. 1011, which was repealed by the present act.

Sale of jute goods, prices, etc.

§ 1. The state board of prison directors are authorized and empowered to adopt rules and regulations of the sale of jute goods, but such rules and regulations, before they become effective, shall be approved by a majority of the state board of control. The state board of prison directors shall annually, in the month of January of each year fix the price, for the sale of jute bags, and give public notice of the same, for at least ten days in at least four newspapers of general circulation printed and published as follows, to wit: one in the city and county of San Francisco, one in the San Joaquin valley, one in the Salinas valley, and one in the Sacramento valley. Until the first day of April of each year, jute bags shall be sold only to consumers thereof, but after said date, if a surplus of said jute bags remain unsold, they may be sold to any one in such quantities and at such prices as the board of prison directors in their discretion may deem proper.

Orders accompanied by affidavit.

§ 2. All orders for jute bags filed with the board of prison directors prior to the first day of April of each year, shall be accompanied by an affidavit setting forth the name, residence, post office address and occupation of the applicant; that the amount of goods contained in the order are for the applicant's individual and personal use, and that he has not contracted for, nor agreed to contract for the sale of any portion thereof to any person or persons whatsoever. Said affidavit shall be subscribed and sworn to before a notary public, justice of the peace, or other officer authorized to administer oaths.

Penalty for false affidavit.

§ 3. Any person who shall falsely or fraudulently make such affidavit, or who shall falsely or fraudulently procure jute bags under the provisions of this act, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than two hundred dollars.

Public record.

§ 4. The board of prison directors shall keep at the San Quentin prison a book for public inspection, in which shall be entered the number of jute bags, the amount of jute goods manufactured each year, and also the name of each purchaser, his post office address, his occupation, number of jute bags or jute goods purchased by him, and the price paid by him therefor and the date of sale and the place to which shipment is made.

Act 1913 repealed.

§ 5. An act entitled, "An act fixing the price, terms and conditions of sale at which jute goods shall be sold by the state, and providing for prosecution and punishment for offense under the same"; approved June 16, 1913, and all other acts and parts of acts in conflict with this act are hereby repealed.

Urgency.

§ 6. This act is hereby declared to be an urgency measure within the meaning of section one of article four of the constitution of the state of California and shall take effect immediately. The following is a statement of facts constituting such urgency: Since the fixing of the present price of jute goods manufactured in the state prison, the market price has fallen on account of financial conditions incident to the European war, and the state has been, now is, and, until the taking effect of this act, will be unable so to change the price of said goods as to be able [to] sell or dispose of any portion thereof. The state now has in stock over two hundred fifty thousand dollars worth of such jute goods, which it is the purpose and effect of this act to enable the state, acting through its board of prison directors, to sell, in order that the moneys now invested in said goods may be rendered available for the use and support of the state prison.

INSURANCE OF JUTE GOODS.

ACT 2332—An act to authorize and empower the state board of prison directors to insure jute and jute goods against either fire or marine loss and to pay the cost of such insurance from the revolving fund for the purchase of jute.

Title as amended:

"An act to authorize and empower the state board of prison directors to insure jute, jute goods, and other prison made goods and materials for the manufacture of the same, against either fire or marine loss and to pay the cost of such insurance from the revolving fund for the purchase of jute and from the manufacturing revolving fund." [Amendment of April 30, 1919. In effect July 22, 1919. Stats. 1919, p. 175.]

History: Approved March 10, 1909, Stats. 1909, p. 281. Entire act including title amended April 30, 1919. In effect July 22, 1919. Stats. 1919, p. 175.

Act as amended:

Insurance of jute goods.

§ 1. The state board of prison directors is hereby authorized and empowered to insure from time to time against fire or marine loss, all jute and jute goods owned by the state, in such amounts as it may deem proper. The cost of such insurance shall be paid from the revolving fund for the purchase of jute.

Insurance of other prison made goods.

§ 2. The state board of prison directors is hereby authorized to insure from time to time against fire or marine loss, all furniture, shoes, clothing or other articles manufactured at San Quentin Prison and the materials from which the same are made, in such amounts as it may deem proper. The cost of such insurance shall be paid from the manufacturing revolving fund.

PERMANENT FUND FOR PURCHASE OF JUTE.

ACT 2333—Appropriation for the establishment of a permanent fund for the purchase of jute to be manufactured at the state prison at San Quentin.

History: Approved March 9, 1885, Stats. 1885, p. 53. Amended March 16, 1889, Stats. 1889, p. 228; February 23, 1911, Stats. 1911, p. 73; March 24, 1911, Stats. 1911, p. 486. The act of March 8, 1907, Stats. 1907, p. 162, appropriated \$100,000 for the purpose indicated.

Act as amended February 23, 1911:

Appropriation: Purchase of jute. "Revolving fund."

§ 1. The sum of two hundred thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated, to provide and maintain a permanent revolving fund for the purchase of jute for the state prisons. All moneys taken therefrom to be used exclusively in payment for jute to be used in manufacturing in said state prisons; and so much of the money received from the sale of any goods manufactured from said jute shall be returned to the said revolving fund, so that the fund shall contain two hundred thousand dollars before any of the proceeds from the sale of said manufactured goods are used for any other purpose than the purchase of jute. Whenever said "revolving fund" shall be replenished and there shall be a surplus, or balance, over the amount appropriated, such surplus, or balance, shall be paid, not less frequently than semi-annually, into the state treasury to the credit of the fund to be known as "the prison fund of San Quentin prison" (which "fund" is hereby created), for the use and support of San Quentin prison and of the trades and industries conducted therein. [Amendment approved February 23, 1911, Stats. 1911, p. 73.]

§ 2. This act shall take effect immediately.

Act as amended March 24, 1911:

Appropriation: Revolving fund, San Quentin.

§ 1. The sum of two hundred thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated, to provide and maintain a permanent revolving fund for the purchase of jute for the state prison. All moneys taken therefrom to be used exclusively in payment for jute to be used in manufacturing in said state prison; and so much of the money received from the sale of any goods manufactured from said jute shall be returned to the said revolving fund, so that the fund shall contain two hundred thousand dollars before any of the proceeds from the sale of said manufactured goods are used for any other purpose than the purchase of jute. Whenever said "revolving fund" shall be replenished and there shall be a surplus or balance over the amount appropriated, such surplus or balance shall be paid, not less frequently than semi-annually, into the state treasury to the credit of the fund to be known as "the prison fund of San Quentin prison" (which "fund" is hereby created), for the use and support of San Quentin prison and of the trades and industries conducted therein. [Amendment approved March 24, 1911, Stats. 1911, p. 486.]

CHAPTER 177.
JUVENILE COURT.

CONTENTS OF CHAPTER.
ACT 2341. JUVENILE COURT LAW.

JUVENILE COURT LAW OF 1915.

ACT 2341—An act to be known as the juvenile court law, and concerning persons under the age of twenty-one years; and in certain cases providing for their care, custody and maintenance; providing for the probationary treatment of such persons, and for the commitment of such persons to the Whittier State School and the Preston School of Industry, the California School for Girls, and other institutions; establishing probation officers and a probation committee to deal with such persons and fixing the salary thereof; providing for the establishment of detention homes for such persons; fixing the method of procedure and treatment or commitment where crimes have been committed by such persons; providing for the punishment of those guilty of offenses with reference to such persons, and defining such crimes; and repealing the juvenile court law approved March 8, 1909, as amended by an act approved April 5, 1911, and as amended by an act approved June 16, 1913, and all amendments thereof and all acts or parts of acts inconsistent herewith.

History: Approved June 5, 1915. In effect August 8, 1915. Stats. 1915, p. 1225. Amended (1) May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1002. (2) May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1022. (3) May 11, 1919. In effect July 22, 1919. Stats. 1919, p. 475. (4) May 18, 1919. In effect July 22, 1919. Stats. 1919, p. 755. (5) May 27, 1919. In effect July 22, 1919. Stats. 1919, p. 1298. Prior act of February 26, 1903, Stats. 1903, p. 44. Amended (1) March 22, 1905, Stats. 1905, p. 806; (2) March 21, 1907, Stats. 1907, p. 777. Repealed by the act of March 8, 1909, Stats. 1909, p. 213, which was amended (1) February 17, 1911, Stats. 1911, p. 83; (2) as to entire act, April 5, 1911, Stats. 1911, p. 658; (3) as to entire act June 16, 1913, Stats. 1913, p. 1285; and repealed by the present act. The acts of 1909 (Stats. 1909, p. 213), 1911 (Stats. 1911, p. 673), and 1913 (Stats. 1913, p. 1285), contained saving clauses, providing that orders and judgments made under the act of 1903 should continue in full force and effect.

"Juvenile court law."

§ 1. This act shall be known as the "juvenile court law" and shall apply to any person under the age of twenty-one years:

Persons affected.

1. Who is found begging, receiving or gathering alms, or who is found in any street, road or public place for the purpose of so doing, whether actually begging or doing so under the pretext of selling or offering for sale any article or articles, or of singing or playing on any musical instrument, or of giving any public entertainment or accompanying or being used in aid of any person so doing; or

2. Who has no parent or guardian; or who has no parent or guardian willing to exercise or capable of exercising proper parental control; or who has no parent or guardian actually exercising such proper parental control and who is in need of such control; or

3. Who, being a minor, is destitute, or whose father, said person being a minor, does not or can not provide for said person the necessities of life, and who has no other means, through his mother or otherwise, of obtaining said necessities.

4. Whose home, said person being a minor, by reason of neglect, cruelty or depravity on the part of his parents or either of them, or on the part of his guardian, or on the

part of the person in whose custody or care he may be, is an unfit place for said person; or

5. Who is found wandering and either has no home or no settled place of abode or no visible means of subsistence or no proper guardianship; or

6. Who is a vagrant or who frequents the company of criminals, vagrants or prostitutes, or persons so reputed; or who is in any house of prostitution or assignation; or

7. Who habitually visits without parent or guardian any public billiard room or public pool room, or any saloon or any place where any spirituous, vinous or malt liquors are sold, bartered, exchanged or given away; or

8. Who habitually uses intoxicating liquors or habitually smokes cigarettes, or habitually uses opium, cocaine, morphine or other similar drug without the direction of a competent physician; or

9. Who, being a minor, persistently or habitually refuses to obey the reasonable and proper orders or directions of, or who is beyond the control of, his parent, parents, guardian or custodian; or

10. Who is an habitual truant from school within meaning of any law of this state; or

11. Who is leading, or from any cause is in danger of leading, an idle, dissolute, lewd or immoral life; or

12. Who is insane, or feeble-minded, or so far mentally deficient that the parents or guardian are unable to exercise proper parental control over said person, or whose mind is so far deranged or impaired as to endanger the health, person, or property of himself or others.

13. Who violates any law of this state or any ordinance of any town, city, county, or city and county of this state defining crime.

14. Who shall be declared free from the custody and control of his parents, as more fully defined in section fifteen of this act.

Persons judged wards of court.

§ 2. When any person under the age of twenty-one years, alleged to come within the provisions of any of the subdivisions one to thirteen inclusive of section one of this act, shall be found by said court or judge to come within the terms of any of said subdivisions as alleged, the court shall adjudge said person to be a ward of the juvenile court and shall in its judgment make a finding of the facts upon which the court exercises its jurisdiction over such person as a ward of the juvenile court; and the court shall thereupon make such order or orders, in accordance with said findings, as may be necessary for the care of said ward of the juvenile court; provided, however, that no merely unfortunate person shall be so committed or placed as to be brought into direct contact or personal association with wayward persons of evil influence. All commitment and recommitment orders shall be in writing, and shall be signed by the judge of the juvenile court.

Any person may file petition.

§ 3. Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing therein, or, in the case of any alleged violation within said county of any law or ordinance, that there then was within said county, a person coming within the provisions of section one or section fifteen of this act, and praying that the superior court deal with such person as provided in this act. Such petition shall be verified, and shall contain a statement of the facts bringing said person within the provisions of either of said sections, and the names and residences, if known to said petitioner, of the parent or parents or guardian of said person, or if there be neither parent nor guardian residing within the county, or in the case of a person coming within the provisions of subdivision fourteen of section one or of section fifteen, if there be no parent residing within the state or if his place of residence be

not known to said petitioner, then the name and residence, if known to said petitioner, of some relative of said person, residing within said county, or in the case of a person coming within the provisions of subdivision fourteen of section one or of section fifteen, then the name of some relative residing within said state. Either the judge of said court or the clerk thereof may set the time for the hearing of said petition.

No filing fee.

§ 3a. There shall be no fee for filing such petition mentioned in the foregoing section. Nor shall any fees be charged by any officer for his services in filing, or serving papers, nor for the performance of any duty enjoined upon him by this act, except where the sheriff transports a person to a state institution.

Probation officer notified.

§ 3b. It shall be the duty of the clerk of any court before which any person alleged to come within the provisions of sections one or fifteen of this act is brought, to notify the probation officer of the county thereof immediately upon the filing of the petition.

Citation to appear.

§ 4. Upon the filing of the petition provided for in section three hereof, a citation shall issue, requiring the person or persons having the custody or control of the person alleged to come within the provisions of any of subdivisions one to thirteen inclusive of section one of this act, to appear with said person so alleged at the time and place stated in the citation. Service of said citation must be made at least twenty-four hours before the time stated therein for such appearance. The parents or guardian of said person so alleged, if residing within the county in which the court sits, and if their places of residence be known to the petitioner, or if there be neither parents nor guardian so residing, or if their places of residence be not known to the petitioner, then some relative of said person so alleged, if any there be residing within said county, and if his residence and relationship to said person so alleged be known to the petitioner, shall be notified of the proceeding by service of citation requiring him or them to appear at the time and place stated in said citation. Service of citation may be waived by any person by a voluntary appearance entered in the minutes of the court or by a written waiver of service of citation filed with the clerk of the court at or prior to the hearing. In any case, the judge presiding in the juvenile court may appoint some suitable person to act in behalf of said person so alleged, and may order such further notice of the proceedings to be given as he may deem proper.

Failure to appear.

§ 4a. If any person cited, as herein provided, shall fail, without reasonable excuse, to appear and abide by the order of the court or to bring said person so alleged, if so required in the citation, such failure shall constitute a contempt of said court, and may be punished as provided for in other cases of contempt of court.

When citation cannot be served.

§ 4b. In case such citation cannot be served, or the party served fails to obey the same, or in any case in which it shall be made to appear to the court that said citation will probably be ineffective, a warrant of arrest shall issue on the order of the court, either against the parent or guardian, or the person having the custody of said person so alleged, or with whom the said person so alleged may be, or against the said person so alleged himself, or any or all said persons; or if there be no person to be served with citation, as above provided, a warrant of arrest may be issued immediately against the said person so alleged. On the return of the citation or other process, or as soon thereafter as possible, the court shall proceed to hear and dispose of the case in a summary manner. Until the final disposition of any case, said person so alleged may

be retained by the person having charge of said person, or may be kept, upon the order of the court, in some suitable place, provided by the county, or city and county, or may be held otherwise, as the court may direct.

Prosecution under general law.

§ 4c. If upon the hearing, or at any time thereafter, said court shall determine that any person alleged to come within the provisions of subdivision thirteen of section one of this act, is not a fit and proper subject to be dealt with under the provisions of this act, said court may dismiss the petition therein, and direct that said person be prosecuted under the general law.

Persons under eighteen.

§ 4d. No person under the age of eighteen years at the time of the commission of an alleged offense or crime shall be prosecuted for crime until the matter has first been submitted to the juvenile court by petition as hereinbefore provided, or by certificate of the lower court as hereinafter provided.

Order is not conviction.

§ 5. In no case shall an order adjudging a person to be a ward of the juvenile court be deemed to be a conviction of crime.

Persons under eighteen not to be tried before justice, etc.

§ 6. Whenever a deposition or complaint shall be filed in any court other than a superior court, charging a person with a crime and it shall be suggested or shall appear to the judge, justice or recorder before whom such person is brought that the person charged was at the date the offense is alleged to have been committed under the age of eighteen years, said judge, justice or recorder, shall immediately suspend all proceedings against such person on said charge and examine into the age of such person, and if from such examination, it shall appear to the satisfaction of said judge, justice or recorder, that such person was at the date the offense is alleged to have been committed under the age of eighteen years, he shall forthwith certify to the juvenile court of his county (a) that said person (naming him) is charged with such crime (briefly stating its nature); (b) that said person appears to be under the age of eighteen years, giving date of birth when known, and (c) that proceedings have been suspended against such person on such charge by reason of his age, with the date of such suspension; and immediately thereupon all proceedings against the said person on said charge shall be suspended until said juvenile court shall issue its mandate, as hereinafter provided, directing the court before which said charge was made to proceed with the examination into or trial thereof, and the court so suspending its proceedings shall forthwith cause such person to be taken before the juvenile court of the county for consideration and proceedings under this act. To such certification said judge, justice or recorder, or the clerk of said court shall attach a certified copy of said original deposition or complaint, and when such person shall be brought before the judge of the juvenile court, said judge shall direct the probation officer to file a petition as provided in section three of this act, except that said petition need not be verified; and said probation officer shall forthwith comply with such directions. Pending such hearing said judge may admit said person to bail or otherwise provide for his temporary custody in any manner provided herein for the care of a ward of the juvenile court.

If juvenile court decides person was over eighteen. In case of persons under twenty-one.

The proceedings thereafter shall be the same as in the case of a verified petition; provided, however, that if said judge of the juvenile court shall after such investigation decide that the person was at the time said offense was alleged to have been committed of the age of eighteen years or more, such determination shall be conclusive and

he shall immediately issue his mandate directing the court before which such charge is pending to proceed therewith, and upon receipt of such mandate said court shall proceed with the examination or trial of said charge as though no suspension thereof had taken place; except that if said judge of the juvenile court shall find that the person so charged is under the age of twenty-one years, and a fit subject for consideration under the provisions of this act, he may make such order or orders hereunder as he may deem best in relation to such person; but if such judge shall at any time conclude that such person is not a fit subject for further consideration under this act, he may sit as a committing magistrate and hold a preliminary examination if such person is charged with a felony, or he may remand such person to the court in which said person is charged with said offense for further proceedings on said charge, and upon receipt of the mandate of said juvenile court, or the judge thereof, the court before which said charge is then pending shall be vested with full authority to proceed with the examination or trial thereof.

Statutes of limitations suspended.

All statutes of limitations relating to the charge so pending against such person shall be suspended as to said person and charge from the issuance by said judge, justice or recorder of his certificate hereinbefore provided for until said juvenile court, or judge thereof, shall issue its mandate remanding such person for further proceedings as aforesaid; and all statutes of limitation relating to any charge, made in any court, against any person under the age of twenty-one years, shall be suspended as to such charge and person whenever, and as long as, such person is before the juvenile court for consideration under the provisions of this act, or is detained by virtue of any commitment issued hereunder and unrevoked; but if said person shall be discharged by the juvenile court as reformed, such order of discharge shall constitute a bar to any further proceedings in any court against said person upon said charge.

Persons under twenty-one charged with felony.

§ 7. Whenever any person over the age of eighteen years and under the age of twenty-one years is accused of a felony or misdemeanor by indictment or information therefor in the superior court of the county, wherein the crime was committed, the judge may in his discretion, with the consent of the accused, or upon his request, arrest said proceeding at the time of arraignment or at any time previous to the impanelment of a jury, except where the crime charged is a capital offense, or any attempt to commit a capital offense, and may proceed to investigate the charge against the defendant, and all the facts and circumstances necessary to determine the proper disposition to be made of said person, and shall determine whether such person shall be dealt with as a ward of the juvenile court under the provisions of this act. If the court is satisfied upon such investigation that said person should be declared a ward of the juvenile court and should be dealt with under this act, it may make such order or orders as herein provided for the disposition of such wards. If such person thereafter proves not to be amenable to the discipline of the state school to which he may be committed, and the trustees thereof shall determine that said person should be committed to a state penitentiary, such person shall be returned to the committing court, and thereafter proceedings shall be had upon the indictment or information commencing at the point at which proceedings were arrested; and said person shall be tried for the offense alleged in the information, and if convicted shall be sent to the penitentiary for such time as the court may determine or otherwise dealt with in accordance with the law for dealing with persons convicted of a felony. If no request is made by the defendant for proceedings under this statute, or if the defendant desires trial by jury, or if the judge declines to consent to the application of the defendant for proceedings under this stat-

ute, said cause shall proceed in the ordinary manner up to the verdict of guilty or not guilty, as the case may be.

May be committed to state schools. If person proves incorrigible.

If said person is convicted, the court may thereafter receive such evidence as may be offered, touching the question as to whether or not said person should be dealt with as a ward of the juvenile court in the manner hereinbefore provided in the case of the application and consent of the accused before trial, and may make such order of probation or commitment to said state schools, and may from time to time modify said probation orders, as is herein provided in the case of persons adjudged wards of the juvenile court. If such person during the period of his commitment to said state institution, proves to be incorrigible or not amenable to the discipline of such institution, and it shall be deemed advisable in the judgment of the trustees of such institution that said person be sent to a state prison, then said person shall be returned to the superior court in which the verdict was rendered, for sentence, and thereupon the court shall pronounce judgment.

Period of commitment and place. Preston and Whittier.

§ 8. When any person alleged to come within the provisions of any of subdivisions one to thirteen inclusive of section one of this act shall be adjudged by said court or judge to come within the terms of any of said subdivisions, and adjudged to be a ward of the juvenile court, the court may make an order committing said person for such time as the court may deem fit, but not beyond the time when such ward of the juvenile court shall reach the age of twenty-one years, either (a) to the home and care of some reputable person of good moral character, or (b) to the care of some association, society or corporation embracing within its objects the purpose of caring for or obtaining homes for such persons, willing and able to receive and care for said ward, or (c) to the care of the probation officer, to be boarded out or placed in some suitable family home, in case provision is made by voluntary contribution, or otherwise, for the payment of the board of said ward until suitable provision may be made for said ward in a home without such payment, said ward to be subject to the supervision of the probation officer and the further order of the court; or (d) on probation to the care of the probation officer, said ward to remain in the home of said ward, or in any other fit home in which the court may order the probation officer to place said ward, subject to the visitation of the probation officer, said ward to report to the probation officer as often as may be required, and to be subject to be returned to the court for further proceedings whenever such action may appear necessary or desirable; or (e) the court may, if said ward of the juvenile court be a boy, commit him to the Preston School of Industry, or to the Whittier State School, during his minority; provided, that no boy under the age of sixteen years shall be committed to the Preston School of Industry, nor any boy over the age of sixteen years to the Whittier State School, or if a girl, commit her to the California School for Girls, until twenty-one years of age; or may commit such person to any other state or county institution that is now established or may hereafter be established for the purpose of caring for and training persons that come within the provision of this act; provided, however, that before conveying any such person to any such institution it shall be ascertained from the superintendent thereof whether such person can be received; provided, however, that such commitment under this act to either the Preston School of Industry or the Whittier State School shall permit the transfer of any such boy from one institution to the other upon the agreement thereto by the superintendents of such institutions.

Court may admonish and dismiss.

When any person alleged to come within the provisions of any of subdivisions one to thirteen inclusive of section one of this act shall be found by said court to come within

said provisions, said court may at its discretion admonish said person and dismiss said petition.

Wards under eight or having contagious disease.

No ward who is under the age of eight years and no ward who is suffering from any contagious, infectious, or other disease which would probably endanger the lives or health of the other inmates of said state schools shall be committed thereto. No person under the age of fourteen years at the time of the commission of any offense with which he may be charged shall ever be sent to a state prison unless he has first been committed to the Whittier State School, or the Preston School of Industry, and has there proved to be incorrigible or not amenable to the discipline of said school. No ward shall be committed to said state schools unless the judge of said court shall be fully satisfied that the mental and physical condition and qualifications of said ward are such as to render it probable that such ward will be benefited by the reformatory educational discipline of such schools.

History of ward.

Accompanying the commitment papers, the court must send to the superintendent of the state institution to which said person is committed a summary of all the facts in the possession of the court, covering the history of the ward committed, including a statement of the mental and physical condition of said ward.

[Order may be modified.] Parole system not affected.

§ 9. Any order made by the court in case of any person subject to the jurisdiction of the court under the provisions of any of subdivisions one to thirteen inclusive of section one of this act may at any time be changed, modified or set aside as to the judge may seem meet and proper; provided, however, that nothing in this act contained shall be deemed to interfere with the system of parole and discharge that is now or may hereafter be provided by law, or by rule of the board of trustees of the Whittier State School, the Preston School of Industry or the California School for Girls, or any similar state institution or institutions, respectively, for the parole and discharge of wards of the juvenile court committed to the said schools or to any similar state institutions hereafter created, or with the management of the said schools, save that the court committing a ward to any of said schools may thereafter change, modify or set aside said order of commitment upon ten days' notice of the hearing of the application therefor being served by United States mail upon the superintendent of the said school to which said person has previously been committed, and providing that the court shall not then change, modify or set aside said order without due consideration of the effect thereof upon the discipline and parole system of said school or institution.

Notice to probation officer.

§ 9a. No order of court or modification thereof shall be made in any juvenile court proceedings concerning any ward of the juvenile court either in chambers, or otherwise, without notice of the application therefor having first been given by the judge or the clerk of said court to the probation officer.

Taking ward from parent.

§ 9b. No ward of the juvenile court as defined in this act shall be taken from the custody of his parent or legal guardian, without the consent of such parent or guardian unless the court shall find such parent or guardian to be incapable of providing or to have failed or neglected to provide proper maintenance, training and education for said person; or unless said person has been tried on probation in said custody and has failed to reform, or unless said person has been convicted of crime by a jury, or unless the court shall find that the welfare of said person requires that his custody be taken from said parent or guardian.

Incorrigible person returned to court.

§ 10. Should it develop, either at the time of their presentation, or after having become an inmate thereof, that any person, who has been committed to either of such institutions is an improper person to be there retained or so incorrigible or so incapable of reformation under the discipline of the school to which such person may be committed as to render his or her retention detrimental to the interests of the school, the superintendent may, with the approval of the board of trustees of such institution, return such person to the committing court. And in the event of such return, the transportation of such person shall be made in the same manner, and the compensation therefor, if any, shall be paid as is provided for in the execution of an order of commitment to such institution.

Judge to sit as committing magistrate.

When any ward of the juvenile court under subdivision thirteen of section one of this act shall have been accused of a felony and no indictment or information shall have been filed, and said ward shall have been committed to either of said schools and shall there prove to be incorrigible or not amenable to the discipline of the said school, and shall be returned to the custody of the juvenile court, which in such case the trustees of said school are hereby authorized to do, it shall be the duty of the judge of said court to sit as a committing magistrate and hold the preliminary examination of such person, and if upon said hearing he shall determine that there is probable cause to believe that the said person has committed the offense charged in the petition theretofore filed in said court, he shall hold such person to answer to the superior court, and thereupon the usual proceedings shall be had for the trial of said case in the superior court after the filing of the information in pursuance to said order of said judge sitting as a committing magistrate, and said person shall be tried by court and jury in the usual manner for the trial of a felony.

Support of ward.

§ 11. Any order providing for the care and custody of a ward of the juvenile court may provide that the expense of support and maintenance of said ward shall be paid by the parent, parents, guardian of said ward or other person liable therefor, after citation thereto, or from the earnings, property or estate of said ward, and in such case shall state the amount to be so paid. If it is found, however, that the parent, parents, guardian of said ward, or other person liable therefor, are unable to pay or that the earnings, property, or estate, of said ward is insufficient to pay the whole expense of support and maintenance of said ward, the court may direct such additional amount as may be necessary for the maintenance and support of said ward to be paid from the county treasury of the county for the support and maintenance of said ward, the amount so ordered to be paid from the treasury of said county not to exceed, in the case of any one ward, the sum of twenty dollars in any one month. No order for payment shall be made in a sum in excess of the actual cost of supporting and maintaining said ward. No order for the payment of all or part of the expense of support and maintenance of a ward of the juvenile court from the county treasury shall be effective for more than six months, and upon said original and all subsequent hearings the case shall be continued on the calendar, but in no instance to exceed six months.

Paid to probation officer.

The judge of the juvenile court may provide that the amount, or any part of the amount, so paid by parents, parent, guardian or other person liable therefor or from the earnings, property or estate of said ward, shall be paid to the probation officer, to be by him paid as the court shall direct, first, to reimburse the person, association or institution that under court order is caring for and maintaining said ward and after such

reimbursement to reimburse the county. For such purpose said probation officer shall keep suitable books and accounts and shall give and keep suitable receipts and vouchers, and if such funds shall be by said probation officer kept in a bank, said bank shall be designated by the judge of said court. The auditor of said county annually in the month of January shall audit such books and accounts and shall make a report thereon to the judge of said court and to the supervisors of such county prior to the thirty-first day of said month of January.

Extent of parents' control.

In all cases the court may determine whether or not the parent, parents, or guardian shall exercise any control of said ward and shall define the extent thereof. Any disobedience or interference with the custody and control of said ward shall constitute a contempt of court.

Duty of probation officer.

It shall be the duty of the probation officer to see that such parent, guardian, or other person liable therefor, comply with such orders, or upon three months failure to make such payment to report such failure to said court. The court may thereafter set aside, change or modify any order herein provided for. [Amendment of May 9, 1919. In effect July 22, 1919. Stats. 1919, p. 476.]

Jurisdiction retained until ward is twenty-one.

§ 12. The court shall retain the jurisdiction of any person who is found to be a ward of the juvenile court until such ward attains his majority, or if a girl, until she attains the age of twenty-one years, unless she is married with the consent of the court entered upon the minutes of the court, or until said court is satisfied that said ward has fully reformed or that further direction and supervision under the provisions of this act are unnecessary or inadvisable for said ward's reformation.

Transfer of juvenile court cases. Order of transfer.

§ 13. Whenever a petition has been filed in the juvenile court of a county other than that of the residence of a person coming within any of the provisions of this act, or whenever, subsequent to the filing of a petition in the juvenile court of the county where said person resides, the residence of said person is changed to another county, the entire case may be transferred at any time to the juvenile court of the county wherein said person then resides, and such court must take jurisdiction of the case upon the filing with it of such order. The expense of the transfer of said person shall be borne by the parent, parents, or guardian of the person so transferred or shall be paid out of the earnings, property, or estate of said person, or if the parent, parents or guardian are unable to pay the same or if the earnings, property or estate of said person is insufficient to pay the same the court shall order the same to be paid from the county treasury of the county ordering the transfer. Whenever a case shall be transferred thereunder, the order of transfer shall recite (a) each and all the findings, orders or modification of orders that may have been made in said case, and (b) that said person resides in or has removed to the county to which said matter has been transferred and (c) to said order of transfer shall be attached a certified copy of the original petition in said matter. Such transfer shall be accompanied by a summary of all the facts in the possession of the court or probation officer covering the history of said person. [Amendment of May 18, 1919. In effect July 22, 1919. Stats. 1919, p. 755.]

Detention pending hearing. No commitment to jail.

§ 14. In the case of a person alleged to come within the provisions of section one of this act, the juvenile court, pending the hearing, at any time before the person is adjudged a ward or otherwise disposed of, may order that said person be detained in

any detention home provided for that purpose by any county, or said person may otherwise be temporarily provided for as to the court may seem fit, in any manner provided herein for the care of a ward of the juvenile court; provided, further, that should the legislative body of the county provide a suitable place for the detention of wards of the juvenile court, such wards may be committed thereto for a definite period to be specified in such order, at the end of which time such wards shall be brought before the court for further order of court. The court may thereafter set aside, change or modify said order and provide for a further detention in said place. No court, judge, magistrate or peace officer shall commit a person under sixteen years of age to any jail or prison, before trial and conviction, or detain such person therein, but if any such person is not released pending such hearing, he may be committed to the care and custody of a sheriff, constable or other peace officer, who shall keep such person in a detention home or some other suitable place outside of the enclosure of any jail or prison, as the court may direct. When any person under sixteen years of age shall be sentenced to confinement in any institution to which adult convicts or prisoners are sentenced or confined, it shall be unlawful to confine such person in the same room, yard or enclosure with such adult convicts or prisoners, or to permit such person to come or remain in contact with such adult convicts or prisoners.

Persons free from parents' control.

§ 15. Within the meaning of this act the words "persons who should be declared freed from the custody and control of his parents" shall include any person:

1. Who has been left in the care and custody of another by his parent or parents without any provision for his support, or without communication from such parent or parents, for the period of one year with the intent to abandon said person; such failure to provide, or such failure to communicate for the period of one year shall be presumptive evidence of the intent to abandon; such person shall be deemed and called an abandoned person; or

2. Who has been cruelly treated or neglected by his parent or parents; provided, that in either instance, said person shall have been a ward of the juvenile court and the parents deprived of his custody because of such cruel treatment or neglect for the period of one year continuously immediately prior to the filing of a petition praying that he be declared free from the custody and control of his parents; or

3. Whose parent or parents are habitually intemperate; provided, that said person shall have been a ward of the juvenile court and the parents deprived of his custody because of such intemperance for the period of one year, continuously immediately prior to the filing of a petition praying that he be declared free from the custody and control of his parents.

Citation to issue upon filing of petition.

§ 15a. Upon the filing of a petition, as provided in section three of this act, alleging that there is within the county or residing therein a person who should be declared free from the custody and control of his parents, as defined in this act, and praying that the superior court deal with said person as provided in this act, a citation shall issue, requiring the person or persons having the custody or control of said person or the person or persons with whom said person may be, to appear with said person at a time and place stated in the citation. Service of such citation must be made at least ten days before the time stated therein for such appearance. The parent or parents of said person, if residing within the state of California, and if their place of residence be known to the petitioner, or, if there be no parent so residing, or if the place of residence of such parent or parents be not known to the petitioner, then some relative of said person, if any there be residing within the state, and if his residence and relationship to said person be known to the petitioner, shall be notified of the proceedings by service of

citation requiring him or them to appear at the time and place stated in such citation. Service of such citations must be made at least ten days before the time stated therein for such appearance.

When parents reside outside of state.

§ 15b. If the parent or parents of said person reside outside of the state of California, or if their places of residence be not known to the petitioner, the petitioner or his agent, or attorney, shall make and file an affidavit wherein there shall be stated the names of the parent or parents who reside outside of the state and their places of residence, if known to the petitioner, and the names of the parent or parents residing in or out of the state whose places of residence are unknown to the petitioner and thereupon the judge of the juvenile court shall make an order directing a citation requiring him or them to appear at the time and place stated in such citation, to be served upon the parent or parents residing out of the state whose places of residence are known to the petitioner and upon the parent or parents residing in or out of the state whose places of residence are unknown to the petitioner by publication in some newspaper of general circulation printed and published in the county in which the court sits, and if there be no such paper in such county, then in some adjoining county to be designated by the judge of the juvenile court, which publication shall be once a week for four successive weeks.

Citation mailed.

§ 15c. Within ten days after the making of said order a copy of the citation, properly addressed and with the postage thereon fully prepaid, shall be mailed to the parent or parents who reside outside of the state at their places of residence, if known to the petitioner.

Service of citation.

§ 15d. When publication is ordered, personal service of a copy of the citation out of the state shall be equivalent to publication and deposit in the post office. In either case, the service of the citation shall be complete upon the completion of the publication and the time stated for the appearance of the parent or parents in a citation so served shall be not less than thirty days after the completion of such service.

Failure to appear, contempt.

§ 15e. In any case the judge of the juvenile court may appoint some suitable party to act in behalf of said person and may order such further notice of the proceedings to be given as he may deem proper. If any party, cited as herein provided, shall fail without reasonable cause to appear and abide by the order of the court, or to bring said person if so required in the citation, such failure shall constitute a contempt of said court. In case such citation can not be served, or the party served fails without reasonable cause to obey the same, a warrant of arrest shall issue on the order of the court, either against the parent or the custodian of said person or with whom the said person may be, or against the said person himself, or any or all said persons; or if there be no party to be served with citation as above provided, a warrant of arrest may be issued immediately against the said person.

Hearing of case.

§ 15f. On the return of the citation or other process, or as soon thereafter as may be, the court shall proceed to hear and dispose of the case, after full and careful consideration of all the evidence presented and with due regard to the legitimate rights and claims of the parent or parents of said person, and with due regard to any and all ties of blood or affection, but with the dominant purpose of serving the best interests of said person.

Order depriving parent of control.

§ 15g. Whenever the procedure laid down in section three and sections fifteen a, fifteen b, fifteen c, fifteen d, fifteen e, or fifteen f has been followed, the juvenile court shall be empowered to make a final written order signed by the judge presiding in said court, judicially depriving the parents of the custody and control of a person who should be declared free from the custody and control of his parents; provided, that nothing in this section shall be construed to impair the right of the court to make orders or commitments under any other section of this act. Any final order made and entered by the court under the provisions of this section, shall be conclusive and binding upon the person declared free from the custody and control of his parents, upon such parents, and upon all other persons who have been served with citation by publication or otherwise as herein provided. After making such final order, the court shall have no power to set aside, change or modify the same; provided, that nothing in this section shall be construed to impair the right of appeal.

Superior court known as "juvenile court."

§ 16. The superior court in every county and city and county in this state shall exercise the jurisdiction conferred by this act, and while sitting in the exercise of its said jurisdiction shall be known and referred to as the "juvenile court." In counties or cities and counties having more than one judge of the superior court, the judges of such court shall annually, in the month of January, designate one or more of their number, whose duty it shall be to hear all cases coming under this act; provided, that nothing in this section contained shall be construed in conflict with article VI, section VI of the constitution of the state of California. The orders and findings, if any, of the superior court in all cases coming under the provisions of this act, shall be entered in a suitable book or books or other form of written record, to be kept for that purpose, and known as the "juvenile court record," and the court, when acting under this act, shall be called the "juvenile court." All cases coming under the provisions of this act shall be heard at a special or separate session of the court, and no other matter shall be heard at such session, nor shall there be permitted to be present at such session, except as a witness in said matter, any person on trial or awaiting trial, or under accusation of crime, who does not come under the provisions of this act.

Private hearing.

§ 16a. Any person alleged or adjudged to come within any of subdivisions 1 to 13 inclusive of section 1 of this act shall be entitled to have any proceeding concerning such person, heard privately, and upon the request of said person, or either of his parents, or guardian, such hearing shall be had privately in the manner provided by law for private hearings at preliminary examinations.

Probation committee.

§ 17. The judge of the superior court in and for each county, or city and county, of the state, and in counties where there is more than one judge of said court, the judge of the superior court in said county who has been designated the judge of the juvenile court shall, by order entered in the minutes of the court, appoint seven citizens of good moral character, to be known as the "probation committee," and shall fill all vacancies occurring in such committee. The clerk of said court shall immediately notify each person appointed on said committee, and thereupon said person shall appear before the judge of the said court and qualify by taking an oath, which shall be entered in said juvenile court record, to perform faithfully the duties of a member of such probation committee.

Term of office. Vacancy. Removal. Meetings.

§ 17a. The members of such probation committee shall hold office for four years, and until their successors are appointed and qualify; provided, that of those first appointed, one shall hold office for one year, two for two years, two for three years, and two for four years, the terms for which the respective members shall hold office to be determined by lot as soon after their appointment as may be. When any vacancy occurs in any probation committee by expiration of the term of office of any member thereof, his successor shall be appointed to hold office for the term of four years; when any vacancy occurs for any other reason the appointee shall hold office for the unexpired term of his predecessor. Any member of the probation committee may be removed for cause at any time by an affirmative vote of four members of said committee at a meeting called for the special purpose of considering the question of said removal and the subsequent written approval of the judge of the juvenile court filed with the clerk of the juvenile court, said written approval to be filed within thirty days after the written report of said committee has been received by said judge. Written notice as to said special meeting shall be served on each of the members of said committee at least ten days prior to the day set therefor and shall specify the purpose thereof.

Examination of societies. Annual report. Supervision of wards.

§ 17b. The juvenile court, or the judge thereof, may at any time and upon request of the county board of supervisors shall require said probation committee or the probation officer to examine into the qualifications and management of any society, association or corporation, other than a state institution, receiving, or applying for, any ward of the juvenile court and to report thereon to the court; provided, that nothing in this section shall be construed as giving any probation officer or probation committee any power to enter any institution without the consent of such institution but in the event that such consent is refused, commitments thereto shall not be made. It shall be the duty of each probation committee to prepare each year one or more reports in writing on the qualifications and management of all societies, associations, corporations and institutions, except state institutions, applying for or receiving any ward of the juvenile court from the courts of their respective counties, and in such report said committee may make such suggestions or comments as to them may seem fit; such report shall be filed for the information of said court with the clerk of the juvenile court appointing such committee. The probation committee shall also make to the court an annual report to be filed as a public document prior to the first day of December, copies of which shall be filed with the county board of supervisors and the state board of charities and corrections. It shall be the duty of the probation committee to exercise a friendly supervision and visitation over the wards of the juvenile court when so directed by the court, to furnish the court in formation and assistance whenever required upon the request of the court and from time to time, to advise and recommend to the court any change or modification of the order made in the case of a ward of the juvenile court as may be for the best interests of such person. Upon request of the judge any member of the probation committee shall investigate the case of an alleged ward of the juvenile court coming under the provisions of this act, and render a report thereon to the judge.

Control of detention home.

The probation committee shall also have the control and management of the internal affairs of any detention home or branch detention home heretofore or hereafter established by the county board of supervisors; and it shall be the duty of said board of supervisors to provide for the payment of such employees as may be needed in the efficient management of such detention home or branch detention home or homes.

Compensation.

§ 17c. Members of the probation committee shall serve without compensation, but shall be allowed their reasonable traveling expenses as approved by the judge of the juvenile court; and the same shall be a charge upon the county in which the court appointing them has jurisdiction, and said expenses shall be paid out of the county treasury upon a written order of the judge of the juvenile court of said county directing the county auditor to draw his warrant upon the county treasurer for the specified amount of such expenses. All orders by the juvenile court judge upon the county treasury shall be filed in duplicate with the county board of supervisors.

Probation offices created. Term of office. Salaries. Removal. Bond.

§ 18. The offices of probation officer and assistant probation officer and deputy probation officer are hereby created. The probation officers and assistant probation officers to serve hereunder in any county shall be nominated by the probation committee in manner as the judge of the juvenile court in the respective counties shall direct, and the appointment of such probation officers and assistant probation officers shall then be made by the judge thereof. The term of office of the probation officers and assistant probation officers shall be two years from the date of their said appointments. All probation officers and assistant probation officers receiving a salary of seventy-five dollars or more per month shall devote their entire time and attention to the duties of their offices, and no such probation officer or assistant probation officer, while holding such office and receiving salary therefor, shall be a candidate for or seek the nomination for any other public office or employment, and no person shall be appointed to and receive the salary attached to such office of either probation officer or assistant probation officer who is a sheriff or constable or is related to the judge of the juvenile court or to a member of the probation committee of such county, by consanguinity or affinity within the third degree computed according to the rules of law. Such probation officers and assistant probation officers may at any time be removed by the judge of the juvenile court for good cause shown; provided, that the judge of the juvenile court may at any time in his discretion remove any such probation officer or assistant probation officer with the written approval of a majority of the probation committee. Every probation officer and every assistant probation officer receiving an official salary shall, at the time that he files his oath of office, file with the county clerk of the county his official bond approved by the judge of the juvenile court. The judge of the juvenile court shall have authority by an order entered in the minutes of said court to determine and fix the amount of bonds of the probation officer of the county and of his assistants. If said bonds, or any of them, are furnished by any surety company licensed to transact business in the state of California, the premium thereon shall be paid out of the county treasury.

Officer in each county; deputies.

There shall be appointed, as herein provided, a probation officer in every county, and he may appoint as many deputies as he may desire; provided, however, that such deputies shall not have authority to act until their appointment shall have been approved by a majority vote of the members of the probation committee, and by the judge of the juvenile court. The term of office of such deputies shall expire with the term of the probation officer making such appointment, but the probation officer with the written approval of the majority of the members of the probation committee and of the judge of the juvenile court, may, at any time in his discretion revoke and terminate such appointment. Such deputies, except as hereinafter provided, shall serve without compensation; provided, however, that in counties having charters providing a method of appointment and tenure of office for probation officers and members of the probation committee, such charter provision shall control as to such matters, and boards of super-

visors, if thereto authorized thereby may increase or decrease the number of assistants and deputies and the salary of the probation officer and such assistants, deputies and clerks.

Referees in counties of first class.

§ 19. In counties of the first class the judge of the juvenile court, may appoint referees in juvenile court matters. Said referees shall have the usual power of referees in chancery cases in all such cases submitted to them by the court; shall hear the testimony of witnesses and certify to the judge of the juvenile court their findings upon the case submitted to them, together with their recommendation as to the judgment or order to be made in the case in question.

The court, after notice of the presentation of such findings and recommendation, to the parents of such person, may make the order recommended by the referee, or any other order in the judgment of the court required by the findings of the referee, or may hear additional testimony, or may set aside said findings and hear the case anew.

Female referees.

In appointing a referee for the trial of females, a female referee shall be appointed where possible. Such referee shall serve without compensation save that in counties of the first class having charters, the boards of supervisors shall fix the compensation for at least two such referees. Where a case has been submitted to a referee, as herein provided, without any previous order for temporary custody having been made, the referee shall from time to time, recommend to the court such order or orders for temporary custody as may seem necessary. Thereupon such order shall be made unless the court shall determine otherwise.

Officers in counties of first class.

§ 19a. In counties of the first class there shall be one probation officer and twenty-nine assistant probation officers, and clerks. The salaries of said officers shall be as follows: Probation officer, two hundred dollars per month; two assistant probation officers, each one hundred and fifty dollars per month; nineteen assistant probation officers, each one hundred dollars per month; one assistant probation officer to act as probation officer's bookkeeper, one hundred dollars per month; one assistant probation officer to act as probation officer's clerk eighty-five dollars per month; three assistant probation officers to act as stenographers to the probation officers in clerical work, each seventy-five dollars per month; one assistant probation officer to act as stenographer, sixty-five dollars per month; one assistant probation officer to act as telephone exchange operator, fifty dollars per month; one assistant probation officer who shall be a physician at one hundred and twenty-five dollars per month.

Probation officers in cities and counties of second class.

§ 19b. In counties or cities and counties of the second class there shall be one probation officer and nine assistant probation officers. The salaries of said officers shall be as follows: Probation officer, two hundred fifty dollars per month; one assistant probation officer, two hundred dollars per month, and eight assistant probation officers, one hundred forty dollars per month each. [Amendment of May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1299.]

Probation officers in counties of third class.

§ 19c. In counties of the third class there shall be one probation officer and ten assistant probation officers. The salaries of said officers shall be as follows: Probation officer, two hundred twenty-five dollars a month; one assistant at a salary of one hundred seventy-five dollars a month; one assistant at a salary of one hundred sixty dollars a month; one assistant at a salary of one hundred fifty dollars a month; one assistant

at a salary of one hundred thirty-five dollars a month; three assistants at a salary of one hundred dollars a month each; two assistants at a salary of eighty-five dollars a month each; one assistant at a salary of seventy-five dollars a month; provided, however, that in the event an adult probation department is created in counties of the third class, from and after the creation of such department and the appointment of an adult probation officer or any deputy or assistant or like officer who shall relieve the probation officer of the adult probation work, the offices of assistant probation officer at a salary of one hundred seventy-five dollars a month and of assistant probation officer at a salary of one hundred sixty dollars a month shall cease and determine and be abolished in counties of this class. [Amendment of May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1002.]

Fourth class.

§ 19d. In counties of the fourth class there shall be one probation officer, one assistant probation officer, and one deputy probation officer who shall act as probation officer's clerk. The salaries of said officers shall be as follows: Probation officer, one hundred and fifty dollars per month; assistant probation officer, one hundred dollars per month; and one deputy probation officer to act as probation officer's clerk, seventy-five dollars per month.

Sixteenth, etc., classes.

§ 19e. In each of the counties of the sixteenth, twenty-second and twenty-third classes there shall be one probation officer, whose salary shall be one hundred fifty dollars per month. In counties of the fifth class there shall be one probation officer at one hundred seventy-five dollars per month, one assistant probation officer, whose salary shall be one hundred fifty dollars per month; one assistant probation officer at a salary of one hundred dollars per month, and one assistant probation officer, who shall be a competent stenographer, at a salary of eighty-five dollars per month. In counties of the twenty-third class there shall be one assistant probation officer, whose salary shall be fifty dollars per month. In counties of the twenty-second class the probation officer shall perform in addition to his duties as probation officer, the duties of the attendance officer for the schools of the county, and investigator for the board of supervisors on applications for county and state aid, without any additional compensation except his necessary expenses and such mileage as the board of supervisors shall fix and allow in the performance of his duties. [Amendment of May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1023.]

Sixth class.

§ 19f. In counties of the sixth class there shall be one probation officer and three assistant probation officers. The salaries of such officers shall be as follows: Probation officer, one hundred and seventy-five dollars per month; one assistant probation officer, one hundred and fifty dollars per month; one assistant probation officer, one hundred dollars per month; and one assistant probation officer to act as probation officer's clerk, one hundred dollars per month.

Seventh class.

§ 19g. In counties of the seventh class there shall be one probation officer and three assistant probation officers. The salaries of said officers shall be as follows: Probation officer, one hundred and seventy-five dollars per month; one assistant probation officer, one hundred and fifty dollars per month; one assistant probation officer, one hundred and twenty-five dollars per month; and one assistant probation officer, one hundred dollars per month.

Eighth class.

§ 19h. In counties of the eighth class there shall be one probation officer and one assistant probation officer. The salaries of said officers shall be as follows: Probation officer, one hundred dollars per month; assistant probation officer, seventy-five dollars per month.

Ninth, etc., classes.

§ 19i. In each of the counties of the ninth, twelfth, thirteenth, fifteenth, seventeenth, eighteenth, nineteenth, twenty-sixth, twenty-seventh, thirty-third and thirty-sixth class, there shall be one probation officer whose salary shall be one hundred dollars per month. In counties of the ninth class there shall be two assistant probation officers, whose salaries shall be as follows: One assistant probation officer, whose salary shall be seventy-five dollars per month and one assistant probation officer whose salary shall be fifty dollars per month. In counties of the twelfth class, there shall be one assistant probation officer whose salary shall be seventy-five dollars per month. In counties of the thirteenth class there shall be one assistant probation officer whose salary shall be twenty-five dollars per month. In counties of the eighteenth class there shall be four assistant probation officers whose salaries shall be twenty-five dollars per month each. In counties of the twenty-third class there shall be one assistant probation officer whose salary shall be fifty dollars per month. In counties of the twenty-sixth class there shall be one assistant probation officer, whose salary shall be sixty dollars per month; provided, that in counties of the twelfth class the probation officer shall, as a part of his duties, and without any additional compensation, except his necessary expenses, do all necessary work that the board of supervisors of said county may designate or require, in looking after the indigent and poor of said county. [Amendment of May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1023.]

Tenth class.

§ 19j. In counties of the tenth class there shall be one probation officer whose salary shall be one hundred and sixty-six dollars per month, and one assistant probation officer whose salary shall be seventy-five dollars per month.

Eleventh, etc., classes.

§ 19k. In each of the counties of the eleventh, fourteenth and thirtieth class there shall be one probation officer whose salary shall be one hundred twenty-five dollars per month; provided, that in the counties of the eleventh class there shall be an assistant probation officer, whose salary shall be seventy-five dollars per month; and provided, that in counties of the fourteenth class there shall be an assistant probation officer, whose salary shall be fifty dollars per month; and provided, further, that in counties of the thirteenth class the probation officer shall, as a part of his duties, and without any additional compensation, except his necessary expenses, do all necessary work that the board of supervisors of said county may designate or require, in looking after the indigent and poor of said county. [Amendment of May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1024.]

Thirty-second class.

§ 19l. In each of the counties of the thirty-second class there shall be one probation officer, whose salary shall be seventy-five dollars per month. [Amendment of May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1024.]

Twentieth class.

§ 19 ll. In each of the counties of the twentieth class there shall be one probation officer, whose salary shall be one hundred dollars per month. [New section added May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1024.]

Thirty-ninth, etc., classes.

§ 19m. In each of the counties of the thirty-ninth, fortieth and forty-second classes, there shall be one probation officer whose salary shall be fifty dollars per month. [Amendment of May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1024.]

Twenty-first class.

§ 19nn. In each of the counties of the twenty-first class there shall be one probation officer, whose salary shall be sixty-five dollars per month. [New section added May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1024.]

§ 19n. In each of the counties of the twenty-fourth, twenty-eighth, twenty-ninth, thirty-seventh, forty-first, forty-third, forty-fifth, forty-sixth, forty-seventh, forty-ninth, fifty-first, fifty-second, fifty-third, fifty-fourth, and fifty-sixth class, there shall be one probation officer whose salary shall be thirty-five dollars per month.

Forty-third class.

§ 19nm. In each of the counties of the forty-third class there shall be one probation officer, whose salary shall be fifty dollars per month. [New section added May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1024.]

Twenty-fifth class.

§ 19o. In counties of the twenty-fifth class there shall be one probation officer whose salary shall be one hundred fifty dollars per month, and one assistant probation officer whose salary shall be seventy-five dollars per month. [Amendment of May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1025.]

§ 19p. In each of the counties of the thirty-first class, there shall be one probation officer whose salary shall be sixty dollars per month.

§ 19q. In counties of the thirty-fourth class, there shall be one probation officer whose salary shall be ninety dollars per month.

§ 19r. In counties of the thirty-fifth class, there shall be one probation officer who shall maintain an office in the court house at the county seat. The salary of said probation officer shall be one hundred dollars per month.

§ 19s. In each of the counties of the forty-fourth and fifty-fifth class, there shall be one probation officer whose salary shall be ten dollars per month.

§ 19t. In each of the counties of the forty-eighth and fiftieth classes, there shall be one probation officer whose salary shall be twenty-five dollars per month.

§ 19u. In each of the counties of the fifty-seventh and fifty-eighth class, there shall be one probation officer whose salary shall be five dollars per month.

§ 19v. In counties of the thirty-eighth class there shall be one probation officer whose salary shall be seventy dollars per month and one assistant probation officer whose salary shall be fifty dollars per month.

Payment of salaries.

§ 19w. The salaries of all probation officers and assistant probation officers shall be paid out of the county treasury of the county for which they are appointed, respectively, in the same manner as the salaries of the other county officers. The probation officers and assistant probation officers and deputy probation officers in all counties of the state shall be allowed such necessary incidental expenses incurred in the performance of their duties as required by any laws of the state of California as may be authorized by the judge of the juvenile court; and the same shall be a charge upon the county in which the court appointing them has jurisdiction, and said expenses shall be

paid out of the county treasury upon a written order of the judge of the juvenile court of said county directing the county auditor to draw his warrant upon the county treasurer for the specific amount of such expenses. The probation officer shall keep a list of expenses and file a copy monthly with the county board of supervisors.

Duty of probation officers.

§ 20. The probation officer shall inquire into the antecedents, character, family history, and environment of every person brought before the court, and of every person alleged to be a person who should be declared free from the custody and control of his parents, and into the cause of such person being brought before the juvenile court, and shall make his report in writing to the judge thereof.

To make investigations.

Whenever application is made to the district attorney of the county for the drawing of a petition hereunder, it shall be the duty of the said probation officer to make such investigation as may be required by the said district attorney, or if the application has been made to the probation officer, said probation officer shall make such investigation as to him may seem necessary for the purpose of determining the necessity for the filing of a petition. If, after such investigation it appears to said district attorney or to said probation officer to whom said application has been made that proceedings should not be brought hereunder, said district attorney or said probation officer to whom said application has been made may refuse to draw said petition.

To be in court.

It shall also be the duty of the probation officer to be present in court to represent the interests of said person when the case is heard, and to furnish to the court such information and assistance as the court may require and to make such report at such time; and to take charge of said person before and after the hearing as may be ordered. Every probation officer, assistant probation officer and deputy probation officer shall have the power of a peace officer. At any time the probation officer may bring any such ward committed to his care before the court with written report and recommendation for such further order or other action as the court may deem proper. Before any such ward is recommitted, the probation officer shall inquire into the reasons assigned for such action and shall be present in court to represent the interests of such ward.

Power of attendance officer.

Every probation officer shall have the powers of a school attendance officer, in such portions of the county, in which such probation officer has been appointed, as are not otherwise provided with a school attendance officer, and shall exercise such powers when not inconsistent with his other duties.

Probation officers' reports.

Every probation officer, within fifteen days after the thirty-first day of December, of each year, shall make in writing and file as a public document a report to the judge of the juvenile court of the county in which such probation officer is appointed, and shall furnish to the county board of supervisors and to the secretary of the state board of charities and corrections of this state a copy thereof. Such report, without giving names, shall state separately the exact number of neglected, dependent, and delinquent persons and wards of the juvenile court that remain under commitment to the care and custody of the probation officer, and the exact number of such persons of whose cases other disposition has been made, as such number exists, deducting all cases dismissed or discharged as reformed, or where such person has passed the age of twenty-one years upon such thirty-first day of December, segregating such persons as having been adjudged by such juvenile court to be neglected, dependent, delinquent, or wards of

the juvenile court, as the case may be, in nineteen hundred and three, nineteen hundred and four, nineteen hundred and five, and so on, up to and including the calendar year for which such report is made and filed. Any of the duties of a probation officer may be performed by an assistant or deputy probation officer, and shall be so performed whenever directed by the probation officer; and it shall be the duty of the probation officer to see that his assistant and deputy probation officers perform their duties.

Penalties.

§ 21. Any person who shall commit any act or omit the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of twenty-one years to come within the provisions of any of subdivisions 1 to 13 inclusive of section one of this act, or which act or omission contributes thereto, or any person who shall, by any act or omission, or by threats, or commands, or persuasion, induce or endeavor to induce any such person, under the age of twenty-one years, to do or to perform any act or to follow any course of conduct, or to so live as would cause or manifestly tend to cause any such person to become or to remain a person coming within the provisions of any of subdivisions 1 to 13 inclusive of section one of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail for not more than two years, or by both such fine and imprisonment, or may be released on probation for a period not exceeding five years; and the superior court, sitting as a juvenile court, shall have original jurisdiction over all such misdemeanors. The court may also, as a condition of such probation, require a bond in such sum as the court may designate, to be approved by the judge requiring the same, to secure the performance by such person of the conditions imposed by the court on such probation. Such bond shall by its terms be made payable to the state of California and any moneys received for the breach thereof shall be paid into the county treasury.

Detention home. Superintendent and matron.

§ 22. It shall be the duty of the legislative body of every county, or city and county, immediately upon this act becoming effective, to provide and thereafter maintain, at the expense of such county, or city and county, in a location approved by the judge of the juvenile court, a suitable house or place to be known as the "detention home" of said county, or city and county, for the detention of wards of the juvenile court and of persons alleged to come under the provisions of subdivisions 1 to 13 inclusive of section one of this act. Such detention home must not be in, or connected with any jail or prison, and shall be conducted in all respects as nearly like a home as possible and shall not be deemed to be nor be treated as a penal institution. Such legislative body must also provide a suitable superintendent and matron to have charge of such detention home, and for such other employees as may be needed in the efficient management of such detention home, and provide for the payment, out of the general fund of the county, or city and county, of suitable salaries for such superintendent and matron, and such other employees, such superintendent, matron and other employees to be appointed by said legislative body upon the nomination of the probation committee and the approval of the judge of the juvenile court. The superintendent of the detention home shall keep a classified list of expenses, and shall file a duplicate copy with the county board of supervisors. The superintendent, matron, or other employee of such detention home, may, at any time be removed by the probation committee in its discretion.

Appeal from judgment.

§ 23. Every judgment or decree of a juvenile court assuming jurisdiction and declaring any person to be a ward of the juvenile court or a person free from the custody and control of his parents may be appealed from in the same manner as any final judgment,

and any subsequent order may be appealed from as from an order after judgment; but no such order or judgment shall be stayed by such appeal, unless suitable provision is made for the maintenance, care and custody of such person pending the appeal, to be approved by an order of the said juvenile court. Such appeal shall have precedence in the court to which the appeal is taken over all other cases.

Construction of act.

§ 24. This act shall be liberally construed, to the end that its purpose may be carried out, to wit, that the care, custody and discipline of a ward of the juvenile court, as defined in this act, shall approximate as nearly as may be that which should be given by his parents, and in all cases where it can be properly done, the ward of the juvenile court, as defined in this act, shall be placed in an approved family, with people of the same religious belief, and become a member of the family, by legal adoption or otherwise. All commitments to institutions or for placement in family homes under this act shall be, so far as practicable, either to institutions or for placement in family homes of the same religious beliefs as that of the person so committed or of his parents or to institutions affording opportunity for instruction in such religious belief. In any detention or commitment under this act, no merely unfortunate person shall be brought into direct contact or personal association with any wayward person of evil influence. In all cases of female persons over the age of five years coming under the provisions of this act, such persons shall be dealt with, so far as possible, by or in the presence of a woman probation officer, assistant probation officer, deputy probation officer, a woman member of the probation committee, or other woman; and in transporting female persons coming under any of the provisions of this act, such persons shall be transported in the care and custody of a woman. In this act the word "county" shall include "city and county," the plural shall include the singular, and the singular shall include the plural, and the word "ward" shall mean "a ward of the juvenile court," as defined in this act.

Acts superseded.

§ 25. This act shall supersede all provisions of the act entitled "An act to establish a state school for juvenile offenders, and to make an appropriation therefor," approved March 11, 1889, and all amendments thereto, and all provisions of the act entitled "An act to establish a school of industry, to provide for the maintenance and management of the same, and to make an appropriation therefor," approved March 11, 1889, and all amendments thereto, relating to the mode of commitments to the institutions therein named; but said acts shall control as to all matters concerning the management of said institutions, respectively.

Acts repealed.

§ 26. The juvenile court law approved March 8, 1909, as amended by an act approved April 5, 1911, and as amended by an act approved June 16, 1913, and all amendments thereof, and all acts or parts of acts inconsistent herewith are hereby repealed; provided, however, that nothing herein contained shall be deemed to interfere with the management of any state school except as herein expressly provided; provided, further, that all orders and judgments heretofore made under the acts hereby repealed shall continue in full force and effect and the court shall retain jurisdiction of all persons now subject to the jurisdiction thereof, and such persons shall be herein dealt with in the same manner as if all previous orders had been made under the provisions of this act, and all proceedings now pending under said act shall be continued under the provisions of this act.

Persons charged with crime under the provisions of section twenty-six of said law of nineteen hundred eleven, or section twenty-eight of said law of nineteen hundred thir-

teen, shall be tried and punished under the law as it existed at the time of said alleged offense.

All officers holding office under the provisions of said acts shall be continued therein, subject hereto and nothing herein contained shall be deemed to interfere with their term or tenure of office.

Constitutionality.

§ 27. If any one section or sections, or portion or portions of a section, or any paragraph or paragraphs, or sentence or sentences of this act are declared invalid such declaration shall not affect the rest of the law.

I. CONSTITUTIONALITY.

1. **Not a special statute.**—The "juvenile court law" is not a special act and is constitutional.—In re Sing, 13 Cal. App. 736, 110 Pac. 693.

2. **Legislative power to regulate minority without regard to sex.**—The legislature is empowered to regulate minority and to treat males and females of the same age alike, as was done in the act of 1911.—Moore v. Williams, 19 Cal. App. 600, 127 Pac. 509.

3. **Same.**—The legislature had power to confer upon the juvenile court jurisdiction of all persons under twenty-one years of age, whether male or female, and without regard to their minority.—In re Willis, 30 Cal. App. 188, 157 Pac. 819.

4. **Title.**—The "juvenile court law" is not unconstitutional because of defect in title within section 24, article IV, of the constitution.—In re Maginnis, 162 Cal. 200, 202, 121 Pac. 723.

5. **Same—Repeal of prior acts.**—The repeal of other statutes dealing with the same subject is germane to the subject and purpose of the act.—In re Maginnis, 162 Cal. 200, 121 Pac. 723.

6. **Same—Failure to refer to age, though referred to in body of act.**—The provision of section 1 of the "juvenile court law" of 1911, that the act applies only to "persons under the age of twenty-one years," does not render the act unconstitutional because the title refers to "dependent and delinquent minor children."—Moore v. Williams, 19 Cal. App. 600, 127 Pac. 509.

7. **Same—Subject sufficiently expressed.**—The subject of the act of 1911 is sufficiently expressed in the title to meet the requirements of the constitution.—Moore v. Williams, 19 Cal. App. 600, 127 Pac. 509.

8. **Same—Subjects not embraced in—Validity of act not affected.**—If there are any provisions in the "juvenile court law" not embraced in the general scope of the subject covered by its title, their invalidity would not affect the validity of the act as a whole.—In re Maginnis, 162 Cal. 200, 202, 121 Pac. 723.

9. **Exercise of police power—Not a "municipal affair."**—The "juvenile court law" is an exercise of the police powers of the state, and concerns the whole state as much as any other extension of the judicial system, and the subject is not a "municipal affair" within the meaning of that term in the constitution, although the functions of

the particular extension of the system may be exercised exclusively within incorporated cities having a municipal charter.—Nicholl v. Koster, 157 Cal. 416, 108 Pac. 302.

10. **Trial on mere verified complaint—Construction rendering act unconstitutional.**—To interpret the exception in subdivision 4 of section 682 of the Penal Code as authorizing the trial of an offense under section 26 of the act of 1911 by the superior court on a mere verified complaint would render it repugnant to subdivision 3 of section 25, of article IV of the constitution.—Gardner v. Superior Court, 19 Cal. App. 548, 126 Pac. 501.

II. PURPOSE.

11. **Protection of all children against delinquency and dependency.**—The legislature intended by the "juvenile court law" to provide protection to all children who, by the terms of the act, were either dependent or delinquent, by attaching a penalty to any act contributing to such delinquency or dependency.—In re Sing, 14 Cal. App. 512, 112 Pac. 582.

12. **Same—Main purpose.**—The main purpose of the act is to provide for the care and custody of children who have shown, or who, from lack of care, are likely to develop criminal tendencies, in order to have them trained to good habits and correct principles.—Nicholl v. Koster, 157 Cal. 416, 108 Pac. 302.

13. **Same—Same.**—The "juvenile court law" aims, as its principal object, at the proper custody and education of children who lack the care and control deemed essential to their right development, whether or not their situation be such as to be likely to lead them to actual crime.—In re Maginnis, 162 Cal. 200, 204, 121 Pac. 723.

14. **Secondary purpose—Punishment of persons responsible.**—The secondary purpose of the "juvenile court law" is to provide for the punishment of persons responsible for, or contributing to the dependency or delinquency of children.—In re Maginnis, 162 Cal. 200, 204, 121 Pac. 723.

15. **Act of 1911 has same purpose as act of 1909.**—The purposes of the act of 1911 are substantially the same as the purposes of the act of 1909.—Moore v. Williams, 19 Cal. App. 600, 127 Pac. 509.

III. CONSTRUCTION.

16. **No new court set up.**—The "juvenile court law" does not pretend to set up a

new court district from the superior court, but merely to give that court jurisdiction of a new class of offenses created thereby.—*People v. Budd*, 24 Cal. App. 176, 140 Pac. 714.

17. Jurisdiction over offense properly includes jurisdiction to punish.—The subject of granting to the superior court jurisdiction over the offense of contributing to or causing delinquency or dependency, properly includes jurisdiction to punish the offense thus created.—*In re Maginnis*, 162 Cal. 200, 121 Pac. 723.

18. Residence—Jurisdiction not limited to children technically residing in California.—The "juvenile court law" does not limit the power of the court to children who have a technical residence in this state, and the decisions of the supreme court, so far as they go do not hold that the courts of this state are prohibited from assuming guardianship of children who may happen to be within its jurisdiction, but whose legal residence or domicile elsewhere; but the court does not decide the question whether the juvenile court has jurisdiction of a child present in the state, but whose technical residence is in Montana.—*In re Maginnis*, 162 Cal. 200, 205, 121 Pac. 723.

19. Same—Finding as to, not reviewable.—Where the juvenile court finds that a delinquent child was a resident of the state of California, in accordance with the allegations of the petition, such finding can not be reviewed on habeas corpus, however erroneous.—*In re Maginnis*, 162 Cal. 200, 121 Pac. 723.

20. Same—Technical residence in California but domiciled elsewhere.—The act does not limit the jurisdiction of the juvenile court over children who have a technical residence in the state, though actually domiciled elsewhere.—*In re Maginnis*, 162 Cal. 200, 121 Pac. 723.

21. Sex and age immaterial—Act of 1911.—The sex or age of a person is a negligible quantity under the act of 1911, in declaring what shall constitute "dependency" and "delinquency," and the legislature had the power to make those provisions equally applicable to males and females under twenty-one years of age.—*Moore v. Williams*, 19 Cal. App. 600, 127 Pac. 509.

22. Same—Act of 1909 and act of 1911 distinguished.—The act of 1909 is distinguished from the act of 1911, in that it was limited to children "under the age of eighteen years," while the latter act raised the limit to twenty-one years, and provided for additional probation officers, and adjusts the salaries of such officers by counties.—*Moore v. Williams*, 19 Cal. App. 600, 127 Pac. 509.

23. Children of divorced persons—Jurisdiction of court.—The superior court sitting as a juvenile court has the authority to exercise its jurisdiction under the juvenile court act for the disposition of the children of the parties to a divorce suit, notwithstanding it had, in the divorce suit, already awarded their custody to one of

the parties.—*Dupes v. Superior Court*, 176 Cal. 440, 442, 168 Pac. 838.

24. Persons who are guilty of contributing subject to punishment.—Any one who contributes to the dependency of a child, whatever may be his relation thereto, becomes amenable to punishment under the provisions of section 26 of the act.—*In re Sing*, 14 Cal. App. 512, 112 Pac. 582.

25. Abandoned and neglected children.—Section 224 of the Civil Code, defines the circumstances which give the juvenile court jurisdiction to take charge of the case of the child, and determine whether there has been an abandonment or not; but it does not state all the elements or abandonment.—*In re Cordy*, 169 Cal. 150, 146 Pac. 532, 534.

IV. ACTIONS AND PROSECUTIONS.

26. Minor charged with crime—Absence of request for determination as to age.—Where no request is presented to have the matter submitted to the juvenile court, the superior court may proceed with the trial of a criminal prosecution of a minor under eighteen years, although the evidence adduced at the trial discloses the fact.—*People v. Oxnam*, 170 Cal. 211, 217, 149 Pac. 165.

27. Defective petition not bar to subsequent petition.—The filing of a petition which is defective and does not give the juvenile court jurisdiction, does not deprive the court of jurisdiction of a subsequently filed sufficient petition.—*Moore v. Superior Court*, 22 Cal. App. 156, 134 Pac. 352.

28. Affidavit insufficient to confer jurisdiction.—An affidavit that a fifteen-year-old female child is dependent in "that the said child is without proper guardianship and her home is an unfit place for such child," is insufficient to confer jurisdiction upon the superior court sitting as a juvenile court to make an order committing such child to special custody, and she was discharged on habeas corpus.—*In re Mundell*, 3 Cal. App. 472, 86 Pac. 833.

29. Information showing minority of defendant—Duty of magistrate.—Where it appeared at the preliminary examination that the defendant accused of committing lewd and lascivious acts with a child under the age of fourteen years, was himself under eighteen, it would have been the duty of the magistrate to have referred the case to the juvenile court, but when the defendant's attorney stated to the magistrate that defendant was over eighteen, he was not required to make such reference.—*In re Tom*, 17 Cal. App. 678, 121 Pac. 294.

30. Error not to admit evidence of age of defendant when offered—Error does not authorize release on habeas corpus.—Under the act of 1915, sections 4d and 6, it was error for a justice of the peace to refuse to hear evidence of age of a defendant, when it is suggested to him that the defendant is under eighteen years of age, but it is not sufficient to justify a release on habeas corpus, in view of section 6,

which authorizes the juvenile court to examine and commit the defendant or certify him back to the magistrate.—*In re Northon*, 35 Cal. App. 369, 169 Pac. 1051.

30a. Minor charged with crime—Determination as to age—Presumption on appeal.—In the absence of a trial and determination as to age of a defendant in the superior court, or of any proceedings in that court calling for such trial and determination, the supreme court will assume that he is over eighteen years old, and whatever may have been the duty in the event of a suggestion as to age and the denial of a request to present the matter to the juvenile court, the court will not consider the matter not raised in the court below.—*People v. Oxnam*, 170 Cal. 211, 220, 149 Pac. 165.

31. Prosecution by verified complaint not permitted—Unconstitutional construction.—Subdivision 4, section 682, of the Penal Code, can not be construed to permit a prosecution under the "juvenile court law" by verified complaint, and such a construction would render that subdivision repugnant to subdivision 3 of section 25, article IV of the constitution, as well as to subdivision 33 of that section.—*People v. Budd*, 24 Cal. App. 176, 140 Pac. 714.

32. Same—Does not confer jurisdiction.—A verified complaint can not confer jurisdiction of a charge of contributing to the delinquency of a female under the age of twenty-one years, under the "juvenile court law."—*People v. Budd*, 24 Cal. App. 176, 140 Pac. 714.

33. Preliminary examination and committed required as conditions precedent to information.—A preliminary examination and commitment are conditions precedent to an information upon which only can the juvenile court try one with a misdemeanor under the "juvenile court law," even though it has jurisdiction of such offense.—*In re Sing*, 13 Cal. App. 736, 110 Pac. 693.

34. Preliminary examination not required—Nullity.—It is admitted that a preliminary examination is not required in prosecution of "juvenile court law" offenses, and where such examination is held, it is a nullity.—*Edington v. Superior Court*, 18 Cal. App. 739, 124 Pac. 450, 128 Pac. 338.

35. Information—Dependency must be alleged and proved.—In prosecutions under the "juvenile court law" for contributing to the dependency of a minor, it is essential to conviction to allege and prove that such minor has become a dependent, and such condition of dependency is an indispensable prerequisite to the maintenance of such a charge.—*People v. Pierro*, 17 Cal. App. 741, 121 Pac. 689.

36. Same—Plea of dependency, sufficiency of.—Where a child against whom the offense of contributing to her dependency has been committed, has been adjudicated a dependent child, it would be sufficient to plead such adjudication, but when no adjudication is relied on, the facts which make such minor a dependent under the provisions of the law must be pleaded in

the information.—*People v. Pierro*, 17 Cal. App. 741, 121 Pac. 689.

36a. Same—Same—Definiteness required.—A general allegation that the child to whose dependency a defendant is charged with contributing, "was then and there a dependent child—within the meaning" of the "juvenile court law" of 1909, is insufficient to inform the defendant of the particulars of the charge which he is called upon to meet.—*People v. Pierro*, 17 Cal. App. 741, 121 Pac. 689.

37. Same—Same.—The information must set forth the facts making the minor dependent unless there has been a previous adjudication of dependency, in which case it is sufficient to allege such adjudication.—*In re Goldsworthy*, 22 Cal. App. 354, 134 Pac. 352.

38. Indictment or information—Prosecution must be by.—Prosecution for an offense under section 26 of the "juvenile court act" of 1911, must be by indictment or information, and the superior court has no jurisdiction to try such an offense upon a mere verified complaint.—*Gardner v. Superior Court*, 19 Cal. App. 548, 126 Pac. 501.

39. Same—Same—Verified complaint insufficient.—The prosecution, under the "juvenile court law" for contributing to the delinquency of a female under twenty-one years of age, must be by indictment or by information after preliminary examination by a magistrate, and not by a mere verified complaint.—*People v. Budd*, 24 Cal. App. 176, 140 Pac. 714.

40. Same—Sufficiency.—An information which charges the manager of a cafe with contributing to the delinquency or dependency of a minor, by being present when a girl of seventeen years of age was served with liquor in his cafe, sets forth a violation of section 21 of the act of 1915, especially since section 397b of the Penal Code, which makes his conduct a misdemeanor.—*People v. De Leon*, 35 Cal. App. 466, 170 Pac. 173.

41. Same—Same.—The information in this case held to state facts warranting the conclusion that the female child referred to was a dependent person within the meaning of the act of 1911.—*Edington v. Superior Court*, 18 Cal. App. 739, 124 Pac. 450, 128 Pac. 338.

42. Same—Same.—Although an information does not expressly nor directly declare that the minor therein named is a dependent person, the charge that defendant endeavored to induce said minor to lead an idle, dissolute and immoral life by importuning and coercing her to enter a house of prostitution, and that he had sexual intercourse with her, is sufficient.—*In re Goldsworthy*, 22 Cal. App. 354, 134 Pac. 352.

43. Same—Same.—The information in this case held to charge defendant with committing the public offense of contributing to the dependency of a female child of the age of fifteen years.—*People v. Oliver*, 29 Cal. App. 576, 156 Pac. 1005.

44. Same—Same.—An information which fails to state that the particular acts

charged against defendant were committed in the presence of the children or that such acts had any direct effect upon their morals, is insufficient to charge the offense of contributing to the dependency of such children in violation of the "juvenile court law."—*People v. Bergotini*, 172 Cal. 717, 720, 158 Pac. 198.

45. Same—Same—Statute of limitations.—An information filed November 2, 1917, charging defendant did, on various dates between October 1, 1916 and October 1, 1917, entice a girl fifteen years of age away from her home and usual place of abode and induce her to accompany defendant to various hotels and rooming houses, where they occupied the same room, and defendant did then and there have and accomplish sexual intercourse with her, was sufficient against the objection that there was a bar of the one-year statute.—*People v. Brown*, 37 Cal. App. 101, 173 Pac. 621.

46. Same—Same.—An information charging defendant with inducing a girl of fifteen years of age to accompany him to hotels and rooming houses, where they occupied the same room and he accomplished with her the act of sexual intercourse, is not insufficient for failure to allege negatively they were husband and wife, where it does show that their surnames were different, and that she was only fifteen years of age.—*People v. Brown*, 37 Cal. App. 101, 173 Pac. 621.

47. Offense of contributing may be committed upon person not previously delinquent.—Under the act of 1911 the offense of contributing to the dependency or delinquency of a female under the age of twenty-one years, may be committed upon a person not theretofore possessing any of the characteristics of dependency or delinquency under the act.—*In re Goldsworthy*, 22 Cal. App. 354, 134 Pac. 352.

48. Evidence—Delinquency prior to filing information must be proved.—Upon a charge of contributing to the dependency of a girl under eighteen, by an act of sexual intercourse with her, it is necessary for the people to prove not only the act of sexual intercourse, but also that the girl was, prior to the filing of the information a dependent person within the meaning of the act, and that defendant's act caused or contributed to such dependency.—*People v. Cruse*, 24 Cal. App. 497, 141 Pac. 936.

49. Same—Previous acts of delinquency.—The fact that the minor may have been leading an idle, dissolute, and immoral life prior to the time she came to defendant's house is immaterial in a prosecution of the proprietress of a house of prostitution for a violation of section 21 of the "juvenile court law," by permitting such minor to commit acts of prostitution in her house.—*People v. Hanford*, 35 Cal. App. 799, 171 Pac. 112.

50. Same—Evidence as to other acts.—In a prosecution for contributing to the dependency of a female child of fifteen years, evidence of other acts of improper conduct with such minor, than those

charged in the information, is admissible.—*People v. Oliver*, 29 Cal. App. 576, 156 Pac. 1005.

51. Same—Sufficient.—Evidence held sufficient to support a judgment of conviction of the offense of contributing to the dependency of a female child of the age of fifteen years.—*People v. Oliver*, 29 Cal. App. 576, 156 Pac. 1005.

52. Same—Defendant entitled to full measure of all legal rights.—In a prosecution under the "juvenile court law" for contributing to the delinquency of a female under twenty-one years of age by an act of sexual intercourse with her, owing to natural instincts and laudable sentiments on the part of the jury, and the usual circumstances of isolation of the parties involved in the commission of the offense, the defendant is, as a rule, so disproportionately at the mercy of the prosecutrix's evidence, that he should be given the full measure of every legal right.—*People v. Cruse*, 24 Cal. App. 497, 141 Pac. 936.

53. Instructions—As to moral delinquency of girl complainant.—An instruction that the moral delinquency of the girl complainant should not be considered as affecting her credibility, is proper in a prosecution under the "juvenile court law" for contributing to the delinquency of a female under the age of twenty-one years by committing an act of sexual intercourse with her.—*People v. Cruse*, 24 Cal. App. 497, 141 Pac. 936.

54. Orders—Not for punishment—Provision for guardianship.—Juvenile court orders are not for the infliction of punishment, but to provide suitable guardianship, and the defendant is not entitled to a jury trial.—*In re Brodie*, 33 Cal. App. 751, 166 Pac. 605.

55. Judgment—Discharge on ground that defendant did not stand in loco parentis.—A person convicted of a violation of the terms of section 26 of the "juvenile court law" can not be discharged on habeas corpus on the ground that he did not stand in loco parentis to the child.—*In re Sing*, 14 Cal. App. 512, 112 Pac. 582.

56. Same—Abandoned and neglected children—Reopened on father's petition.—Where an order of the juvenile court adjudging minor children neglected under the act was made without the father's consent, reserved the matter for the further order of the court, the court had jurisdiction, upon the petition of the father, to reopen the case.—*In re Cannon*, 27 Cal. App. 549, 150 Pac. 794.

57. Same—Same—Deprivation of parental custody.—The "juvenile court law" of 1913 provides that the custody of a neglected child shall not be taken from a parent, without his consent, except it is found that he is incapable of providing or has neglected or failed to provide for such child, and on an appeal from an order denying a petition of the father of minors to set aside a judgment, made without his consent, adjudging his children neglected persons within the act, and the proceedings

holding up to the judgment are not in the count. It will be presumed that there was such evidence of neglect as rendered his appointment unnecessary. In re Cannon, 27 Cal. App. 349, 150 Pac. 794.

58. **Same—Same—Same.—Welfare of minor.** Under 1911 a finding that the welfare of the minor requires the taking away of such person from the custody of his parent or guardian is essential where this is done.—In re Brodie, 33 Cal. App. 751, 166 Pac. 522.

59. **Same—Commitment to Preston—Protection.** In case of an ordinary criminal information the court may commit a minor to the Preston School of Industry for a probationary period, and may change or modify the judgment at any time during the probationary term; subject to the right of the trustees to admit the prisoner to probation or to discharge him, and if so discharged he is released from all penalties and disabilities, and in case of re-arrest by order of the court, may be released on habeas corpus.—In re Johnson, 36 Cal. App. 319, 171 Pac. 1074.

60. **Same—Same—Jurisdiction of trustees.**—The "juvenile court law" of 1915, does not take away from the board of trustees of the Preston School of Industry the right to allow paroles or make discharges of its inmates.—In re Johnson, 36 Cal. App. 319, 171 Pac. 1074.

61. **Appeal—Record—Authentication.**—Prior acts contain no provision for an appeal, but the act of 1913 (§ 30) provides for an appeal to the district court of appeal, from an order sending a dependant child to a school at the mother's expense, and further provides the manner of authenticating the record to be reviewed.—In re Fowler, 24 Cal. App. 529, 141 Pac. 1053.

62. **Same—Record.**—An appeal from an order declaring a child dependant and sending her to a school at her mother's expense, is taken, under section 30 of the act of 1913, by a bill of exceptions, settled by the judge, engrossed and certified by the clerk, and the appeal will be dismissed if such bill is not signed by the judge, although engrossed, and certified by the clerk to have been "regularly settled and allowed by the judge."—In re Fowler, 24 Cal. App. 529, 141 Pac. 1053.

V. PROBATION OFFICER.

63. **Salary—Disqualification to hold other office.**—Section 18 of the act of 1915, as to salary and disqualifications of a probation officer, disqualifies such officer from holding the position of the superintendent of the detention home.—Spier v. Peck, 36 Cal. App. 4, 171 Pac. 115.

64. **Same—Legislative power to create assistant.**—The legislature was empowered to create the office of assistant probation officer, and to make such an officer a county officer, appointed by the juvenile court, and to fix his tenure of office and his compensation, as was done by the "juvenile court law" of 1911.—Reed v. Hammond, 18 Cal. App. 411, 155 Pac. 319.

65. **Conflict of laws—Los Angeles county charter provisions.**—After the adoption of the Los Angeles county charter, the board of supervisors have power to appoint a probation officer without waiting for the removal of an incumbent holding under an appointment by the juvenile court.—Gibson v. Civil Service Commissioners, 27 Cal. App. 396, 150 Pac. 78.

66. **Same—Same.**—The county charter of Los Angeles county providing for the removal of county officers supersedes the "juvenile court law," giving that power to the juvenile court judge, and vests it in the Los Angeles board of civil service commissioners.—Gibson v. Civil Service Commission, 27 Cal. App. 396, 150 Pac. 78.

67. **County officer.**—A probation officer is a county officer.—Gibson v. Civil Service Commission, 27 Cal. App. 396, 150 Pac. 78.

68. **Payment of salary—Mandamus to compel.**—Mandamus will lie to compel the payment of the salary of a legally appointed probation officer under the act of 1911 by the county auditor.—Moore v. Williams, 19 Cal. App. 600, 127 Pac. 509.

69. **Jurisdiction of court to appoint.**—Even if the legislation had made no provision for the appointment by the court of probation officers, and had made no provision for such officers, the court would have had jurisdiction, under the act, to make such appointment.—Nicholl v. Koster, 157 Cal. 416, 108 Pac. 302.

70. **Power of appointment by judge not unconstitutional.**—The probation officers appointed under the act are not officers of the state government, and the appointment of such officers is not necessarily a part of the duties or functions of the executive department of the state government, according to the system outlined in the constitution, and the juvenile court judge, in appointing such officers, does not exercise functions intended to be described in the constitution as those appertaining to the executive department of the state, and the provision of the act authorizing the appointment is not in conflict with article III of the constitution.—Nicholl v. Koster, 157 Cal. 416, 108 Pac. 302.

71. **Legislative power to provide for appointment in county organization act.**—The legislature had power to create a new county and provide for the appointment of persons to perform the duties thereof, who would be county officers.—Nicholl v. Koster, 157 Cal. 416, 108 Pac. 302.

72. **Duties of.**—The probation officer provided for in the act, is required to inquire into the antecedents, character, family, history, environment, and cause of delinquency of every child brought before the court, to be present in court and represent the interests of such child upon the hearing as to its being delinquent, to give to the court such information and assistance as it may require, to take charge of the child, and, in some circumstances, to act in a capacity similar to that of a guardian.—Nicholl v. Koster, 157 Cal. 416, 108 Pac. 302.

73. **San Francisco city and county trans-**

ory is "county treasury" under the act.—The treasury of the city and county of San Francisco is, so far as the payment of the compensation of the probation officer is concerned, for that purpose, a county treasury.—*Nicholl v. Koster*, 157 Cal. 416, 108 Pac. 302.

74. **Same—Payment of probation officer.**—As the San Francisco charter neither creates the office of probation officer contemplated by the act, nor prescribes the duties thereof, nor provides for the compensation of such officer, there is nothing in its provisions which can in any way affect the validity and force of the declaration of the act that such compensation must be paid out of the county treasury.—*Nicholl v. Koster*, 157 Cal. 416, 108 Pac. 302.

75. **Same—Act in force in San Francisco as to payment of salary of probation officer.**—In the absence of charter provisions, the act is in force in the city and county of

San Francisco as to its provisions relating to the compensation of the probation officers of the so-called "juvenile court."—*Nicholl v. Koster*, 157 Cal. 416, 108 Pac. 302.

VI. CONFLICT OF LAWS.

76. **Los Angeles county charter provisions superseded by the "juvenile court law."**—The provisions of the Los Angeles charter conferring exclusive jurisdiction in misdemeanor cases upon the police court, was superseded by the "juvenile court law" as to misdemeanors under that act.—*In re Sing*, 13 Cal. App. 736, 110 Pac. 693.

77. **San Francisco charter.**—The San Francisco charter does not control the provisions of this law, in so far as the law gives additional jurisdiction to the superior court, prescribes the necessary procedure and provides the means of exercising and enforcing that jurisdiction.—*Nicholl v. Koster*, 157 Cal. 416, 108 Pac. 302.

CHAPTER 178.

KAWEAH RIVER.

CONTENTS OF CHAPTER.

ACT 2345. KAWEAH RIVER COMMISSIONERS.

KAWEAH RIVER COMMISSIONERS.

ACT 2345—An act to create a board of commissioners in the county of Tulare, to define their powers and duties, and to appropriate money for the purpose thereof.

History: Approved March 15, 1864, Stats. 1863-64, p. 167. Amended March 20, 1866, Stats. 1865-66, p. 314.

The commissioners were empowered to open the old channel of the river, remove drift, trees and beaver dams.

KEEPER OF ARCHIVES.

See *Kerr's Cyc. Political Code*, §§ 412, 413.

CHAPTER 179.

KELP.

CONTENTS OF CHAPTER.

ACT 2353. KELP ACT.

KELP ACT.

ACT 2353—An act to regulate the taking and harvesting of kelp and other aquatic plants of the state of California by recognizing and declaring their ownership in the state of California and providing for the control thereof by the fish and game commissioners, and providing for a license tax upon all persons, firms or corporations engaged in the industry of taking or harvesting kelp or other aquatic plants, and providing for the collection and disbursement of the revenues derived therefrom, and providing for a privilege tax upon all kelp taken in the waters of this state, and providing for the protection of kelp beds, and for the manner of taking kelp and other aquatic plants, and providing for hearings by the fish and game commissioners, and providing penalties for the violation of this act.

History: Approved May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 646.

Kelp state property.

§ 1. All kelp and other aquatic plants in the waters of the state are hereby declared to be the property of the state of California.

Powers of board of fish and game commissioners.

§ 2. The board of fish and game commissioners of the state of California are hereby empowered to carry out the provisions of this act, and to make proper rules and regulations for the taking and harvesting of kelp, and the conservation of kelp and aquatic plants, and to see that the laws, rules and regulations with reference thereto are strictly enforced, and to issue all licenses herein provided for, and collect the fees therefor, and to collect all moneys due or to become due under this act.

License to harvest kelp.

§ 3. Every person, firm or corporation, desiring to engage in taking or harvesting kelp or other aquatic plants for profit in the waters of this state must first obtain a license before engaging in such occupation.

Term. Fee. Privilege tax.

§ 4. Licenses granting the privilege to take or harvest kelp in this state shall be issued and delivered upon application by the state board of fish and game commissioners, who shall prepare suitable licenses, which shall license the holder of such license to take or harvest kelp or other aquatic plants in this state for the term of one year from the date of the issuance of such license. All licenses shall be numbered consecutively, and shall contain blanks for the name of the licensee, and place of business, which information shall be furnished by the applicant to the board of fish and game commissioners. The license herein provided for shall be issued to such applicant upon payment of ten dollars and before such license is delivered to the applicant said license must be countersigned by the president of the board of fish and game commissioners, and in addition to such license fee every person, firm or corporation taking or harvesting kelp shall pay a privilege tax of one and one-half cents per ton of wet kelp taken or harvested.

Record of kelp harvested.

§ 5. Every person, firm or corporation engaged in taking or harvesting kelp in the waters of this state shall cause to be weighed, all wet kelp immediately after said kelp shall be delivered to the place of business designated in said license, and the weight thereof shall be entered in a book, or books, to be kept by said person, firm or corporation, said book or books to be open at all times to the inspection of the board of fish and game commissioners, or any of its deputies; every person, firm or corporation engaged in taking or harvesting kelp shall on or before the tenth day after the last day of each month during the term of said license, render a statement of the weight of all wet kelp cut or harvested during the preceding month, and pay to the board of fish and game commissioners, the privilege tax herein provided for.

Notice of closing kelp beds. Hearing.

§ 6. If at any time the taking or harvesting of kelp will tend to destroy or impair any kelp bed or beds or parts thereof, or shall tend to impair or destroy the supply of any food for game fish, said fish and game commission shall cause to be served on every person, firm or corporation, licensed to take or harvest kelp in the waters of this state, a notice in writing that said kelp bed or beds or parts thereof shall be closed to the taking or harvesting of kelp for a period not to exceed one year. Within ten days after the service upon any person, firm or corporation licensed to take or harvest kelp under the provisions of this act, of a notice that any kelp bed or beds or parts thereof are closed to the taking or harvesting of kelp, said person, firm or corporation may demand

a hearing upon the necessity for making such order, by serving on the board of fish and game commissioners a demand to be heard upon the necessity for closing said kelp bed or beds or parts thereof for the taking or harvesting of kelp, and upon such demand for a hearing, said board of fish and game commissioners shall fix a time and place for the taking of evidence upon the necessity of closing said bed or beds or parts thereof, which time shall be not less than ten days nor more than thirty days from the date of such demand for a hearing, and said fish and game commission shall cause notices in writing to said time and place to be served upon the party or parties making a demand for said hearing at least ten days before the day set for the hearing, and if no demand is made for a hearing within the time prescribed herein, said kelp bed or beds or parts thereof shall remain closed to the taking or harvesting of kelp for the time mentioned in said order.

Complaint. Answer. Evidence. Witness fees. Powers of superior court.

Complaint may be made by the commission or any of its deputies against any person, firm or corporation licensed to cut or harvest kelp in the waters of this state for any violation of the laws of this state, or any rules or regulations made by the board of fish and game commissioners for the taking or harvesting of kelp. Said complaints shall be made in writing, setting forth the particular offense charged to have been committed by said person, firm or corporation, a copy of which shall be filed with the board of fish and game commissioners and a copy of the same served upon the person, firm or corporation so charged. Said person, firm or corporation must appear or file an answer within five days from the date of service of a copy of said complaint, and if default be made, the board of fish and game commissioners shall issue an order revoking said license for the period hereinafter prescribed in this act, and said board of fish and game commissioners shall fix a time and place for the hearing of said charges, not less than ten days nor more than thirty days from the filing of said charges, and if the party accused appears and answers, a day may be fixed within the time prescribed in this act to take testimony. The evidence in any investigation, inquiry or hearing upon the necessity for closing any kelp bed or beds or parts thereof and the evidence in any hearing upon any charges made against any person, firm or corporation for violating any of the laws of the state of California for the preservation of kelp, or of the rules and regulations of the board of fish and game commissioners regulating the taking and harvesting and handling of kelp provided for in this section may be taken by any member of the board of fish and game commissioners, or such deputy fish and game commissioner or employee as the board may designate to take such evidence; and each member of the board and any of its deputies or employees designated to take evidence at the hearing provided hereby shall have the power to administer oaths, take affidavits and issue subpoenas for the attendance of witnesses at such hearing. Each witness legally subpoenaed attending a hearing shall receive for his attendance the same fees and mileage allowed by law to a witness in civil cases, which amount shall be paid by the party at whose request such witness is subpoenaed. The superior court in and for the county or city and county in which any inquiry, investigation, hearing or proceeding may be held under authority of this section, shall have power to compel the attendance of witnesses, the giving of testimony and the production of papers, as required by any subpoena issued under authority of this section.

Report of failure to obey subpoena.

The commission or representative of the commission before whom the testimony is to be given or produced may in the case of refusal of any witness to attend, or testify or produce any papers required by such subpoena, report to the superior court in and for the county or city and county in which the proceeding is pending by petition setting forth that due notice has been given of the time and place of the attendance of said

witness or the production of said papers and that the witness has been summoned in the manner prescribed in this act and that the witness has failed and refused to attend or produce the papers required by the subpoena before the commission or its representatives, in the case or proceeding named in the notice of time and place of hearing and subpoena, or has refused to answer questions propounded to him in the course of said proceeding, and ask an order of said court to compel the witness to attend and testify or produce said papers before the commission or its representatives.

Order of court.

The court upon the petition of the commission or its representatives, shall enter an order directing the witness to appear before the court at any time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he has not attended and testified or produced said papers before the commission or its representative. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission or its representative the court shall thereupon enter an order that said witness shall appear before the commission or its representatives at the time and place entered in said order, and testify or produce the required papers, and upon failure to obey said order said witness shall be dealt with as for contempt of court.

Deposition of witnesses.

The commission or its representatives, or any party designated by the fish and game commission may, in any investigation or hearing before the commission, or its representatives, cause the deposition of witnesses, residing within or without the state, to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state, and to that end may compel the attendance of witnesses and the production of documents and papers.

Revocation of license.

§ 7. If any person, firm or corporation, taking or harvesting kelp from any bed or beds or parts thereof, after service of a notice that said bed or beds or parts thereof are closed to the taking or harvesting of kelp, takes or harvest any kelp between the time of the service of said notice and the decision of the board of fish and game commissioners upon the hearing for the necessity for closing said kelp bed or beds or parts thereof, his license may be revoked for a period not to exceed one year.

Revocation of license.

§ 8. If any person, firm or corporation, licensed to take or harvest kelp in the waters of this state shall violate any of the laws of the state of California, regulating the taking and harvesting of kelp, or any rule or regulation of the board of fish and game commissioners regarding the taking or harvesting of kelp, said board of fish and game commissioners may, after a hearing, as provided herein, revoke said license and withhold the issuance of a new license to any such person, firm or corporation for a period not to exceed one year thereafter.

Penalty.

§ 9. Every person, firm or corporation, who takes or harvests kelp or other aquatic plants for profit in this state, without first obtaining a license therefor, is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail, in the county in which conviction shall be had for not less than fifty days nor more than one hundred and fifty days, or by both such fine and imprisonment.

Fines paid to "state university fund."

All fines and forfeitures collected for any violation of this act and all licenses fees and two-thirds of the moneys collected from the privilege tax under this act must be paid into the state treasury to the credit of the fish and game preservation fund and one-third of the moneys collected from the privilege tax under this act must be paid into the state treasury to the credit of the "state university fund." The amount so paid to the "state university fund" in accordance with the direction of this section, is hereby appropriated to be expended annually in accordance with law by the Scripps Institute of Biological Research.

License not required, when.

§ 10. The fish and game commission of this state shall have the power, subject to such rules and regulations as it may deem proper, to grant permits to any department of the United States government or to any scientific or any educational institution to take or harvest kelp at any and all times for scientific or experimental purposes without the payment of the kelp license or privilege tax herein provided.

Repealed.

§ 11. All acts and parts of acts in conflict herewith are hereby repealed.

KENNETT.

See Act 3094, note.

CHAPTER 180.**KERN COUNTY.**

References: Boundary, see Kerr's Cyc. Political Code, § 3923; and see tit. "County Boundaries."

County Government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 2361. ISSUE OF BONDS TO PAY COUNTY INDEBTEDNESS.

2367. INCREASE OF SUPERIOR JUDGES.

2371. SALARIES OF SUPERIOR JUDGES.

ACT 2361—An act to provide for the issuance of bonds in the county of Kern, for the payment of the indebtedness of said county.

History: Approved March 31, 1876, Stats. 1875-76, p. 645.

This act authorized the issue of \$40,000 ten per cent bonds, due January 1, 1896, for the purpose indicated.

INCREASE OF SUPERIOR JUDGES.

ACT 2367—An act to increase the number of judges of the superior court of the county of Kern, and to provide for the appointment of an additional judge.

History: Approved April 14, 1913. In effect August 10, 1913. Stats. 1913, p. 23. Prior act of February 17, 1903, Stats. 1903, p. 30, increased the number of judges from one to two.

Additional judge for Kern county.

§ 1. The number of judges of the superior court of the county of Kern, is hereby increased from two to three.

§ 2. Within thirty days after the taking effect of this act, the governor shall appoint one additional judge of the superior court of the county of Kern, state of California, who shall hold office until the first Monday after the first day of January, A. D. nineteen hundred and fifteen. At the general election to be held in November, 1914, a judge of

the superior court of said county shall be elected in said county, who shall be the successor of the judge appointed hereunder, to hold office for the term prescribed by the constitution and by law.

Appointment and term of office. Election.

§ 3. The salary of said additional judge shall be the same in amount, and shall be paid at the same time, and in the same manner, as the salary of the other judges of the superior court of said county now authorized by law.

SALARIES OF SUPERIOR JUDGES.

ACT 2371—An act fixing the salaries of the judges of the superior court of the state of California, in and for the county of Kern, and providing for the payment thereof.

History: Approved May 1, 1911, Stats. 1911, p. 1421.

Salary of superior Judges of Kern county.

§ 1. The annual salary of each of the judges of the superior court of the state of California in and for the county of Kern is five thousand dollars; one-half thereof to be paid by the said state and the other half thereof by the said county; at the same times and in like manner as the salaries of the other judges of the superior court of said state are paid.

Repeal of conflicting acts.

§ 2. All acts and parts of acts so far as they conflict with this act are hereby repealed.

§ 3. This act shall take effect and be in force from and after its passage.

1. **Act not repealed by section 737, Political Code.**—This act was not repealed by the re-enactment in 1915 of section 737 of the Political Code, fixing salaries of superior court judges in about fifty counties of the state, including Kern, the re-enacting

act containing no general or special repealing clause, and making no change in the section as it existed prior to re-enactment except in the case of Sonoma county.—*Peairs v. Chambers*, 28 Cal. App. 584, 153 Pac. 410.

KEYES CREEK.

See Kerr's Cyc. Political Code, § 2349.

KING CITY.

See Act 3094, note.

CHAPTER 181.

KINGS COUNTY.

References: Boundaries, see Kerr's Cyc. Political Code, § 3924; and, also, see tit. "County Boundaries."

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 2380. ORGANIZATION ACT.

ORGANIZATION ACT.

ACT 2380—To create the county of Kings, to define the boundaries thereof, to fix the county seat thereof, and to provide for its organization and election of officers, and to classify said county.

History: Approved March 22, 1893, Stats. 1893, p. 176.

1. **Constitutionality.—Collection of taxes in new county.**—The provision of section 15 as to the collection of taxes for 1892 on

property within the boundary of the new county is not unconstitutional on the ground of special legislation or that it is

not expressed in the title of the act.—*Kings County v. Johnson*, 104 Cal. 198, 37 Pac. 870.

2. Same—Power to apportion debts of new county.—The power to apportion debts of a new county and an old, under section 3 of article XI of the constitution rests exclusively with the legislation, and not with the courts.—*County of Tulare v. County of Kings*, 117 Cal. 195, 49 Pac. 8.

3. Action for debt by old county against new county for the latter's proportion of debts.—Neither section 1432 nor 2847, Civil Code, authorizes the mother county to bring an action against the new county for the latter's just proportion of the debts of the old county.—*County of Tulare v. County of Kings*, 117 Cal. 195, 49 Pac. 8.

4. Swamp land fund—State as custodian.—The state has ceased to be the immediate custodian of the swamp land fund, but there is nothing in any act that confers upon any county any property right in and to this fund, and there is nothing in any act from which it may be inferred that the state has relinquished its right of legislative control over it, or has renounced, or transferred its trust; and it

was placed in the county treasuries for the convenience of the landowner, and there was no provision in the organization act for the transfer of any portion of the fund in the Tulare county treasury to Kings county, on the latter's organization.—*County of Kings v. County of Tulare*, 119 Cal. 509, 51 Pac. 866.

5. Mandamus—Furnishing to collector of new county—List of unpaid taxes by collector of old county.—Mandamus may issue to compel the tax collector of Tulare county upon his refusal on demand of the tax collector of Kings county, to furnish the list of unpaid taxes on property within Kings county for year 1892.—*Kings County v. Johnson*, 104 Cal. 198, 37 Pac. 870.

6. Same—Same.—It was not the duty of the tax collector of Tulare county to collect any of the taxes for the year 1892, on land within the boundaries of Kings county, unpaid when the demand provided for in section 15 of the act is made, and if any money was collected on such taxes, the remedy is by action for money had and received by him.—*Kings County v. Johnson*, 104 Cal. 198, 37 Pac. 870.

KINGSBURG.

See Act 3094, note.

CAPTER 182.

KNIGHTS LANDING.

Reference: See tit. "Drainage."

CONTENTS OF CHAPTER.

ACT 2395. HOGS AND GOATS RUNNING AT LARGE.

HOGS AND GOATS RUNNING AT LARGE.

ACT 2395—An act to prevent hogs and goats running at large in.

History: Approved March 20, 1872, Stats. 1871-72, p. 438.

The code commissioners are of the opinion that this act was probably repealed by the general estray law of 1897; but see editor's note to chapter on "Estrays."

CHAPTER 183.

LABOR BUREAU.

References: Hours of labor, see Kerr's Cyc. Political Code, § 3244.

Labor union, unlawful use of trade mark, see Kerr's Cyc. Penal Code, § 349b.

Labor union, coercing persons not to join, see Kerr's Cyc. Penal Code, § 679.

Lien for labor, see Kerr's Cyc. Civil Code, §§ 3051, 3052.

Minors, see Kerr's Cyc. Penal Code, § 651.

Office hours, county officers, see Kerr's Cyc. Political Code, § 4312.

Prisoners, see Kerr's Cyc. Penal Code, §§ 1613, 1614.

Public works, see Kerr's Cyc. Political Code, § 3245.

Street cars, see Kerr's Cyc. Political Code, §§ 3246, et seq.

Union labor, misrepresentation as to employment, see Kerr's Cyc. Penal Code, §§ 349a, 349c.

Water front, San Francisco, see Kerr's Cyc. Political Code, § 2545.

See, generally, tits. "Hours of Labor"; "Infants"; "Master and Servant."

CONTENTS OF CHAPTER.

ACT 2401. BUREAU OF LABOR STATISTICS.

2402. BUREAU OF LABOR STATISTICS—ATTORNEY.

2403. ENFORCEMENT OF LABOR LAWS.

2404. PROTECTION OF WAGES ACT OF 1868.

BUREAU OF LABOR STATISTICS.

ACT 2401—An act to establish and support a bureau of labor statistics.

History: Approved March 3, 1883, Stats. 1883, p. 27. Amended (1) February 8, 1889, Stats. 1889, p. 6; (2) February 20, 1901, Stats. 1901, p. 12; (3) March 15, 1907, Stats. 1907, p. 306; (4) February 20, 1909, Stats. 1909, p. 36; (5) February 13, 1911, Stats. 1911, p. 39; (6) April 28, 1911, Stats. 1911, p. 1205; (7) May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 925. (8) May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 928. (9) May 10, 1917. In effect July 27, 1917. Stats. 1917, p. 328. (10) May 7, 1919. In effect July 22, 1919. Stats. 1919, p. 330.

Term of labor commissioner.

§ 1. As soon as possible after the passage of this act, the governor of this state shall appoint a suitable person to act as commissioner of a bureau of labor statistics. The headquarters of said bureau shall be located in the city and county of San Francisco. Said commissioner shall hold office and serve solely at the pleasure of the governor, and not otherwise. [Amendment approved February 13, 1911. Stats. 1911, p. 39.]

Commissioner's bond.

§ 2. The commissioner of the bureau, before entering upon the duties of his office, must execute an official bond in the sum of five thousand (5000) dollars and take oath of office, all as prescribed by the Political Code for state officers in general.

Duties of commissioner enumerated.

§ 3. The duties of the commissioner shall be to collect, assort, systematize, and present, in biennial reports to the legislature, statistical details, relating to all departments of labor in the state, such as the hours and wages of labor, cost of living, amount of labor required, estimated number of persons depending on daily labor for their support, the probable chances of all being employed, the operation of labor-saving machinery in its relation to hand labor, etc. Said statistics may be classified as follows:

First—In agriculture.

Second—In mechanical and manufacturing industries.

Third—In mining.

Fourth—In transportation on land and water.

Fifth—In clerical and all other skilled and unskilled labor not above enumerated.

Sixth—The amount of cash capital invested in lands, buildings, machinery, material, and means of production and distribution generally.

Seventh—The number, age, sex, and condition of persons employed; the nature of their employment; the extent to which the apprenticeship system prevails in the various skilled industries; the number of hours of labor per day; the average length of time employed per annum, and the net wages received in each of the industries and employments enumerated.

Eighth—The number and condition of the unemployed, their age, sex, and nationality, together with the causes of their idleness.

Ninth—The sanitary condition of lands, workshops, dwellings, the number and size of rooms occupied by the poor, etc.; the cost of rent, fuel, food, clothing, and water in each locality of the state; also the extent to which labor-saving processes are employed to the displacement of hand labor.

Tenth—The number and condition of the Chinese in the state; their social and sanitary habits; number of married, and of single; the number employed, and the nature of their employment; the average wages per day at each employment; and the gross amount yearly; the amounts expended by them in rent, food, and clothing, and in what proportion such amounts are expended for foreign and home productions, respectively; to what extent their employment comes in competition with the white industrial classes of the state.

Eleventh—The number, condition, and nature of the employment of the inmates of the state prison[s], county jails, and reformatory institutions, and to what extent their employment comes in competition with the labor of mechanics, artisans, and laborers outside of these institutions.

Twelfth—All such other information in relation to labor as the commissioner may deem essential to further the object sought to be obtained by this statute, together with such strictures on the condition of labor and the probable future of the same as he may deem good and salutary to insert in his biennial reports.

State department officers to assist.

§ 4. It shall be the duty of all officers of state departments, and the assessors of the various counties of the state, to furnish, upon the written request of the commissioner, all the information in their power necessary to assist in carrying out the objects of this act; and all printing required by the bureau in the discharge of its duty shall be performed by the state printing department, and at least three thousand (3000) copies of the printed report shall be furnished the commissioner for free distribution to the public.

Penalty for obstructing.

§ 5. Any person who wilfully impedes or prevents the commissioner or his deputy in the full and free performance of his or their duty, shall be guilty of a misdemeanor, and upon conviction of the same shall be fined not less than ten (10) nor more than fifty (50) dollars, or imprisonment not less than seven (7) nor more than thirty (30) days in the county jail, or both.

Office hours.

§ 6. The office of the bureau shall be open for business from nine (9) o'clock a. m. until five (5) o'clock p. m. every day except non-judicial days, and the officers thereof shall give to all persons requesting it all needed information which they may possess.

Powers of labor commissioner and deputies. Seal. Access to places of labor.

§ 7. The commissioner and his representatives duly authorized by him in writing shall have the power and authority, when in his judgment he deems it necessary, to take assignments of wage claims and prosecute actions for the collection of wages and other demands of persons who are financially unable to employ counsel in cases in which, in the judgment of the commissioner, the claims for wages are valid and enforceable in the courts; to issue subpoenas, to compel the attendance of witnesses or parties and the production of books, papers or records, and to administer oaths and to examine witnesses under oath, and to take the verification or proofs of instruments of writing, and to take depositions and affidavits for the purpose of carrying out the provisions of this act and all other acts now or hereafter placed in the bureau for enforcement. The commissioner shall have a seal inscribed "Bureau of Labor Statistics—State of California" and all courts shall take judicial notice of such seal. Obedience to subpoenas issued by the commissioner or his duly authorized representatives shall be enforced by the courts in any county or city and county. The commissioner and his representatives shall have free access to all places and works of labor, and any principal, owner, operator, manager, or lessee of any mine, factory, workshop, manufacturing or mercantile establishment, or any agent or employee of such principal, owner, operator, manager or lessee who shall refuse to said commissioner, or his duly authorized representative, admission therein, or who shall, when requested by him, wilfully neglect or refuse to furnish to him any statistics or information, pertaining to his lawful duties, which may be in his possession or under the control of said principal, owner, operator, lessee, manager or agent thereof, shall be

punished by a fine of not more than two hundred dollars. [Amendment of May 7, 1919. In effect July 22, 1919. Stats. 1919, p. 330.]

This section was also amended February 8, 1880, Stats. 1889, p. 6; May 29, 1915, Stats. 1915, p. 925.

Information to be confidential. Violation of confidence and penalty.

§ 8. No use shall be made in the reports of the bureau of the names of individuals, firms, or corporations supplying the information called for by this act, such information being deemed confidential, and not for the purpose of disclosing any person's affairs; and any agent or employee of said bureau violating this provision shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars or by imprisonment in the county jail not to exceed six months. [New section added February 8, 1889. Stats. 1889, p. 6.]

The original section was amended and changed to § 9 in 1889, Stats. 1889, p. 7.

Assistants of labor commissioner. Offices.

§ 9. The commissioner shall appoint two deputies who shall have the same power as said commissioner; an assistant deputy who shall reside in the county of Los Angeles; a statistician and chief examiner; a stenographer; and such agents or assistants as he may from time to time require, at such rate of wages as he may prescribe, and actual traveling expenses for each person while employed. He shall procure rooms necessary for offices in San Francisco, Los Angeles, Sacramento, San Diego, and in such other places as he may deem necessary, at a rent not to exceed the sum of four hundred dollars per month. [Amendment of May 10, 1917. In effect July 27, 1917. Stats. 1917, p. 328.]

This was originally § 8. It was changed to § 9 February 8, 1889, Stats. 1889, p. 7, and amended by the same act, and again amended March 15, 1907, Stats. 1907, p. 306; February 20, 1909, Stats. 1909, p. 36; April 28, 1911, Stats. 1911, p. 1205; May 29, 1915, Stats. 1915, p. 928.

Salaries. Traveling expenses.

§ 10. The salary of the commissioner shall be four thousand dollars per annum; the salary of each deputy commissioner shall be two thousand four hundred dollars per annum; the salary of the assistant deputy shall be two thousand one hundred dollars per annum; the salary of the statistician and chief examiner shall be two thousand seven hundred dollars per annum; the salary of the stenographer shall be one thousand two hundred dollars per annum; to be audited by the controller and paid by the state treasurer in the same manner as other state officers. There shall also be allowed a sum not to exceed forty thousand dollars per annum for salaries of agents or assistants, for traveling expenses, and for other contingent expenses of the bureau. [Amendment of May 10, 1917. In effect July 27, 1917. Stats. 1917, p. 328.]

This was originally § 9. It was changed to § 10 February 8, 1889, Stats. 1889, p. 7, and amended by the same act, and again amended March 15, 1907, Stats. 1907, p. 307; February 20, 1909, Stats. 1909, p. 36; April 28, 1911, Stats. 1911, p. 1205; May 29, 1915, Stats. 1915, p. 928.

Time of taking effect of act.

§ 11. This act shall take effect and be in force from and after its passage.

Labor commissioner may condemn scaffoldings, etc., upon complaint. Certificate. Procedure.

§ 12. Whenever complaint is made to the commissioner that the scaffolding or the slings, hangers, blocks, pulleys, stays, braces, ladders, irons, or ropes of any swinging or stationary scaffolding used in the construction, alteration, repairing, painting, cleaning or painting of building are unsafe or liable to prove dangerous to the life or limb of any person, such commissioner shall immediately cause an inspection to be made of

such scaffolding or the slings, hangers, blocks, pulleys, stays, braces, ladders, iron, or other parts connected therewith. If after examination such scaffolding or any of such parts is found to be dangerous to life or limb, the commissioner shall prohibit the use thereof, and require the same to be altered and reconstructed so as to avoid such danger. The commissioner, deputy commissioner, or agent or assistant making the examination shall attach a certificate to the scaffolding or the slings, hangers, irons, ropes or other parts thereof, examined by him, stating that he has made such examination and that he found it safe or unsafe as the case may be. If he declares it unsafe, he shall at once in writing notify the person responsible for its erection of the fact and warn him against the use thereof. Such notice may be served personally upon the person responsible for its erection or by conspicuously affixing it to the scaffolding or the part thereof declared to be unsafe. After such notice has been so served or affixed the person responsible therefor shall immediately remove such scaffolding or part thereof and alter or strengthen it in such manner as to render it safe, in the discretion of the officer who has examined it or of his superiors. The commissioner, his deputy and any duly authorized representative whose duty it is to examine or test any scaffolding or part thereof as required by this section, shall have free access, at all reasonable hours, to any building or premises containing them or where they may be in use. All swinging and stationary scaffolding shall be so constructed as to bear four times the maximum weight required to be dependent therefrom and placed thereon, when in use, and not more than four men shall be allowed on any swinging scaffolding at one time. [New section added February 20, 1901. Stats. 1901, p. 12.]

The amending acts of 1915 and 1917, contained the following section:

§ 3. All the provisions of said act in conflict with the provisions of this act are hereby repealed.

BUREAU OF LABOR STATISTICS—ATTORNEY.

ACT 2402—An act to create the office of attorney for the state bureau of labor statistics.

History: Approved June 4, 1913. In effect August 10, 1913. Stats. 1913, p. 382.

Attorney for state bureau of labor statistics.

§ 1. The office of attorney for the state bureau of labor statistics is hereby created. Said attorney shall be appointed by the commissioner of the bureau of labor statistics.

Duties.

§ 2. It shall be the duty of such attorney to act for and represent the state bureau of labor statistics and the commissioner thereof in all legal matters which may require the attention of such state bureau of labor statistics and the commissioner thereof, and to specially represent and act for and in co-operation thereof, when required, in the prevention of all acts and things which, in the judgment of the state bureau of labor statistics or the commissioner thereof, as will best subserve and carry out the provisions of an act entitled, "An act to establish and support a bureau of labor statistics," approved March 3, 1883; and also, all other acts which have been or may be hereafter designated by the legislature to be enforced by said state bureau of labor statistics or the commissioner thereof, and in all other matters pertaining to the welfare of minors and labor generally and to assist and aid the said bureau and the commissioner thereof with his advice, and to represent and act for the same in court.

Salary.

§ 3. The salary of such attorney shall be twenty-four hundred dollars per annum and shall be paid out of the state treasury, upon warrants drawn by the controller, in the same manner as the salaries of other state officers are paid.

§ 4. All acts and parts of acts in conflict with this act are hereby repealed.

ENFORCEMENT OF LABOR LAWS.

ACT 2403—An act to provide for the enforcement of labor laws of the state of California by the commissioner of the bureau of labor statistics.

History: Approved May 24, 1915. In effect August 8, 1915. Stats. 1915, p. 814.

Commissioner of bureau of labor statistics to enforce labor laws.

§ 1. The commissioner of the bureau of labor statistics shall have authority and power to enforce any and all labor laws of the state of California, the enforcement of which is not specifically vested in any other officer, board or commission, and the deputies and agents of the said labor commissioner shall have the power and authority of sheriffs and other peace officers to make arrests, and to serve any process or notice throughout the state in the enforcement of such labor laws, pursuant to the instructions of said commissioner.

PROTECTION OF WAGES OF LABOR ACT OF 1868.

ACT 2404—An act to protect the wages of labor.

History: Approved March 21, 1868, Stats. 1867-68, p. 213. Amended March 2, 1872, Stats. 1871-72, p. 205.

CHAPTER 184.

LABOR UNIONS.

References: Labor union, unlawful use of trade mark, see Kerr's Cyc. Penal Code, § 349b.

Labor union, coercing persons not to join, see Kerr's Cyc. Penal Code, § 679.

Union labor, misrepresentation as to employment, see Kerr's Cyc. Penal Code, §§ 349a, 349c.

See, generally, tits. "Hours of Labor"; "Labor Bureau"; "Master and Servant."

CONTENTS OF CHAPTER.

ACT 2412. UNLAWFUL WEARING OF BUTTON.

2413. UNLAWFUL USE OF CARD.

Men for wages payable weekly or monthly.—See tit. "Corporations," Act 1037.

1. Wages of laborers—Preferred claim.—This act made wages of laborers, mechanics, etc., a preferred claim in cases of insolvent estates, and estates of deceased persons. It was included in the general repeal bill (S. bill No. 519, session 1871-72),

introduced to carry out the proposal of section 4505, Political Code, but it was amended at the same session, and it is doubtful as to the intention of the legislature with respect to it. It was probably superseded, in effect, by the code.—See Kerr's Cyc. Code Civ. Proc., §§ 1204, et seq.

UNLAWFUL WEARING OF BUTTON.

ACT 2412—An act to prevent persons from unlawfully wearing the button of any labor union of this state.

History: Approved March 20, 1909, Stats. 1909, p. 546.

Labor unions, protection of button.

§ 1. Any person who shall willfully wear the button of any labor union of this state, unless entitled to wear said button under the rules of such union, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment for a term not to exceed twenty days in the county jail or by a fine not to exceed twenty dollars, or by both such fine and imprisonment.

UNLAWFUL USE OF CARD.

ACT 2413—An act to prevent persons from unlawfully using a union card.

History: Approved March 22, 1909, Stats. 1909, p. 668.

Union card, unlawful use of.

§ 1. Any person, who shall willfully use the card of any labor union to obtain aid, assistance or employment thereby within this state, unless entitled to use said card

under the rules and regulations of a labor union within this state, shall be guilty of a misdemeanor.

Conflicting acts repealed.

§ 2. All acts, and parts of acts, in conflict with the provisions of this act, are hereby repealed.

CHAPTER 185.

LAKE BIGLER.

Reference: Fishing in, see tit. "Game Laws," Act 1724.

CONTENTS OF CHAPTER.

ACT 2417. LEGALIZING NAME.

LEGALIZING NAME.

ACT 2417—An act to legalize the name of Lake Bigler.

History: Approved February 10, 1870, Stats. 1869-70, p. 64.

CHAPTER 186.

LAKE COUNTY.

References: Boundaries, see Kerr's Cyc. Political Code, § 3925.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 2422. ISSUE OF BONDS TO PAY JUDGMENT.

2424. TRANSFER AND LOAN OF SWAMP LAND FUNDS.

2428. RESTRICT HERDING OF SHEEP AND GOATS.

ISSUE OF BONDS TO PAY JUDGMENT.

ACT 2422—An act to authorize the board of supervisors of Lake County to issue bonds of said county to pay a judgment recovered against said county in the Sixth Judicial District Court, in and for Yolo County, in the state of California, on May sixth, A. D. one thousand eight hundred and seventy-five.

History: Approved March 11, 1876, Stats. 1875-76, p. 209. Amended March 23, 1876, Stats. 1875-76, p. 405.

These bonds were authorized to pay a judgment of the Clear Lake Water Works Company against the county.

TRANSFER AND LOAN OF SWAMP LAND FUNDS.

ACT 2424—An act to authorize the transfer and loan of certain funds in Lake county.

History: Approved March 13, 1874, Stats. 1873-74, p. 349.

This act authorized the transfer of moneys from the Swamp Land Fund to the General Road Fund.

RESTRICT HERDING OF SHEEP AND GOATS.

ACT 2428—An act to prevent sheep and goats from being herded or from running at large in parts of. [Stats. 1877-78, p. 685.]

History: Approved March 29, 1878, Stats. 1877-78, p. 685. Prior act March 18, 1874, Stats. 1873-74, p. 434. Amended March 16, 1876, Stats. 1875-76, p. 312, restricting the herding of sheep, covered a part, at least, of the same territory, and so far as the territory was the same, was superseded by the present act.

The code commissioner is of the opinion that this act was superseded by the general estray law of 1897; but see editor's note to chapter on "Estrays."

CHAPTER 187.

LAKE EARL.

Reference: See tit. "Drainage Districts."

CONTENTS OF CHAPTER.

ACT 2434. PERMANENTLY DRAINING.

PERMANENTLY DRAINING LAKE EARL.

ACT 2434—An act to provide for permanently draining Lake Earl in Del Norte county, and making an appropriation therefor.

History: Approved March 11, 1907, Stats. 1907, p. 207.

CHAPTER 188.

LAKEPORT.

Reference: Incorporation, see Act 3094, note.

CONTENTS OF CHAPTER.

ACT 2439. HOGS RUNNING AT LARGE.

HOGS RUNNING AT LARGE.

ACT 2439—An act to prevent hogs from running at large in the towns of Lakeport and Lower Lake, in Lake county.

History: Approved March 23, 1878, Stats. 1877-78, p. 435.

The code commissioner is of the opinion that this act was repealed by the general estray law of 1897; but see editor's note on chapter on "Estrays."

CHAPTER 189.

LAKES.

References: See, generally, tits. "Drainage Districts"; "Lake Earl"; "Lake Tahoe."

CONTENTS OF CHAPTER.

ACT 2444. LOWERING CERTAIN LAKE LEVELS BY UNITED STATES GOVERNMENT.

LOWERING CERTAIN LAKE LEVELS BY UNITED STATES GOVERNMENT.

ACT 2444—An act authorizing the United States government to lower the water levels of any or all of the following lakes: Lower or Little Klamath Lake, Tule or Rhett Lake, Goose Lake, and Clear Lake, situated in Siskiyou and Modoc Counties, and to use any part or all of the beds of said lakes for the storage of water in connection with the irrigation and reclamation operations conducted by the Reclamation Service of the United States; also ceding to the United States all right, title, interest or claim of the state of California to any lands uncovered by the lowering of the water levels of any or all of said lakes not already disposed of by the state.

History: Approved February 3, 1905, Stats. 1905, p. 4.

LAKE TAHOE.

See tits. "Highways"; "Lakes."

LA MESA.

See Act 3094, note.

CHAPTER 190.

LARCENY.

References: Animals, see Kerr's Cyc. Political Code, § 487.

Definition and degrees, see Kerr's Cyc. Penal Code, §§ 484, 486.

Dogs, see Kerr's Cyc. Penal Code, § 491.

Gas, Kerr's Cyc. Penal Code, § 498.

Fire, goods saved from, in San Francisco, see Kerr's Cyc. Penal Code, § 500.

Fixtures, severing from realty, see Kerr's Cyc. Penal Code, § 495.

Mortgaged property, see Kerr's Cyc. Penal Code, § 538.

Official records, see Kerr's Cyc. Penal Code, §§ 113, 114.

Vehicle, see Kerr's Cyc. Penal Code, § 499b.

Water, see Kerr's Cyc. Penal Code, § 499.

CONTENTS OF CHAPTER.

ACT 2465. CONVERSION OF FIXTURES.

2466. GOLD-DUST, AMALGAM, QUICKSILVER.

CONVERSION OF FIXTURES.

ACT 2465—An act to more fully define the crime of larceny.

History: Approved March 6, 1872, Stats. 1871-72, p. 232. See Act 2466.

Grand larceny.

§ 1. Every person who shall convert any manner of real estate of the value of fifty dollars and upwards into personal property, by severing the same from the realty of another, with felonious intent to and shall so steal, take, and carry away the same, shall be deemed guilty of grand larceny, and upon conviction thereof shall be punishable by imprisonment in the state prison for any term not less than one year nor more than fourteen years.

Petit larceny.

§ 2. Every person who shall convert any manner of real estate of the value of under fifty dollars into personal property, by severing the same from the realty of another, with felonious intent to and shall so steal, take, and carry away the same, shall be deemed guilty of petit larceny, and upon conviction thereof shall be punishable by imprisonment in the county jail for a period not more than one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Editor's note: This act penalized as grand larceny the act of removing fixtures from realty and converting the same into personalty, with intent to steal the same. The Penal Code made the same act larceny, but brought the degree of the crime within the rules of that code as to the determination of such degree. See Kerr's Cyc. Penal Code, § 495. As to whether the act was superseded by the code, neither the code commission nor the supreme court have expressed an opinion; but the supreme court

has referred to it as an act supplementary to the "crimes and punishments act" of 1850, as Act 2466 is declared to be by the legislature, and the court has decided that the latter act, passed by the same legislature, is in force unaffected by the codes.

1. Allegation that ore taken was severed from the ground.—It is not necessary that the information should allege that the ore taken had been severed from the ground.—*People v. Opie*, 123 Cal. 294, 55 Pac. 983, 55 Pac. 989.

GOLD-DUST, AMALGAM, QUICKSILVER.

ACT 2466—An act supplementary to an act entitled "An act concerning crimes and punishments," passed April sixteenth, eighteen hundred and fifty.

History: Approved March 20, 1872, Stats. 1871-72, p. 435.

Grand larceny.

§ 1. Every person who shall feloniously steal, take, and carry away, or attempt to take, steal, and carry from any mining claim, tunnel, sluice, undercurrent, riffle-box, or sulphurate [sulphuret-] machine any gold-dust, amalgam, or quicksilver, the property

of another, shall be deemed guilty of grand larceny, and upon conviction thereof shall be punished by imprisonment in the state prison for any term of not less than one year nor more than fourteen years.

Act takes effect when.

§ 2. This act shall be in force from and after its passage.

The act makes the stealing of gold ore grand larceny, whether severed from the earth, or not, by the party charged.—People v. Opie, 123 Cal. 294, 11 Pac. 801.

1. **Act construed.**—The act must be construed as having been passed subsequent to the adoption of the Penal Code, and as in force.—People v. Salvator, 71 Cal. 16, 11 Pac. 301, 11 Pac. 801.

LARKSPUR.

See Act 3094, note.

LASSEN COUNTY.

See Kerr's Cyc. Political Code.

LA VERNE.

See Act 3094, note.

LAW LIBRARIES.

See tit. "Libraries."

CHAPTER 191.

LEASES.

CONTENTS OF CHAPTER.

ACT 2483. CERTAIN LEASES CONFIRMED AND RATIFIED.

CERTAIN LEASES RATIFIED AND CONFIRMED.

ACT 2483—An act concerning confirming and ratifying leases and other contracts made by any officer or boards of officers of this state.

History: Approved March 23, 1901, Stats. 1901, p. 601.

Ratification of leases made by state officers, etc.

§ 1. All leases for terminal facilities made or executed by any state officer or board of state officers to any person, persons or corporation within two years prior to the passage of this act and which shall be on file in the office of the secretary of state on or before February fifteenth, nineteen hundred and one, are hereby recognized, approved and ratified, and the terms, covenants and conditions thereof shall bind the parties thereto, their successors and assigns and the state of California.

China basin lease ratified.

§ 2. The lease of the lands known as China basin in the city and county of San Francisco to the San Francisco and San Joaquin Valley Railway Company for terminal facilities, made on November twenty-first, nineteen hundred, by and between said company and the board of state harbor commissioners, is hereby approved and ratified, and the covenants, conditions and terms thereof shall bind the parties thereto, their successors and assigns, and the state of California.

Repeal of conflicting acts.

§ 3. All acts and parts of acts in conflict herewith are hereby repealed.

§ 4. This act shall take effect immediately.

1. **Constitutionality**—Act applicable to all leases of tideland.—This act being general in its terms, applicable to all leases

of tidelands made by a certain class of municipalities, is not invalid as special legislation.—San Pedro, etc., Co. v. Hamil-

ton, 161 Cal. 610, 37 L. R. A. (N. S.) 686, 119 Pac. 1073.

2. Constitutionality — Leasing of reclaimed tidelands.—Section 3 of article XV of the constitution, does not forbid the legislature to lease reclaimed tidelands within two miles of an incorporated town or city, nor to ratify a lease already made by a state officer or board, as was done by this act.—*San Pedro, etc., Co. v. Hamilton*, 161 Cal. 610, 37 L. R. A. (N. S.) 686, 119 Pac. 1073.

3. Words and phrases—A “lease” not a “grant.”—The word “grant” in section 3, article XV, of the constitution, is to be taken in its ordinary and generally accepted sense, particularly where it is used in connection with the word “sale,” as there, and so interpreted, it does not include a lease.—*San Pedro, etc., Co. v. Hamilton*, 161 Cal. 610, 37 L. R. A. (N. S.) 686, 119 Pac. 1073.

CHAPTER 192.

LEGAL TENDER.

CONTENTS OF CHAPTER.

ACT 2488. LEGAL TENDER NOTES RECEIVABLE AT PAR FOR TAXES.

LEGAL TENDER NOTES RECEIVABLE AT PAR FOR TAXES.

ACT 2488—An act in relation to the currency of the United States.

History: Approved March 12, 1880, Stats. 1880, p. 8. [Ban. ed. p. 28.]

Legal-tender notes to be received at par.

§ 1. All legal-tender notes heretofore issued, or which may hereafter be issued, by the government of the United States of America, as legal-tender notes, shall be received at par in payment for all taxes due or to become due to this state, or to any county or municipal corporation thereof, and such notes shall be a legal tender for all debts, dues, and demands between citizens of this state.

Repeal of conflicting acts.

§ 2. All acts, and the provisions of any act or parts of acts, conflicting with this act are hereby repealed.

§ 3. This act shall take effect and be in force from and after its passage.

As to what money constitutes a legal tender, see Kerr's Cyc. Civil Code, § 1478 and note.

1. Lien may be paid in any kind of money.—The lien of a street assessment

may be paid in any kind of money, notwithstanding the board of supervisors provided that the assessment should be payable in gold coin.—*Perine, etc., Co. v. Quackenbush*, 104 Cal. 684, 38 Pac. 533.

CHAPTER 193.

LEGISLATION.

CONTENTS OF CHAPTER.

ACT 2494. LEGISLATIVE COUNSEL BUREAU.

2495. INVESTIGATION OF HIGHWAY LEGISLATION.

LEGISLATIVE COUNSEL BUREAU.

ACT 2494—An act to establish a legislative counsel bureau and making an appropriation therefor.

History: Approved May 26, 1913. In effect August 10, 1913, Stats. 1913, p. 626. Amended April 10, 1915. In effect August 8, 1915. Stats. 1915, p. 49. May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1398.

Legislative counsel bureau created.

§ 1. A bureau is hereby created to be known as the legislative counsel bureau, which shall be in charge of a chief, who shall be a civil executive officer and who shall be

known as the legislative counsel of California and who shall be appointed by the governor and who shall hold during the pleasure of the governor. The legislative counsel shall be chosen without reference to party affiliations and solely on the ground of fitness to perform the duties of his office. [Amendment of May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1398.]

Duty of legislative counsel.

§ 2. It shall be the duty of the legislative counsel to prepare and assist in the preparation, amendment and consideration of legislative bills when requested or upon suggestion as herein provided. Upon request he shall advise any state officer, commissioner or bureau as to the preparation of bills to be submitted to the legislature; and when requested so to do, he shall advise as to their work with any legislative committee appointed to carry on investigations between sessions of the legislature. He shall advise the legislature from time to time as to needed revision of the statutes. He shall present to each session of the legislature a statement calling attention to laws which have been repealed by implication or which have been declared unconstitutional by the courts but which have not been expressly repealed. It shall also be the duty of the legislative counsel, whenever in his judgment there is reasonable probability that an initiative measure will be submitted to the voters of the state of California under the laws of the state relating to the submission of measures by initiative, to co-operate with the proponents of said measure in the preparation of said law when requested in writing so to do by twenty-five or more electors proposing such a measure. [Amendment of May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1398.]

This section was also amended April 10, 1915, Stats. 1915, p. 49.

Preparation of legislative bills.

§ 3. The legislative counsel shall prepare or assist in the preparation or amendment of legislative bills at the suggestion, in writing and as herein set forth, of the governor of the state, or of any judge of the supreme court or of the district courts of appeal or of the superior courts of the state, or of any committee of the senate or assembly of the legislature of the state. All such suggestions shall set forth the substance of the provisions desired or which may be needed with the reasons therefor. Such suggestion by a judge of the supreme court shall be filed with the clerk of that court. Such suggestion by a judge of a district court of appeal shall be filed with the clerk of that court. Such suggestion by a judge of a superior court shall be filed with the clerk of the district court of appeal of the district within which such superior court is located. When such suggestion is so filed with the clerk of the supreme court or of a district court of appeal, that clerk shall make and send to the permanent office of said bureau a certified copy of such suggestion, and all other suggestions shall be filed at said office, and all such papers so received at such office shall be there permanently filed and recorded and copies furnished to the legislative counsel. The legislative counsel shall prepare a bill in accordance with such suggestion and shall transmit it to the chairman of the judiciary committee of each house at the next succeeding session of the legislature.

Not to urge legislation.

From the time the legislature of the state convenes until it is adjourned finally, the legislative counsel shall give such consideration to and service concerning any bill before the legislature, as circumstances will permit, and which is in any way requested by the governor of the state or the senate or the assembly or any committee of the legislature having such bills before it for consideration, and after such adjournment the legislative counsel shall still remain so subject to such request by the governor of the state as to any bill still in his hands for rejection or approval or other action. Neither the legislative counsel nor any employee of the bureau shall oppose or urge legislation, but the bureau shall, upon request, and so far as may be in its power, aid and assist any mem-

ber of the legislature as to bills, resolutions and measures, drafting the same into proper form and furnishing to them the fullest information upon all matters in the scope of the bureau. Neither the legislative counsel nor any other employee of the bureau shall reveal to any person outside thereof the contents or nature of any matter which has not become a public record, except with the consent of the person bringing such matter before the bureau. [Amendment of May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1399.]

Office in capitol. Temporary office.

§ 4. The legislative counsel shall be in attendance upon all sessions of the legislature and his permanent office shall be in the state capitol in Sacramento, where he shall be provided with suitable and sufficient offices convenient to the chambers of the two houses of the legislature. For the convenience of members of the legislature, however, and when in his judgment the conduct of his work requires, he may maintain temporary offices at other places in the state of California. [Amendment of May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1400.]

Salaries.

§ 5. The salary of the legislative counsel shall be four thousand dollars per annum and shall be payable in equal monthly installments. The legislative counsel shall have authority to employ and to fix the compensation of such professional assistants and such clerical and other employees as he may deem to be necessary for the effective conduct of the work under his charge. The salary of the legislative counsel and of every other employee of the bureau shall be paid in the same way as the salaries of other state officers are paid. The legislative counsel shall be repaid all actual expenses incurred or paid by him in carrying out the provisions of this act. [Amendment of May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1400.]

Material available to bureau.

§ 6. The material (including books and other publications) of the state library shall be made available to said bureau, and all the officers of the state, the University of California, and all departments, commissions and bureaus and other official state organizations, and all persons connected therewith, shall give the legislative counsel ready access to their records and full information and reasonable assistance in any matters of research requiring recourse to them or to data within their knowledge or control. The bureau may co-operate with any of the educational institutions of the state in any manner approved by the legislative counsel and such institutions. [Amendment of May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1400.]

Books, records, etc.

§ 7. All books, papers, records and correspondence of said bureau pertaining to its work, except copies furnished to or retained by the chief of what is filed at the permanent office of said bureau, and except memoranda made by him, shall be public records and shall be filed with and recorded and kept at the permanent office of said bureau, except as herein otherwise provided.

Papers kept confidential.

§ 8. Any and all persons receiving service from said bureau, as herein provided, may by request in writing filed with the bureau have all their personal papers and correspondence temporarily kept private and confidential, but said papers and correspondence shall become public records whenever the said board or the legislature shall so order or said written request is withdrawn.

Unexpended balance available.

§ 9. The unexpended balance of the moneys heretofore appropriated for the support and salaries of the legislative counsel bureau by an act entitled "An act making

appropriations for the support of the government of the state of California for the sixty-seventh and sixty-eighth fiscal years," approved May 19, 1915, is hereby made available to carry out the provisions of this act. [Amendment of May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1401.]

INVESTIGATION OF HIGHWAY LEGISLATION.

ACT 2495—An act providing for an investigation by the legislative counsel of laws relating to roads, streets, highways and bridges, and for the submission of a report thereon to the governor for presentation to the legislature.

History: Approved March 25, 1919. In effect July 22, 1919. Stats. 1919, p. 18.

Report on road laws by legislative counsel.

§ 1. The legislative counsel is hereby directed to investigate and study the existing laws of this and other states relating to roads, streets, highways and bridges, and to prepare a report, accompanied by a draft of an act or acts, codifying and perfecting the laws of this state relating thereto. Such report shall be printed by the superintendent of state printing and shall be submitted to the governor on or before the first day of November in the year 1920, and shall be presented by him to the legislature at the opening of its forty-fourth session.

LEGISLATURE.

See Kerr's Cyc. Political Code, §§ 78, 90, and 225, et seq.

LELAND STANFORD JR. UNIVERSITY.

See "Stanford University."

LEMOORE.

See Act 3094, note.

LAND SETTLEMENT.

See tit. "State Land Settlement Board."

LAND TITLE LAW.

See tit. "Titles."

CHAPTER 194.

LEEVE DISTRICTS.

References: Reorganization of, see Kerr's Cyc. Political Code, § 3489.

See, generally, "Drainage Districts"; "Irrigation and Irrigation Districts"; "Protection Districts"; "Reclamation Districts"; "Storm Water Districts"; "Swamp and Overflowed Lands."

CONTENTS OF CHAPTER.

- ACT 2508. LEEVE DISTRICT ACT OF 1905.
- 2509. VALIDATION ACT OF 1915.
- 2510. BEAR RIVER DISTRICT No. 1.
- 2511. "LEEVE DISTRICT No. 1 OF SACRAMENTO COUNTY."
- 2511a. "LEEVE DISTRICT NUMBER ONE OF SUTTER COUNTY."
- 2511b. "LEEVE DISTRICT NUMBER ONE OF SUTTER COUNTY"—FUNDING BONDS.
- 2511c. "LEEVE DISTRICT NUMBER TWO OF SUTTER COUNTY."
- 2512. "LEEVE DISTRICT NUMBER TWO OF SUTTER COUNTY"—SUPPLEMENTARY ACT.
- 2512a. "LEEVE DISTRICT NUMBER TWO OF SUTTER COUNTY"—FUNDING ACT.
- 2513. "LEEVE DISTRICT NUMBER SIX OF SUTTER COUNTY."
- 2514. "LEEVE DISTRICT NUMBER SIX OF SUTTER COUNTY"—FUNDING ACT.
- 2515. PALO VERDE JOINT LEEVE DISTRICT—VALIDATION.
- 2516. LEEVE AND PROTECTION DISTRICTS—REFUNDING ACT OF 1897.
- 2517. BOND ACT OF 1911.
- 2518. SACRAMENTO RIVER WEST SIDE LEEVE DISTRICT.

LEVEE DISTRICT ACT OF 1905.

ACT 2508—An act to provide for the formation of levee districts in the various counties of this state, and to provide for the erection of levees, dikes and other works for the purpose of protecting the lands within such districts and overflow and to levy assessments to erect and construct and maintain such levees, dikes and other works and to pay the necessary costs and expenses of maintaining said districts.

History: Approved March 20, 1905, Stats. 1905, p. 327. Amended March 16, 1907, Stats. 1907, p. 333; April 28, 1911, Stats. 1911, p. 1212; May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 824. Prior act of March 10, 1891, Stats. 1891, p. 30, repealed March 9, 1893, Stats. 1893, p. 111, which put the subject of improving innavigable streams in the manner specified in the hands of boards of supervisors. See Kerr's Cyc. Political Code, § 4085, prior to its change of number to § 4042, by Stats. 1907, p. 372, which section is substantially the same as § 52 of the county government act of 1897.

§ 1. An act to provide for the formation of levee districts in the various counties of this state and to provide for the erection of levees, dikes and other works for the purpose of protecting the lands within such districts from overflow and to levy assessments, to erect and construct and maintain such levees, dikes and other works and to pay the necessary costs and expenses of maintaining said districts, approved March 20, 1905, is hereby amended so as to read as follows:

Petition to supervisors for formation of levee district. Resolution of intention. Publication of notice.

§ 2. Whenever the board of supervisors of any county in this state shall receive a petition signed by a majority of the land owners within any portion of said county, accompanied by a deposit sufficient to cover the cost of publication of all notices required by sections 2 and 3 of this act, which said portion of said county shall be specifically described and set out by metes and bounds in said petition, asking that said portion of said county be set apart and erected into a levee district for the purpose of protecting the lands embraced in said portion of said county from overflow from any river, stream or streams, or watercourse, the board of supervisors shall pass a resolution signifying its intention to erect and set apart said portion of said county into a levee district, for the purpose of protecting the lands therein from overflow and describing the exterior boundaries of the district of lands embraced therein, and to be assessed to pay the damages, costs and expenses thereof. Such resolution shall also contain a notice to be published, which said notice shall be headed, "Notice of intention of the board of supervisors to form a levee district," and shall state the fact of the passage of such resolution, with the date thereof, the boundaries of the district, and the statement that it is proposed to assess all properties embraced within such proposed levee district for the purpose of paying the damages, costs and expenses of erecting and repairing dikes, levees and other improvements to protect the said lands from overflow, and the necessary expense of maintaining the said district and refer to the resolution for further particulars. Such notice to be given by the board of supervisors and signed by its clerk. Petitions shall be heard in the order of filing. [Amendment approved March 16, 1907, Stats. 1907, p. 333. In effect immediately.]

Term of publication.

§ 3. Such notice shall be published for a period of thirty days, in a newspaper published and circulated in said county and designated by said board of supervisors. [Amendment approved March 16, 1907, Stats. 1907, p. 334.]

Objections to formation of district. Time for hearing.

§ 4. Any person interested, objecting to the formation of such levee district or to the extent of the district of lands to be affected or benefited by erection or repair of such

dikes, levees or other improvements to protect the same from overflow, and to be assessed to pay the costs and expenses thereof, may make written objections to the same within ten days after the expiration of the time of the publication of said notice, which objection shall be delivered to the clerk of said board of supervisors, who shall indorse thereon the date of its reception by him, and at the next regular meeting of said board of supervisors or at an adjourned meeting or a special meeting called for that purpose, after the expiration of said ten days lay such objections before said board of supervisors, said board shall then fix a time for hearing of said objections not less than fifteen days thereafter and direct its clerk to notify each person objecting of such day fixed for hearing, by depositing a notice thereof in the postoffice at the county seat of such county, postage prepaid addressed to such person objecting, which said notice shall be deposited in the postoffice not less than ten days before the day set for hearing. [Amendment approved March 16, 1907, Stats. 1907, p. 334.]

Hearing.

§ 5. At the time specified or to which the hearing may be adjourned, the board of supervisors shall hear the objections urged and pass upon the same. Such board may, in its discretion sustain, in whole or in part, any or all of the objections made and filed, and must declare such levee district as petitioned for formed as a subdivision of such county, and shall designate such district by name as the "—— Levee District of —— County." [Amendment approved March 16, 1907. Stats. 1907, p. 334. In effect immediately.]

Declaration of supervisors.

§ 6. If it shall appear to the satisfaction of the board of supervisors that it is the desire of a majority of the owners of land in such proposed district that the same should be erected into a levee district, and that it is just and proper, they may declare said territory a levee district for the above purposes, and record the same in a book to be kept for that purpose, giving the metes and bounds. [Amendment approved March 16, 1907, Stats. 1907, p. 334. In effect immediately.]

Notice of election of trustees. Who may vote. Conduct of election.

§ 7. Within ten days after the board of supervisors have declared the territory a levee district and recorded the same as provided in section 5 of this act, the board of supervisors must give notice of an election to be held in the said district, for the election of three eligible persons, who shall be property owners in said district and, who shall constitute when elected and qualified, the board of trustees of the district for the management of the affairs thereof, and who shall hold office for two years next succeeding their election, and until their successors are elected and qualified. The notice calling such election shall not be less than one month, and at such election every qualified elector in said district whose names shall appear on the last preceding assessment-roll of the county and having been assessed on property within the boundaries of said district, shall be entitled to vote, and a majority of votes cast at such election shall elect. The board of supervisors must appoint a time and place for holding such election. The notice of such election shall be given by publication for not less than one month, in a newspaper in the county where such district is situated. For the purpose of such election the board of supervisors of the county in which said district is situated must appoint from the qualified electors and property owners of said district, one inspector and two judges of election for such district; but in case the board of supervisors fail to appoint, or the persons appointed, fail to attend at the time and place appointed for such election, the voters present at the time and place of opening the polls may appoint the board or supply the place of the absent member thereof. Each member of the board of election must before entering upon his duties, be sworn to faithful perform-

ance thereof by some officer authorized to administer oaths. The board of election must canvass the votes cast, and issue certificates of election to the persons elected, and must place the ballots when canvassed in an envelope, and forward the same sealed to the clerk of the board of supervisors. Any legally qualified voter may challenge any vote, and the board of election shall determine, by the oath of the parties or otherwise, as they may think proper, whether or not the person challenged is entitled to vote, and in case of challenge, either one of the board of election is hereby authorized to administer oaths. The polls shall be open from 10 a. m. until 4 p. m. In case of vacancy in the board of trustees, the board of supervisors shall by appointment fill such vacancy. Similar elections shall be held every two years from and after the date of the first election, and shall be called in the same way as the first election. [Amendment approved March 16, 1907, Stats. 1907, p. 335. In effect immediately.]

Board of trustees must keep office. Powers of trustees. Yearly estimate of costs. Report to board of supervisors.

§ 8. The board of trustees must keep an office in or near the district for the transaction of the business thereof, and the books, maps, papers, records, contracts and other documents pertaining to the affairs of the district must be open for inspection to any person interested at all times. From and after the election and qualification of said trustees said district shall be deemed organized and shall have power to sue or be sued. The board of trustees shall have power to elect one of its members president thereof, to employ engineers and others, to survey, plan, locate and estimate the cost of the works and improvements necessary, in the way of erection or repair of levees, dikes and other works for the benefit of said district; to thereafter and at any time in its discretion modify or change said original plan or plans or to adopt any new supplemental or additional plan or plans, when in its judgment the same shall become necessary; to acquire by purchase, condemnation or otherwise, rights of way, and the right to take material for the construction of all works necessary for the accomplishment of the objects of the district including drains, levees and embankments, and to construct, maintain and keep in repair all works, requisite and necessary to that end; and to do all other acts and things necessary or required for the protection of the lands in said district from the overflow of any river, stream, streams or watercourse, and to employ the service of any person legal or otherwise which in the judgment of said board of trustees may be necessary to the welfare of the district. The said board of trustees shall each year estimate the total cost for all purposes of erecting, constructing or repairing levees, dikes or other works, and doing the necessary things for the protection of the lands and property within said district from the overflow of any river, stream, streams or watercourse, and maintain the same for one year, including all damages awarded to any person by reason of the erection or construction of any of said levees, dikes or other works for protection, and shall thereupon make a report of the foregoing matters to the board of supervisors in which said district is situated, showing the amount of money required by said district for all purposes for one year thereafter. Said estimate of moneys necessary for said district for each year, and said report shall be made to said board of supervisors by said board of trustees on or before the first day of September of each year after the formation of said district and said estimate made as aforesaid and report to said board of supervisors by said board of trustees as hereinbefore set out, shall in each instance form the basis of the estimates of the board of supervisors for the amount of money required to be raised by assessment on the lands and personal property within such district for such year. [Amendment of May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 825.]

This section was also amended March 16, 1907, Stats. 1907, p. 336.

Duty of county assessor.

§ 9. The county assessor of such county shall, on or before the 1st day of September of each year after the formation of such district, and at such other times as the board of supervisors shall require, furnish said board of supervisors with a detailed statement showing the names of all owners of land and personal property within the boundaries of said district and the assessed valuation of said lands, improvements thereon, and personal property, as shown on the last preceding assessment-roll, made by such assessor on the property within said district. [Amendment approved March 16, 1907, Stats. 1907, p. 336. In effect immediately.]

Annual tax levy.

§ 10. At the time when by law it is the duty of the board of supervisors of such county to fix the annual tax rate of such county, the said board of supervisors taking as a basis the last previous estimate and report of said board of trustees of said district as hereinbefore specified, for the amount of money necessary to be raised in said district for the purposes thereof for that year, and the valuation of the lands and improvements thereon, and personal property within such district as furnished them by the county assessor, must levy a tax upon all taxable property in such levee district sufficient to raise the amount set forth in said estimate and report as made by said board of trustees.

The rate of taxation shall be ascertained by deducting twenty per cent for anticipated delinquency from the aggregate value of all the property in said district as shown by the statement prepared and furnished to said board of supervisors by the assessor as hereinbefore provided, and then dividing the amount necessary to be raised in said levee district by the remainder of such aggregate assessed value as shown in said statement as furnished by said assessor. The taxes so levied shall be computed and entered upon the assessment-roll of the county by the county auditor and collected at the same time, and in the same manner as state and county taxes; and when collected shall be paid into the county treasury for the use of said levee district in which said taxes were levied. And all taxes so levied as hereinbefore provided shall be a lien upon the lands and property in said district, in the manner, and with the same effect, and collected in the same way, as are state and county taxes. [Amendment approved March 16, 1907. Stats. 1907, p. 336. In effect immediately.]

Disposition of moneys collected. Payment of claims.

§ 11. All moneys collected from such district for such taxes, and all moneys received from any source for the benefit of such district shall be by the county treasurer placed in a fund, to be called the "— Levee District Fund"; and all payments of any of the expenses of the work or improvements or other expenses of such district shall be made upon warrants drawn by the county auditor upon such fund, and paid by said treasurer, and all claims as well for the land and improvements taken or damaged, as for the charges and expenses of said district, shall be paid on claims prepared in the manner required by law for the preparation of claims against the county and first presented to the board of trustees of said district, and be by them approved, and then to be presented and filed as are the claims against the county, and shall thereupon be paid as are the claims against the county, and upon the order of the board of supervisors, and the claims shall be itemized in the same manner as are the claims against the county. [Amendment approved March 16, 1907. Stats. 1907, p. 337. In effect immediately.]

Construction must be by contract; exception. Sealed bids. Emergency work. Plans and details.

§ 12. No levees, dikes or other works for the benefit of said district must be constructed or repaired except on the order of the board of trustees of said district and when such repair or construction will exceed the sum of \$500 the same must be repaired

or constructed under a contract, let, after reasonable notice given by the said board of trustees by publishing said notice at least once a week for two weeks in a newspaper published and circulated in said county and designated by said board of trustees. All bids shall be sealed and shall be opened at the time specified in the notice, and the contract awarded to the lowest responsible bidder. The board may however, reject any and all bids. The contract and bond for its performance must be entered into and approved by the board of trustees, except however in cases of great emergency, by the unanimous consent of the whole board of trustees they may proceed at once to replace or repair any and all levees, dikes or other works of whatever nature without notice. Prior to the publication of the notice of the letting of any contract for the erection or repair of dikes, levees or other works, the board of trustees must cause to be prepared by a competent engineer, plans and specifications and working details of such work, which said plans and specifications shall be adopted by the board of trustees and filed in the office of said board and shall be subject to inspection by any person for at least two weeks prior to the date of the letting of such contract. The board of trustees must appoint an engineer to supervise the construction, repair or other works to be done under such plans and specifications and no claim shall be allowed for any work done under any contract let under such plans and specifications without a certificate being first filed in the office of the board of trustees and in the office of the clerk of the board of supervisors of said county signed by said engineer, certifying that such work has been completed and constructed according to the plans and specifications and the terms of the contract. Such engineer shall be paid such compensation as may be agreed upon by the board of trustees and such compensation shall be paid in the same manner as are other claims against said district. [Amendment approved March 16, 1907. Stats. 1907, p. 337. In effect immediately.]

When county may contribute to expenses.

§ 13. Whenever the board of supervisors of any county in which said district is situated shall consider that the construction or repair of dikes, levees or other works of said district along or upon any of the county roads of such county, will be for the mutual benefit of such district and such county, then in that event the said board of supervisors shall have power, and may contribute to the expense and cost of such work, such sums of money as they may deem proper on behalf of the county, and such moneys shall be paid out of either the general road fund or the special fund of any road district, in which said work is done, and as a majority of said board of supervisors may determine. [Amendment approved March 16, 1907. Stats. 1907, p. 338. In effect immediately.]

Bond of trustees.

§ 14. The board of trustees elected under this act shall serve without compensation, and shall each file a bond for the faithful performance of their duties in the sum of \$5,000 said bond to be approved by the judge of the superior court of the county in which said district is situated. [Amendment approved March 16, 1907. Stats. 1907, p. 338. In effect immediately.]

Power to condemn land.

§ 15. The board of trustees shall have power, in the name of the district to condemn land, or other property, for the purpose of erecting levees, dikes and other improvements or obtaining material for the same for the purpose of protecting the lands embraced in said district from overflow, and for that purpose, all of the provisions of Part III, Title VII of the Code of Civil Procedure are hereby made applicable to exercise of the right of eminent domain for such purpose to the needs of such district. [Amendment approved March 16, 1907. Stats. 1907, p. 338. In effect immediately.]

Not to supersede other acts.

§ 16. This act is not intended to supersede or repeal any other act for the construction and maintenance of ditches, levees, dikes or works of protection or for drainage or for reclamation but is intended as an independent and alternative means of constructing and erecting such districts, levees, dikes or other works of protection where most applicable and desirable to the parties interested. [Amendment approved March 16, 1907. Stats. 1907, p. 338. In effect immediately.]

Land in different counties may form a levee district.

§ 17. Levee districts may be formed, governed and maintained under this act where the land embraced therein shall be situate partly in different counties, and all the preceding sections hereof shall be applicable to such districts, except as herein provided, and nothing hereinafter contained shall in any manner limit or qualify the first sixteen sections of this act. In such districts, except as hereinafter provided, all acts and duties required to be performed by any county officer or board shall be done or performed by the officer or board of the county in which the petition mentioned in section 1 shall be filed. All sections subsequent hereto in this act shall refer to districts situate partly in different counties. [New section approved April 28, 1911. Stats. 1911, p. 1212.]

Petition filed in county of larger portion of land.

§ 18. In districts situate partly in different counties the petition mentioned in section 1 shall be filed with the board of supervisors of the county in which the greater portion of the land to be embraced within such district is situate, and such board shall have the same jurisdiction for all the purposes of this act as if all the land of the district were situate within the county, except as in this act otherwise provided. [New section approved April 28, 1911. Stats. 1911, p. 1212.]

Designation.

§ 19. At the time and after the proceedings mentioned in section 4 hereof, such board of supervisors must declare such levee district formed as a subdivision of such counties and shall designate such district by the name of — joint levee district of — and — counties. [New section approved April 28, 1911. Stats. 1911, p. 1212.]

Declaration forwarded to all supervisors of counties represented.

§ 20. Upon the recording of the declaration that the levee district is formed as required by section 6 hereof, a copy thereof, duly certified by the clerk of the board of supervisors, must be immediately transmitted to the clerk of the board of supervisors of each other county in which any portion of such district may be situate, which shall be kept in the office of such last named clerk. [New section approved April 28, 1911. Stats. 1911, p. 1213.]

Publication of election notice.

§ 21. The notice of election mentioned in section 7 shall be published for the time designated therein in a newspaper published in each county in which any portion of such district is situate. [New section approved April 28, 1911. Stats. 1911, p. 1213.]

Division of estimate among counties.

§ 22. The board of trustees of such joint district shall divide the total estimate provided for in section 8 hereof, in proportion to the value of the real and personal property of the district in each county. Such value to be determined by the equalized values of the last assessment-rolls of such counties. The board of trustees shall, after the approval of the estimate as provided in said section 8, report, as provided in said section, to the board of supervisors of each of such counties, on or before the first day of September of each year, and furnish each of such boards of supervisors such esti-

mate, together with a statement of the part thereof apportioned to each county. [New section approved April 28, 1911, Stats. 1911, p. 1213.]

Applicable to assessors and supervisors of each county.

§ 23. The provisions of section 9 shall apply to the county assessors and boards of supervisors of each county in which any portion of the district may be situate, so far as the portion of such district in such county is concerned. [New section approved April 28, 1911. Stats. 1911, p. 1213.]

To officers of each county.

§ 24. The provisions of section 10 shall apply to the officers of each county in which any portion of such district is situate. [New section approved April 28, 1911. Stats. 1911, p. 1213.]

Treasurer of county in which petition was filed to be repository of funds.

§ 25. The treasurer of the county in which the petition mentioned in section 1 was filed, and in which the district was organized, shall be the repository of the funds of the district. The treasurers of any other counties in which is situate a portion of said district, must, at any time, not more often than four times each year, upon the order of the board of trustees, pay over to the treasurer of the county where said petition mentioned in section 1 was filed, all moneys in their possession belonging to the district. Said last named treasurer is authorized and required to receive and receipt for the same, and to place the same to the credit of the district. All moneys of the district received from any source shall be by him placed in a fund to be called the — joint levee district of — and — counties. [New section approved April 28, 1911. Stats. 1911, p. 1213.]

Under section 3489 of the Political Code, as amended by Stats. 1877-8, 62, levee districts theretofore formed were authorized to reorganize as therein provided. This applies also to swamp land and reclamation districts.

See Protection Districts; Reclamation Districts; Swamp and Overflowed Lands.

1. A public corporation.—A levee district organized by the board of supervisors under the authority of an act of the legislature is a public corporation whether the legislature in terms declares it a corporation or not.—*Dean v. Davis*, 51 Cal. 406; *Hoke v. Perdue*, 62 Cal. 545.

2. Petition—Sufficient—Majority of owners not required to sign.—A petition for the formation of a levee district under the act

of 1891 was sufficient if signed by a majority of the freeholders within the district owning lands along the stream, and the signature of a majority of the owners of land subject to overflow was not required.—*De Baker v. Batcheller*, 97 Cal. 472.

3. Publication of notice—Sufficient.—The publication of the petition under the act of 1893, showing the boundaries of the proposed district with minute detail was not defective because of the failure to publish a plat, where the petition as published contained a provision that "the proposed boundaries of said district are shown approximately by the plat thereof hereunto annexed."—*De Baker v. Batcheller*, 97 Cal. 472.

VALIDATION ACT OF 1915.

ACT 2509—An act to validate the organization and formation of levee districts.

History: Approved May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 948.

Levee districts validated.

§ 1. All levee districts, the organization and formation of which, have been authenticated by an order or declaration of a board of supervisors in this state declaring the same a levee district, such declaration or order being recorded in a book kept for that purpose, as required by law, and which levee districts thereafter have acted in the form and manner of levee districts under the provisions of "An act to provide for the formation of levee districts in the various counties of this state, and to provide for the erection of levees, dikes and other works for the purpose of protecting the lands within such districts from overflow and to levy assessments to erect and construct and maintain such levees, dikes and other works and to pay the necessary costs and expenses of

maintaining said districts," approved March 20, 1905, and the amendments thereto are hereby declared to be and to have been levee districts from the date of the recording of the declaration or order of the board of supervisors; and all the acts of said levee districts heretofore performed according to the act aforesaid are hereby validated and declared as legal.

BEAR RIVER DISTRICT NO. 1.

ACT 2510—An act to organize a levee district in Yuba, Sutter and Placer counties, and to provide for the construction, maintenance and repair of levees therein.

History: Approved March 30, 1878, Stats. 1877-78, p. 732.

"LEVEE DISTRICT NO. 1 OF SACRAMENTO COUNTY."

ACT 2511—An act to organize levee district No. 1, Sacramento county, and to provide for its government.

History: Approved March 30, 1878, Stats. 1877-78, p. 853. Amended April 15, 1880, Stats. 1880, p. 65.

1. Words and phrases—"More beneficial."

—The phrase "more beneficial" in section 15 of the act indicates that all the lands of the district are benefited in some degree and the power to assess "upon the lands" given in § 1456, Political Code, is a power

only to assess all the lands, and the commissioners have no power to declare that some of the lands of the district are not benefited and omit such lands from the assessment.—*Levee District, etc., v. Huber*, 57 Cal. 41.

LEVEE DISTRICT NUMBER ONE OF SUTTER COUNTY.

ACT 2511a—An act to define the boundary, provide for the care, strengthening, and repairing of the levee, and for the payment of the indebtedness of Levee District Number One of Sutter county.

History: Approved March 20, 1874, Stats. 1873-74, p. 511. Amended (1) April 1, 1878, Stats. 1877-78, p. 914; (2) March 19, 1889, Stats. 1889, p. 355; (3) March 23, 1901, Stats. 1901, p. 629; (4) February 23, 1907, Stats. 1907, p. 47; (5) March 13, 1911, Stats. 1911, p. 347. The district was originally created by an act approved March 25, 1868, Stats. 1867-68, p. 316.

See Act 2513 and notes.

1. Constitutionality—Section 20 of act of 1868—Section 20 of the act of 1868 is unconstitutional in so far as it authorizes the board of supervisors, in their discretion, to remit a portion of the district taxes in a levee district.—*Wilson v. Board of Supervisors*, 47 Cal. 91.

2. Same—Section 21 of the act of 1868.—Section 21 of the act of 1868 was unconstitutional, a district formed thereunder has no rights, and is not protected from collateral attack, and the commissioners of such district are not estopped from disputing the validity of the bonds in a proceeding in mandamus to compel the levy of a tax to pay the principal and interest of the bonds, by retaining the benefits of the proceeds of such sale of bonds.—*Brandenstein v. Hoke*, 101 Cal. 131.

3. Act of 1868 imposed tax, not assessment for benefits—The act of 1868 imposed a tax and not an assessment for benefits.—*People v. Whyler*, 41 Cal. 351.

See, also, *Hoke v. Perdue*, 2 Cal. Unrep. 28.

4. Same—A tax levied by Levee District No. One of Sutter county to pay principal and interest on outstanding bonds of the district is not an assessment for benefits, but a tax.—*Southern Pacific Co. v. Levee District No. 1*, 172 Cal. 345, 349.

5. Local tax on properties of railroad company—The only form of local tax upon the operative properties of a railroad company, included in a levy district, which may be levied and collected by such district under section 14, article XIII, of the constitution, is a tax levied to pay the principal and interest of a bonded indebtedness created and outstanding at the time the section went into effect.—*Southern Pacific Co. v. Levee Dist. No. 1*, 172 Cal. 345, 353.

6. Power of board of supervisors of Sutter county under act of 1868—The board of supervisors of Sutter county had no power, under the act of 1868, to construct a levee in Colusa county.—*Moulton v. Parks*, 64 Cal. 166.

7. Tax paid by railroad company, right to recover—Where a railroad company pays into the state treasury the entire amount of the state tax under the provisions of section 14, article XIII, of the constitution and the acts passed to carry the same into effect, and afterwards pays a levee district tax to the district under protest, after the controller has refused to turn over to the district its proportion of the tax paid, it is entitled to recover it back.—*Southern Pacific Co. v. Levee District, etc.*, 172 Cal. 345.

LEVEE DISTRICT NUMBER ONE OF SUTTER COUNTY—FUNDING BONDS.

ACT 2511b—An act to empower the trustees of levee district No. 1, Sutter county, to issue bonds for the payment or funding of the unfunded indebtedness of said levee district, and to provide for the redemption of such bonds by taxing the property of the district.

History: Approved April 9, 1880, Stats. 1880, p. 30.

LEVEE DISTRICT NUMBER TWO OF SUTTER COUNTY.

ACT 2511c—An act to define the boundary and provide for the government of Levee District Number Two of Sutter County.

History: Approved March 23, 1876, Stats. 1875-76, p. 391. Amended April 5, 1911, Stats. 1911, p. 657. Supplemented. See Act 2512.

LEVEE DISTRICT NUMBER TWO OF SUTTER COUNTY—
SUPPLEMENTARY ACT.

ACT 2512—Amendatory of and supplementary to an act entitled "An act to define the boundary and provide for the government of levee district number two, of Sutter County," passed March 23, 1876, in relation to the election of officers for said district, funding the floating debt, and refunding the funded debt thereof.

History: Approved March 23, 1893, Stats. 1893, p. 199. Amended March 27, 1895, Stats. 1895, p. 237. See Act 2511c.

LEVEE DISTRICT NUMBER TWO OF SUTTER COUNTY—FUNDING ACT.

ACT 2512a—An act to provide for funding the indebtedness of Levee District Number Two of Sutter county.

History: Approved March 9, 1876, Stats. 1875-76, p. 155.

LEVEE DISTRICT NUMBER SIX OF SUTTER COUNTY.

ACT 2513—An act to define the boundary and to provide for the government of Levee District Number Six of Sutter county.

History: Approved March 31, 1891, Stats. 1891, p. 237. Amended February 23, 1907, Stats. 1907, p. 56.

See Act 2511a and notes.

1. Levee district not a municipal corporation.—A levee district is not a "municipal corporation within the meaning of the constitution of 1879, prohibiting the passing of a special act creating or recognizing such a corporation, but a corporation belonging to a class by itself, which the legislature might recognize by special act and give it a legal existence though originally formed under a void law.—People ex rel Silva v. Levee District, etc., 131 Cal. 30; Reclamation District No. 70 v. Sherman, 11 Cal. App. 399.

2. Levee district—Legislative recognition of existence.—By the present act the legislature recognized the existence of the levee district, notwithstanding the fatal irregularity of its formation under the invalidated act of 1868, as it was empowered to do and such recognition was sufficient to invest the district with the functions and attributes which it had assumed to exercise under that act and gave it a legal existence.—People ex rel Silva v. Levee District, etc., 131 Cal. 30, 6 Cal. Unrep. 615.

LEVEE DISTRICT NUMBER SIX OF SUTTER COUNTY—FUNDING ACT.

ACT 2514—An act to provide for funding the indebtedness of levee district number six, of Sutter county, and to provide for the payment of such funded debt.

History: Approved March 31, 1891, Stats. 1891, p. 235.

See acts 2511a and 2513, and notes.

PALO VERDE JOINT LEVEE DISTRICT—VALIDATION.

ACT 2515—An act to validate bonds of Palo Verde joint levee district of Riverside and Imperial counties, California, and all proceedings relating thereto.

History: Approved May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 541.

Bonds of Palo Verde joint levee district validated.

§ 1. Bonds in the amount of one million two hundred eighty-five thousand nine hundred fifty-one and eighty-six hundredths dollars of the Palo Verde Joint Levee District of Riverside and Imperial counties, California, and all the acts and proceedings of said district and of the board of trustees thereof and of the board of supervisors of Riverside county, California, and of the officers of said county leading up to and including the authorizing of said bonds and also the issuance of two hundred fifty-six thousand dollars of said bonds already sold are hereby legalized, ratified, confirmed and declared valid to all intents and purposes, and said bonds in the amount of two hundred fifty-six thousand dollars already sold, and the remainder of said bonds when issued and sold, shall be, and are hereby, declared to be legal and valid obligations of said district, and the faith and credit of said district is hereby pledged for the prompt payment and redemption of the principal and interest of said bonds, and said bonds by their issuance shall be conclusive evidence of the regularity of all proceedings leading up thereto.

LEVEE AND PROTECTION DISTRICTS—REFUNDING ACT OF 1897.

ACT 2516—An act to provide for the funding and refunding of the indebtedness of levee and protection districts.

History: Approved April 1, 1897, Stats. 1897, p. 424.

Levee or protection districts, funding or refunding indebtedness. Form of bond. Coupons.

§ 1. The board of directors or trustees of any levee or protection district having an outstanding indebtedness of not less than twenty thousand dollars, evidenced by bonds or warrants of such district, by a vote of two-thirds of all the members thereof, are empowered, if they deem it for the best interest of such district to fund and refund the same, or any part thereof, and issue bonds of such district therefor, in sums of not less than one hundred dollars nor more than one thousand dollars each, having not more than twenty years to run, and bearing a rate of interest not exceeding seven per cent per annum, payable semi-annually, which bonds shall be substantially in the following form:

No. ——. (Name of district), in the county of —, state of California, for value received, promises to pay —, or order, at the office of the treasurer of said district, in —, California, on or before the first day of —, 19—, the sum of — dollars, in gold coin of the United States, with interest at the rate of — per cent per annum, payable at the office of said treasurer semiannually, on the first day of — and — in each year, on presentation and surrender of the interest coupons hereto attached. This bond is issued by the board of — of said district in conformity with a resolution of said board, dated the — day of —, eighteen hundred and —, and under authority conferred upon said board by the provisions of an act of the legislature of California, entitled "An act to provide for the funding and refunding of the indebtedness of levee and protection districts," approved (insert date of approval of the act).

In testimony whereof, the said district, by its board of —, has caused this bond to be signed by the chairman of said board, and attested by the auditor of — county, with his seal of office attached, this — day of — 18—. _____,

Chairman of said Board.

Attest: —, Auditor of — county.

And the interest coupons shall be in the following form:

The treasurer of (name of district) will pay to the holder hereof, on the — day of —, 1—, at his office in —, — dollars, gold coin, for interest on bond of said district numbered —.

Bonds, general provisions relating to.

§ 2. Bonds issued under this act shall be numbered consecutively, signed by the chairman of the board of directors, or trustees, as the case may be, and delivered to the auditor of the county in which the levee or protection district is situated, who shall countersign the same and affix thereto his official seal, and shall by him be delivered to the treasurer of the district, who shall deliver to such auditor his receipt therefor, and said treasurer shall stand charged in his official bond with all bonds delivered to him and the proceeds thereof, and he shall sell the same or exchange them under the direction of the board of directors or trustees of such levee or protection district, on the best available terms, for any legal indebtedness of such district, but in neither case for a less sum than the face value of the bonds and all interest accrued thereon at the date of such sale or exchange; and if any portion of such bonds are sold for money, the proceeds thereof shall be applied exclusively to the payment of liabilities existing against the district at the date last above named. When they are exchanged for bonds or warrants or other legal evidences of district indebtedness, the treasurer shall at once cancel such evidences of indebtedness by indorsing thereon the amount for which they were received, the word "canceled" and the date of cancellation. He shall keep a record of all bonds sold or exchanged by him, by number, date of sale, amount, date of maturity, the name and postoffice address of purchasers, and, if exchanged, what evidences of indebtedness was received therefor, which record shall be open at all times for public inspection. No such bonds shall be sold or exchanged for any indebtedness of the district except by the approval of the board of directors or trustees thereof.

Tax levy to pay bonds and interest.

§ 3. The board of directors or trustees shall cause to be assessed and levied each year upon the assessable property of the district, in addition to the levy authorized for other purposes, a sufficient sum to pay the interest on outstanding bonds, issued in conformity with the provisions of this act, accruing before the next annual levy, and such proportion of the principal, that at the end of five years the sum raised from such levies shall equal at least twenty per cent of the amount of bonds issued, at the end of nine years at least forty per cent of the amount, and at and before the date of maturity of the bonds shall be equal to the whole amount of the principal, and the money arising from such levies shall be known as the bond fund, and shall be used for the payment of bonds and interest coupons, and for no other purpose whatever; and the treasurer shall open and keep in his books a separate and special account thereof, which at all times shall show the exact condition of said bond fund.

Provision for redemption of bonds.

§ 4. Whenever there shall be in the bond fund of such district a surplus of five hundred dollars or more, over and above the interest maturing before the next levy, the treasurer shall give notice for two weeks in one or more newspapers of general circulation, printed and published in the county in which such district is situated, stating the amount of such surplus, and that on the day and hour named in such notice, sealed proposals will be received at his office for the surrender of bonds of the district, and shall at the time and place named open the proposals and accept the lowest bid; provided, that no bid shall be accepted for an amount exceeding the par value of such bonds with accrued interest; if bids are not offered, at par, or less, sufficient to exhaust the amount on hand applicable to redemption, the treasurer shall publish for the same time and in the same manner a notice that he will redeem a bond or bonds of said district, giving the number or numbers thereof, and that if not presented for redemption within thirty days after the date of the first publication of such notice, the interest thereon will cease, and the amount due thereon will be set aside for the payment of such bond or bonds whenever presented. If any such bond be not so presented, interest

thereon shall cease, and the amount due thereon shall be set aside as specified in said notice. All redemption of bonds other than those voluntarily surrendered shall be made in the exact order of their issuance, beginning with the lowest or first number.

§ 5. This act shall take effect immediately.

BOND ACT OF 1911.

ACT 2517—An act authorizing levee districts of the state to incur a bonded indebtedness for the purpose of building, constructing, or repairing levees of the district; or for excavating and constructing ditches or canals of such districts; or for the purpose of acquiring rights of way for any such levees, ditches, or canals; or for any and all of said purposes.

History: Approved March 8, 1911, Stats. 1911, p. 303. Amended (1) May 29, 1915; in effect August 8, 1915, Stats. 1915, p. 914; (2) May 22, 1917; in effect July 27, 1917, Stats. 1917, p. 809.

Levee district may issue bonds.

§ 1. Any levee district formed or organized by or under the laws of California, may incur a bonded indebtedness for the purpose of building, constructing, or repairing the levee or levees of such district; or in excavating or constructing any ditches or canals in such district, or other protective works; or to purchase and acquire any levee or levees, ditches or canals, or other reclamation works already constructed or in process of construction; or for the purpose of acquiring rights of way for any such levee, or ditches, pipe-lines or canals; or for building, repairing and constructing any and all kinds of work in water and river channels, wherever situate, as ancillary to land and levee protection, including the straightening of river channels, or diverting waters from the dikes and levees themselves, or the lands they are protecting, and in general for doing any and all work of every character and description for the purpose of securing, protecting, guarding and preserving the lands protected, and the dikes, levees, ditches, excavations or other protective works; or for any and all of said purposes, or for any or more of said purposes.

Report of engineer.

Whenever it shall become necessary in the opinion of the board of trustees of any such levee district to build, construct, or repair any levee for the protection of the lands of the district from overflow; or to excavate or construct any ditches or canals, or to purchase or acquire any levee or levee system or parts thereof then constructed or in process of construction; or for acquiring rights of way for either of such purposes of building, constructing, or repairing the levee or levees of such district; or in excavating or constructing any ditches or canals in such district, or other protective works, or to purchase and acquire any levee or levees, ditches, or canals or other reclamation works already constructed or in process of construction; or for the purpose of acquiring rights of way for any such levee, or ditches, pipe-lines, or canals; or for building, repairing any and all kinds of work in water and river channels, wherever situate, as ancillary to land and levee protection, including the straightening of river channels, or diverting waters from the dikes and levees themselves, or the lands they are protecting, or in general for doing any and all work of every character and description for the purpose of securing, protecting, guarding and preserving the lands protected, and the dikes, levees, ditches, excavations or other protective works, or for any and all of said purposes, or for any one or more of said purposes, the trustees of such levee district shall, by resolution, employ some civil engineer, and direct him to make a report in writing to said board of trustees, containing his recommendations as to the best method of doing said work. Said report shall show:

1. A description of the work to be done, including all ancillary work.

2. The plans, profiles, cross sections and specifications of the work required.
3. A general description of the lands required for rights of way for the work, if any such are required.
4. An estimate of the expenses of such work, including an estimate of the cost of acquiring rights of way for such work, should such rights of way be required.
5. An estimate of the cost or value of any levee or levees, ditches or canals already constructed or in process of construction, or advisable or proposed to be acquired as part of the proposed system, including all work necessary to be done for the protection of said main works and ancillary thereto, and including moreover the amount necessary for the maintenance of the work proposed to be done for the first year.
6. An estimate of all incidental expenses likely to be incurred in connection with the work, such as clerical, engineering, inspection, printing and advertising. [Amendment of May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 809.]

Adoption of report.

§ 2. After the report of the engineer provided for in the next preceding section has been filed with the board of trustees of such levee district, said board shall consider the same and shall have power, by resolution, to adopt the same as filed by said engineer, or to modify or change the same, and to adopt the same as so modified or changed, and said report shall be adopted as originally presented if not modified or changed, but if modified or changed it shall be adopted as so modified or changed. [Amendment of May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 811.]

Notice of adoption. Publication.

§ 3. Within ten days after the adoption of the report as provided in section two of this act, the board of trustees of such levee district shall give notice thereof as herein-after provided. Such notice shall specify a day and hour when and a place where any and all persons may appear before said board and show cause, if any they have, why said work provided for in said report should not be carried out in accordance therewith, said time to be not less than twenty nor more than forty-five days from the adoption of said report.

Said notice shall briefly outline the proposed work, and shall refer to the said report on file with said board for a particular description of the work to be done. Such notice shall be given by conspicuously posting in three of the most public places within said district, and publishing in some newspaper printed and published in the county where said district is situated, or if said district is situated in more than one county then by posting in three of the most public places in that portion of the district, situated in each county and by publishing in a newspaper printed and published in each of the counties wherein any portion of said district is situated, for a period of three weeks prior to the day of hearing. Said publication shall be made once a week for three consecutive weeks in a newspaper of general circulation published in the county where said district is situated. If said district comprises land situated in more than one county, then once a week for three consecutive weeks in a newspaper of general circulation in each of the counties where said lands are situated. It shall not be necessary that publication shall be made on the same day of the week in each of the three weeks, but not less than sixteen days, including the day of the first publication, shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication. [Amendment of May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 811.]

Affidavit of publisher. Objections.

§ 4. At the time mentioned in the notice provided for in section 3 of this act, to wit: At the time specified in said notice, at which the taxpayers of the district are

notified to appear before the board to show cause why the work provided for in the report adopted by the board should not be carried out, there shall be filed with said board an affidavit that such notice has been posted as provided for in said section 3, and an affidavit of the printer or publisher, or the principal clerk of such printer or publisher of the newspaper or newspapers in which said notice has been published, showing that such notice has been published as provided for by said section 3. Said board of trustees or directors, before proceeding with said hearing, shall cause to be entered upon the minutes of the meeting an order reciting that such notice of said hearing has been posted and published according to law, and such recitals shall be conclusive evidence of the facts therein recited. Said board shall thereupon proceed with the hearing of any objections which shall have been made in writing and filed with said board not later than the hour fixed for said hearing as specified in said notice, and no other objections shall be considered. Said hearing may be continued from time to time by said board, and all parties interested shall be deemed to have notice of said continuances. All objection to the performance of the work specified in said report must be in writing, and must state the objector's grounds of opposition and must be signed by the objector; and objections which do not comply with these requirements shall not be considered by said board.

Board may confirm resolution.

§ 5. The board of trustees shall have power to set aside, modify, or confirm the resolution provided for in section two of this act; in case the board shall decide that it will be for the best interests of the district to proceed with the work, it shall, by resolution, so declare; and in case the said original plan of the work shall have been modified or changed, the board shall direct the engineer of the district to estimate the cost of the work in accordance with the plan so modified or changed, and to report the same to the board. The engineer of the district shall thereupon, in case such original plan shall have been changed or modified, make a report to the board in accordance with the modifications or changes adopted by it, and such report must show:

Report of engineer.

1. A description of the work to be done as changed or modified by the board, including all ancillary work.
2. The plans, profiles, cross sections and specifications of the work as so changed or modified by the board.
3. A general description of the lands required for rights of way for the work, if any such are required.
4. An estimate of the expense of such work in accordance with the plan so modified or changed by the board, including an estimate of the cost of acquiring rights of way for such work, if any such rights are acquired.
5. An estimate of the cost or value of any levee or levees, ditches or canals already constructed or in process of construction, proposed to be acquired as part of the proposed system.
6. An estimate of all incidental expenses likely to be incurred in connection with the work as planned, such as clerical, engineering, inspection, printing and advertising, including all work necessary to be done for the protection of said main works, and ancillary thereto, and including furthermore the amount necessary for the maintenance of the work proposed to be done, for the first year. [Amendment of May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 811.]

Reapproval of report.

§ 6. If, after the hearing provided for in section 4 of this act, the report of the engineer as finally adopted under the provisions of section 2 of this act, has not been

changed or modified by said board, the board shall, by resolution, finally reapprove and readopt said report in all respects as approved and adopted under the provisions of said section 2; in case, after such hearing, the report of the engineer as finally adopted under the provisions of said section 2 has been changed or modified by said board, the board shall, by resolution, finally reapprove and readopt said report as so changed or modified; and in either case the resolution reapproving and readopting said report shall state the amount of the entire estimate of the expense of such work.

Bonds for levee districts. Order for election. Notice of election. Oath of election officers.

§ 7. Whenever in the judgment and opinion of the board of trustees in said district it would be for the best interests of said district, or the land owners therein, to issue bonds for the purpose of obtaining money to pay the cost of construction of said levee or levees, ditches or canals, or other protective works, or to purchase in whole or in part any system of levee, or levees, ditches or canals already constructed or in process of construction, or for any of the purposes set forth in section one of this act, or when a petition requesting them so to do, signed by the owners of more than one-half of the land of the district, is filed with the secretary of the board, the board of trustees of such district shall, by order entered upon the records of said board, order a special election to be held for the purpose of submitting the question of the issuance of bonds to the taxpayers of said district. Said order shall specify the amount of bonds it is proposed to issue which, in any case, shall not exceed the entire estimate of the expense of the work as planned, shall specify the rate of interest to be paid, not exceeding seven per cent, and the number of years, not exceeding forty, the whole or any part of said bonds are to run, and shall name a time and place for the holding of such election, which place shall be at some convenient place in the district. In the case of joint levee districts the said order shall specify a polling place within the district in each county, in which a portion of the district lies. The board shall also appoint one inspector, two judges and one clerk to conduct said election at each and every polling place designated, all of whom must be electors and taxpayers of said district. Notice of such election shall be given by publication, in a newspaper printed and published in the county in which said district or some part thereof is situated once a week for at least three weeks prior to such election. If said district is situated in more than one county, then publication shall be made in a newspaper printed and published in each county wherein a portion of said district is situated, and the provisions relating to publication provided in section three hereof shall apply, and such notice must contain a time and place for the holding of such election, the names of the election officers to conduct the same, and amount and denominations of the bonds, the rate of interest to be paid, and the number of years, not exceeding forty, the whole or any part of said bonds are to run. If any election officer appointed by said board and named in such notice is not present at the time for the opening of the polls, the voters present may appoint an election officer to take the place of such election officer so absent. Before opening the polls each officer of election must take and subscribe an oath faithfully to perform the duties imposed upon him by law. Any voter of the district may administer and certify such oath.

Manner of voting. Count of votes.

The polls shall be kept open for receiving votes from ten o'clock a. m. until four o'clock p. m. At such election any voter qualified to vote for the election officers of said district and none other shall be permitted to vote thereat, and such election shall be held as nearly as practicable in conformity with the general election law of the state, except that no sample ballot need be sent out, except that registration shall not be required, and except also that persons voting at such bond election shall put a cross (X) upon the ballots with pencil or ink after the words: "bonds—yes" and "bonds—

no" (as the case may be) to indicate whether they have voted for or against the issuance of the bonds. The said ballots shall be of the form: "bonds—yes" and "bonds—no," or words of similar import, together with a general statement of the amount and purpose of the bonds to be issued.

At the close of the polls the board or boards of election shall at once proceed to count the votes and declare the result, and shall forward a certificate showing the same and the number of votes cast for and against the issuance of the bonds to the clerk of the board of supervisors of the county in which the greater portion of the lands of said district is situated, and deliver a duplicate thereof to the board of trustees of the district, and shall also deliver to the clerk of the said board of supervisors all ballots cast at such election, and all documents and papers used at such election.

Contest of election.

Any person owning land situated in said district may contest said election within twenty days after the result thereof has been declared by the board of supervisors, by filing a complaint in the superior court of the county where said land is situated, and if no contest shall be commenced within said time the declaration of the result by the board of supervisors shall be final and conclusive.

Canvass of returns.

The returns of such election shall be canvassed and the result declared by the board of supervisors of the county to whom said returns of election are made, at a special meeting called for that purpose or at the next regular meeting of such board after such election. No ballot shall be rejected because of any distinguishing marks made thereon. If a majority of the voters of the district voting at such election shall vote in favor of the issuance of bonds, the board of supervisors shall be, and it is, authorized and directed to issue bonds of said district to the number and amount provided in such proceedings, payable out of the bond fund of such district, naming the same, and provide that the money shall be raised by taxation upon the taxable property in said district for the redemption of said bonds and the payment of interest thereon, provided that the total amount of bonds so issued shall not exceed the entire estimate of the expense of the work as planned or determined by section one, together with the expense of the maintenance of said works for one year after their completion.

Duty of board of supervisors.

The board of supervisors to whom said returns of election are made, by an order upon its minutes shall prescribe the form of said bond and the interest coupons attached thereto, and provide whether the same shall be paid in lawful money of the United States or in gold coin, and fix the time when the whole or any part of the principal of said bonds shall be payable, which shall not be more than forty years from the date thereof; and said bonds shall be issued in sums of not less than one hundred dollars nor more than one thousand dollars each, and shall not have more than forty years to run, and shall bear interest at a rate not exceeding seven per cent per annum, payable semiannually, and said bonds shall be substantially in the following form:

Form of bond.

STATE OF CALIFORNIA

No.

\$.....

BOND OF

.....Levee District.

In the county (or counties) of.....

State of California.

.....district, of the county of (or counties of).....state of California, for value received, hereby acknowledges itself indebted and promises to pay

to the holder of this bond on the first day of....., 191., at the office of the treasurer of the county of.....in the city of..... state of California, the sum of.....dollars in gold coin (or lawful money) of the United States, with interest at the rate of.....per cent (..%) per annum, payable semiannually upon the first day of.....and the first day of..... of each and every year from and after the date hereof, at the office of the treasurer aforesaid, on presentation and surrender of the interest coupons hereto attached, until this bond is fully paid. This bond is issued by the board of supervisors of the said county of..... in conformity with the resolution of said board dated theday of..... 191., and under the authority conferred upon the said board by the provisions of the act of the legislature of the state of California, entitled "An act authorizing levee districts of the state to incur a bonded indebtedness for the purpose of building, constructing and repairing levees of the district, or for excavating and constructing ditches or canals of such district, etc.

(Here will be inserted in the final draft the correct designation of the act approved March 8, 1911, together with acts amendatory thereof.)

It is hereby declared that said.....levee district is a levee district duly created, organized, established and incorporated in strict conformity to the laws of the state of California relating thereto.

It is furthermore declared that a majority of the qualified electors of said levee district voting at a special election held therein on the.....day of....., 19., which said election was held to determine whether bonds of said levee district, in the amount of \$..... should be issued and sold for the purpose of raising money for the purposes prescribed in said act, voted in favor thereof.

It is hereby further declared that said election was duly called, duly held and duly conducted and the notices thereof duly given, and the result thereof canvassed and declared in accordance with the provisions of the act above mentioned, and that all other proceedings of the board of supervisors of such..... levee district, and of the board of supervisors of said county, in the matter of the issuance of this bond, were regular and in strict accordance with the provisions of the said act above mentioned, and of the constitution of the state of California; and that the total bonded indebtedness of said district authorized at said election does not exceed the entire estimate of the expense of the work planned and the cost of the maintenance of said work for one year after the date of their completion.

This bond is in the form prescribed by the order of said board of supervisors, duly made and entered in its minutes on theday of....., 19., and in substantial conformity to the form prescribed by said act, and this bond shall be payable out of the bond fund of said levee district, and the money for the redemption of said bond, and the payment of the interest thereon, shall be raised by taxation upon the taxable property of said district.

In witness whereof the said board of supervisors has caused this bond to be signed by its chairman and by the auditor of said county, with its seal of office attached this day of....., 19..

.....
Chairman of the board of supervisors of the
county of.....

Attest:

.....
Auditor of.....county.

Form of interest coupon.

The interest coupon shall be in the following form:

On theday of....., 19., the treasurer of the county of.....,
Gen. Laws—90

state of California, will pay to the holder hereof out of the bond fund of the.....
.....levee school district of said county, at his office, in the city of.....
in said county, the sum of \$..... for interest on bond of said district,
No..... [Amendment of May 22, 1917. In effect July 27, 1917. Stats. 1917,
p. 812.]

This section was also amended May 29, 1915, Stats. 1915, p. 914.

Bonds to be numbered and signed.

§ 8. Bonds issued under this act shall be numbered consecutively, signed by the chairman of the board of supervisors and attested by the county auditor, who shall affix thereto his official seal. The coupons shall be numbered consecutively and signed by the treasurer by original, or engraved, or lithographed facsimile signature, and the bonds and coupons shall be payable at the office of the county treasurer. In case any officer whose signature or attestation or countersignature appears on any bonds or coupons thereof issued under the provisions of this act shall cease to be such officer before the sale or delivery of said bonds to the purchaser thereof, such signature, countersignature or attestation appearing either on the bonds or the coupons or on both shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until the sale or delivery of such bonds. [Amendment of May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 816.]

Sale of bonds.

§ 8a. Said bonds must be sold in the manner prescribed by the board of supervisors, but for not less than par. The board of supervisors may sell all the bonds of said issue at one time, or may sell less than the whole, to wit, any part thereof, at one time, and from time to time. In the event the whole, or any part of said issue of bonds, may be offered for sale at one time, the board of supervisors may sell either the whole or any lesser number of the bonds so offered for sale. All moneys realized from the sale of said bonds shall be placed on deposit with the county treasurer to the credit of the bond fund of said district, and shall not be expended for any purpose other than that for which said bonded indebtedness was incurred as specified in section one of this act. [New section added May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 816.]

Action to have bonds declared valid. Summons.

§ 8b. As soon as said bonds shall have been delivered to said county treasurer, the board of trustees, or any holder of title, or evidence of title, including possessory rights, to lands contained in the district, may, in order to determine that said bonds are a legal obligation of the district, institute a proceeding therefor in the superior court of the county in which the district was organized by filing with the clerk of said county a complaint setting forth that on a date therein named bonds of said district were delivered to the said treasurer, stating the amount of such bonds, and praying that such bonds be adjudged to be a valid legal obligation of such district. The summons in such proceeding shall be served by publishing a copy thereof once a week for four weeks in some newspaper of general circulation published in each county in which any of the lands contained in said district are located. Within thirty days after the last publication thereof shall have been completed and proof thereof filed with the court, any person interested may appear and answer said complaint, in which case said answer shall set forth the facts relied upon to show the invalidity of said bonds. If no answer shall be filed within said time, the court must render judgment as prayed for in the complaint. If an answer be filed the court shall proceed as in other civil cases. Said proceeding is hereby declared to be a proceeding in rem and the judgment rendered therein shall be conclusive against all persons whomsoever and against the state of California. In the event said district comprises lands situated in more than one county, such action

shall be brought in the superior court of the county in which the larger portion of the district is situated.

Treasurer's record.

The treasurer of the county shall keep a record of all bonds by number, date of sale, amount, date of maturity, and the name and post-office address of the purchaser when known, which record shall be open at all times for public inspection. [New section added May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 817.]

Bonds exempt from taxation.

§ 8c. Any bonds issued by any levee district under the provisions of this act are hereby given the same force, value and use as bonds issued by any municipality and shall be exempt from all taxation within the state of California.

Bonds legal investment.

The bonds of levee districts issued pursuant to this act may be lawfully purchased or received in pledge for loans by banks, trust companies, guardians, executors, administrators, and special administrators, or by any public officer or officers of this state, or of any county, city, or city and county, or other municipal or corporate body within the state, having or holding bonds which they are allowed by law to invest or loan. [New section added May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 817.]

Tax to pay interest and principal.

§ 9. In addition to any other estimate which the board of trustees may be required by law to make and to submit to the board of supervisors of the county in which said district is situated, the board of trustees, on or before the first day of September of each year, shall certify to the board of supervisors, if said district is situated in one county, but if it comprises lands situated in more than one county, then the respective boards of supervisors of each county within which lands of said district are situated, the amount of interest upon all outstanding bonds to grow due within the said year, and the amount of moneys necessary to redeem any or all outstanding bonds that may grow due in said year. At the time when by law it is the duty of the board of supervisors of said county to fix the annual tax rate of such county, said board of supervisors must levy a tax upon the taxable property situated in such levee district, for the interest and redemption of said bonds, and such tax must not be less than sufficient to pay the interest on said bonds for that year and such portion of the principal as is to become due during such year, and such proportion of the principal that at the end of ten years the sum raised from such levies shall equal at least twenty-five per cent of the amount of bonds issued, at the end of twenty years at least fifty per cent of the amount, and at and before the date of the maturity of the bonds shall be equal to the whole amount of the principal, and the money arising from such levies shall be known as the bond fund, and shall be used for the payment of bonds and interest coupons and for no other purpose whatever; and the county treasurer shall open and keep in his book a separate and special account which, at all times, shall show the exact condition of such bond fund.

Levy and collection. Lien on property.

Such tax shall be levied on all property in the territory comprising the district, and shall be collected at the same time and in the same manner and form as county taxes are collected, and when collected shall be held by the treasurer for the credit of said district, to be paid by orders of such treasurer issued under the authority of and signed by the president of the board of trustees of said district. Such taxes shall be a lien on all the property within the territory comprising the district, and of the same force

and effect as other liens for taxes, and its collection shall be enforced by the same means and in the same manner as provided for in the enforcement of liens for county taxes.

Levy and collection of tax when land situated in more than one county.

In the event the said district comprises land situated in more than one county, then said estimate shall be furnished to the board of supervisors of each of the counties within which said lands of said district are situated. In such case at the time when by law it is the duty of the board of supervisors of said respective counties to fix the annual tax rate of each county, it shall be the duty of the board of supervisors of each of said counties respectively to levy a tax upon the taxable property in such levee district as may be situated in said county for the interest and redemption of said bonds, and such tax must not be less in the aggregate than sufficient to pay the interest on said bonds for that year and such portion of the principal as is to become due during such year, and such portion of the principal that at the end of ten years the sum raised from such levies shall equal at least twenty-five per cent of the amount of bonds issued, at the end of twenty years at least fifty per cent of the amount, and at and before the date of maturity of the bonds shall be equal to the whole amount of the principal, and the money arising from such levies shall be known as the bond fund and shall be used for the payment of bonds and interest coupons and for no other purpose whatever. The county treasurer of each county shall open and keep in his book a separate and special account which shall at all times show the exact condition of such bond fund. Such tax shall be levied on all property in the territory comprising the district situated in said county, and shall be collected at the same time and in the same manner and form as county taxes are collected, and when collected shall be held by the treasurer of each of said counties. Upon the first days of January, April, July and October of each year succeeding the date of issuance of said bonds, the county treasurer of each county, other than the county wherein the larger portion of the lands of said district is situated, shall transmit to the county treasurer of the county in which the larger portion of the lands of said district is situated all sums then in his possession in said bond fund, and the county treasurer of the county in which the larger portion of the lands of said district is situated shall issue his receipt therefor. Such taxes shall be a lien upon all the property within the territory comprising the district, and of the same force and effect as other liens for taxes, and the collection of said taxes shall be enforced by the same means and in the same manner as provided by law for the enforcement of liens for county taxes. [Amendment of May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 818.]

This section was also amended May 29, 1915, Stats. 1915, p. 916.

Redemption of bonds.

§ 10. Whenever there shall be in the bond fund of such district a surplus of one thousand dollars or more, over and above the interest maturing before the next levy, the treasurer shall give notice for two weeks in one or more newspapers of general circulation, printed and published in the county in which such district is situated, stating the amount of such surplus, and that on the day and hour named in such notice, sealed proposals will be received at his office for the surrender of bonds of the district, and shall at the time and place named open the proposals and accept the lowest bid; provided, that no bid shall be accepted for an amount exceeding the par value of such bonds with accrued interest; if bids are not offered at par, or less, sufficient to exhaust the amount on hand applicable to redemption, the treasurer shall publish for the same time and in the same manner a notice that he will redeem a bond or bonds of said district, giving the number or numbers thereof, and that if not presented for redemption within thirty days after the date of the first publication of such notice, the interest thereon

will cease, and the amount due thereon will be set aside for the payment of such bond or bonds whenever presented. If any such bond be not so presented, interest thereon shall cease, and the amount due thereon shall be set aside as specified in said notice. All redemption of bonds other than those voluntarily surrendered shall be made in the exact order of their numbering, beginning with the lowest or first number. [Amendment of May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 819.]

Act full authority for issuance and sale of bonds. Levee district fund.

§ 11. This act shall without reference to any other act of the legislature of the state of California be full authority for the issuance and sale of the bonds in this act authorized, which bonds shall have all the qualities of negotiable paper under the law merchant, and when executed by the officials as provided in this act in conformity with the provisions of this act, and when sold in the manner prescribed therein and the consideration therefor received by the county treasurer for the benefit of said district, shall not be invalid for any irregularity or defect in the proceedings for the issuance and sale thereof, and shall be incontestible in the hands of bona fide purchasers or holders thereof for value. The moneys obtained from the sale of such bonds shall be by the county treasurer placed in a fund to be called the "..... levee district fund," and all payments of any of the expenses of the work or improvements for which said bonded indebtedness was incurred shall be paid out upon warrants drawn by the board of trustees of said levee district. [New section added May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 820.]

Old § 11. This act shall take effect immediately.

This section was not repealed, although a new section was added and given the same number.

SACRAMENTO RIVER WEST SIDE LEEVE DISTRICT.

ACT 2518—An act to create a levee district to be called and designated Sacramento river west side levee district; to prevent the overflow of flood waters from the Sacramento river from flooding onto the lands within said district by the construction of levees along the west bank of the Sacramento river and adjacent thereto and maintain the same; providing for the election and appointment of officers of said levee district; defining the powers, duties and compensation of such officers; and providing for levying and collecting assessments upon the lands within said levee district.

History: Approved May 18, 1915. In effect August 8, 1915. Stats. 1915, p. 516. Amended May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 1211.

Sacramento river west side levee district created. Boundaries.

§ 1. A levee district is hereby created to be known and designated "Sacramento river west side levee district," and is hereinafter in this act designated as "district," the boundaries of which said district shall be as follows:

Beginning at a point seven hundred and sixty feet north, and three hundred and twenty-six feet east of southeast corner of the northwest quarter of the northwest quarter of section seven, in township eleven north, range two east, Mount Diablo base and meridian, the same being a point of junction with the present existing levee around reclamation district number seven hundred and eighty-seven and the center line of the back or westerly levee of reclamation district number one hundred and eight; thence running in a northwesterly and northerly direction along the center line and within the right of way of the back or westerly levee of said reclamation district one hundred and eight to a junction with the existing levee of reclamation district number one hundred and eight; said levee being commonly known as the Howell Point levee, said junction point being eight hundred and twenty-three feet north and six hundred and nine feet east of the northwest corner of the northeast quarter of the southwest quarter of sec-

tion thirty, township thirteen north, range one east, Mount Diablo base and meridian, the center line of said levee right of way being more particularly described as follows:

Beginning at a point seven hundred and sixty feet north and two hundred and eight feet east of the southeast corner of the northwest one-quarter of the northwest one-quarter of section seven, township eleven north, range two east, Mount Diablo base and meridian, and running thence northwesterly in a direct line through the northwest one-quarter of the northwest one-quarter of section seven and the southwest one-quarter of the southwest one-quarter of section six, township eleven north, range two east, the south one-half of section one, the north one-half of the southeast one-quarter of section two, the northeast one-quarter of section three in township eleven north, range one east, and the south one-half of section thirty-four, township twelve north, range one east, to a point three hundred feet north of the northwest corner of the southwest one-quarter of the southwest one-quarter of said section thirty-four; thence in a direct line northwesterly through the south one-half of section thirty-three, and the southeast one-quarter of section thirty-two to the center of said section thirty-two, in township twelve north, range one east, thence in a direct line northwesterly through the northwest one-quarter of section thirty-two to the southeast corner of the northeast one-quarter of the northeast one-quarter of section thirty-one, township twelve north, range one east; thence in a direct line northwesterly across the northeast one-quarter of section thirty-one, and the east one-half and the northwest one-quarter of section thirty, and the southwest one-quarter of section nineteen, township twelve north, range one east, and the southeast one-quarter of section twenty-four, township twelve north, range one west, to a point three hundred feet west of the one-quarter section corner between section nineteen, township twelve north, range one east, and section twenty-four, township twelve north, range one west; thence north, parallel with and three hundred feet west of the Mount Diablo meridian between townships twelve north, range one east, and one west; through the east half of the east half of section twenty-four, the east half of the east half of section thirteen, the east half of the east half of section twelve, and the east half of the east half of section one, in township twelve north, range one west, to a point three hundred feet west of the corner to townships twelve and thirteen north, ranges one east and one west; thence in a direct line northeasterly through the southeast one-quarter of section thirty-six, township thirteen north, range one west, and the west one-half of section thirty-one, township thirteen north, range one east, to a point on the north line of section thirty-one, township thirteen north, range one east, from whence the southeast corner of the southeast one-quarter of the southwest one-quarter of section thirty, township thirteen north, range one east, bears west four hundred and fifty-nine feet distant; thence in a direct line north no degrees fifty-three minutes east one-half of a mile across the southwest one-quarter of section thirty, township thirteen north, range one east; thence from said point north no degrees fifty-three minutes east eight hundred and twenty-two feet across the southeast one-quarter of the northwest one-quarter of said section thirty, to a point in the right of way of the existing Howell Point levee.

Thence leaving said junction point with the said Howell Point levee of reclamation district number one hundred and eight, said junction point being eight hundred and twenty-three feet north and six hundred and nine feet east of the northwest corner of the northeast quarter of the southwest quarter of section thirty, township thirteen north, range one east, Mount Diablo base and meridian, and running along the center line and within the existing right of way of said Howell Point levee of said reclamation district number one hundred and eight northwesterly a distance of thirty-one thousand, three hundred and sixty-nine feet, more or less, to a point on the center of said levee and on the line between section four, township thirteen north, range one west and section thirty-three, township fourteen north, range one west, Mount Diablo base and

meridian; thence following the center line of the existing reclamation district number one hundred and eight back levee north forty-two degrees, forty-five minutes west, two thousand five hundred and forty-two feet across the southwest one-quarter of section thirty-three, township fourteen north, range one west, Mount Diablo base and meridian; thence across the northwest one-quarter of the southwest one-quarter of said section thirty-three, and the northeast one-quarter of the southeast one-quarter of section thirty-two, said township and range, north forty-eight degrees thirty-five minutes west seven hundred and seventeen feet; thence across the northeast one-quarter of the southeast one-quarter, and the southeast one-quarter of the northeast one-quarter of section thirty-two, said township and range, north nine degrees, thirty-eight minutes west, six hundred and seventy-five feet; thence across the east half of the east half of sections twenty-nine and thirty-two, said township and range, north three degrees, twenty-nine minutes west, three thousand six hundred and fifteen feet; thence across the southeast one quarter of section twenty-nine, and the southwest one-quarter of section twenty-eight, said township and range, east six hundred and twenty-two feet to a point two hundred and twenty-five feet east and forty-five feet south of the one-sixteenth corner between the southeast quarter of section twenty-nine and the southwest quarter of section twenty-eight, said township and range; thence across the west one-half of the west one-half of section twenty-eight, said township and range, north no degrees, twenty-three minutes east, eighteen hundred and sixty feet, more or less, to the center line of Sycamore slough; thence in a northerly direction along the center line of said slough to a point where said slough crosses the line between sections five and six, township fourteen north, range one west; thence north along said line, three thousand feet, more or less, to the northeast corner of said section six; thence west along the north line of said section, thirty-two hundred feet, more or less, to a point due south of the southwest corner of the Davis west levee; thence north one hundred feet, more or less, to the center line of the said Davis west levee; thence northerly along the center line of said levee, one mile, more or less, to the south line of section thirty, township fifteen north, range one west; thence west three-fourths mile more or less to the quarter section corner between sections twenty-five and thirty-six, township fifteen north, range two west; thence north two and one-half miles to the center of section thirteen, township fifteen north, range two west; thence west one-half of a mile to the quarter section corner between sections thirteen and fourteen, township fifteen north, range two west; thence north one mile to the quarter section corner between sections eleven and twelve, township fifteen north, range two west; thence west one-half of a mile to the center of said section eleven; thence north one mile to the center of section two, township fifteen north, range two west; thence west one-half of a mile to the quarter section corner on the west boundary of the said section two; thence north one mile to the quarter section corner between sections thirty-four and thirty-five, township sixteen north, range two west; thence east through the center of said section thirty-five and along the center line of road number sixty-four (old series), of Colusa county, one mile, more or less; thence continuing northeasterly along the center line of the said road number sixty-four (old series), the same being known as the "Colusa and Williams road," one and three-eighths miles, more or less, to the south boundary line of the town of Colusa; thence southeasterly along the south boundary line of the town of Colusa to the southeast corner thereof; thence northeasterly along the east boundary line of the town of Colusa to a point where the said line intersects the right bank of the Sacramento river; thence down the right bank of the Sacramento river to a point where the said right bank of the Sacramento river intersects the right or southerly bank of Lower Sycamore slough; thence leaving the right bank of the said Sacramento river and running in courses and distances as follows: South sixty-one degrees, thirty-five minutes, west two hundred and fifty-nine feet; thence south three degrees, forty-three minutes west, one hundred and

one and sixty five hundredths feet; thence south fifty-five degrees, twelve minutes west, five hundred and fifteen and ninety-five hundredths feet; thence south twelve degrees, twenty-seven minutes west, two hundred and sixty-five and seventy-four hundredths feet; thence south forty-two degrees, thirty-four minutes west, six hundred and thirty-nine and four-tenths feet; thence south thirty-nine degrees, thirty-four minutes west, eight hundred and two and forty-seven hundredths feet; thence south fifty-eight degrees, forty-one minutes west, three hundred and ninety-six and eight-tenths feet; thence south fifty-two degrees, thirty minutes east, seven hundred and twenty-eight and seven-tenths feet; thence south fifty-two degrees, eleven minutes east, five hundred and nine and thirty-three hundredths feet; thence south forty-four degrees, forty-eight minutes west, six hundred and ninety-nine and three-tenths feet; thence south eighty-eight degrees, twenty-one minutes west, four hundred and eight and twenty-two hundredths feet to the northeast corner of section twenty-two, township eleven north, range two east, Mount Diablo base and meridian; thence north eighty-nine degrees, seventeen minutes, thirty seconds west, three hundred and forty-five and ninety-five hundredths feet; thence north forty-five degrees, twenty-nine minutes, thirty seconds west, one thousand four hundred and fifty feet, more or less, to the center line of the southerly levee of reclamation district number seven hundred and eighty-seven; thence following said center line of said levee in a northwesterly direction through the south one-half and the northwest one-quarter of section fifteen of said township and range; thence continuing along the center line of said levee in a westerly direction through the south one-half of the north one-half of section sixteen and the northeast one-quarter of section seventeen, of said township and range; thence continuing along the center line of said levee in a northwesterly direction ————— northeast quarter and the northwest quarter of said section seventeen, the southwest quarter of section eight, the southeast quarter, the northeast quarter, and the northwest quarter of section seven, said township and range; thence continuing along the center line of said levee in a northerly direction through the northwest quarter of said section seven, to the point of beginning.

Commissioners.

§ 2. The officers of said district shall consist of a board of five levee commissioners who shall hold office for the term of four years from and after their election and qualification and until their successors have been elected and qualified. Said levee commissioners shall be selected from the district at large and each of them must at the time of his election be the owner of at least forty acres of land in said district, the test of his qualification as such commissioner to be such land ownership and not residence in the said district.

Election. Notice of election. Election officers. Determination of acreage for purpose of election. Vote by proxy. Polls open. Ballots. Certificate illegally issued. Commissioner takes office.

§ 3. An election shall be held within forty days after the date upon which this act shall take effect, and on the last Monday of October of every fourth calendar year thereafter, at which election said commissioners shall be elected. Said first election shall be called by the reclamation board created by that certain act of the legislature of the state of California, entitled: "An act approving the report of the California debris commission transmitted to the speaker of the house of representatives by the secretary of war on June 27, 1911, directing the approval of plans of reclamation along the Sacramento river or its tributaries or upon the swamp lands adjacent to said river, directing the state engineer to procure data and make surveys and examinations for the purpose of perfecting the plans contained in said report of the California debris commission and to make report thereof, making an appropriation to pay the expenses of such examinations and surveys, and creating a reclamation board and defining its powers," approved

December 24, 1911, or such board as may by law be made its successor. Said reclamation board shall also designate the voting place for said first election and for all succeeding elections. Notice of the time and place of holding all elections shall be given by said reclamation board by publication once a week for two weeks next preceeding such election, in some newspaper published in Colusa county and also in some newspaper published in Yolo county. In the first election the reclamation board shall, prior to the election, procure from the assessors of said counties of Yolo and Colusa, respectively, a list certified by such assessors, respectively, containing a description of all the lands of the district situated in such counties, the name of the person to whom each tract is assessed and the acreage thereof as it appears from the last prior assessment roll of said counties, which said list shall be furnished to and be used by the board of election hereinafter described in determining the number of votes each voter is entitled to cast. In all elections said reclamation board shall appoint an inspector and two judges of election, who shall constitute a board of election for such voting place. At the first election of commissioners each owner of land within said levee district as above defined, shall be entitled to cast one vote, in person or by proxy, for each commissioner to be elected therein for each acre of land or fraction thereof owned by such landowner within said district, such acreage to be determined by the aforesaid assessment roll of the county in which the same is situated. In case of town lots, or where the acreage is not stated, the board of election officers shall determine the amount of acreage therein. The estates of minors, incompetents, deceased persons and beneficiaries under a trust shall be represented by the guardian, executor, administrator or trustee in person. Where a tract is situated partly within and partly without the boundaries of such district, and the assessment roll contains the acreage of said tract of land as a whole, the same must be apportioned according to the number of acres lying within and without the boundaries of said district. In the case of all elections after the first election hereinbefore provided for, each landowner in said district shall be entitled to cast one vote, either in person or by proxy, for each commissioner to be elected therein for each dollar, or fraction thereof, assessed against his land, as shown by the first assessment list in said district as prepared by the assessors and heretofore filed with the reclamation board, as provided in section six of this act, or in the event that said assessment list has been equalized by the said reclamation board before the time of said election, then as shown by the said assessment list so equalized by the reclamation board. No person shall vote by proxy at such election, unless authority to cast such vote shall be evidenced by an instrument in writing, duly acknowledged and certified in the same manner as grants of real property, and filed with the board of election. In case no board of election shall be appointed, or if any member thereof shall fail or refuse to serve, the landowners present at the time of the opening of such election may appoint such board of election or supply the place of an absent member. Each member of the board of election must, before entering upon the discharge of his duties, be sworn to perform them faithfully. Any person entitled to vote at such election may administer the oath. The polls shall be kept open from ten o'clock a. m. till four o'clock p. m. on the day of said election. The board of election must keep a list of the names of the persons voting at such election, together with a statement of the number of votes cast by each, and shall canvass the votes and make a return thereof showing the number of votes cast for each person for levee commissioner and shall return therewith said list containing the names of the landowners voting at such election. Such election shall be by ballot, which ballots must contain the name of the person voting same, the total number of votes cast, the names of the persons voted for and the number of votes cast for each of said persons. The ballots must be inclosed in an envelope by the election board, and delivered, with the election returns, to the said reclamation board, and said reclamation board shall cause a certificate of election to be

issued within five days to the person or persons receiving the highest number of legal votes. If a certificate of election shall be issued to any person who has not received the highest number of legal votes, and upon an affidavit being filed by a landowner in the said levee district, setting forth that such person did not receive the highest number of legal votes, and giving the names of the persons who cast illegal votes for such person, and the number of such illegal votes so cast, the said reclamation board shall canvass the election returns, and hear evidence touching the legality of any votes cast, and may revoke such certificate of election and issue a certificate to the person legally elected. Within fifteen days after receiving a certificate of election, and before entering upon the duties of his office, each levee commissioner shall take the oath of office prescribed by law, and file the same in the office of said reclamation board. All vacancies in the board of levee commissioners shall be filled by the said reclamation board, and such appointee shall hold office until the next succeeding election, and the qualification of his successor. Such person shall possess the same qualifications as an elected commissioner. [Amendment of May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 1212.]

Officers of board. Meetings. Compensation.

§ 4. The board of levee commissioners shall elect one of their number as president, and shall elect a secretary who may or may not be a member of said board, and an engineer, who shall not be a member of said board, and employ such other persons as may be necessary to assist and advise said board. The office of said board of levee commissioners shall be such place as designated by said board, but the same may be changed by the said board from time to time. The board shall hold regular meetings as the by-laws of the district may provide. At all meetings three of said members shall constitute a quorum for the transaction of any and all business. Special meetings may be called and held at such times and in such manner as the by-laws may provide. Any meeting of the commissioners, at which all members of the board are present, shall be deemed a regular meeting at which any business may be transacted. No commissioner shall be disqualified from participating in any and all proceedings or actions of the board of levee commissioners, except that he shall not cast a deciding vote upon a motion or resolution to pay money or award a contract directly to himself. Each commissioner shall receive ten dollars per day and necessary mileage actually expended while engaged in the performance of his duties.

Powers of board. Report on plans. To acquire levees on west bank.

§ 5. The board of levee commissioners shall have power to adopt by-laws not in conflict with general laws; to appoint an executive committee with such powers as shall not be in conflict with general laws; to employ engineers and others to survey, plan, locate and estimate the cost of the works necessary for the protection of the lands of the district from the flood waters of the Sacramento river overflowing or coming therefrom on the west side of said river; to thereafter, at any time, in its discretion, modify or change such original plan or plans, or adopt new, supplemental or additional plan or plans, when in its judgment the same shall have become necessary; provided, that said board of levee commissioners must report to the said reclamation board such original plan or plans of the work and every new, supplemental or additional plan, if any, together with the estimates of the cost of the works necessary for the protection of the lands of the district, in pursuance of any such plan or plans, together with an estimate of incidental expenses; such plans and estimates shall include the cost of construction and maintenance; to acquire from private persons, reclamation, swamp land, levee or other public agencies or protection districts, or corporations, all rights of way, easements, existing levees, property and material, whether outside or within the limits of the district, necessary or requisite for levees, by donation, contract, purchase or by proceed-

ings under the provisions of title VII, part three of the Code of Civil Procedure of the state of California for condemnation thereof in the name of the district, or any other provision of law in relation to the right of eminent domain; to sue and be sued in the name of said levee district and to do all other acts or things necessary or requisite for the full exercise of its powers or necessary for the promotion of the protection of lands within said levee district from the flood waters of the Sacramento river. It shall be the duty of said board of levee commissioners to take such steps as may be necessary to acquire dominion and control of all levees along or adjacent to the west bank of the Sacramento river and within the said levee district, and to repair the breaks or openings now therein; also to reconstruct all existing levees; also to construct and maintain levees where there may be none, and generally to do all other things that it may deem necessary or requisite to prevent the flood or overflow waters from the Sacramento river flowing over or through the west bank or west levee thereof, either inside or outside of said levee district, entering the lands within said district, or any part thereof, and, for this purpose, to control the levee or levees within said district along the west bank of the said Sacramento river, or any levee or levees outside of said district, as may be necessary, for such purpose; also to construct, reconstruct and repair and maintain and protect such levees, and, for this purpose, to construct and maintain any protection or works of any kind which may be deemed necessary for the purpose of assuring the safety of such levees hereinbefore referred to, with a view of keeping the waters from the Sacramento river flowing onto the lands within said district, or any part thereof.

Assessors. List of lands. Hearing. Approval of assessment.

§ 6. The said reclamation board shall upon receipt of plans and estimates, as above set forth, appoint three assessors, who shall be disinterested persons, and who shall have no interest in any real estate within said levee district, and each of whom, before entering upon his duties, shall make and subscribe an oath that he is not in any manner interested in any real estate within said district, directly or indirectly, and that he will perform the duties of an assessor to the best of his ability. Said assessors must assess upon the land within said levee district the said sum so estimated and reported to the board of levee commissioners, and shall apportion the same according to the benefits that will accrue to each tract of land in said district, respectively, by reason of the expenditure of said sums of money. Said assessors shall make a separate list of the lands so assessed in each county, which list shall contain a description of the tracts of land assessed, by swamp land surveys, legal subdivisions, or other boundaries or references sufficient to identify the same; the name of the owner, if known or if unknown, that fact; the amount of the charge assessed against each tract. No mistake in the name of the owner or supposed owner, of any real estate shall invalidate the assessment. Said lists shall be made in duplicate, each being made as an original, and, when completed, shall be filed with the said reclamation board of the state of California. The said reclamation board shall appoint a time when it will meet for the purpose of hearing objections to said assessment, and notice of such hearing shall be given by publication for two weeks in a newspaper of general circulation published in the county of Yolo, and in a newspaper of general circulation published in the county of Colusa. At any time before the date of such hearing any person interested in any land upon which any charge has been assessed may file written objections to such assessment with said reclamation board stating the grounds of such objections, which said statement shall be verified by the affidavit of such person, or some other person who is familiar with the facts. At said hearing the said reclamation board shall hear such evidence as may be offered in support of said written objection, and may modify or amend the assessment in any particular, or make a re-apportionment of the entire assessment. If the amount of any assessment in said list shall be changed, the said reclamation board shall set a day for hearing objections to said assessment as changed, and shall give notice thereof by

publication for two weeks in a newspaper of general circulation published in the county of Yolo, and in a newspaper of general circulation published in the county of Colusa. At such hearing objections in writing may be made by any person interested, and the reclamation board shall proceed to hear the same in the same manner as upon the original hearing. If the amount of any assessment shall again be changed, the said reclamation board shall proceed as before to give notice and to hear objections thereto, and shall proceed in a similar manner until the amount of each assessment shall be finally fixed and approved. The said reclamation board shall then make an order approving said assessment, and shall endorse such order upon such assessment list, and the duplicate original thereof, which said order shall be signed by the chairman of said reclamation board and attested by the clerk or secretary thereof, and such decision of said reclamation board shall be final, and thereafter said original assessment list and duplicate original assessment list shall be conclusive evidence that the said assessment has been made and levied according to law. Immediately after the approval of said assessment, the original shall, by the said reclamation board, be deposited in the office of the county treasurer of Colusa county, and the duplicate original of said assessment list shall be deposited by said reclamation board in the office of the county treasurer of Yolo county.

Charges become lien. Statement that assessment delinquent. Interest.

§ 7. From and after the filing of the original list with the county treasurer of Colusa county, and from and after the filing of the duplicate original list with the county treasurer of Yolo county, the charges assessed upon any tract of land within each respective county shall constitute a lien thereon, and shall impart notice thereof to all persons. No subsequent act or conduct of the commissioners shall invalidate said assessment or lien, but such commissioners may be compelled by mandate or other proper proceeding to perform their duties, as required by law. The list thus prepared and filed must remain in the offices of the respective treasurers for thirty days from such filing, or longer if ordered by the board of levee commissioners, and during the time they so remain, any person may pay the amount of the charge assessed against any tract of land to the treasurer of the county in which such tract is situated, in gold coin of the United States, or in warrants of the district. At the end of thirty days the treasurers must return the lists to the board of commissioners of the district. The said board, from time to time in its discretion, may, by order entered in its minutes, direct the said assessment to be collected and paid in separate installments, of such amounts and at such time, respectively, as the said board may determine. After any order has been made calling in an installment of assessment, the secretary of the said district, for the information of the landowners, shall mail to each landowner, as described in the said assessment list, if his address be known to such secretary, or, if not, then to the county seat of the county in which such land may be situated, a statement stating the amount of the call of such assessment, and stating further that said installment, if unpaid at the expiration of thirty days from the date of such order, shall become delinquent, which said statement shall be mailed by said secretary within ten days after the date of any such order calling in any installment of such assessment, and each installment of assessment, from the time of the order of said board directing the same to be collected and paid, shall bear interest at the rate of seven per cent per annum until paid; if any such installment shall remain unpaid at the expiration of thirty days from the date of the order, then said installment shall become delinquent, together with the accrued interest thereon, and ten per cent of the amount of said installment and interest shall be added thereto, and collected for the use of the district; provided, further, that the commissioners must on the first day of January of each year, order the collection of a sufficient amount of said assessment to pay all warrants that have been issued and outstanding for a period of two years or more, together with the interest on such warrants.

Immediately after the said installment has become delinquent, the board of levee commissioners must publish a notice at least once each week for three weeks in some newspaper of general circulation published in the county or counties in which any land upon which such installment may be delinquent is situated, which notice shall contain a description of the property assessed, the name of the person to whom it is assessed, or a statement that it is assessed to unknown owners, if such be the fact; the amount of the delinquent installment, the amount of the interest at the date of delinquency, the amount of the penalty that has been added as above provided, and a notice that the property assessed will be sold on a date therein stated, at such time and place in said district as the board of commissioners may in said notice designate, to pay said installment with accrued interest and the penalty hereinbefore specified.

Sale of property. Purchase by district. Redemption of property.

At the time stated in said notice, or such other time to which said sale may have been postponed, the commissioners must sell said property to the highest bidder for gold coin of the United States. Out of the proceeds of said sale the commissioners must pay the amount of said installment with the accrued interest thereon and the penalty herein provided for to the county treasurer of the county of Colusa who shall place the same in the proper funds of said district, and the commissioners must pay to the owner of said property any surplus remaining after such payment to said county treasurer. The commissioners may postpone said sale from time to time by a written notice posted at the place of sale. If no bid is made for said property equal to the amount of said installment, accrued interest and penalty, the district shall become the purchaser, and the said property must be struck off to the district for the amount of said installment, accrued interest and penalty. A certificate of such sale shall be executed by the commissioners of said levee district to the purchaser, or to the district, if the property shall have been struck off to the district, and said certificate of sale shall be recorded in the office of the county recorder of the county in which the land sold is situated, or if situated in two counties, then in the office of the county recorder of each thereof. Any person interested in said property may redeem the same at any time within one year after the date of said sale, by paying in gold coin or in warrants of said district, to the county treasurer of Colusa county the amount of said installment with the accrued interest and penalty, and interest on the said sums at the rate of two per cent per month from the date of said sale.

Sale at public auction.

If no redemption shall be made within said one year, the purchaser, or the district, if said property shall have been sold to the district, shall be entitled to a deed executed by said commissioners, and the effect of such deed shall be to convey said property free of all liens and incumbrances, excepting state, county and municipal taxes, and the liens of assessments now levied or which may hereafter be levied by any of the reclamation districts situate within said levee district, or by the Knights Landing Ridge drainage district, and the unpaid balance of said assessment of said levee district, if any, which said balance must be called in and collected in the same manner as other assessments; provided, that where said property shall have been deeded to the district and shall not have been sold by the commissioners, the same shall not be offered for sale for subsequent installments of said assessments so long as the district shall remain the owner of said property, but the commissioners may sell said property at any time at public auction after notice given for the same period and in the same manner as is herein provided for sales for delinquent installments, but not for a sum less than all delinquent unpaid installments with accrued interest and penalties, and the deed executed in pursuance of such sale shall convey said property free of all incumbrances, except state,

county and other municipal taxes, the lien of any assessments levied or which may hereafter be levied by any reclamation district within said levee district, or the Knights Landing Ridge drainage district, and the unpaid balance of said assessment.

Land not charged to be charged later. Correction of errors.

In all cases where an assessment has been, or shall hereafter be, levied for any purpose on the lands embraced within said levee district, if, for any reason, any tract or tracts of land shall not have been charged with said assessment, then such tract or tracts of land shall be charged in any subsequent assessment with such proportion of the former assessment as the benefits derived by said lands from the levee works, for which said former assessment was levied, bears to the whole amount of said former assessment; or a subsequent reassessment of such tract or tracts of land may be made separately for the purpose of charging said land with its proper proportion of the costs of levee protection. Such reassessment shall be made by assessors appointed by the reclamation board, as provided by this act, and must be made and approved in the same manner as other assessments. The assessors appointed by the reclamation board must make a list of the charges assessed against each tract of land; and, if there be any error or mistake in the description of the land or in the name of the owner, or if any land which should be assessed has been, or shall be, omitted from the list, or if there is any error or mistake in any other respect, the said assessors may amend or correct the same at any time before the filing of such list with the reclamation board as hereinbefore provided. Where payment is made in warrants of the district, legal interest must be computed thereon from the date thereof to the time of such payment, when said warrants must be surrendered to the county treasurer of the county of Colusa and by him canceled.

In the event that any landowner of the said district shall have paid the amount, or any portion of the amount, assessed against any tract of land before said assessment shall have been adjudged invalid, in whole, or in part, the amount so paid by said landowner, together with legal interest thereon from the date of such payment, shall be a credit and shall be credited by the treasurer of the county where the assessment list is filed, or by said district, or upon any subsequent assessment on the tract of land on which the said invalid assessment was paid, or be applied in satisfaction pro tanto of any such subsequent assessment thereafter levied on said tract.

To whom payments are made.

All installments of assessment, after the original list and the duplicate original have been returned by the respective county treasurers to the board of levee commissioners that may be called in, shall be paid to the secretary of said board of levee commissioners, and the same and also all proceeds from any delinquent sale shall be paid into the county treasury of the county of Colusa, and be placed by the treasurer thereof to the credit of said district, and paid out upon warrants issued by the board of levee commissioners. At any time an assessment on any tract of land may be paid in full, notwithstanding the same has not been called in by the board of levee commissioners.

Moneys deposited in county treasury.

All moneys received from any source by the board of levee commissioners shall be paid by the said board, or the secretary thereof, into the county treasury of Colusa county, and be placed by the treasurer to the credit of the district, and paid out upon the warrants of the board of levee commissioners in the manner hereinbefore provided.

On the first Monday of each month the county treasurer of Yolo county shall transmit to the county treasurer of Colusa county all moneys that may be in his hands to the credit of said district arising from any source, and, likewise, all warrants that may be

delivered in payment of any assessment, and all such moneys shall thereupon be placed to the credit of said district by said county treasurer of Colusa county. [Amendment of May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 1214.]

Payment of warrants.

§ 8. The warrants drawn by the commissioners must be presented to the treasurer of the county of Colusa, and if they are not paid on presentation, such indorsement must be made thereon and they must be registered and bear interest from the date of such warrants at the rate of seven per cent per annum and shall be payable in the order of their registration. Such warrants are, and shall be, considered as contracts in writing for the payment of money, and the period prescribed for the commencement of an action based upon the said warrants, or connected therewith, is, and shall be, the term of four years from the date of their issuance. Any owner of land in the district may, at any time, pay any assessment thereon, or any part thereof, with warrants of the district. No warrant shall be paid or received on an assessment, except within four years after the date of its issuance. The board of levee commissioners and the county treasurer of Colusa county must cancel all warrants not paid within four years after the date of issuance; provided, that any warrant not paid or received on assessment within four years after date of the issuance may, before the expiration of such four years, upon the demand of the owner or holder, be extended for a like period of four years upon the presentation of the same to the board of commissioners of the district, such extension being indorsed thereon by the said board and a record thereof filed with the county treasurer of Colusa county. Said warrants may also thereafter be renewed from time to time in the same manner.

In case of action on warrant.

In case an action or proceeding, based upon any warrant or connected therewith, be commenced within four years from the date of issuance of such warrant and final judgment be obtained in favor of the owner or holder thereof, such warrant shall be paid or received on assessment in like manner as if it had been paid or received on assessment before the expiration of said four years from the date of its issuance. In any proceedings for a writ of mandate to compel the board of levee commissioners to issue a warrant, if a controversy arises as to the amount that may be due to the plaintiff, the court must determine the same in the manner provided for determining controversies in other civil actions and shall cause a writ to issue for such sum as may be found to be due. At any time after the issuance of a warrant the holder or owner thereof with the consent of the board of levee commissioners may surrender the said warrant, and a new warrant for the face thereof and accrued interest thereon shall thereupon be issued to the owner or holder in the same manner as the original warrant. Whenever there shall be sufficient moneys in the county treasury of Colusa county to the credit of said levee district to pay any warrant or warrants which have been registered and drawing interest, the said county treasurer must give notice by a written notice posted in a conspicuous place in his office, stating therein that he is ready to pay such warrants. From and after the date of posting such notice, such warrants shall cease to draw interest.

Reclamation districts not interfered with.

§ 9. Nothing in this act is intended to, or shall be construed to, authorize or empower the said board of levee commissioners, or the said levee district, in any way to interfere with the management or control of reclamation districts numbers one hundred eight, seven hundred eighty-seven and four hundred seventy-nine, or any of them, or any other reclamation district situate within the boundaries of said levee district, or within the Knights Landing ridge drainage district, or to supersede the powers of

any of them, or such districts, or any of them, except as to the control, construction and maintenance of the levee or levees along or adjacent to the eastern line of said levee district, the same being along or near the west bank of the Sacramento river, so as to prevent the overflow of flood waters from said Sacramento river flowing on to the lands within said levee district, or any part thereof, together with such protection or other works that may be necessary to protect the said levee or levees now existing, or that may hereafter be constructed, or reconstructed, or raised, or widened, or any new levee that may be hereafter constructed for such purpose.

§ 10. In case the said reclamation board should be abolished by law, and a new board is created by law, succeeding to the powers thereof, then all the duties to be performed by said reclamation board shall be performed by its legal successor, and if there be no such legal successor, in the event of such abolition, then by the board of supervisors of the county of Colusa.

§ 11. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

The amending act of 1917 contained the following section:

Repealed.

§ 3. All acts and parts of acts in conflict with this act are hereby repealed.

CHAPTER 289.

LEXINGTON.

ACT 2522—Lexington, Los Angeles county, name changed to El Monte.

History: Approved April 3, 1876, Stats. 1875-76, p. 854.

CHAPTER 195.

LIBEL.

References: Actions for, see Kerr's Cyc. Code Civil Procedure, §§ 460, 461.

Definition of and recovery for, see Kerr's Cyc. Civil Code, §§ 43-45, 47, 48.

CONTENTS OF CHAPTER.

ACT 2527. UNDERTAKING FOR COSTS.

UNDERTAKING FOR COSTS.

ACT 2527—An act concerning actions for libel and slander.

History: Approved March 23, 1872, Stats. 1871-72, p. 533. Amended April 16, 1880, Stats. 1880, p. 81.

Undertaking.

§ 1. In an action for libel or slander the clerk shall, before issuing the summons therein, require a written undertaking on the part of the plaintiff in the sum of five hundred (500) dollars, with at least two competent and sufficient sureties, specifying their occupations and residences, to the effect that if the action be dismissed or the defendant recover judgment, that they will pay such costs and charges as may be awarded against the plaintiff by judgment or in the progress of the action, or on an appeal, not exceeding the sum specified in the undertaking. An action brought without filing the undertaking required shall be dismissed.

Sureties.

§ 2. Each of the sureties on the undertaking mentioned in the first section shall annex to the same an affidavit that he is a resident and householder or freeholder within the county, and is worth double the amount specified in the undertaking, over and above all his just debts and liabilities, exclusive of property exempt from execution.

Exception to sureties.

§ 3. Within ten days after the service of the summons, the defendants, or either of them, may give to the plaintiff, or his attorney, notice that they or he except to the sureties and require their justification before a judge of the court at a specified time and place, the time to be not less than five or more than ten days thereafter, except by consent of parties. The qualifications of the sureties shall be as required in their affidavits. [Amendment approved April 16, 1880. Stats. 1880, p. 81.]

Justification.

§ 4. For the purpose of justification each of the sureties shall attend before the judge at the time and place mentioned in the notice, and may be examined on oath touching his sufficiency in such manner as the judge in his discretion shall think proper. The examination shall be reduced to writing if either party desires it.

Approval. New undertaking.

§ 5. If the judge find the undertaking sufficient, he shall annex the examination to the undertaking and indorse his approval thereon. If the sureties fail to appear, or the judge finds the sureties or either of them insufficient, he shall order a new undertaking to be given. The judge may also at any time order a new or additional undertaking upon proof that the sureties have become insufficient. In case a new or additional undertaking is ordered, all proceedings in the case shall be stayed until such undertaking is executed and filed, with the approval of the judge.

Failure to file bond.

§ 6. If the undertaking as required be not filed in five days after the order therefor, the judge or court shall order the action to be dismissed.

Costs.

§ 7. In case plaintiff recovers judgment, he shall be allowed as costs one hundred (100) dollars, to cover counsel fees, in addition to the other costs. In case the action is dismissed, or the defendant recover judgment, he shall be allowed one hundred (100) dollars, to cover counsel fees, in addition to the other costs, and judgment therefor shall be entered accordingly.

1. Act not repealed by Code of Civil Procedure.—This act was not repealed by the Code of Civil Procedure.—*Smith v. McDermott*, 93 Cal. 421.

2. Act not repealed by the constitution.—The act was not repealed by the adoption of the constitution.—*Smith v. McDermott*, 93 Cal. 421.

3. Constitutionality.—Not a special law.—The act is not a local or special law, within the meaning of the constitution.—*Smith v. McDermott*, 93 Cal. 421.

4. Same.—The act is constitutional.—*Smith v. McDermott*, 93 Cal. 421; *Carpenter v. Ashley*, 16 Cal. App. 302.

5. Same.—Recovery of counsel fees.—The provision allowing either party to recover counsel fees is constitutional.—*Engel v. Ehret*, 21 Cal. App. 112.

6. Attorney's fee not costs.—The allowance of one hundred dollars attorney's fee is not costs but a penalty and should be taxed in the statutory amount after final judgment.—*Pouchain v. Godeau*, 21 Cal. App. 365.

7. Same.—Recovery of counsel fees.—Counsel fees are not recoverable under the Gen. Laws—91

act unless included in the memorandum of costs.—*McKinney v. Roberts*, 2 Cal. Unrep. 532.

8. Costs.—The amount of recovery of costs in actions for libel and slander is governed by code provisions.—*Engel v. Ehret*, 21 Cal. App. 112.

9. Same.—Where recovery is less than \$300.—The act does not give any costs beyond the amount allowed by the code, and a plaintiff where recovery is less than \$300 is not entitled to costs.—*Jacobi v. Bauer*, 55 Cal. 554.

10. Same.—Later trial.—The costs of the first trial may, if a later trial is held, be taxed in favor of the prevailing party.—*Pouchain v. Godeau*, 21 Cal. App. 365.

11. Bond — Defendant's benefit.—The bond here required is for the defendant's benefit.—*Becker v. Schmidlin*, 153 Cal. 669.

12. Same.—Failure to file.—The failure to file the undertaking required by the act does not deprive the court of jurisdiction, and if objection is made because of such failure, the court may allow the plaintiff time to file the undertaking.—*Dixon v.*

Allen, 69 Cal. 527; Stinson v. Carpenter, 73 Cal. 571; Becker v. Schmidlin, 153 Cal. 669.

13. **Same—Sureties must be residents of county.**—The sureties on the bond must be residents of the county where the action is brought, and a bond by non-resident sureties is defective, and if no other bond is given or offered the action is properly dismissed.—Smith v. McDermott, 93 Cal. 421.

14. **Dismissal—Failure to file undertaking.**—The right of a dismissal of an action for libel for a cause recited in § 581, Code of Civil Procedure, is not limited by the provisions of the act as to dismissal for failure to file an undertaking for costs under this act.—Gaffey v. Mann, 3 Cal. App. 124.

15. **Same—Issue of summons within year.**—A defendant in an action for libel, who appeared by attorney, specially, to move for its dismissal on the ground of a failure to have summons issued within a year, is entitled on a dismissal of the action to one hundred dollars for attorney's fee, and his right in this respect is not limited by the plaintiff's failure to file the undertaking required by the act.—Gaffey v. Mann, 3 Cal. App. 124.

16. **Same—Costs.**—When an action for libel is dismissed and judgment for costs rendered for defendant, plaintiff can not appeal, except as to the judgment for costs and if they amount to less than \$300, the supreme court is without jurisdiction.—Oullahan v. Morrissey, 73 Cal. 297.

CHAPTER 195a.

LIBRARIES.

References: County law libraries, see Kerr's Cyc. Political Code, §§ 4190, et seq.

District Courts of Appeal, libraries, see Kerr's Cyc. Political Code, § 760.

Law Library Association of San Francisco, see Kerr's Cyc. Political Code, § 1486b.

School libraries, see Kerr's Cyc. Political Code, §§ 1712, et seq.

State library, see Kerr's Cyc. Political Code, §§ 2292, et seq.

Supreme court library, see Kerr's Cyc. Political Code, § 753.

See, generally, Kerr's Cyc. Civil Code, tit. "Associations."

CONTENTS OF CHAPTER.

ACT 2530. MUNICIPAL PUBLIC LIBRARIES.

2530a. COUNTY FREE LIBRARIES.

2530b. PUBLIC LIBRARIES IN UNINCORPORATED TOWNS.

2530c. DEPOSIT OF NEWSPAPER FILES IN PUBLIC LIBRARIES.

MUNICIPAL PUBLIC LIBRARIES.

ACT 2530—An act to provide for the establishment and maintenance of public libraries within municipalities.

History: Approved March 23, 1901, Stats. 1901, p. 557. Amended March 20, 1905, Stats. 1905, p. 296; April 12, 1909, Stats. 1909, p. 823. Prior act of March 18, 1878, Stats. 1877-78, p. 329, repealed by the act of April 26, 1880, Stats. 1880, p. 231, which was repealed by the present act.

Establishment.

§ 1. The common council, board of trustees, or other legislative body of any incorporated city or town in the state of California, may, and upon being requested to do so by one-fourth of the electors of such municipal corporation in the manner hereinafter provided, must, by ordinance, establish in and for said municipality a public library; provided, there be none already established therein.

Petitions for.

§ 2. The request referred to in the preceding section may be by a single petition, or by several petitions; provided, that such several petitions be substantially in the same form, and that such single petition has, or such several petitions in the aggregate have, the signatures of the requisite number of electors.

Management.

§ 3. Such public library shall be managed by a board designated as the board of library trustees, consisting of five members, to be appointed by the mayor, president of the board of trustees or other executive head of the municipality, by and with the

consent of the legislative body of said municipality. Such trustees shall severally hold office for three years, serving without compensation; provided, that the members of the first board appointed shall so classify themselves by lot that one of their number shall go out of office at the end of the current fiscal year, two at the end of one year thereafter, and the other two at the end of two years thereafter. Men and women shall be equally eligible to such an appointment, and vacancies shall be filled by appointment for the unexpired term in the same manner.

Trustees, meetings of.

§ 4. Boards of library trustees shall meet at least once a month at such times and places as they may fix by resolution. Special meetings may be called at any time by three trustees, by written notice served upon each member at least three hours before the time specified for the proposed meeting. A majority of the board shall constitute a quorum for the transaction of business. Such boards shall appoint one of their number president, who shall serve for one year and until his successor is appointed, and in his absence shall select a president pro tem. Such boards shall cause a proper record of their proceedings to be kept. [Amended by Stats. 1909, p. 823, though title did not state this section was amended. Also amended in 1905. Stats. 1905, p. 296.]

Powers of trustees.

§ 5. Boards of library trustees shall have power:

First—To make and enforce all rules, regulations and by-laws necessary for the administration, government and protection of the libraries under their management and all property belonging thereto.

Second—To administer any trust declared or created for such libraries, and receive by gift, devise, or bequest and hold in trust or otherwise, property situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of such libraries.

Third—To prescribe the duties and powers of the librarian, secretary and other officers and employees of any such libraries; to determine the number of and appoint all such officers and employees, and to fix their compensation, which said officers and employees shall hold their offices or positions at the pleasure of said boards.

Fourth—To purchase necessary books, journals, publications and other personal property.

Fifth—To purchase such real property, and erect or rent and equip, such buildings or building, room or rooms, as may be necessary, when in their judgment a suitable building, or portion thereof, has not been provided by the legislative body of the municipality for such libraries.

Sixth—To require the secretary of state and other state officials to furnish such libraries with copies of any and all reports, laws and other publications of the state not otherwise disposed of by law.

Seventh—To borrow books from, lend books to and exchange the same with other libraries, and to allow non-residents to borrow books upon such conditions as they may prescribe.

Eighth—To do and perform any and all other acts and things necessary or proper to carry out the provisions of this act.

Annual reports.

§ 6. Boards of library trustees shall, on or before the last day of July in each year, make a report to the legislative body of their municipality, giving the condition of the library on the thirtieth day of June preceding, together with a statement of their proceedings for the year then ended, and forward a copy thereof to the state library at Sacramento. [Amended April 12, 1909. Stats. 1909, p. 825, though title did not state this section was amended. Also amended in 1905. Stats. 1905, p. 297.]

Annual tax levy.

§ 7. The legislative body of any municipality in which a public library has been established in accordance with this act, shall in making the annual tax levy and as part thereof, if the maintenance of the library has not been otherwise provided for, levy a tax for the purpose of maintaining such library and purchasing property necessary therefor, which tax shall be in addition to other taxes, the levy of which is permitted in the municipality. Provided that after two years from the establishment of new libraries thereunder, where a maintenance corresponding thereto, has not been otherwise provided, in municipalities of the first, second and third classes, such tax levy shall not exceed two mills on the dollar of assessed valuation, and in municipalities of the fourth, fifth and sixth classes such levy shall not exceed three mills on the dollar of assessed valuation. [Amended April 12, 1909. Stats. 1909, p. 825.]

Disposition of revenue.

§ 8. The revenue derived from said tax, together with all money acquired by gift, devise, bequest, or otherwise, for the purposes of the library, shall be apportioned to a fund to be designated the library fund, and be applied to the purposes herein authorized. If such payment into the treasury should be inconsistent with the conditions or terms of any such gift, devise, bequest, the board shall provide for the safety and preservation of the same, and the application thereof to the use of the library, in accordance with the terms and conditions of such gift, devise or bequest. Payments from this fund shall be made upon warrants issued after due audit by, and an order from, the library trustees, which warrants shall be signed by the president and secretary of said board of library trustees. The treasurer of the municipality shall pay such warrants without any further order or warrant from any other authority. [Amended April 12, 1909. Stats. 1909, p. 825.]

Library to be free.

§ 9. Every library established under this act shall be forever free to the inhabitants and nonresident taxpayers of the municipality, subject always to such rules, regulations and by-laws as may be made by boards of library trustees; and provided, that for violations of the same a person may be fined or excluded from the privileges of the library.

Loaning of books.

§ 10. Boards of library trustees and the legislative bodies of neighboring municipalities or boards of supervisors of the counties in which public libraries are situated, may contract for lending the books of such libraries to residents of such counties or neighboring municipalities, upon a reasonable compensation to be paid by such counties or neighboring municipalities.

Title to property, shall vest in whom.

§ 11. The title to all property acquired for the purposes of such libraries, when not inconsistent with the terms of its acquisition, or otherwise designated, shall vest in the municipalities in which such libraries are, or are to be, situated, and in the name of the municipal corporations may be sued for and defended by action at law or otherwise.

Act of 1880 repealed.

§ 12. An act entitled "An act to establish free public libraries and reading rooms," approved April twenty-six, eighteen hundred and eighty, is hereby repealed; provided, that as to existing libraries this act is to be deemed a continuation thereof, and such libraries shall be governed hereby accordingly; provided, however, that this act shall

have no application to any library established or governed by the provisions of a city charter, and the provisions of any city charter shall in no manner be affected by this act.

Disestablishment of library.

§ 13. Any ordinance establishing a library adopted under the provisions of section 1 of this act must be repealed by the body which adopted the same upon being requested to do so by fifty-one per cent of the electors of such municipal corporations, as shown by the great register then in force, and upon the repeal of such ordinance such library shall be disestablished in such municipal corporation. [Amended April 12, 1909. Stats. 1909, p. 826, though title stated that this section was stricken out.]

The amending act of 1909 contained the following:

§ 2. All acts and parts of acts inconsistent with this act are hereby modified in accordance with this act.

1. **Power of board to control funds donated to city.**—A board of library trustees under this act are not entitled to control the construction of a public library building with a fund donated to the city eo nomine, and not to the trustees.—Board of Library Trustees v. Board of Trustees, 2 Cal. App. 760.

COUNTY FREE LIBRARIES.

ACT 2530a—An act to provide for the establishment and maintenance of county free libraries in the state of California, and repealing ‘‘An act entitled ‘An act to provide county library systems,’ approved April 12, 1909, and all acts and parts of acts in conflict with this act.’’

History: Approved February 25, 1911, Stats. 1911, p. 80. Amended (1) June 1, 1917; in effect July 31, 1917, Stats. 1917, p. 1610; (2) March 31, 1919; in effect July 22, 1919, Stats. 1919, p. 19; (3) April 4, 1919; in effect July 22, 1919, Stats. 1919, p. 23; (4) April 9, 1919; in effect July 22, 1919, Stats. 1919, p. 61; (5) April 21, 1919; in effect July 22, 1919, Stats. 1919, pp. 122, 123. Prior act of April 12, 1909, Stats. 1909, p. 811, repealed by the present act.

Supervisors may establish.

§ 1. The boards of supervisors of the several counties have power to establish and maintain, within their respective counties, county free libraries in the manner and with the functions prescribed in this act.

Not to include cities having libraries. Publication of notice.

§ 2. The board of supervisors of any county may establish at the county seat a county free library for that part of such county lying outside of incorporated cities and towns maintaining free public libraries, and outside of library districts maintaining district libraries, and for all such additional portions of such county as may elect to become a part of, or to participate in, such county free library system, as hereafter provided in this act. At least once a week for two successive weeks prior to taking such action the board of supervisors shall publish, in a newspaper designated by them and published in such county, notice of such contemplated action, giving therein the date of the meeting at which such action is proposed to be taken.

How cities having libraries may participate. May cease to participate. Publication of notice.

§ 3. After the establishment of a county free library as provided in this act, the board of trustees, common council or other legislative body of any incorporated city or town in the county maintaining a free public library, or the board of trustees of any library district maintaining a district library, may notify the board of supervisors that such city, town or library district desires to become a part of the county free library system, and thereafter such city, town or library district shall be a part thereof

and its inhabitants shall be entitled to the benefits of such county free library, and the property within such city, town or library district shall be liable to taxes levied for county free library purposes. But the board of trustees, common council or other legislative body of any incorporated city or town in the county, or the board of trustees of any library district may at any time notify the board of supervisors that such city, town or library district no longer desires to be a part of the county free library system, and thereafter such city, town or library district shall cease to participate in the benefits of such county free library, and the property situated in such city, town or library district shall not be liable to taxes for county free library purposes; provided, however, that the board of trustees, common council or other legislative body of any incorporated city or town, or the board of trustees of any library district, shall publish, at least once a week for two successive weeks prior either to giving or to withdrawing such notice, in a newspaper designated by said board of trustees, city council or board of library trustees, and circulating throughout such city, town or library district, notice of such contemplated action, giving therein the date and the place of the meeting at which such contemplated action is proposed to be taken.

Cities having libraries may contract with county libraries for service.

§ 4. The board of supervisors of any county wherein a county free library has been established under the provisions of this act, shall have full power and authority to enter into contracts with any incorporated city or town maintaining a free public library, and any such incorporated city or town shall, through its board of trustees or other legislative body, have power to enter into contracts with such county to secure to the residents of such incorporated city or town the same privileges of the county free library as are granted to, or enjoyed by, the residents of the county outside of such incorporated city or town, or such privileges as may be agreed upon in such contract, upon such consideration to be named in said contract as may be agreed upon, the same to be paid into the county free library fund, and thereupon the residents of such incorporated city or town shall have the same privileges with regard to said county free library as are had by the residents of such county outside of such incorporated city or town, or such privileges as may be agreed upon by said contract.

One county may furnish library service to another. Library tax.

§ 5. The board of supervisors of any county wherein a county free library has been established under the provisions of this act, shall have full power and authority to enter into contracts or agreements with the board of supervisors of any other county to secure to the residents of such other county such privileges of such county free library as may, by such contract, be agreed upon and upon such consideration as may in said contract be agreed upon, the same to be paid into the county free library fund, and thereupon the inhabitants of such other county shall have such privileges of such county free library as may by such contract be agreed upon; and the board of supervisors of such county shall have full power and authority to enter into a contract with the board of supervisors of another county wherein a county free library has been established under the provisions of this act, as in this section provided, and shall have power to levy a library tax, as in this act provided, for the purpose of carrying out such contract, but the making of such contract shall not bar the board of supervisors of such county during the continuance of such contract from establishing a county free library therein under the provisions of this act, if none be already established therein, and upon the establishment of such county free library, such contract may be terminated upon such terms as may be agreed upon by the parties thereto, or may continue for the term thereof.

Board of library examiners. To pass on qualifications of county librarians.

§ 6. A commission is hereby created to be known as the board of library examiners, consisting of the state librarian, who shall be ex-officio chairman of said board, the librarian of the public library of the city and county of San Francisco, and the librarian of the Los Angeles public library. The members of said board shall receive no compensation for their services, except their actual and necessary traveling expenses, to be paid out of the state library fund. Said board shall pass upon the qualifications of all persons desiring to become county librarians, and may, in writing, adopt rules and regulations not inconsistent with law for its own government, and for carrying out the purposes of this act. Persons of either sex shall be eligible to certification for the office of county librarian.

County librarian, appointment.

§ 7. Upon the establishment of a county free library, the board of supervisors shall appoint a county librarian, who shall hold office for the term of four years, subject to prior removal for cause, after a hearing, by said board. No person shall be eligible to the office of county librarian unless prior to his appointment he has received from the board of library examiners a certificate of qualification for the office. At the time of his appointment, the county librarian need not be a resident of the county nor a citizen of the state of California.

Government of county library. Employees. Grades. Apprentices.

§ 8. The county free library shall be under the general supervision of the board of supervisors, which shall have power to make general rules and regulations regarding the policy of the county free library, to establish, upon the recommendation of the county librarian, branches and stations throughout the county and may locate said branches and stations in incorporated cities and towns wherever deemed advisable to determine the number and kind of employees of such library, and to appoint and dismiss such employees upon the recommendation of the county librarian. Such employee shall not be removed except for cause, and in case any such removal be made upon the ground that the services of such employee are no longer required, such removed employee shall have the first right to be restored to such employment when such services are again required, but the board of supervisors may, at the time of appointing any employee, and upon the recommendation of the county librarian, enter into an agreement that such employee be employed for a definite time only. All employees of the county free library whose duties require special training in library work shall be graded in grades to be established by the county librarian, with the advice and approval of the state librarian, according to the duties required of them, experience in library work and other qualifications for the service required; and before appointment to a position in the graded service, the candidate must pass an examination appropriate to the position sought, satisfactory to the county librarian, and show a satisfactory experience in library work. Work in approved library schools or libraries, or certificates issued by the board of library examiners, may be accepted by the county librarian in lieu of such examination. The county librarian may also accept as apprentices, without compensation, candidates possessing personal qualifications satisfactory to him and may dismiss the same at any time if in his judgment their work is not satisfactory to him.

County librarian, bond, duties. Salary.

§ 9. The county librarian shall, prior to entering upon the duties of his office, file with the county clerk the usual oath of office and a bond, conditioned upon the faithful performance of his duties, with sufficient sureties approved by a judge of the superior court in the county of which the librarian is to be the county librarian, in such sum as may be determined by the board of supervisors. The county librarian shall, subject

to the general rules adopted by the board of supervisors, build up and manage, according to accepted principles of library management of the library for the use of the people of the county, and shall determine what books and other library equipment shall be purchased. The salary per annum of the county librarian shall be as follows: In counties of the first to the third classes inclusive, two thousand four hundred dollars; of the fourth to the tenth classes inclusive, two thousand dollars; of the eleventh to the twentieth classes inclusive, eighteen hundred dollars; of the twenty-first to the thirtieth classes inclusive, fifteen hundred dollars; of the thirty-first to the forty-eighth classes inclusive, twelve hundred dollars; and of the forty-ninth to the fifty-seventh classes inclusive, five hundred dollars. The salary of each of the county librarians here provided shall be paid by each of such counties in equal monthly installments, at the same time and in the same manner and out of the same fund as the salaries of other county officers are paid. The county librarian and his assistant shall be allowed actual and necessary traveling expenses incurred on the business of the office.

Counties of the thirty-second class, salary of librarian.

§ 9ff. In counties of the thirty-second class the county librarian shall receive one thousand five hundred dollars per year. [New section added April 21, 1919. In effect July 22, 1919. Stats. 1919, p. 122.]

Salary of county librarian.

§ 9gg. In counties of the thirty-third class the salary of the county librarian shall be eighteen hundred dollars per annum. [New section added June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1610.]

Counties of the thirty-fifth class, salary of librarian.

§ 9ii. In counties of the thirty-fifth class the salary of the county librarian shall be one thousand eight hundred dollars per annum. [New section added April 21, 1919. In effect July 22, 1919. Stats. 1919, p. 123.]

Counties of the thirty-ninth class, salary of librarian.

§ 9mm. In counties of the thirty-ninth class the salary of the county librarian shall be one thousand five hundred dollars per annum. [New section added March 31, 1919. In effect July 22, 1919. Stats. 1919, p. 19.]

Counties of the forty-second class, salary of librarian.

§ 9pp. In counties of the forty-second class the county librarian shall receive one thousand eight hundred dollars per year, to be paid by such counties in equal monthly installments at the same time, in the same manner and out of the same fund as the salaries of other county officers are paid, and shall also be allowed the actual and necessary traveling expenses incurred on the business of the office. [New section added April 9, 1919. In effect July 22, 1919. Stats. 1919, p. 62.]

Counties of the fifty-fifth class, salary of librarian.

§ 9qcc. In counties of the fifty-fifth class the salary of the county librarian shall be one thousand two hundred dollars per annum. [New section added April 4, 1919. In effect July 22, 1919. Stats. 1919, p. 23.]

Supervision of state librarian. Convention of county librarians.

§ 10. The county free libraries of the state shall be under the general supervision of the state librarian, who shall from time to time, either personally or by one of his assistants, visit the county free libraries and inquire into their condition. The actual and necessary expenses of such visits shall be paid out of the state library fund. The state librarian shall annually call a convention of county librarians, to assemble at such time and place as he shall deem most convenient, for the discussion of questions per-

taining to the supervision and administration of the county free libraries, the laws relating thereto, and such other subjects affecting the welfare and interest of the county free libraries as shall properly be brought before it. It is hereby made the duty of all the county librarians to attend and take part in the proceedings of such convention. The actual and necessary expenses of the county librarians attending the convention shall be paid out of the county free library fund.

Report.

§ 11. The county librarian shall, on or before the thirty-first day of July in each year, report to the board of supervisors and to the state librarian on the condition of the county free library, for the year ending June thirtieth preceding. Such reports shall, in addition to other matters deemed expedient by the county librarian, contain such statistical and other information as may be deemed desirable by the state librarian. For this purpose the state librarian may send to the several county libraries instructions or question blanks so as to obtain the material for a comparative study of library conditions in the state.

Tax levy. Bonds. Gifts. Fund. Claims, how paid.

§ 12. The board of supervisors, after a county free library has been established, shall annually levy, in the same manner and at the same time as other county taxes are levied, and in addition to all other taxes, a tax not to exceed one mill on the dollar of assessed valuation upon all property in such county outside of incorporated cities and towns maintaining free public libraries, and library districts maintaining district libraries, and upon all property within incorporated cities, towns and library districts, which have elected to become a part of such county free library system as provided in this act, for the purpose of purchasing property for, establishing and maintaining the county free library. County bonds may be issued, in the manner prescribed in section 4088 of the Political Code for the erection and equipment of county free library buildings and the purchase of land therefor. The board of supervisors is authorized to receive, on behalf of the county, any gift, bequest or devise for the county free library, or for any branch or subdivision thereof. The title to all property belonging to the county free library shall be vested in the county. All laws applicable to the collection of county taxes shall apply to the collection of the tax herein provided. All funds of the county free library, whether derived from taxation or otherwise, shall be in the custody of the county treasurer. They shall constitute a separate fund, called the county free library fund, and shall not be used for any purposes except those of the county free library. Each claim against the county free library fund shall be authorized and approved by the county librarian, or in his absence from the county by his assistant. It shall then be acted upon in the same manner as are all other claims against the county.

County law library.

§ 13. In any county of this state where a law library may now or hereafter exist under the provisions of sections 4190 to 4204, inclusive, of the Political Code of the state, the board of supervisors of such county shall have the power to enter into contracts, or agreements with the board of law library trustees of such law library for the co-operation of said law library and the county free library, and, in that connection to contract or agree with the board of law library trustees of such law library that the county librarian and other employees of the county free library perform the duties required to be done or performed by the officers and employees of such law library as contemplated by sections 4190 to 4204, inclusive, of the Political Code of this state for a compensation to be named in such contract or agreement, the same to be paid into the county free library fund.

School library.

§ 14. The board of supervisors shall have power to accept on behalf of the county free library, all books and other property of school libraries and of the teachers' library as provided by sections 1565, 1715 and 1716 of the Political Code, and to manage and maintain the same as a part of the county free library.

How disestablished.

§ 15. After a county free library has been established, it may be disestablished in the same manner as it was established. At least once a week for two successive weeks prior to taking such action, the board of supervisors shall publish, in a newspaper designated by them, and published in the county, notice of such contemplated action, giving therein the date of the meeting at which such contemplated action is proposed to be taken.

Contract with public library.

§ 16. Instead of establishing a separate county free library, the board of supervisors may enter into a contract according to the provisions of this section with the board of library trustees or other authority in charge of the free public library of any incorporated city or town, and the board of library trustees, or other authority in charge of such free public library, is hereby authorized to make such a contract. Such contract may provide that the free public library of such incorporated city or town shall assume the functions of a county free library within the county with which such contract is made, including incorporated cities and towns therein. The board of supervisors may agree to pay annually into the library fund of such incorporated city or town such sum as may be agreed upon. Either party to such contract may terminate the same by giving six months' notice of intention to do so.

Act of April 12, 1909, repealed.

§ 17. An act entitled "An act to provide county library systems," approved April 12, 1909, and all acts and parts of acts in conflict herewith are hereby repealed; provided, however, that any county library which may have been established and is now in existence under the provisions of the act approved April 12, 1909, shall be continued under the provisions of this act, and be considered the same as if established under the provisions of this act; and provided, further, that in any case where a contract has been entered into between any county board of supervisors and any city or incorporated town under the provisions of section 12 of said act, the same shall continue in force, and the provisions of section 16 of this act shall be applicable thereto, until the establishment and equipment of a county free library under the provisions of sections 1 to 15 inclusive of this act, unless sooner terminated under the provisions thereof.

PUBLIC LIBRARIES IN UNINCORPORATED TOWNS.

ACT 2530b—An act to allow unincorporated towns and villages to establish, equip, and maintain public libraries; to provide for the formation, government and operation of library districts; the acquisition of property thereby; the calling and holding of elections in such district; the assessment, collection, custody and disbursement of taxes therein; and to create boards of library trustees.

History: Approved April 12, 1909, Stats. 1909, p. 815. Amended March 13, 1911, Stats. 1911, p. 343.

Libraries in unincorporated towns.

§ 1. Any unincorporated town or village of this state may establish, equip and maintain a public library for the dissemination of a knowledge of the arts, sciences and general literature, in accordance with the provisions of this act.

Manner of establishment.

§ 2. Upon the application, by petition, of fifty or more taxpayers and residents of said town or village to the board of supervisors in the county in which said town or village is located, praying for the formation of a library district, and setting forth the boundaries of the said proposed district; the said board of supervisors must, within ten days after receiving said petition, by resolution, order that an election be held in the said proposed district for the determination of the question and shall appoint three qualified electors thereof to conduct said election.

Election, how called.

§ 3. Said election shall be called by posting notice thereof in three of the most public places in said proposed library district, and by publication in a daily or weekly paper therein, if there be one, at least once a week for not less than fifteen days. Said notices must specify the time, place, and the purposes of said election, and the hours during which the polls will be kept open; provided, that in districts with a population of ten thousand or over, the polls must be opened at eight o'clock a. m., and kept open until seven o'clock p. m., and in districts where the population is less than ten thousand, the polls must not be opened before one o'clock p. m., and must be kept open not less than six hours.

Conduct of election.

§ 4. Said election shall be conducted in accordance with the general election laws of this state, where applicable, without reference to form of ballot or manner of voting, except that the ballots shall contain the words, "For library district," and the voter shall write or print after said words on his ballot the word "Yes," or the word "No."

Electors, qualifications of.

§ 5. Every qualified elector, resident within the proposed district for the period requisite to enable him to vote at a general election, shall be entitled to vote at the election above provided for.

Return of result.

§ 6. It shall be the duty of the election officers to report the result of said election to the board of supervisors within five days subsequent to the holding thereof.

Trustees, appointment of.

§ 7. If a majority of the votes at said election shall be in favor of a library district, the said board of supervisors must, by resolution, establish said library district, and must appoint three trustees, who must be qualified electors and residents within the limits of the proposed library district, to be known and called a board of library trustees, of the town or village for which they are appointed. Such trustees shall severally hold office for three years from the first day of July next succeeding their election and until their successors are elected and qualified; serving without compensation; provided however, that the members of the first board appointed shall be so classified by the board of supervisors at the time of their appointment, that one of their number shall go out of office on the thirtieth day of June next succeeding his appointment, one at the end of one year thereafter, and the other at the end of two years thereafter. Vacancies shall be filled by the board of supervisors by appointment for the unexpired term.

Proceedings if proposition be defeated.

§ 8. If a majority of the votes cast shall be against a library district, the board of supervisors shall, by order, so declare; no other proceedings shall be taken in relation thereto until the expiration of one year from the date of presentation of the petition.

Facts establishing the validity of district.

§ 9. The fact of the presentation of the petition, and the order establishing the library district and making the appointment of the three library trustees, shall be entered in the minutes of the board of supervisors and shall be conclusive evidence of the due presentation of a proper petition, and that each of the petitioners was, at the time of signature and presentation of the petition, a taxpayer and resident of the proposed district, and of the fact and regularity of all prior proceedings of every kind and nature provided for by this act, and of the existence and validity of the district.

Trustees, meetings of.

§ 10. Boards of library trustees shall meet at least once a month, at such time and place as they may fix by resolution. Special meetings may be called at any time by two trustees, by written notices served upon each member at least twelve hours before the time specified for the meeting. Two members shall constitute a quorum for the transaction of business. At its first meeting held after the first day of July the board shall organize by electing one of its number president, and another one of its number secretary; they shall serve as such for one year or until their successors are elected and qualified. Such boards shall cause a proper record of its proceedings to be kept, and at the first meeting of the board of trustees of any library formed under the provisions of this act, it must immediately cause to be made out and filed with the state librarian at Sacramento a certificate showing that such library has been established, with the date thereof, the names of the trustees, and the officers of the board chosen for the current fiscal year.

Powers and duties of trustees.

§ 11. The board of library trustees so appointed by the said board of supervisors, and their successors, shall be authorized and they are hereby empowered, and it shall be their duty:

First—To make and enforce all rules, regulations and by-laws necessary for the administration, government and protection of the libraries under their management, and all property belonging thereto.

Second—To administer any trust declared or created for such libraries, and receive by gift, devise, or bequest, and hold in trust or otherwise, property situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of such libraries.

Third—To prescribe the duties and powers of the librarian, secretary, and other officers and employees of any such libraries; to determine the number of and appoint all such officers and employees, and fix their compensation, which said officers and employees shall hold their offices and positions at the pleasure of said boards.

Fourth—To purchase necessary books, journals, publications and other personal property.

Fifth—To purchase such real property, and erect or rent and equip, such building or buildings, room or rooms, as in their judgment may be necessary to properly carry out the provisions of this act.

Sixth—To require the secretary of state and other state officials to furnish such libraries with copies of any and all reports, laws, and other publications of the state not otherwise disposed of by law.

Seventh—To borrow books from, lend books to and exchange the same with other libraries, and to allow nonresidents to borrow books upon such conditions as the board may prescribe.

Eighth—To do and perform any and all other acts and things necessary or proper to carry out the provisions of this act.

Ninth—To file, through their secretary, on or before the last day of the month of

July of each year, a report with the state librarian at Sacramento giving the condition of their library and the number of volumes contained therein on the thirtieth day of June preceding.

Tenth—To designate the hours during which the library shall be open for the use of the public; provided however, that all public libraries established under the provisions of this act, shall be open for the use of the public during every day in the year.

Estimates of cost.

§ 12. In any library district formed under the provisions of this act, which is now maintaining a public library, or which shall have petitioned for and has been granted permission to establish, and intends to maintain a public library in accordance with this act, it shall be the duty of the board of library trustees therein, to furnish to the board of supervisors of the county wherein said library district is situated, each and every year, on or before the first day of September, an estimate of the cost of leasing temporary quarters, purchasing a suitable lot, of procuring plans and specifications and erecting a suitable building, of furnishing and equipping the same, and of fencing and ornamenting the grounds, for the accommodation of the public library, and of conducting and maintaining the same for the ensuing fiscal year, or for any or all of said purposes; provided however, that the board of library trustees, may, when in its judgment it is deemed advisable, and upon the petition of fifty or more taxpayers residing within said library district, must call an election and submit to the electors of the said library district whether the bonds of said library district shall be issued and sold for any or all of the purposes of this act.

Special tax levy.

§ 13. When such estimate shall have been submitted to the board of supervisors of any county in which a public library district has been established, the said board of supervisors must, at the time of levying county taxes, levy a special tax upon all of the taxable property within the limits of the said library district, sufficient in amount to maintain the said public library, or to purchase the site, erect and equip the building, improve the grounds or building, or for any or all of the purposes of this act. The taxes so levied shall be computed, entered upon the tax-roll, and collected in the same manner as other taxes are computed, entered and collected.

Disposition of revenue.

§ 14. The revenue derived from said tax, together with all money acquired by gift, devise, bequest, or otherwise, for the purposes of the library, shall be paid into the county treasury to the credit of the library fund of the district wherein said tax was collected, subject only to the order of the library trustees of said district. If such payment into the treasury should be inconsistent with the terms or conditions of any such gift, devise, or bequest, the board of library trustees shall provide for the safety and preservation of the same, and the application thereof to the use of the library, in accordance with the terms and conditions of such gift, devise or bequest.

Library to be free.

§ 15. Every library established under the provisions of this act shall be forever free to the inhabitants and nonresident taxpayers of the library district, subject always to such rules, regulations, and by-laws as may be made by the board of library trustees; also provided, that for violations of the same a person may be fined or excluded from the privileges of the library.

Loan of books.

§ 16. Boards of library trustees and the boards of trustees of neighboring library districts, or the legislative bodies of neighboring municipalities, or boards of super-

visors of the counties in which public libraries are situated, may contract to lend the books of such libraries to residents of such counties or neighboring municipalities, or library districts, upon a reasonable compensation to be paid by such counties, neighboring municipalities, or library districts.

Title to library property.

§ 17. The title to all property acquired for the purposes of such libraries, when not inconsistent with the terms of its acquisition, or not otherwise designated, shall vest in the district in which such libraries are, or are to be situated. Every library district must be designated by the name and style of — library district (using the name of the district), of — county (using the name of the county in which said district is situated); and in that name the trustees may sue and be sued, and may hold and convey property for the use and benefit of such district. A number must not be used as a part of the designation of any library district.

Election for trustees.

§ 18. An election for library trustees must be held in each library district, annually, at the public library, if there is one, and if there is none, at the place to be designated by the board of trustees; for the election of one library trustee, who shall hold office for three years dating from the first day of July next succeeding his election, or until his successor shall be elected, or appointed and qualified.

Number of trustees.

§ 19. The number of library trustees for any library district established under the provisions of this act, shall be three.

Notice of election.

§ 20. Not less than ten days before the election required in section eighteen of this act, the trustees must post notices in three public places in the district, one of which places shall be the public library; which notices must specify the time and place of election, and the hours during which the polls will be kept open; if within five days of holding the election the trustees have failed to post the notices required under this section, then any three electors of the district may give notice.

Conduct of election.

§ 21. Boards of trustees must appoint one inspector and two judges to conduct the said election; if none are so appointed, or, if those appointed are not present at the opening of the polls, the electors present may appoint them, and they shall conduct the election. Any member of the board of library trustees is hereby qualified to administer the oath and swear in the election officers.

Polls, opening and closing.

§ 22. In library districts with a population of ten thousand or over, the polls must be open at eight o'clock a. m., and kept open until seven o'clock p. m.; in districts where the population is less than ten thousand the polls must not be opened before one o'clock p. m., and must be kept open not less than six hours.

Electors, qualifications of.

§ 23. Every elector, resident of the library district, who is a qualified elector of the county, and who is registered in the district where the election is held at least thirty days before the election, may vote thereat.

Voting.

§ 24. Voting must be by ballot (without reference to the general election law in regard to nominations, form of ballot, or manner of voting), which shall be handed by

the elector voting to the inspector, who shall then, in his presence, deposit the same in the ballot-box, and the judges shall enter the elector's name on the poll-list.

Challenges.

§ 25. Any person offering to vote may be challenged by any elector of the district, and the judges of election must thereupon administer to the person challenged an oath, in substance as follows: "You do swear that you are a citizen of the United States, that you are twenty-one years of age, that you have resided in this state one year, in this county ninety days, and in this library district thirty days preceding this election, and that your name is on the great register of this county and was on the great register of a precinct of this library district at least thirty days before this election, and that you have not before voted this day." If he takes the oath prescribed in this section, his vote must be received, otherwise his vote must be rejected.

Poll-lists.

§ 26. A poll and tally list must be kept and must be returned to the board of library trustees.

Canvass of votes.

§ 27. The officers of election must publicly canvass the votes immediately after closing the polls, and make, sign, and deliver certificates of election to the person elected, which must, with the oath of office of the person so elected attached, be forwarded to the county clerk and filed in his office.

Bonds, election for.

§ 28. The board of trustees of any library district may, when in their judgment it is deemed advisable, and must, upon a petition of fifty or more taxpayers and residents of said library district, call an election and submit to the electors of the district, whether the bonds of such district shall be issued and sold for the purpose of raising money for the purchase of suitable lots, of procuring plans and specifications and of erecting a suitable building, of furnishing and equipping the same, and of fencing and ornamenting the grounds, for the accommodation of the public library, or for any or all of the said purposes, or for any or all of the purposes of this act; for liquidating any indebtedness incurred for said purposes, and for refunding any outstanding valid indebtedness, evidenced by bonds or warrants of the district.

Notice of bond election.

§ 29. Such election must be called by posting notices, signed by the board, in three of the most public places in the district, for not less than twenty days before the election; and if there is a newspaper published in the district, or if not, a newspaper published in the county, by publishing such notice therein not less than once a week for three successive weeks.

What notice must contain.

§ 30. Such notice must contain:

1. Time and place of holding such election;
2. The names of inspectors and judges to conduct the same;
3. The hours during the day in which the polls will be open;
4. The amount and denomination of the bonds, the rate of interest and the number of years, not exceeding forty, the whole or any part of said bonds are to run.

Conduct of election.

§ 31. The election shall be conducted in accordance with the provisions of sections twenty-one, twenty-two, twenty-three, twenty-five, twenty-six, twenty-seven, of this act, in so far as they are applicable to the election for bonds.

Voting.

§ 32. Voting must be by ballot (without reference to the general election law in regard to form of ballot, or manner of voting), except that the words to appear on the ballot shall be, "Bonds—Yes," and "Bonds—No," and except further, that persons voting at such bond election shall put a cross (X) upon their ballots, with pencil or ink, after the words "Bonds—Yes," or "Bonds—No" (as the case may be), to indicate whether they have voted for or against the issuance of the bonds; which said ballot shall be handed by the elector voting to the inspector, who shall then, in his presence, deposit the same in the ballot box, and the judges shall enter the elector's name on the poll-list.

Canvass, bond election of library districts. Amount of bonds.

§ 33. On the seventh day after said election, at eight o'clock p. m., the returns having been made to the board of trustees, the board must meet and canvass said returns, and if it appears that two-thirds of the votes cast at said election were cast in favor of issuing such bonds, then the board shall cause an entry of such fact to be made upon its minutes and shall certify to the board of supervisors of the county, all the proceedings had in the premises, and thereupon said board of supervisors shall be and they are hereby authorized and directed to issue the bonds of said district, to the number and amount provided in such proceedings, payable out of the building fund of said district, naming the same, and that the money shall be raised by taxation upon the taxable property in said district, for the redemption of said bonds and the payment of the interest thereon; provided, that the total amount of bonds so issued shall not exceed five per cent of the taxable property of said district, as shown by the last equalized assessment-book of the county. [Amendment approved March 13, 1911. Stats. 1911, p. 343.]

Form of bonds.

§ 34. The board of supervisors by an order entered upon its minutes shall prescribe the form of said bonds and of the interest coupons attached thereto, and must fix the time when the whole or any part of the principal of said bonds shall be payable, which shall not be more than forty years from the date thereof.

Interest.

§ 35. Said bonds must not bear a greater amount of interest than six per cent, said interest to be payable annually or semi-annually; and said bonds must be sold in the manner prescribed by the board of supervisors, but for not less than par, and the proceeds of the sale thereof must be deposited in the county treasury to the credit of the building fund of said library district, and be drawn out for the purposes aforesaid as other library moneys are drawn out.

Tax levy, for interest and redemption.

§ 36. The board of supervisors, at the time of making the levy taxes for county purposes, must levy a tax for that year upon the taxable property in such district, at the equalized assessed value thereof for that year, for the interest and redemption of said bonds, and such tax must not be less than sufficient to pay the interest of said bonds for that year, and such portion of the principal as is to become due during such year, and in any event must be high enough to raise, annually, for the first half of the term said bonds have to run, a sufficient sum to pay the interest thereon, and during the balance of the term, high enough to pay such annual interest and to pay, annually, a proportion of the principal of said bonds equal to a sum produced by taking the whole amount of said bonds outstanding and dividing it by the number of years said bonds then have to run, and all moneys so levied, when collected, shall be paid into the

county treasury to the credit of the said library district, and be used for the payment of principal and interest on said bonds, and for no other purpose. The principal and interest on said bonds shall be paid by the county treasurer, upon the warrant of the county auditor, out of the fund provided therefor; and it shall be the duty of the county auditor to cancel and file with the county treasurer the bonds and coupons as rapidly as they are paid.

Unsold bonds, disposition of.

§ 37. Whenever any bonds issued under the provisions of this act shall remain unsold for the period of six months after having been offered for sale in the manner prescribed by the board of supervisors, the board of trustees of the library district for or on account of which said bonds were issued, or of any library district composed wholly or partly of territory which, at the time of holding the election authorizing the issuance of such bonds, was embraced within the district for or on account of which such bonds were issued, may petition the board of supervisors to cause such unsold bonds to be withdrawn from market and canceled. Upon receiving such petition, signed by a majority of the members of said board of trustees, the supervisors shall fix a time for hearing the same, which shall be not more than thirty days thereafter, and shall cause a notice, stating the time and place of hearing, and the object of the petition in general terms, to be published for ten days prior to the day of hearing, in some newspaper published in said library district, if there is one, and if there is no newspaper published in said library district, then in a newspaper published at the county seat of the county in which said library district or part thereof is situated. At the time and place designated in the notice for hearing said petition, or at any subsequent time to which said hearing may be postponed, the supervisors shall hear any reasons that may be submitted for or against the granting of the petition, and if they shall deem it for the best interests of the library district named in the petition that such unsold bonds be canceled, they shall make and enter an order in the minutes of their proceedings that said unsold bonds be canceled, and thereupon said bonds, and the vote by which they were authorized to be issued, shall cease to be of any validity whatever.

Dissolution of district.

§ 38. The district may at any time be dissolved upon the vote of two-thirds of the qualified electors thereof, upon an election called by the library trustees of such district, upon the question of dissolution. Such election shall be called and conducted in the same manner as other elections of the district. Upon such dissolution, the property of the district shall vest in any incorporated town or city that may at such time be in occupation of a major portion of the territory of such library district and including within its town or city limits the property and buildings wherein the library is situated; and if there be no such incorporated town or city, then the property shall be vested in the board of supervisors of the county until the formation of such a town or city; provided, however, that if, at the time of such election to dissolve such district, there be any outstanding bonded indebtedness of such district, the vote to dissolve such district shall dissolve the same for all purposes excepting only the levy and collection of taxes for the payment of such indebtedness; and from the time such district is thus dissolved until such bonded indebtedness, with the interest thereon, is fully paid, satisfied and discharged, the legislative authority of such incorporated town or city, or the board of supervisors, if there be no such incorporated town or city, is hereby constituted ex officio the library board of such district. And it is hereby made obligatory upon such board to levy such taxes and perform such other acts as may be necessary in order to raise money for the payment of such indebtedness, and the interest thereon, as herein provided.

§ 39. All acts or parts of acts conflicting with the provisions of this act are hereby repealed.

§ 40. This act shall take effect immediately.

DEPOSIT OF NEWSPAPER FILES IN PUBLIC LIBRARIES.

ACT 2530c—An act to authorize the deposit of certain newspaper files kept in recorders' offices, in free public libraries.

History: Approved March 19, 1909, Stats. 1909, p. 436. Amended May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 278.

Deposit of newspapers in public libraries.

§ 1. The county boards of supervisors of the several counties may authorize the recorders of their several counties to deposit with any free public library maintained at the county seat, or with the California state library, such newspaper files, or portions thereof, as may be in the custody of such recorders by virtue of an act approved April 8, 1862, and entitled "An act for the purchase and preservation of public newspapers, printed and published in the several counties of this state," or by virtue of any other act. [Amendment of May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 278.]

Agreement required.

§ 2. Before making such deposit, the said board of supervisors shall obtain from the board of trustees or authorities in charge of such free public library, or the board of trustees of the California state library, an agreement that they will properly preserve and care for such newspaper files, and make them accessible to the public. [Amended May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 278.]

Files may be transferred to state library.

§ 3. The county boards of supervisors of the several counties may authorize the boards of trustees or other authorities in charge of any free public library with which newspaper files have been deposited in accordance with section one of this act to deposit such newspaper files with the California state library. [New section added May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 278.]

CHAPTER 196.

LICENSES.

References: Licenses for particular callings, occupations, businesses, etc., see Kerr's Cyc. Codes, particular title, and here, particular title.

CONTENTS OF CHAPTER.

- ACT 2532. FOREIGN MINERS' LICENSES.
- 2533. LICENSES TO CERTAIN ALIENS PROHIBITED.
- 2534. FOREIGN MINERS' LICENSE FEES GRANTED TO MINING COUNTIES.
- 2535. ENFORCEMENT OF COLLECTION.
- 2536. LEGALIZING PAYMENTS OF SALARIES OF LICENSE COLLECTORS.
- 2537. LICENSES ON SHEEP RAISING, HERDING, ETC.
- 2538. ITINERANT VENDOR'S LICENSE.
- 2539. BICYCLE LICENSE.

FOREIGN MINERS' LICENSES.

ACT 2532—An act to provide for the protection of foreigners, and to define their liabilities and privileges.

History: Passed March 30, 1853, Stats. 1853, p. 62. Amended (1) May 13, 1854, Stats. 1854, p. 55; (2) April 30, 1855, Stats. 1855, p. 216; (3) April 19, 1856, Stats. 1856, p. 141; (4) March 5, 1857, Stats. 1857, p. 60; (5) April 7, 1857, Stats. 1857, p. 182; (6) April 30, 1857, Stats. 1857, p. 360; (7) April 26, 1858, Stats. 1858, p. 302. Supplemented March 24, 1866, Stats. 1865-66, p. 380.

Code commissioner's note: "Doubtless unconstitutional; but see *People v. Naglee*, 1 Cal. 232; *Lin Sing v. Washburn*, 20 Cal. 544."

LICENSES TO CERTAIN ALIENS PROHIBITED.

ACT 2533—An act to prohibit the issue of licenses to aliens not eligible to become electors.

History: Approved April 12, 1880, Stats. 1880, p. 39.

See tit. "Aliens," Act 150.

Code commissioner's note: "Unconstitutional: *People v. Quong On Long*, 6 Pac. C. L. J. 192. See Political Code, § 3666, as amended 1901, p. 635."

FOREIGN MINERS' LICENSES. FEES GRANTED TO MINING COUNTIES.

ACT 2534—An act granting to the mining counties of this state the foreign miners' license tax collected in said counties severally.

History: Approved March 16, 1868, Stats. 1867-68, p. 173.

ENFORCEMENT OF COLLECTION.

ACT 2535—An act enforcing the collection of license taxes.

History: Approved March 21, 1872, Stats. 1871-72, p. 539.

This act imposed upon the district attorney the duty of instituting proceedings against persons neglecting to pay ferry or bridge license taxes.

LEGALIZING PAYMENTS OF SALARIES OF LICENSE COLLECTORS.

ACT 2536—An act authorizing the payment of salaries by boards of supervisors to persons who have been employed to collect county licenses, and legalizing all payments heretofore made to such persons.

History: Approved March 27, 1895, Stats. 1895, p. 267.

Unconstitutional as authorizing the payment of salaries to persons theretofore employed.—*Butte Co. v. Merrill*, 141 Cal. 396, 74 Pac. 1036. See, also, *Powell v. Phelan*, 138 Cal. 271, 71 Pac. 335.

LICENSES ON SHEEP RAISING, HERDING, ETC.

ACT 2537—An act restricting the powers of boards of supervisors in the matter of imposing licenses upon the business of raising, herding, grazing, and pasturing sheep.

History: Approved February 26, 1903, Stats. 1903, p. 41.

License tax on sheep.

§ 1. No license or licenses greater than five cents per head shall be imposed by the board of supervisors of any county on the business of raising, herding or pasturing sheep, and any and all licenses imposed by the board of supervisors of any county on the business of raising, herding or pasturing sheep, in excess of five cents per head, shall be and are hereby declared invalid; provided, the provisions of this act shall not apply to any license tax the validity of which is involved in any suit now pending, or to any such license tax due when this act takes effect.

§ 2. This act shall take effect immediately.

1. Superseded in part by later act.—The act, so far as it is inconsistent with the provisions of the act of 1907 (§ 4041, Pol. Code), giving the supervisors power to umpire license taxes for regulation only, must give way to the later act.—*In re McCoy*, 10 Cal. App. 116.

ITINERANT VENDOR'S LICENSE.

ACT 2538—An act imposing a license tax upon itinerant vendors of drugs, nostrums, ointments, or appliances sold for the cure of disease, injuries, or deformities.

History: Approved March 20, 1903, Stats. 1903, p. 284. Amended March 21, 1907, Stats. 1907, p. 765; March 19, 1909, Stats. 1909, p. 419.

License required.

§ 1. No person as principal or agent, shall conduct as an itinerant vendor the business of selling or in any manner disposing of drugs, nostrums, ointments or any appliances for the treatment of disease, deformities or injuries, within this state, without

previously obtaining a license therefor as herein provided. [Amendment approved March 19, 1909, Stats. 1909, p. 419.]

Fee. Term of license. Pharmaceutical firms. Ex-Union soldiers.

§ 2. A license fee of one hundred dollars is hereby levied upon all such itinerant vendors doing business in this state. Said tax shall be paid to the state board of pharmacy, for the use and benefit of the state of California, and shall constitute a special fund for the enforcement of this act, and of the provisions of the act or acts creating such board of pharmacy. Upon the receipt of said sum from any persons desiring to conduct such business within this state, the secretary of said board of pharmacy shall issue a license to such person to carry on such business within this state for the term of six months next ensuing; provided that nothing in this act shall be construed to prevent the collection of any tax or license that may be imposed by any county or municipal authority; and provided, further, that nothing herein contained shall prevent manufacturing pharmaceutical firms from placing their products on the market through their agents and managers subject to the provisions of section 3 of this act. The said board of pharmacy may allow such license to be transferred during the life thereof on such terms as the board of pharmacy may deem proper; provided, however, that nothing in this act shall be held to repeal or modify the provisions of an act approved March 30, 1905, "An act permitting all ex-Union soldiers and sailors of the Civil War, honorably discharged from military or marine service of the United States, the right to vend, hawk and peddle goods, wares, fruits or merchandise not prohibited by law, in any county, town or village, incorporated city or municipality in the state of California, without paying a license." [Amendment approved March 21, 1907, Stats. 1907, p. 765.]

Itinerant vendors defined.

§ 3. Itinerant vendors under the meaning of this act shall include all persons who carry on the business above described by passing from house to house, or by haranguing the people on the public streets or in public places, or use the various customary devices for attracting crowds and therewith recommending their wares, and offering them for sale.

Statement to controller.

§ 4. Said board of pharmacy shall on the first day of July of each year make a verified and itemized statement in writing to the controller of this state, of all receipts and disbursements of money coming into their hands by reason of this act.

Penalty for violation of this act.

§ 5. Any person violating any of the provisions of this act, who shall without such license, sell or offer for sale any of the above-described drugs, nostrums, ointments, or appliances, shall be deemed guilty of a misdemeanor, and for such breach of this act upon conviction therefor, shall be punished by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars, or by imprisonment in the county jail for not less than fifty days or more than one hundred and twenty days, or both such fine and imprisonment. All fines recovered under this act shall be paid by the magistrate receiving the same, to the state board of pharmacy, and by said board placed in the special fund created by section 2 of this act.

Proof required.

§ 6. In all actions or prosecutions under this act it need not be alleged in the complaint nor proved by the prosecution that the defendant has not a license as required in this act, but the fact that he has such license may be plead as a matter of defense.

Repeal of conflicting acts.

§ 7. All acts or parts of acts conflicting with this act [are] hereby repealed, in and so far as they conflict.

§ 8. This act shall take effect and be in force sixty days after its passage.

1. Constitutionality.—Fourteenth amendment.—The act of 1903 (234) as amended in 1907 (765) and 1909 (419), regulating and licensing the selling of drugs by itinerant vendors, is not repugnant to the fourteenth amendment to the federal constitution.—In re Gilstrap, 171 Cal. 108, 115, Ann. Cas. 1917A, 1086, 152 Pac. 42.

2. Same—Valid exercise of police power.—The act constitutes a valid exercise of the police power of the state.—In re Gilstrap, 171 Cal. 108, 115, Ann. Cas. 1917A, 1086, 152 Pac. 42.

3. Same—General law.—It is clear that the license tax is a general law, enforceable in every part of the state.—In re Gilstrap, 171 Cal. 108, 116, Ann. Cas. 1917A, 1086, 152 Pac. 42.

4. Same—Not attempt to tax, but to regulate.—The act is not an attempt to exercise the power of taxation for purposes of revenue, but is merely intended to regulate the business of selling drugs by itinerant vendors under the police power.—In re Gilstrap, 171 Cal. 108, 117, Ann. Cas. 1917A, 1086, 152 Pac. 42.

5. "Itinerant vendor," broad enough to include "hawkers" and "peddlers."—The definition of an itinerant vendor as found

in section 3 of the act, is broad enough to include hawkers and peddlers.—In re Gilstrap, 171 Cal. 108, 112, Ann. Cas. 1917A, 1086, 152 Pac. 42.

6. License tax reasonably necessary for regulation.—It can not be held as matter of law that the amount of the license fee prescribed is not reasonably necessary for the regulation of the business.—In re Gilstrap, 171 Cal. 108, 123, Ann. Cas. 1917A, 1086, 152 Pac. 42.

7. Act and pharmacy act supplementary.—The act of 1903 and the pharmacist act are supplementary and together are intended to constitute the legislative plan for regulating the entire business of selling drugs, nostrums, and ointments.—In re Gilstrap, 177 Cal. 108, 122, Ann. Cas. 1917A, 1086, 152 Pac. 42.

8. No conflict.—The third proviso of the amendment of 1907 has no application to the legislation prescribing the license tax, inasmuch as the act prescribes a state license tax, and the exemption act of 1905 referred to in the amendment plainly is limited to local licenses.—In re Gilstrap, 171 Cal. 108, 120, Ann. Cas. 1917A, 1086, 152 Pac. 42.

BICYCLE LICENSE.

ACT 2539—An act to authorize counties, cities and counties, and incorporated towns, and chartered or incorporated cities, to license bicycles, tricycles, and similar vehicles, and collect a fee therefor, for the purpose of devoting such fee to the construction of paths along county roads for the use of pedestrians, and the wheeling thereon of such vehicles.

History: Became a law under constitutional provision without governor's approval, March 16, 1901, Stats. 1901, p. 324.

Governing bodies may tax bicycles, tricycles, automobiles, etc.

§ 1. Counties, cities and counties, chartered or incorporated cities and towns in the state of California, are hereby, through the governing bodies thereof, authorized and permitted to license the use of bicycles, tricycles, automobile carriages and carts, and similar wheeled vehicles, propelled by the power of the rider, or by motor under control of the rider, owned, rented, and used within the several jurisdictions above named; provided, that such license shall be granted and issued only on payment of a fee not to exceed one dollar a year for each of such vehicles; and further provided, that the money so collected shall be appropriated and used only for the purpose of constructing and maintaining paths and walkways for the use of pedestrians, and the wheeling of the above-named vehicles; and provided also, that the sum of the taxes paid to the state, county, town, or municipality, upon any vehicle the use of which is hereby authorized to be licensed, shall be deducted from the amount of the license fee hereby authorized, and credited upon the license; it being the intention that any license fee hereby authorized shall be collected in such less sum as is represented by the subtraction of the personal property tax from the sum of the license fee fixed by such ordinance.

How license fee shall be collected.

§ 2. When an ordinance establishing such license and fixing such license fee is passed, the fee shall be collected and the license issued in the manner and by the officer or officers provided for the issuance and collection of other licenses, and the governing body of such jurisdictions named in section 1 of this act may devise such label, tag, or certificate as is deemed necessary to be witness of the possession of such license, and the payment of such fee; provided, that no license shall be required for any vehicle so named in this act as is in the possession of a merchant, manufacturer, or dealer, for the purposes of sale or barter, and not for use by the owner or his or her agent, or by persons to whom such vehicles are rented for use, by the hour, the day, the week, or other period of time.

Ordinances to enforce collection of licenses.

§ 3. It shall be lawful for such governing bodies to provide in such ordinance or ordinances for the enforcement of penalties for the violation thereof, or for failure or refusal to take such license, or pay such license fee; provided, that no penalty shall exceed the sum of the said license fee, with the costs of collection and prosecution under the ordinance added thereto; nor shall any judgment of imprisonment exceed a period of twenty-four hours for violation of said ordinance.

Application of funds derived from licenses.

§ 4. It shall be lawful to provide in any such ordinance authorized by this act, for the application of the money collected to the construction and maintenance of such paths, by said towns or cities, or consolidated cities and counties, without the limits of such town and municipal jurisdictions, but within the county, by and with the consent of the board of supervisors of such county.

Jurisdiction under the provisions of this act. Visitors and temporary residents not to be taxed.

§ 5. No municipal or town authority in this act referred to shall have authority by ordinance or otherwise to license any such vehicle for use as is in this act referred to, except the same is owned by a resident of such municipal or town jurisdiction, or is used by a resident of such jurisdiction; nor shall any county, by ordinance or otherwise, lay such license upon the use of any such vehicle named in this act, or require a license fee therefor, except the same is owned or used by a resident of the county without the boundaries of town or municipal jurisdictions in the county; provided, that if any town or municipal authority authorized under this act does not provide for such ordinance of license and fee as is permitted by this act, then, and in that case, the governing body of the county may by ordinance provide for the license herein provided for and permitted, and the collection of the fee authorized by this act, so as to make the same applicable to the residents of such town or municipality. But in no case shall any license or fee be required of travelers in counties other than that of their residence, nor from tourists, or visitors, or temporary residents of any city, town, city and county, or county.

Expenses incident to this act to be paid from collections.

§ 6. All costs and charges for licenses herein provided for, for tags, or visible evidences of issuance and possession of license, for receipts for payment of the license fee, and other necessary and inseparable expense related to such licenses, shall be paid from the sum of such collections of fees; provided, that no additional salary or fee shall be paid to any officer of any county, or town, or city, or city and county, for services in issuing or delivering licenses provided for by this act, or for collecting the fees therefor, authorized and provided for in this act.

§ 7. This act shall take effect and be in force from and after its passage.

CHAPTER 197.

LIENS.

References: Agisters, see Kerr's Cyc. Civil Code, § 3062.

Attachment, see Kerr's Cyc. Code Civil Procedure, §§ 537, et seq.

Bottomry, see Kerr's Cyc. Civil Code, §§ 3017, et seq.

Chattel mortgage, see Kerr's Cyc. Civil Code, §§ 2955, et seq.

Creation, see Kerr's Cyc. Civil Code, §§ 2881, et seq.

Definitions, see Kerr's Cyc. Code Civil Procedure, § 1180; Kerr's Cyc. Civil Code, §§ 2872, et seq.

Effect, see Kerr's Cyc. Civil Code, §§ 2888, et seq.

Execution, see Kerr's Cyc. Code Civil Procedure, §§ 681, et seq.

Extinction, see Kerr's Cyc. Civil Code, §§ 2909, et seq.

Loggers, see Kerr's Cyc. Civil Code, § 3065.

Mechanics' liens, see Kerr's Cyc. Code Civil Procedure, §§ 1183, et seq.

Miscellaneous, see Kerr's Cyc. Civil Code, §§ 3046, et seq.

Mortgage, in general, see Kerr's Cyc. Civil Code, §§ 2920, et seq.

Mortgage, realty, see Kerr's Cyc. Civil Code, §§ 2947, et seq.

Pledge, see tit. "Pledge," and Kerr's Cyc. Civil Code, §§ 2986, et seq.

Prevention of cruelty to animals, acts done in, see Kerr's Code Civil Procedure, §§ 1208, et seq.

Priority, see Kerr's Cyc. Civil Code, §§ 2897, et seq.

Redemption, see Kerr's Cyc. Civil Code, §§ 2903, et seq.

Respondentia, see Kerr's Cyc. Civil Code, §§ 3036, et seq.

Salary and wages, see Kerr's Cyc. Code Civil Procedure, §§ 1204, et seq.; and see tit. "Labor Bureau."

Particular liens, see particular title.

CONTENTS OF CHAPTER.

ACT 2545. LIEN ON LIVESTOCK FOR FEEDING, ETC.

2549. LOGGERS' LIEN.

LIEN ON LIVESTOCK FOR FEEDING, ETC.

ACT 2545—An act to secure a lien on livestock kept, fed, or pastured by ranchmen and stable keepers.

History: Approved April 4, 1870, Stats. 1869-70, p. 723.

Not repealed by codes.—Johnson v. Perry, 53 Cal. 351.

This act is partially superseded, at least, see Kerr's Cyc. Civil Code, § 3051.

LOGGERS' LIEN.

ACT 2549—An act giving a lien to loggers and laborers employed in logging camps upon the logs cut and hauled.

History: Approved March 30, 1878, Stats. 1877-78, p. 747. Amended April 12, 1880, Stats. 1880, p. 38; March 8, 1887, Stats. 1887, p. 53.

Labor with logs; lien upon.

§ 1. A person who labors at cutting, hauling, rafting, driving logs or lumber, or who performs any labor in or about a logging-camp necessary for the getting out or transportation of logs or lumber, shall have a lien thereon for the amount due for his personal services, which shall take precedence of all other claims, to continue for thirty days after the logs or lumber arrive at the place of destination, for sale or manufacture, except as hereinafter provided. [Amendment approved April 12, 1880, Stats. 1880, p. 38.]

Lien to cease; how and when.

§ 2. The lien hereby created shall cease and determine unless the claimant thereof shall, within twenty days from the time of such labor shall have been completed, file and record in the office of the county recorder of the county where such labor was performed a verified claim, containing a statement:

First. Of his demand, after deducting all just credits and offsets.

Second. The time within which such labor was done.

Third. The name of the person or persons for which the same was done.

Fourth. The place where the logs or timber upon which such lien is claimed are believed to be situated, and the marks upon the same.

Fifth. The reputed owner thereof; and,

Sixth. The reputed owner of the land from which the same were cut and hauled.

Suits to be commenced in proper courts.

§ 3. All liens hereby provided for shall cease and determine unless suit to foreclose the same shall be commenced in the proper court within twenty-five days from the time the same are filed. [Amendment approved April 12, 1880, Stats. 1880, p. 39.]

Plaintiff to have lumber attached.

§ 4. The plaintiff in any such suit, at the time of issuing the summons, or at any time afterward, may have the logs or timber upon which such lien subsists attached, as further security for the payment of any judgment he may recover, unless defendant give him good and sufficient security to pay such judgment, in which event such logs shall be forthwith discharged by the sheriff from such attachment, and from the lien hereby created.

Clerk to issue writ.

§ 5. The clerk of the court must issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, showing:

First. That defendant is indebted to the plaintiff upon a demand for labor, for which his claim has been duly filed in accordance with section two of this act.

Second. That the sum for which the attachment is asked is an actual bona fide existing debt, due and owing from the defendant to the plaintiff, and that the attachment is not sought, and the action is not prosecuted, to hinder, delay, or defraud any creditor or creditors of the defendant.

Sheriff to attach logs.

§ 6. The writ must be directed to the sheriff of the county, and must require him to attach and safely keep the logs and timber specified in such lien, or so much thereof as may be sufficient to satisfy plaintiff's demand, unless the defendant give good and sufficient security, as provided in this act, in which case to take such security and discharge any attachment he may have made, and to deliver up such logs to defendant, who shall receive the same free from the lien upon which such suit is brought.

Sections made applicable.

§ 7. Sections five hundred and thirty-nine, eleven hundred and eighty-nine, eleven hundred and ninety-five, eleven hundred and ninety-seven, eleven hundred and ninety-eight, and eleven hundred and ninety-nine of the Code of Civil Procedure are hereby made applicable to this act. [Amendment approved March 8, 1887, Stats. 1887, p. 53.]

Attachment; how made.

§ 8. Such attachment shall be made by taking such logs into possession, and the sheriff shall make an inventory and return of his proceedings as directed in chapter four, title seven, of the Code of Civil Procedure.

Where lien shall extend.

§ 9. The lien provided for by this act shall in no case extend beyond the limits of the county in which the logs or timber in controversy were cut.

§ 10. This act shall take effect and be in force from and after its passage.

Superseded except as to procedure.—See Kerr's Cyc. Civil Code, § 3065.

Code commissioner's note: Concerning this statute the code commissioner says: "So much of the statute of 1877-78, p. 747, as amended in 1880, p. 38, and 1887, p. 53, relat-

ing to loggers' liens, as is deemed necessary to be preserved, is codified in the above section." The act is inserted here because that portion relating to the procedure is certainly in force.

LIGHTHOUSES.

See Kerr's Cyc. Political Code, § 35.

LINCOLN.

See Act 3094, note

LINDSAY

See Act 3094, note

LIQUIDS.

See tit. "Adulteration."

LIQUOR.

See tit. "Intoxicating Liquors."

LIVERMORE.

See Act 3094, note.

CHAPTER 198.

LIVESTOCK.

References: See tits. "Animals"; "Cruelty to Animals."

CONTENTS OF CHAPTER.

- ACT 2560. TAMPERING WITH ANIMALS.
2565. IMPORTATION OF DISEASED LIVESTOCK.
2566. PREVENTING INTRODUCTION OF RABIES.
2567. PREPARATION AND DISTRIBUTION OF VACCINES, ETC.
2568. PREPARATION, INSPECTION, AND SALE OF HOG CHOLERA SERUMS, ETC.
2568a. PREVENTION OF SPREAD OF CONTAGIOUS ANIMAL DISEASES.
2568b. HERDING AND GRAZING OF LIVESTOCK BY NONRESIDENTS.
2568c. EXTERMINATION OF BOOPHILUS ANNULATUS TICK.
2568d. COMBINATIONS TO OBSTRUCT SALE OF LIVESTOCK.
2568e. CATTLE PROTECTION BOARD.

TAMPERING WITH ANIMALS.

ACT 2560—An act to prevent tampering with animals, and to prevent the giving or administering of poison or drugs to horses, cattle, dogs, animals, and other live-stock, except for medicinal purposes, and making the same a misdemeanor.

History: Approved March 23, 1901, Stats. 1901, p. 553.

Unlawful administering of drugs to animals on exhibition.

§ 1. It shall be unlawful for any person or persons, except for medicinal purposes, to administer any poison, drug, medicine, or other noxious substance, to any horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, dog, animals, or other live-stock, entered or about to be entered in any race or upon any race course in the state of California, or entered or about to be entered at or with any agricultural park, or association, race-course, or corporation, or other exhibition for competition for prize, reward, purse, premium, stake, sweepstakes, or other reward, or to expose any such poison, drug, medicine, or noxious substance, with intent that the same shall be taken, inhaled, swallowed, or otherwise received by any horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, dog, animal, or other live-stock, with intent to impede or affect the speed, endurance, sense, health, physical condition, or other character or quality of such above-mentioned animal, or other live-stock.

Same.

§ 2. It shall be unlawful for any person or persons to cause to be taken by or placed upon or in the body of any horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, dog, animal, or other live-stock, entered or about to be entered in any race upon any race-course in the state of California, or entered or about to be entered at or with any agricultural park, association, race-course, or corporation, or other exhibition for competition for prize, reward, purse, premium, stake, sweepstakes, or other reward, and sponge, wood, or foreign substance of any kind, with intent to impede or affect the speed, endurance, sense, health, physical condition, of such horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, dog, animal, or other live-stock.

Penalty.

§ 3. Any person or persons who shall violate any of the provisions of sections one or two of this act shall be guilty of a misdemeanor.

Conflicting acts repealed.

§ 4. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Act takes effect when.

§ 5. This act shall take effect immediately.

IMPORTATION OF DISEASED LIVESTOCK.

ACT 2565—An act to prevent importation into the state of California of horses, mules, dairy cattle and breeding bulls which are affected with communicable diseases, providing for the inspection or certification of such animals before being brought into the state of California, exempting certain animals from such inspection or certification, providing penalties for violating any of the provisions of this act, and repealing an act approved June 4, 1913, entitled "An act to prevent the importation into the state of California of horses, mules, asses, or cattle which are affected with any infectious or contagious disease; to provide for the inspection of such animals before they are brought into the state; to repeal an act entitled, "An act to prevent the importation of neat cattle for dairy or breeding purposes affected with tuberculosis into the state of California," approved March 7, 1911; to repeal an act entitled "An act to prevent the importation of horses, mules and asses affected with glanders into the state of California," approved March 7, 1911.

History: Approved April 12, 1915. In effect August 8, 1915. Stats. 1915, p. 59. Prior acts (1) of March 23, 1893, Stats. 1893, p. 302, to prevent the spread of contagious diseases among domestic animals; codified in 1901; See Kerr's Cyc. Penal Code, § 402d; (2) of March 7, 1911, Stats. 1911, p. 292, and (3) of March 7, 1911, Stats. 1911, p. 293; both of which were repealed by the act (4) of June 4, 1913. In effect August 8, 1913, Stats. 1913, p. 379, which was repealed by the present act.

Importation of live stock.

§ 1. It shall be unlawful for any person, firm, company or corporation, their agents and servants, to bring into the state of California any horses, mules, dairy cattle or breeding bulls except as hereinafter otherwise provided.

Cattle.

(a) Dairy cattle and breeding bulls over six months of age must be accompanied by a certificate of health and tuberculin test record signed by a qualified veterinarian showing that each of said animals is free from communicable diseases, including tuberculosis, and copy of such certificate and tuberculin test record shall be mailed to the state veterinarian of the state of California on the day the shipment of said animals starts from its origin.

Statement of state veterinarian.

(b) In lieu of such certificate of health and tuberculin test record, as provided for in subdivision (a) of this section, said dairy cattle and breeding bulls may be brought into the state of California, provided said animals are accompanied by a signed statement issued by the state veterinarian or other authority in charge of live stock sanitary work in the state from which such animals are transported, stating that the animals in the shipment originated in herds which are free from tuberculosis and are not affected with any communicable disease; and a copy of said statement shall be mailed to the state veterinarian of the state of California on the day the shipment of said animals starts from its origin.

Horses and mules.

(c) Horses and mules must be accompanied by a certificate of health signed by a qualified veterinarian, stating that each animal in the shipment is free from communicable diseases, and a copy of said certificate shall be mailed to the state veterinarian of the state of California on the day the shipment of said animals starts from its origin.

(d) In lieu of the certificate provided for in subdivision (c) of this section, horses and mules may be brought into the state of California, provided said animals are accompanied by a signed statement issued by the state veterinarian or other authority in charge of live stock sanitary work in the state from which said animals are transported stating that each animal in the shipment is free from communicable diseases, and has not recently been exposed to any communicable disease, and a copy of said statement shall be mailed to the state veterinarian of the state of California on the day the shipment of said animals starts from its origin.

Exemptions.

§ 2. Animals accompanying shipments of emigrant movables shall be exempt from the inspection or certification as provided for in this act. It is further provided that when horses, mules, dairy and breeding cattle are being brought into the state of California for exhibition or theatrical purposes, said animals shall likewise be exempt from the inspection and certification as provided for in this act; provided, however, that when dairy or breeding bulls which have been brought into the state of California for exhibition purposes are sold to remain in the state of California, said animals shall be subjected to the tuberculin test and certified to as free from tuberculosis by the state veterinarian of the state of California before said animals are delivered to the purchaser.

Quarantine against communicable diseases.

§ 3. Whenever it shall have been determined by the state veterinarian that a communicable disease exists among domestic animals in any other state or territory in the United States, or foreign country, and the importation of animals from said state or territory, or foreign country might spread such disease among animals within the state of California, nothing in this act shall be so construed as to prevent or prohibit the governor of the state of California from issuing his proclamation quarantining said state or territory, or foreign country or from prescribing the regulations under which animals might be imported into the state of California from said state or territory, or foreign country.

Act 1913 repealed.

§ 4. That certain act of the legislature of the state of California approved June 4, 1913, entitled "An act to prevent the importation into the state of California of horses, mules, asses, or cattle which are affected with any infectious or contagious disease; to provide for the inspection of such animals before they are brought into the state; to repeal an act entitled 'An act to prevent the importation of neat cattle for dairy or breeding purposes affected with tuberculosis into the state of California,' approved March 7, 1911; to repeal an act entitled 'An act to prevent the importation of horses, mules, and asses affected with glanders into the state of California,' " approved March 7, 1911, is hereby repealed.

Penalty.

§ 5. Any person, firm, company or corporation, their agents, servants and employees, who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five

hundred dollars, or by imprisonment in the county jail for a term not exceeding one hundred and eighty days, or by both such fine and imprisonment.

Importation of diseased animals, validity of state laws regulating.—See monographic note, 97 Am. St. Rep. 242, 249.

Quarantine of diseased animals.—See monographic note, 47 Am. St. Rep. 533, 552; also 27 Am. St. Rep. 567.

Transporting infected cattle.—See 26 L. R. A. 638.

Same.—Communicating Texas fever during.—See 48 L. R. A. 175.

PREVENTING INTRODUCTION OF RABIES.

ACT 2566—An act to prevent the introduction of rabies or other animal diseases dangerous to human beings, into portions of the state not infected; to control the spread of such diseases after introduction; and authorizing the state board of health to make rules and regulations therefor.

History: Approved June 13, 1913. In effect August 10, 1913. Stats. 1913, p. 783.

Quarantine of districts infected with rabies. Quarantine defined.

§ 1. Whenever any case or cases of rabies, or other animal diseases dangerous to the health of human beings which may be declared by the state board of health as coming under the provisions of this act, shall be reported as existing in any county, city and county, or incorporated city or town in the state of California, the state board of health shall make, or cause to be made a preliminary investigation as to whether such disease does exist, and as to the probable area of the state in which the population or animals are thereby endangered. If upon such examination the state board of health shall find that any of the said diseases does exist, a quarantine shall be declared against all such animals as may be designated in the quarantine order, and living within the area specified in said order. Quarantine shall be defined for the purposes of this act as meaning the strict confinement, upon the private premises of the owners under restraint by leash or closed cage or paddock, of all animals specified by the order.

Board of health to investigate extent of disease.

§ 2. Following the order of quarantine the state board of health shall make or cause to be made a thorough investigation as to the extent of the disease, the probable number of persons and animals exposed, and the area found to be involved; and may substitute for the quarantine order such regulations as may be deemed adequate for the control of the disease in each area.

Enforcement of act.

§ 3. It shall be the duty of all peace officers and boards of health to carry out the provisions of this act. During the period for which any quarantine order is in force all officers are empowered to kill or in their discretion to capture and hold for further action by the state board of health or its representatives, all animals in a quarantine area, found on public highways, lands and streets, or not held in restraint on private premises as specified in this act.

Officers may enter private premises.

§ 4. All proper officials within the meaning of this act are hereby authorized to examine and enter upon all private premises for the enforcement of this act.

Owners violating subject to arrest.

§ 5. Any owner, or other person in the possession of any animal then being held or maintained in violation of the provisions of this act, shall be subject to arrest on the charge of committing a misdemeanor.

Rabies treatment fund created.

§ 6. For the purpose of providing funds to pay the expenses incurred in connection with the eradication of diseases included under this act, a special fund, to be known as the rabies treatment and eradication fund, is hereby created for each county, city and county, or incorporated city or town in the state of California. All moneys collected in accordance with the following procedure shall be deposited to the credit of this fund with the treasurer of the county, city and county, or incorporated city or town; provided, that funds now collected from any dog tax may continue to be collected and used for other purposes specified by local ordinances.

Special dog tax.

(a) Upon the determination by the state board of health that rabies does exist in any county, city and county, or incorporated city or town, a special dog license tax shall immediately become effective, unless a dog tax is already in force the funds from which are available for the payment of expenditures in accordance with the provisions of this act. This tax shall be levied as follows: An annual tax of one dollar and fifty cents for each male, two dollars and fifty cents for each female, and one dollar and fifty cents for each neuter dog, the same to be collected by the proper authority at the same time and in the same manner as other taxes are collected; provided, however, that there shall be collected at the first collection such proportion of the annual tax as corresponds to the number of months the tax has been in operation plus one year advance payment. After this dog license tax has been established in a county, city and county, or incorporated city or town, it shall be continued in force until an order has been issued by the state board of health declaring that county, or such portion of that county as may be deemed advisable, to be free from rabies or further danger of its spread.

One half of fines to credit of fund.

(b) One-half of all fines collected by any court or judge for violations of the provisions of this act shall be placed to the credit of the rabies treatment and eradication fund of the county, city and county, incorporated city or town in which the violation occurred.

Special measures of control. Expenditures.

§ 7. Whenever it becomes necessary in the judgment of the state board of health or its secretary, to enforce the provisions of this act in any county, city and county, or incorporated city or town, the said board or its secretary may institute special measures of control to supplement the efforts of the local authorities in any county, city and county, or incorporated city or town whose duties are specified in this act. All expenditures incurred in enforcing such special measures shall be proper charges against the special fund created by the provisions of this act, and shall be paid as they accrue by the proper authorities of each county, city and county, or incorporated city or town in which they have been incurred; provided, that all such expenditures which may be incurred after the issuance of the order establishing the said fund and before the first collection of the tax, shall be paid as they accrue from the general fund of the county, city and county, or incorporated city and town; and provided, further, that all expenditures in excess of the balance of money in this fund shall likewise be paid as they accrue from said general fund. All moneys thus expended from the general fund shall be repaid from the said special fund when the collections from said tax have provided the money.

PREPARATION AND DISTRIBUTION OF VACCINES, ETC.

ACT 2567—An act to provide for the preparation and distribution of serums or vaccines for the prevention of the disease known as cholera in hogs in the state of California, making an appropriation therefor and prescribing the duties of the controller and treasurer in relation thereto.

History: Approved April 21, 1911, Stats. 1911, p. 1064.

University to prepare hog cholera serums.

§ 1. The regents of the University of California are hereby directed to cause to be prosecuted with all possible diligence, through the agricultural experiment station, the preparation of serums or vaccines that will produce immunity in hogs against the disease known as cholera.

Serums to be furnished free.

§ 2. The regents of the University of California are hereby further authorized and directed to furnish such serums or vaccines, in quantities not exceeding five hundred cubic centimeters, as soon as possible after this act takes effect free of charge to any bona fide resident of the state of California who is engaged in the raising of hogs, upon application by such resident hog raiser.

In excess of five hundred cubic centimeters at cost.

§ 3. The regents of the University of California are also hereby further authorized and directed to furnish to any bona fide resident of this state, who is engaged in the raising of hogs, such serums or vaccines in quantities in excess of five hundred cubic centimeters, upon the applicant paying therefor the actual cost of the production of such serums or vaccines.

To owners only whose hogs are sick or in danger.

§ 4. It is herewith provided that no serums or vaccines shall be furnished free of charge to any one unless the applicant shall have first furnished sufficient evidence that the disease known as cholera exists among his hogs or among the hogs in his immediate neighborhood, and in such latter case evidence shall be furnished by said applicant that there is danger of the disease being communicated to the applicant's hogs.

Selling, etc., a misdemeanor.

§ 5. Any person who shall sell, give away or misuse any of the serums so furnished shall, upon conviction thereof, be deemed guilty of a misdemeanor, and be punished as in such cases provided by law.

Assistance, etc.

§ 6. The director of the agricultural experiment station shall obtain and establish such assistance, equipment, materials, appliances, apparatus and other necessary incidentals as may be necessary to the successful prosecution of this work within the appropriation herein specified.

Appropriation.

§ 7. The sum of sixteen thousand (\$16,000) dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated, six thousand (\$6,000) dollars of which shall be available for the balance of the sixty-second fiscal year and ten thousand (\$10,000) dollars of which shall be available during the sixty-third and sixty-fourth fiscal years for the use of said experiment station to be expended by the regents of the University of California in carrying out the purposes of this act, and the state controller is hereby authorized and directed to draw his warrant for the same, and the state treasurer is hereby directed to pay such warrant.

Disposition of funds.

§ 8. All money appropriated under this act, and all money received for the sale of said serums or vaccines as provided for in section 3 of this act, shall be paid to the regents of the University of California, and shall be expended under the direction of the director of the agricultural experiment station of said university for the specific purposes herein named.

PREPARATION, INSPECTION AND SALE OF HOG CHOLERA SERUMS, ETC.

ACT 2568—An act prohibiting the preparation, sale, barter, shipment or exchange of any worthless, contaminated, dangerous or harmful hog cholera serum or virus; requiring every establishment for the preparation of hog cholera serum, virus, vaccine or antitoxin to be inspected and licensed by the director of the agricultural experiment station of the University of California; and providing penalties for violation of any of the provisions hereof.

History: Approved June 1, 1915. In effect August 8, 1915. Stats. 1915, p. 1064.

Unlawful to sell dangerous hog cholera serum.

§ 1. It shall be unlawful for any person, firm or corporation to prepare, sell, barter, ship or exchange in this state any worthless, contaminated, dangerous or harmful hog cholera serum, virus, vaccine or antitoxin.

Must be prepared under direction of University of California.

§ 2. It shall be unlawful for any person, firm or corporation to prepare, sell, barter, ship or exchange in this state any hog cholera serum, virus, vaccine or antitoxin unless and until the said serum, virus, vaccine or antitoxin shall have been prepared under and in compliance with the regulations prescribed by the director of the agricultural experiment station of the University of California, hereinafter referred to as director, at an establishment holding, and operating under, an unsuspended and unrevoked license issued by the director as herein authorized.

Director authorized to inspect serum.

§ 3. The director is hereby authorized to examine and inspect all hog cholera serum, virus, vaccine or antitoxin prepared, sold, bartered, shipped or exchanged in this state and to make and promulgate from time to time such rules and regulations as may be necessary to prevent the preparation, sale, barter, shipment or exchange of any worthless, contaminated, dangerous or harmful hog cholera serum, virus, vaccine or antitoxin and to issue, suspend and revoke licenses for the maintenance of establishments for the preparation of hog cholera serum, virus, vaccine or antitoxin.

Licenses for establishments preparing serum.

§ 4. The licenses issued under the authority of this act to establishments where hog cholera serums, viruses, vaccines or antitoxins are prepared for sale, barter, shipment or exchange shall be issued on condition that the licensee shall permit the inspection of such establishment and of such products and their preparation; and the director may suspend or revoke any permit or license issued under the authority of this act after opportunity for hearing has been granted the licensee, when the director is satisfied that such license is being used to facilitate or effect the preparation, sale, barter, shipment or exchange of worthless, contaminated, dangerous or harmful hog cholera serum, virus, vaccine or antitoxin.

Director may freely enter establishments.

§ 5. The director and each of his agents duly authorized for the purpose may at any time enter and inspect any establishment where any hog cholera serum, virus, vaccine or antitoxin is prepared.

Construction of act.

§ 6. Neither this act nor any provision thereof, except when specifically so stated, shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this union, except in so far as the same may be permitted under the provisions of the constitution of the United States and the acts of congress.

Violation. Penalty.

§ 7. Any person, firm or corporation who shall violate any provision of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

License tax.

§ 8. For the purpose of carrying into effect this act the regents of the University of California are hereby authorized to collect and there shall be paid to the regents of the University of California by every manufacturer, importer, agent or dealer in hog cholera serum, virus, vaccine or antitoxin, a license tax of one mill for every cubic centimeter of serum, virus, vaccine or antitoxin sold or distributed, and each manufacturer or importer of any hog cholera serum, virus, vaccine or antitoxin shall file with the secretary of the board of regents of the university of the state of California, quarterly, a sworn statement showing all sales of hog cholera serum, virus, vaccine or antitoxin for the preceding quarter, accompanied by a corresponding amount of the license tax above specified; provided, however, that nothing herein shall prevent the sale or distribution of hog cholera serum, virus, vaccine or antitoxin produced in a laboratory holding a license issued by the United States department of agriculture to manufacture or import hog cholera serum, virus, vaccine or antitoxin.

PREVENTION OF SPREAD OF CONTAGIOUS ANIMAL DISEASES.

ACT 2568a—An act to prevent the spread of contagious diseases among animals.

History: Approved March 20, 1905, Stats. 1905, p. 317.

Cremation or burial of animals dying from certain diseases.

§ 1. Any person having the care, custody or control of any animal that dies from tuberculosis, glanders, farcy, Texas fever, or other infectious disease shall immediately upon the death of such animal cremate or bury the same, or cause the same to be cremated or buried.

Transportation of animals having certain diseases a misdemeanor.

§ 2. Any common carrier of persons or freight that shall transport any animal suffering with or that has died from the diseases, or any of them, mentioned in section 1 of this act a greater distance than is necessary to transport such animal to the nearest crematory, shall be deemed guilty of a misdemeanor.

Animals dying from certain diseases not to be sold for food.

§ 3. No animal that has died of any of the diseases named in section 1 of this act, shall be sold, used or permitted to be used for the food of human beings or sold, used or permitted to be used for the food of any domestic animal or fowl.

Penalty for violation of statute.

§ 4. Any person, firm or corporation that shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon a conviction thereof shall be punished by a fine of not less than \$50 and not more than \$500, or by imprisonment in the county jail for a term not exceeding 180 days, or by both such fine and imprisonment.

§ 5. This act shall take effect immediately.

HERDING AND GRAZING OF LIVESTOCK BY NONRESIDENTS.

ACT 2568b—An act to regulate the herding and grazing of the live stock of nonresidents and foreign corporations upon unenclosed land in the state of California and providing a penalty for any violation of any of the provisions of this act.

History: Approved May 18, 1919. In effect July 22, 1919. Stats. 1919, p. 753.

Nonresidents must have license for herding and grazing of livestock. Exemptions.

§ 1. It shall be unlawful for any person or for any corporation who or which does not have his or its principal home ranch and live stock headquarters in the state of California, except as herein provided, to herd or graze, or to cause to be herded or grazed, upon any unenclosed lands in the state of California any sheep or bovine cattle without having first obtained from the tax collector of the county in which such herding or grazing or some portion thereof is done, a valid license authorizing such herding and grazing in the state of California. Such license shall be issued by said tax collector to and in the name of such person or corporation upon compliance by him or it with the provisions of section two of this act, and shall be valid only for the calendar year in which it is dated; provided, that any person or any corporation which does not have its principal home ranch and live stock headquarters in the state of California, owning or leasing land in the state of California, shall be exempt from any license or the payment of any license for five head of sheep for each acre so owned or leased, and three head of bovine cattle for each acre so owned or leased.

Affidavit of applicant for license.

§ 2. As conditions precedent to the issuance of said license, the applicant therefor shall:

1. File with said tax collector an affidavit which shall explicitly and truly state the following facts:

(a) If the applicant is a nonresident person, his name and place of residence; or, if the applicant is a corporation, its name, the state under whose laws it is incorporated, the date of its incorporation, its principal place of business, and the names and addresses of its officers;

(b) The location of his or its principal home ranch and live stock headquarters;

(c) The number of acres of land owned or leased in the state of California, together with a description thereof.

2. Pay to the said tax collector the sum of fifty cents a head for each of the sheep, and the sum of two dollars a head for each of the bovine cattle proposed to be herded or grazed in the state of California, after deducting the number of sheep and cattle as exempted from the payment of said tax.

§ 3. No such person or corporation shall herd, graze, or cause to be herded or grazed upon any unenclosed land in any county in California any greater number of live stock than that for which he or it has previously obtained such license, and which is exempted under the provisions of this act.

Disposal of license fees.

§ 4. The tax collector collecting such license moneys shall be allowed to retain for his own compensation and in addition to his salary or other fees now provided by law six per centum of the said license moneys by him collected, and shall quarterly pay the remainder of such moneys into the general county road fund.

Penalty.

§ 5. Any person or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and shall be punishable by a fine not exceeding five

hundred dollars, and shall be prohibited from herding, grazing, or causing to be herded or grazed any live stock in the state of California until such fine is paid.

When act shall become void.

§ 6. If any law passed at the present session of the legislature in any of the states bordering on California, similar to this bill affecting the citizens and corporations of the state of California, shall be declared unconstitutional and invalid by a court of last resort in any of said states, then this act shall immediately become inoperative and void.

The act of 1863 (Stats. 1863, p. 359) applied to the counties of Santa Clara, San Diego, San Bernardino, San Luis Obispo, Contra Costa, San Mateo, Alameda, Santa Barbara and Marin. The amendment of 1863-

64 extended the provisions of the act to Los Angeles county. The act of 1866 (Stats. 1865-66, p. 322) applied to the counties of Fresno, Tulare, Monterey and Mariposa.

EXTERMINATION OF BOOPHILUS ANNULATUS TICK.

ACT 2568c—An act providing for the extermination of the *Boophilus annulatus* tick, defining certain crimes and providing for certain civil and criminal actions.

History: Approved March 21, 1907, Stats. 1907, p. 763. Amended February 23, 1909, Stats. 1909, p. 55.

Sale of infected cattle prohibited. Punishment. Exception.

§ 1. Any person who shall willfully or intentionally sell, offer for sale, or expose in such manner as may infest other cattle or other live stock not so infested, any cattle having thereon or being infested with *boophilus annulatus* tick, shall be guilty of a misdemeanor; provided, however, that the moving or handling of tick infested cattle when same are to be immediately slaughtered, and where said cattle are loaded on railroad cars at point of origin of said cattle, shall not be deemed to be a willful or intentional exposing of such cattle as referred to in this section. [Amendment of February 23, 1909. Stats. and Amdts. 1909, p. 55. In effect immediately.]

When must be dipped or treated.

§ 1½. Whenever cattle infested with or exposed to the infestation of the *boophilus annulatus* tick are to be moved for the purpose of immediate slaughter, and where no provisions are made for the loading of such cattle directly into railroad cars at their point of origin, such cattle shall only be moved or allowed to move after said cattle have first been dipped or otherwise treated in a manner as directed by the state veterinarian or his duly authorized deputy. [Added February 23, 1909. Stats. and Amdts. 1909, p. 55. In effect immediately.]

Duty of state veterinarian.

§ 2. Whenever upon examination of any cattle located in any county of the state of California the state veterinarian or his duly authorized deputy shall find such cattle or any portion of them to be infested with the *boophilus annulatus* tick he shall forthwith notify in writing the owner or person in control of such cattle to dip or otherwise treat all said cattle in a manner as directed by said state veterinarian or his duly authorized deputy for the purpose of eradicating such tick. Such owner or person in control of such cattle shall, within a period of fifteen days after receiving such notice, dip or otherwise treat such cattle in a manner as directed by the state veterinarian or his duly authorized deputy for the purpose of so eradicating such tick. [Amendment of February 23, 1909. Stats. and Amdts. 1909, p. 55. In effect immediately.]

District attorney to be informed.

§ 3. If upon examining said cattle after the expiration of said period of fifteen days the said state veterinarian or his duly authorized deputy shall find that said cattle have not been so dipped or otherwise treated in a manner as directed by said state veteri-

narian or his duly authorized deputy, such officer shall immediately notify the district attorney of the county in which such cattle may be located. [Amendment of February 23, 1909. Stats. and Amdts. 1909, p. 55. In effect immediately.]

State veterinarian to take possession of cattle, when.

§ 4. If upon such second examination the state veterinarian or his duly authorized deputy shall find that said cattle have not been dipped or otherwise treated in a manner as directed by said state veterinarian or his duly authorized deputy for the purpose of eradicating and destroying said tick, said officer shall immediately take possession of said cattle and proceed to eradicate and destroy said tick by dipping or causing to be dipped or by otherwise treating said cattle. [Amendment of February 23, 1909. Stats. and Amdts. 1909, p. 55. In effect immediately.]

Expenses of dipping.

§ 5. All the expenses and costs of so dipping and treating said cattle shall become and remain a lien on said cattle until such lien is paid or foreclosed as provided by law.

Action to foreclose lien for expenses.

§ 6. If such lien is not paid within fifteen days after the said expenses and costs are incurred, then the state veterinarian shall, in the name of the people of the state of California, commence an action to foreclose said lien. Such action shall be commenced, tried and determined in all respects as provided in the Code of Civil Procedure for the foreclosure of mortgages on personal property.

Several treatments may be ordered.

§ 7. If however, upon examination at the end of fifteen days from the date on which the owner or person in control and possession of said cattle is given the notice required by section two of this act, the state veterinarian or his duly authorized deputy shall find that said cattle have been dipped or otherwise treated for the extermination of such ticks but are still infested with the same then he shall instruct the owner or person in possession of said cattle to dip or otherwise treat said cattle one or more time[s] as the circumstances may demand, and within such time as the state veterinarian or his duly authorized deputy shall deem advisable.

State veterinarian may repeatedly take possession.

§ 8. If upon examination at any time the said state veterinarian or his duly authorized deputy again finds that said cattle are again infested with said ticks or that the owner or person in control of said cattle has not continued to properly dip or otherwise treat said cattle for the purpose of destroying said ticks, then said state veterinarian or his duly authorized deputy shall take possession of said cattle one or more times as in this statute provided.

Owners jointly liable.

§ 9. In any action or proceeding, civil or criminal, arising under this act, any and all persons having an interest in the cattle or in control or possession of the same, and concerning which cattle such action or proceeding is had, shall be liable severally and jointly for each violation of the provisions of this act.

When cattle exempt from dipping.

§ 10. Whenever the state veterinarian or his duly authorized deputy is satisfied that any cattle are in process of fattening, and that such cattle will be ready for slaughter within a period of one hundred and twenty days, he shall exempt such cattle from dipping, as provided in this act.

§ 11. All acts or parts of acts in conflict with this act are hereby repealed.

COMBINATIONS TO OBSTRUCT SALE OF LIVE-STOCK.

ACT 2568d—An act to prevent combinations to obstruct the sale of live-stock in the state of California.

History: Approved February 27, 1893, Stats. 1893, p. 30.

Combinations to prevent buying live-stock prohibited.

§ 1. It shall be unlawful for any two or more persons, or corporations, to combine or agree together to do any act which will, in any respect, prevent any person from buying live-stock at any place in this state from any person having the same for sale, either for himself or as the representative or agent of the owner of the same.

Corporation prohibited.

§ 2. It shall be unlawful for any corporation organized under the laws of this state, or any board of directors or trustees, or stockholders, or agents, or officers of any corporation, to have, pass, or enforce any rule, by-law, or regulation, whereby any officer, stockholder, member, shareholder, agent, servant thereof, or any other person in any way interested in or connected with such corporation, shall in any respect be prohibited, prevented, or enjoined from buying live-stock from any other person having such live-stock for sale, either as owner thereof, or as the agent, representative, or assistant of such owner, in any market in this state where live-stock is brought to be sold.

By-laws of corporations.

§ 3. Every rule, regulation, or by-law of any corporation doing business in this state, which has for its purpose, or which, directly or indirectly, tends to prevent its members or stockholders from freely purchasing live-stock from any person lawfully having the same for sale, upon any live-stock market of this state, are hereby declared to be contrary to the public policy of this state, and unlawful and void; and any person or persons who shall attempt, directly or indirectly, to enforce any such rule, regulation, or by-law, shall be deemed guilty of a misdemeanor, and, in addition to the penalties prescribed by this act, shall be personally liable for all damages which may arise from the enforcement of such rule, regulation, or by-law, to any person damaged thereby.

Trusts, combinations, or conspiracies.

§ 4. No trusts, combinations, or conspiracies shall be organized or exist in this state, to prevent any person or persons, or corporation, from selling live-stock on commission, for such an amount of commission as any person engaged in the business may see fit to charge; and all rules, regulations, by-laws, or agreements of any corporation, association, society, or combination of persons, whereby any such corporation, society, association, or combination of individuals are required to charge not less than a given sum for commissions, or whereby any person or commission merchant is, in any respect, restrained from charging less than a certain fixed sum for his services as such commission merchant in the sale of live-stock, are hereby declared to be contrary to the public policy of this state, and unlawful. And any person who shall enter into any such trust, combination, or conspiracy, or who shall enforce or aid, abet, assist, or encourage the enforcement of any such rule, regulation, by-law, or agreement, shall be liable to the penalties prescribed by this act, and also shall be personally liable to any person, individual, society, or corporation who may be injured in his property or business thereby, to the full extent of the injury resulting therefrom.

Selling live-stock at any market.

§ 5. Whoever shall, directly or indirectly, be a party to any combination, conspiracy, or association, which attempts, directly or indirectly, to prevent any other person from

freely selling live-stock at any market in this state for such persons as see fit to engage his services, or shall endeavor to compel, directly or indirectly, any person to charge not less than a fixed minimum sum for services in the sale of live-stock, or shall, in any way, hinder or prevent another from lawfully selling live-stock for another, for such rate of commission as may be agreed upon by the owner of the live-stock and the commission merchant, shall be deemed guilty of a misdemeanor, and suffer the penalties prescribed by this act, and shall be personally liable to any one aggrieved thereby, for the full amount of any damage sustained by such person.

Punishment.

§ 6. Any one who shall violate the provisions of this act shall be punished by a fine in any sum not less than five hundred dollars, and not more than five thousand dollars, or by imprisonment in the county jail not exceeding one year, or by either or both, in the discretion of the court, and shall be liable, in civil action, to any person aggrieved, in such damages as he or she may have sustained by the violation of this act.

§ 7. This act shall take effect and be in force from and after its passage.

CATTLE PROTECTION BOARD.

ACT 2568e—An act to create a cattle protection board, to define its powers and duties, to protect the breeders and growers of cattle from theft, to provide for the registration of cattle brands and the licensing of cattle slaughterers and sellers of the meat thereof, to provide for the inspection of cattle and cattle hides for brands and marks, to provide for the collection of license and inspection fees, to provide for the creation of a fund to be known as the cattle protection fund, and to provide penalties for violation of the provisions hereof.

History: Approved May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1237. Prior act of April 20, 1863, Stats. 1863, p. 354, amended March 28, 1864, Stats. 1863-64, p. 261, and act of March 20, 1866, Stats. 1865-66, p. 322, continued in force by the codes, see Kerr's Cyc. Political Code, § 19, and Kerr's Cyc. Penal Code, § 23, and probably superseded in part by the Political Code, see Kerr's Cyc. Political Code, § 3185, and wholly by the act of March 23, 1893, Stats. 1893, p. 235, which was in turn superseded by the present act.

Cattle protection board created.

§ 1. That there be and is hereby created a cattle protection board, to be appointed by the governor of the state of California, which shall consist of three members, two of whom shall be identified with and experienced in the cattle industry of the state of California and the other shall be the state veterinarian. Said board shall elect one of their number chairman. The members of said board shall each receive ten dollars per day for the time by him necessarily employed in discharging the duties required in this chapter; provided, however, that in no one year shall the board be in session more than sixty days, except upon the call of the governor.

Term. Appointees. Cattle protection fund.

The members of said board shall hold office during the pleasure of the governor. Said board is hereby authorized to appoint a secretary, counsel, inspectors, and such clerks as may be necessary to carry out the provisions of this act, and fix the salaries of said appointees. Such per diem and expenses of said members of the cattle protection board, as well as the salaries and expenses of all appointees of said board, including all other additional expenses incurred by enforcement of this act as hereinafter provided, shall be paid out of the cattle protection fund which fund is hereafter provided.

Duty of board.

Said board is hereby authorized, and it is made its duty, to exercise a general supervision over, and to protect the cattle of this state from theft and to make such rules and regulations as may be necessary to carry out the purposes and intent of this act.

Cattle brands. Record.

§ 2. Every person owning cattle in this state except as hereinafter provided may adopt a brand with which to brand his cattle; provided, such brand be not similar to the brand heretofore adopted by any other person, except by special permit issued by the cattle protection board. Said board shall cause said brands to be recorded in books kept for that purpose. The recording of a brand shall consist of depicting in the brand book a facsimile of the design of the brand adopted, together with an entry in said book bearing a statement of the name, residence, and postoffice address of the person adopting the same, the date the brand was presented for record, the place upon the animal where the brand is proposed to be used, the number of the district and a statement of the location of the range whereon such animals are to range. Before any such record shall be made, proof shall be made that the person applying to have such brand recorded is the owner thereof and entitled to use the same.

Districts.

The said board may divide the state into a number of districts. Such districts may be changed from time to time, so that all of the persons engaged in raising cattle within the state of California may adopt and record a brand, without requiring that any one brand shall be adopted or recorded in any two contiguous districts; provided, however, that where cattle in two or more contiguous districts are owned by one person, said person shall have the right to the use of said brand in contiguous districts.

Fees. Forfeiture.

§ 3. The sum of two dollars shall be paid to said board for the recordation of any brand; for the right to the continued use of said brand, under the provisions of this act, the owner thereof shall before the first day of January of each year after its recordation transmit to the board the sum of one and one-half dollars. A failure to make such payment shall forfeit the right to use said brand.

When the right to any brand recorded hereunder shall have become forfeited, said brand shall not be recorded by any other person until after the expiration of one year from the date of the forfeiture thereof.

Unrecorded brand.

§ 4. No person shall brand any cattle in this state with a brand that has not been recorded under the provisions of this act, nor use any device to obliterate a brand.

Sale of range cattle.

§ 5. Upon the sale or transfer of any range cattle in this state, the actual delivery of such animal shall be accompanied by a written bill of sale, giving the number, kind and marks and brands of each animal, which bill of sale shall be signed by the party giving the same and acknowledged by him before two subscribing witnesses who have been freeholders of the county for at least two years.

Not applicable to registered, etc., cattle.

§ 6. It is hereby expressly provided that the provisions in this act shall not apply to registered purebred cattle or purebred cattle which can be identified as being entitled to registration, or to the dressed carcasses of veal with unmarked or unbranded hides thereon, or cows actually used for dairy purposes.

License to slaughter cattle.

§ 7. It shall be unlawful for any person to slaughter any cattle or offer for sale, barter or exchange the meat thereof, unless he shall have a license therefor issued in accordance with the provisions of this act, except as herein otherwise provided.

Bond.

Every person slaughtering cattle as a business shall do so in a designated slaughterhouse, and before he shall begin the business of slaughtering cattle or selling the meat thereof, he shall first procure from the board a license to carry on such business, under the conditions and upon the payment of the fees herein provided for. After procuring such license and before engaging in such business he shall execute a bond to the state of California, in the penal sum of one thousand dollars (\$1000.00) to be approved by the secretary of the board, condition that such person shall not slaughter, sell or expose for sale any cattle or the meat thereof, without first being the legal and equitable owner thereof, or being authorized to so slaughter, sell or expose for sale such animal, or the meat thereof, by such owner, and that in case he shall violate any of the provisions hereof, he shall pay therefor double the value of such animal. The amount so recovered shall be paid as follows: One-half to the owner of such animal and the remaining one-half to the cattle protection fund.

Annual fee. Monthly report to board.

Said board shall grant to every applicant therefor, who complies with all the provisions of this act a license to slaughter cattle and sell the meat thereof for the unexpired portion of the calendar year in which said license is granted. Every applicant for such a license shall pay to said board the following annual fee which shall be paid in advance: For applicants who slaughter less than ten head per month, one dollar per annum. For applicants who slaughter more than ten head and less than fifty head per month, ten dollars per annum. For applicants who slaughter more than fifty head per month, twenty-five dollars per annum. For a shorter term than one year a proportionate part of said fee shall be paid. The applicant for such license shall state in his application where his slaughterhouse is located, and during the term of such license he shall not slaughter any cattle at any other place than that specified in his license. If the holder of a license desires to change the location of his slaughterhouse, he shall apply to said board to have such license transferred and the board may reissue such license without any additional fee.

Every holder of such a license shall, at the expiration of each calendar month, make a written report and send the same by registered mail to said board. Such report shall include the following:

(a) The number and sex of the cattle slaughtered in such establishment during the calendar month just past.

(b) The names and addresses of persons from whom said cattle were purchased or otherwise obtained.

(c) The brands and marks on said cattle.

(d) The dates on which said cattle were purchased or otherwise obtained and the dates on which said cattle were slaughtered.

Forfeit of license on failure to make statement.

Said statement shall be signed by such licensee or his duly authorized agent. Upon failure or neglect of said licensee or his duly authorized agent for a period of fifteen days to file such a statement in the manner as herein provided, the said board shall have the power and it shall be its duty to forfeit the license of such licensee; and thereafter it shall be unlawful for the owner of said slaughtering establishment, or for any other person to slaughter any cattle in said establishment until a new application is made by him to said board, accompanied by a fee of twenty-five dollars; provided, however, that said board shall have the power and it shall be its duty to refuse to renew the license of any slaughterer who has knowingly slaughtered cattle without the consent of the owner thereof.

Record by butcher of meat purchased.

§ 8. Every peddler, butcher or retailer of meats, purchasing the meat of any bovine animal, must enter in a book to be kept for that purpose and exhibit the same on demand, the name of the person from whom said meat was purchased or otherwise obtained, the date of said purchase and the quantity so purchased.

It shall be unlawful for any peddler or retailer of meat, or person in control of any butcher shop, to purchase the meat of any slaughtered bovine animal from any person not known to him to be licensed under the provisions of this act.

Any person who fails on demand to inform any officer of this state where and from whom he has obtained any meat of any bovine animal that he has in his possession, shall be deemed guilty of a misdemeanor.

Slaughter by ranchman for own consumption.

Nothing in this act shall be so construed as to prohibit an owner of property, or a ranchman located on a definite property as a tenant, lessee or purchaser under contract, from slaughtering cattle in small numbers on said premises for his own consumption, and nothing herein shall be so construed as to prohibit such ranchman from selling or giving away a portion thereof; provided, that such person shall not be required to take out a license.

Hides retained.

§ 9. The hides of all such cattle slaughtered by the owner thereof, or removed from any cattle which have died from any cause, shall be retained in the possession of the owner where the same may be inspected, with the brands attached thereto, and without any alteration or disfiguration thereof, for a period of at least fifteen days after the death of said cattle, or until said hides are inspected.

Record of cattle slaughtered.

Every ranchman, who so slaughters cattle on such premises, shall keep a record in a book to be kept for that purpose of all the cattle so slaughtered by him, with a description thereof, including all the marks and brands of such slaughtered cattle, the date of slaughter, and shall at the end of each month, make a true and correct copy of such record and send the same by registered mail to the office of the cattle protection board, and shall likewise exhibit the said record on demand of any officer of this state.

No cattle slaughtered until inspected.

§ 10. No cattle except cattle shipped for slaughter and which have been inspected as herein provided prior to shipment, shall be slaughtered until they shall have been first inspected and certified to as being the property of the person slaughtering same or causing same to be slaughtered or being duly authorized by the owner thereof to slaughter said cattle; provided, that any person licensed hereunder to slaughter cattle after twenty-four hours notice in writing, addressed to the local inspector demanding his presence at a specified time and place for the purpose of inspecting such cattle for slaughtering, may, without the certificate of inspection of said inspector slaughter said cattle, providing he makes a written statement designating the general description of the animal or animals slaughtered, such as the age, color, weight, etc., and specifying in detail the earmarks and brands of such animal or animals; and provided, further, that he retain the hides of such animal or animals for at least fifteen days thereafter as hereinbefore provided.

Certificate of brand, etc., before shipment.

§ 11. It shall be unlawful for any common carrier to receive any cattle, or the hides of any cattle, for transportation to points within or without this state until such carrier

shall have been furnished with duplicate certificates signed by an inspector, showing, in the case of cattle, the brands and earmarks of such cattle, the number of cattle of each earmark and brand, the names of shipper and consignee and also the origin and destination of said cattle. In the case of cattle hides, the certificates shall state the number of hides, the names of shipper and consignee and also the origin and destination of said hides. One copy of said certificate shall be mailed forthwith by the agent or other person in control of the common carrier at the point at which said cattle are received for shipment, to the consignee.

Inspection of cattle to be shipped.

§ 12. It shall be the duty of inspectors to inspect all cattle for marks and brands which are offered for transportation to any common carrier at the loading stations thereof.

If upon such inspection cattle shall be found not belonging to the shipper, all such cattle shall be taken by the inspector and dealt within accordance with the rules of the board in such cases made.

Inspectors must inspect all cattle subject to inspection immediately, and when inspected, the one in charge thereof shall at once pay to the inspector therefor the sum of five cents per head, whereupon the inspector shall certify that said cattle have been inspected.

Volumes for recordation of marks and brands.

§ 13. It shall be the duty of the said board to prepare volumes for the recordation of said marks and brands, and to keep a true record of all its official transactions. When cattle or the hides thereof have been shipped or slaughtered, each record thereof must be entered under the name of the owner of said mark or brand, and must be entered in such a manner as to disclose under the record of each particular mark or brand, the number of cattle bearing any other marks or brands. An index shall be kept of unrecorded brands, as well as of those that have been recorded under the provisions hereof.

Driving cattle off range.

§ 14. Any person, not being the owner, or having the right of possession, of any cattle, who shall be found driving such cattle off its usual range, without the consent of the owner thereof, shall be guilty of grand larceny.

Report of fees by secretary.

§ 15. The secretary of the cattle protection board, at least as often as once each month, shall report to the state controller the total amount of fees collected, and at the same time he shall pay into the state treasury the entire amount of such receipts. All such receipts shall be credited to the cattle protection fund, which fund is hereby created, and shall be held subject to the uses of the cattle protection board, as defined in this act.

“Range.”

§ 16. The term “range” for the purpose of the interpretation and application of this act shall be understood to mean the enclosed or unenclosed lands outside of cities, towns and villages in this state, whether of the public domain or in private ownership, upon which by custom, license or otherwise, cattle are kept or permitted to roam and feed.

“Person.”

The term “person” wherever used includes every person, persons, firm, association or corporation.

"Cattle."

The term "cattle" wherever used includes every kind of animal of the bovine species.

Penalty.

§ 17. Any person violating any provisions of this act shall, unless otherwise specifically designated herein, be guilty of a misdemeanor.

Repealed.

§ 18. All acts and parts of acts in conflict herewith are hereby repealed.

LODGING-HOUSES.

See tits. "Buildings"; "Dwelling Houses"; "Hotels"; "Tenement Houses"; and see Kerr's Cyc. Penal Code, § 401a.

LODI.

See "Mokelumne Hill," and Act 3094, note.

CHAPTER 199.**LOGS.****CONTENTS OF CHAPTER.****ACT 2569. STANDARD OF MEASUREMENT.****STANDARD OF MEASUREMENT.**

ACT 2569—An act establishing a scale for the measurement of logs.

History: Approved March 28, 1878, Stats. 1877-78, p. 604. Amended April 16, 1880, Stats. 1880, p. 119.

One standard of measurement.

§ 1. There shall be but one standard for the measurement of logs throughout this state.

Standard for measurement of logs.

§ 2. The following table, known as Spaulding's Table for the Measurement of Logs, is hereby made the standard and table for the measurement of logs throughout this state, to wit:

Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.
12	10	38	12	27	396	12	44	1,086	12	61	2,098
12	11	47	12	28	427	12	45	1,134	12	62	2,169
12	12	58	12	29	459	12	46	1,186	12	63	2,241
12	13	71	12	30	492	12	47	1,239	12	64	2,315
12	14	86	12	31	526	12	48	1,293	12	65	2,390
12	15	103	12	32	561	12	49	1,348	12	66	2,467
12	16	121	12	33	597	12	50	1,404	12	67	2,545
12	17	141	12	34	634	12	51	1,461	12	68	2,625
12	18	162	12	35	673	12	52	1,519	12	69	2,706
12	19	184	12	36	713	12	53	1,578	12	70	2,798
12	20	207	12	37	755	12	54	1,638	12	71	2,874
12	21	231	12	38	798	12	55	1,700	12	72	2,960
12	22	256	12	39	843	12	56	1,763	12	73	3,047
12	23	282	12	40	889	12	57	1,827	12	74	3,135
12	24	309	12	41	936	12	58	1,893	12	75	3,224
12	25	337	12	42	984	12	59	1,960	12	76	3,314
12	26	366	12	43	1,033	12	60	2,028	12	77	3,405

Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.
12	78	3,497	13	45	1,228	14	12	67	14	66	2,878
12	79	3,590	13	46	1,284	14	13	82	14	67	2,969
12	80	3,634	13	47	1,342	14	14	100	14	68	3,062
12	81	3,779	13	48	1,400	14	15	120	14	69	3,157
12	82	3,874	13	49	1,460	14	16	141	14	70	3,253
12	83	3,970	13	50	1,521	14	17	164	14	71	3,353
12	84	4,067	13	51	1,582	14	18	189	14	72	3,453
12	85	4,165	13	52	1,645	14	19	214	14	73	3,555
12	86	4,264	13	53	1,709	14	20	241	14	74	3,657
12	87	4,364	13	54	1,774	14	21	269	14	75	3,761
12	88	4,465	13	55	1,841	14	22	298	14	76	3,866
12	89	4,566	13	56	1,909	14	23	329	14	77	3,972
12	90	4,668	13	57	1,979	14	24	360	14	78	4,080
12	91	4,771	13	58	2,050	14	25	393	14	79	4,188
12	92	4,875	13	59	2,123	14	26	427	14	80	4,298
12	93	4,980	13	60	2,197	14	27	462	14	81	4,408
12	94	5,085	13	61	2,272	14	28	498	14	82	4,519
12	95	5,192	13	62	2,349	14	29	535	14	83	4,631
12	96	5,300	13	63	2,427	14	30	574	14	84	4,745
13	10	41	13	64	2,507	14	31	613	14	85	4,859
13	11	51	13	65	2,589	14	32	654	14	86	4,974
13	12	62	13	66	2,672	14	33	696	14	87	5,091
13	13	76	13	67	2,757	14	34	739	14	88	5,209
13	14	93	13	68	2,843	14	35	785	14	89	5,327
13	15	111	13	69	2,931	14	36	831	14	90	5,446
13	16	131	13	70	3,021	14	37	880	14	91	5,566
13	17	152	13	71	3,113	14	38	931	14	92	5,687
13	18	175	13	72	3,206	14	39	983	14	93	5,810
13	19	199	13	73	3,301	14	40	1,037	14	94	5,932
13	20	224	13	74	3,396	14	41	1,092	14	95	6,057
13	21	250	13	75	3,492	14	42	1,148	14	96	6,183
13	22	277	13	76	3,590	14	43	1,205	15	10	47
13	23	305	13	77	3,688	14	44	1,267	15	11	59
13	24	334	13	78	3,788	14	45	1,323	15	12	72
13	25	365	13	79	3,889	14	46	1,383	15	13	88
13	26	396	13	80	3,991	14	47	1,445	15	14	107
13	27	429	13	81	4,094	14	48	1,508	15	15	128
13	28	462	13	82	4,196	14	49	1,572	15	16	151
13	29	497	13	83	4,301	14	50	1,638	15	17	176
13	30	533	13	84	4,406	14	51	1,704	15	18	202
13	31	569	13	85	4,512	14	52	1,772	15	19	230
13	32	607	13	86	4,619	14	53	1,841	15	20	258
13	33	646	13	87	4,727	14	54	1,911	15	21	288
13	34	686	13	88	4,837	14	55	1,983	15	22	320
13	35	729	13	89	4,946	14	56	2,056	15	23	352
13	36	772	13	90	5,057	14	57	2,131	15	24	387
13	37	817	13	91	5,168	14	58	2,208	15	25	421
13	38	864	13	92	5,281	14	59	2,286	15	26	457
13	39	913	13	93	5,395	14	60	2,366	15	27	495
13	40	963	13	94	5,508	14	61	2,447	15	28	533
13	41	1,014	13	95	5,624	14	62	2,530	15	29	573
13	42	1,066	13	96	5,741	14	63	2,614	15	30	615
13	43	1,119	14	10	44	14	64	2,700	15	31	657
13	44	1,176	14	11	55	14	65	2,789	15	32	701

Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.
15	33	746	15	87	5,455	16	54	2,184	17	21	327
15	34	792	15	88	5,581	16	55	2,266	17	22	362
15	35	841	15	89	5,707	16	56	2,350	17	23	399
15	36	891	15	90	5,835	16	57	2,436	17	24	437
15	37	943	15	91	5,964	16	58	2,524	17	25	477
15	38	997	15	92	6,094	16	59	2,613	17	26	518
15	39	1,053	15	93	6,225	16	60	2,704	17	27	561
15	40	1,111	15	94	6,356	16	61	2,797	17	28	604
15	41	1,170	15	95	6,490	16	62	2,892	17	29	650
15	42	1,230	15	96	6,625	16	63	2,988	17	30	697
15	43	1,291	16	10	50	16	64	3,086	17	31	745
15	44	1,357	16	11	63	16	65	3,186	17	32	794
15	45	1,417	16	12	77	16	66	3,289	17	33	845
15	46	1,482	16	13	94	16	67	3,393	17	34	898
15	47	1,548	16	14	114	16	68	3,500	17	35	953
15	48	1,616	16	15	137	16	69	3,608	17	36	1,010
15	49	1,685	16	16	161	16	70	3,718	17	37	1,069
15	50	1,755	16	17	188	16	71	3,832	17	38	1,130
15	51	1,826	16	18	216	16	72	3,946	17	39	1,194
15	52	1,898	16	19	245	16	73	4,062	17	40	1,259
15	53	1,972	16	20	276	16	74	4,180	17	41	1,326
15	54	2,047	16	21	308	16	75	4,298	17	42	1,394
15	55	2,125	16	22	341	16	76	4,418	17	43	1,463
15	56	2,203	16	23	376	16	77	4,540	17	44	1,538
15	57	2,283	16	24	412	16	78	4,663	17	45	1,606
15	58	2,366	16	25	449	16	79	4,786	17	46	1,680
15	59	2,450	16	26	488	16	80	4,912	17	47	1,755
15	60	2,535	16	27	528	16	81	5,038	17	48	1,831
15	61	2,622	16	28	569	16	82	5,165	17	49	1,909
15	62	2,711	16	29	612	16	83	5,293	17	50	1,989
15	63	2,801	16	30	656	16	84	5,423	17	51	2,069
15	64	2,893	16	31	701	16	85	5,553	17	52	2,151
15	65	2,987	16	32	748	16	86	5,685	17	53	2,235
15	66	3,083	16	33	796	16	87	5,818	17	54	2,320
15	67	3,181	16	34	845	16	88	5,953	17	55	2,408
15	68	3,281	16	35	897	16	89	6,088	17	56	2,497
15	69	3,382	16	36	950	16	90	6,224	17	57	2,588
15	70	3,486	16	37	1,006	16	91	6,361	17	58	2,681
15	71	3,592	16	38	1,064	16	92	6,500	17	59	2,776
15	72	3,700	16	39	1,124	16	93	6,640	17	60	2,873
15	73	3,809	16	40	1,185	16	94	6,780	17	61	2,972
15	74	3,919	16	41	1,248	16	95	6,922	17	62	3,072
15	75	4,030	16	42	1,312	16	96	7,066	17	63	3,174
15	76	4,142	16	43	1,377	17	10	53	17	64	3,279
15	77	4,256	16	44	1,448	17	11	67	17	65	3,385
15	78	4,371	16	45	1,512	17	12	82	17	66	3,494
15	79	4,487	16	46	1,581	17	13	100	17	67	3,605
15	80	4,605	16	47	1,652	17	14	121	17	68	3,718
15	81	4,723	16	48	1,724	17	15	145	17	69	3,833
15	82	4,842	16	49	1,797	17	16	171	17	70	3,951
15	83	4,962	16	50	1,872	17	17	199	17	71	4,071
15	84	5,084	16	51	1,948	17	18	229	17	72	4,193
15	85	5,206	16	52	2,025	17	19	260	17	73	4,316
15	86	5,330	16	53	2,104	17	20	293	17	74	4,441

Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.
17	75	4,567	18	42	1,476	18	96	7,950	19	63	3,548
17	76	4,694	18	43	1,549	19	10	60	19	64	3,665
17	77	4,823	18	44	1,629	19	11	74	19	65	3,784
17	78	4,954	18	45	1,701	19	12	91	19	66	3,906
17	79	5,085	18	46	1,779	19	13	112	19	67	4,029
17	80	5,219	18	47	1,858	19	14	136	19	68	4,156
17	81	5,353	18	48	1,939	19	15	163	19	69	4,284
17	82	5,488	18	49	2,022	19	16	191	19	70	4,415
17	83	5,624	18	50	2,106	19	17	223	19	71	4,550
17	84	5,762	18	51	2,191	19	18	256	19	72	4,686
17	85	5,900	18	52	2,278	19	19	291	19	73	4,824
17	86	6,040	18	53	2,367	19	20	327	19	74	4,964
17	87	6,182	18	54	2,457	19	21	365	19	75	5,104
17	88	6,325	18	55	2,550	19	22	405	19	76	5,246
17	89	6,468	18	56	2,644	19	23	446	19	77	5,391
17	90	6,613	18	57	2,740	19	24	489	19	78	5,537
17	91	6,759	18	58	2,839	19	25	533	19	79	5,684
17	92	6,906	18	59	2,940	19	26	579	19	80	5,833
17	93	7,055	18	60	3,042	19	27	627	19	81	5,983
17	94	7,203	18	61	3,147	19	28	676	19	82	6,133
17	95	7,355	18	62	3,253	19	29	726	19	83	6,285
17	96	7,508	18	63	3,361	19	30	779	19	84	6,440
18	10	57	18	64	3,472	19	31	832	19	85	6,594
18	11	70	18	65	3,585	19	32	888	19	86	6,751
18	12	87	18	66	3,700	19	33	945	19	87	6,909
18	13	106	18	67	3,817	19	34	1,003	19	88	7,069
18	14	129	18	68	3,937	19	35	1,065	19	89	7,229
18	15	154	18	69	4,059	19	36	1,128	19	90	7,391
18	16	181	18	70	4,183	19	37	1,195	19	91	7,554
18	17	211	18	71	4,311	19	38	1,263	19	92	7,719
18	18	243	18	72	4,440	19	39	1,334	19	93	7,885
18	19	276	18	73	4,570	19	40	1,407	19	94	8,051
18	20	310	18	74	4,702	19	41	1,482	19	95	8,220
18	21	346	18	75	4,836	19	42	1,558	19	96	8,391
18	22	384	18	76	4,970	19	43	1,635	20	10	63
18	23	423	18	77	5,107	19	44	1,719	20	11	78
18	24	463	18	78	5,245	19	45	1,795	20	12	96
18	25	505	18	79	5,385	19	46	1,877	20	13	118
18	26	549	18	80	5,526	19	47	1,961	20	14	143
18	27	594	18	81	5,668	19	48	2,047	20	15	171
18	28	640	18	82	5,811	19	49	2,134	20	16	207
18	29	688	18	83	5,955	19	50	2,223	20	17	235
18	30	738	18	84	6,101	19	51	2,313	20	18	270
18	31	789	18	85	6,247	19	52	2,405	20	19	306
18	32	841	18	86	6,396	19	53	2,498	20	20	345
18	33	895	18	87	6,546	19	54	2,593	20	21	385
18	34	951	18	88	6,697	19	55	2,691	20	22	426
18	35	1,009	18	89	6,849	19	56	2,791	20	23	470
18	36	1,069	18	90	7,002	19	57	2,892	20	24	515
18	37	1,132	18	91	7,156	19	58	2,997	20	25	561
18	38	1,197	18	92	7,312	19	59	3,103	20	26	610
18	39	1,264	18	93	7,470	19	60	3,211	20	27	660
18	40	1,333	18	94	7,627	19	61	3,321	20	28	711
18	41	1,404	18	95	7,788	19	62	3,434	20	29	765

Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.
20	30	820	20	84	6,778	21	51	2,556	22	42	1,804
20	31	876	20	85	6,941	21	52	2,657	22	43	1,893
20	32	935	20	86	7,106	21	53	2,761	22	44	1,991
20	33	995	20	87	7,273	21	54	2,866	22	45	2,079
20	34	1,056	20	88	7,441	21	55	2,974	22	46	2,174
20	35	1,121	20	89	7,610	21	56	3,085	22	47	2,271
20	36	1,188	20	90	7,780	21	57	3,197	22	48	2,370
20	37	1,258	20	91	7,951	21	58	3,312	22	49	2,470
20	38	1,330	20	92	8,125	21	59	3,429	22	50	2,574
20	39	1,405	20	93	8,300	21	60	3,549	22	51	2,678
20	40	1,481	20	94	8,475	21	61	3,671	22	52	2,784
20	41	1,560	20	95	8,653	21	62	3,795	22	53	2,893
20	42	1,640	20	96	8,833	21	63	3,921	22	54	3,003
20	43	1,721	21	10	66	21	64	4,051	22	55	3,116
20	44	1,810	21	11	82	21	65	4,182	22	56	3,232
20	45	1,890	21	12	101	21	66	4,316	22	57	3,349
20	46	1,976	21	13	124	21	67	4,453	22	58	3,470
20	47	2,065	21	14	150	21	68	4,593	22	59	3,592
20	48	2,155	21	15	180	21	69	4,735	22	60	3,718
20	49	2,246	21	16	211	21	70	4,880	22	61	3,846
20	50	2,340	21	17	246	21	71	5,029	22	62	3,976
20	51	2,435	21	18	283	21	72	5,180	22	63	4,108
20	52	2,531	21	19	322	22	10	69	22	64	4,244
20	53	2,630	21	20	362	22	11	86	22	65	4,381
20	54	2,730	21	21	404	22	12	106	22	66	4,522
20	55	2,833	21	22	448	22	13	130	22	67	4,665
20	56	2,938	21	23	493	22	14	157	22	68	4,812
20	57	3,045	21	24	540	22	15	188	22	69	4,961
20	58	3,155	21	25	589	22	16	221	22	70	5,113
20	59	3,266	21	26	640	22	17	258	22	71	5,269
20	60	3,380	21	27	693	22	18	297	22	72	5,426
20	61	3,496	21	28	747	22	19	337	23	10	72
20	62	3,615	21	29	803	22	20	379	23	11	90
20	63	3,735	21	30	861	22	21	423	23	12	111
20	64	3,858	21	31	920	22	22	469	23	13	136
20	65	3,983	21	32	981	22	23	517	23	14	164
20	66	4,111	21	33	1,044	22	24	566	23	15	197
20	67	4,241	21	34	1,109	22	25	617	23	16	231
20	68	4,375	21	35	1,177	22	26	671	23	17	270
20	69	4,510	21	36	1,247	22	27	726	23	18	310
20	70	4,648	21	37	1,321	22	28	782	23	19	353
20	71	4,790	21	38	1,397	22	29	841	23	20	398
20	72	4,938	21	39	1,475	22	30	902	23	21	442
20	73	5,078	21	40	1,555	22	31	964	23	22	490
20	74	5,225	21	41	1,638	22	32	1,028	23	23	540
20	75	5,372	21	42	1,722	22	33	1,094	23	24	592
20	76	5,522	21	43	1,807	22	34	1,162	23	25	645
20	77	5,676	21	44	1,900	22	35	1,233	23	26	701
20	78	5,829	21	45	1,984	22	36	1,307	23	27	759
20	79	5,983	21	46	2,075	22	37	1,384	23	28	818
20	80	6,140	21	47	2,168	22	38	1,463	23	29	879
20	81	6,298	21	48	2,262	22	39	1,545	23	30	943
20	82	6,456	21	49	2,385	22	40	1,629	23	31	1,008
20	83	6,616	21	50	2,457	22	41	1,716	23	32	1,075

Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.	Length, Feet.	Diam- eter, Inches.	Con- tents, Feet.
23	33	1,144	23	59	3,756	24	22	512	24	48	2,586
23	34	1,215	23	60	3,887	24	23	564	24	49	2,696
23	35	1,289	23	61	4,021	24	24	618	24	50	2,808
23	36	1,366	23	62	4,157	24	25	674	24	51	2,922
23	37	1,447	23	63	4,295	24	26	732	24	52	3,038
23	38	1,529	23	64	4,437	24	27	792	24	53	3,156
23	39	1,615	23	65	4,580	24	28	854	24	54	3,276
23	40	1,703	23	66	4,728	24	29	918	24	55	3,400
23	41	1,794	23	67	4,877	24	30	984	24	56	3,526
23	42	1,886	23	68	5,031	24	31	1,052	24	57	3,654
23	43	1,979	23	69	5,186	24	32	1,122	24	58	3,786
23	44	2,081	23	70	5,345	24	33	1,194	24	59	3,920
23	45	2,173	23	71	5,508	24	34	1,268	24	60	4,056
23	46	2,273	23	72	5,673	24	35	1,346	24	61	4,196
23	47	2,374	24	10	76	24	36	1,426	24	62	4,338
23	48	2,478	24	11	94	24	37	1,510	24	63	4,482
23	49	2,582	24	12	116	24	38	1,596	24	64	4,630
23	50	2,691	24	13	142	24	39	1,686	24	65	4,780
23	51	2,800	24	14	172	24	40	1,778	24	66	4,934
23	52	2,911	24	15	206	24	41	1,872	24	67	5,090
23	53	3,024	24	16	242	24	42	1,968	24	68	5,250
23	54	3,139	24	17	282	24	43	2,066	24	69	5,412
23	55	3,258	24	18	324	24	44	2,172	24	70	5,578
23	56	3,379	24	19	368	24	45	2,268	24	71	5,748
23	57	3,501	24	20	414	24	46	2,372	24	72	5,920
23	58	3,628	24	21	462	24	47	2,478			

Measurement of logs of greater length.

§ 3. For the measurement of logs of any greater length than indicated in the table set forth in section two of this act, the computation shall be made in accordance with table.

Logs, how measured.

§ 4. All logs shall be measured at the small end and inside the bark, and the contents computed according to section two of this act. [Amendment, Stats. 1880, p. 119.]

Allowances made.

§ 5. Allowance shall be made for rot, shake, or other defect in logs measured by this scale and under the provisions of this act, so as to make the survey express the actual quantity of merchantable lumber in each log.

§ 6. This act shall take effect immediately.

1. **Quarter scale method.**—As to the "quarter scale" method of scaling timber, see *Bullock v. Consumer's Lumber Co.*, 3 Cal. Unrep. 609.

2. **Both parties bound by decision of scaler.**—Where a contract for the purchase and sale of merchantable timber provides

that the merchantable character of the timber shall be passed on by a licensed scaler, in the absence of fraud, both parties are bound by the decision of such scaler.—*Bullock v. Consumer's Lumber Co.*, 3 Cal. Unrep. 609.

LOMPOC.

See Act 3094, note.

CHAPTER 200.

LONG BEACH.

CONTENTS OF CHAPTER.

ACT 2574. FREEHOLDERS' CHARTER.

2575. TIDE LAND GRANT.

FREEHOLDERS' CHARTER.

ACT 2574—Freeholders' charter.

History: Ratified at an election held February 5, 1907; adopted February 26, 1907, Stats. 1907, p. 1176. Amended October 14, 1914. Filed with the secretary of state January 28, 1915, Stats. 1915, p. 1652.

Originally incorporated as a city of the sixth class in 1888 under the general law of 883. Disincorporated in 1896. Incorporated in 1897 under the general law of 1883, as a city of the sixth class.

See Act 2575, annotations.

1. Freeholder charters, operation of—Adjacent lands.—A freeholder charter is operative over such territory only as is already erected into a municipality, and the constitution has not delegated to cities the power, in framing such charters to annex adjacent territory without consulting the inhabitants of such territory.—*People ex rel. Scholler v. Long Beach*, 155 Cal. 604.

2. Same—Legislative approval of, annexing adjacent lands, does not operate to include.—The approval by the legislature of a freeholder's charter including adjacent territory not legally annexed does not have the effect of fixing the boundaries of such city so as to include such territory.—*People ex rel. Scholler v. Long Beach*, 155 Cal. 604.

3. Charter invests city with control over public utilities.—The charter of Long Beach invests the power of control over its utilities in the city itself, and the commission has no jurisdiction therein.—*Long Beach Chamber of Commerce v. Pacific Electric Co.*, 3 R. C. D. 611.

4. Power of utilities can not be divested by charter amendment.—The powers now vested in municipalities over public utilities can not be divested through a charter amendment, but must be brought about under the scheme provided by the legislature.—*Long Beach Chamber of Commerce v. Pacific Electric Co.*, 2 R. C. D., 455.

5. Construction of charter provisions relating to certain improvements.—Subdivision 8 of section 3, of article XI, of the Long Beach charter, providing for a two-thirds vote on the question of a bond issue for the improvements named, is limited to such improvements and can not be construed as applying to the improvements of a different nature specified in subdivision 11 of section 21, of the same article, as to which a different rule is provided.—*City of Long Beach v. Boynton*, 17 Cal. App. 290.

6. Same—Construction of new pier.—Issue of bonds for the construction of a new Gen. Laws—94

pier costing in excess of the income and revenue for one year, is not governed by subdivision 8 of section 3 of article XI of the Long Beach charter, but by section 21 of that article, and an issue of bonds authorized by two-thirds of the vote on the bond, but by less than two-thirds of the votes cast at the election, is invalid.—*City of Long Beach v. Boynton*, 17 Cal. App. 290.

7. Power to accept tideland grant.—The city of Long Beach is empowered by its charter to accept a grant of tideland property from the state.—*City of Long Beach v. Lisenby*, 175 Cal. 575-579, 166 Pac. 333.

8. Power to use tidelands for harbor construction.—The city of Long Beach is authorized under the provisions of the acts of 1911 (p. 1304 and p. 1462) and certain charter provisions (article I, section 3, subdivisions 4, 5, 28; article XV, section 9, and article XXV, section 6) to use the tide and submerged lands within its boundaries for harbor construction and improvement.—*City of Long Beach v. Lisenby*, 175 Cal. 575, 579, 166 Pac. 333.

9. Charter does not permit dredging, etc.—Subdivision 11, section 1, article II, of the Long Beach charter does not contain a grant of power to the city to improve its harbor by dredging, deepening and improving the slips.—*City of Long Beach v. Lisenby*, 175 Cal. 575.

10. Words and phrases—"Waterfront."—The word "waterfront" in subdivision 11, section 1, article II, of the Long Beach charter, does not include the water comprising the harbor and the underlying land, but means the land or land and buildings fronting on the body of water.—*City of Long Beach v. Lisenby*, 175 Cal. 575, 577, 166 Pac. 333.

11. Bonds—Curative act did not validate.—The curative act of 1911 (Stats. 1911, p. 421) did not validate bonds authorized by a vote of less than two-thirds of the qualified electors voting at the election.—*City of Long Beach v. Boynton*, 17 Cal. App. 290.

12. Same—"Municipal affair."—The issue of bonds for a municipal improvement is a "municipal affair," with which the legislature can not interfere, and a curative act can not validate such bonds.—*City of Long Beach v. Boynton*, 17 Cal. App. 290.

TIDE LAND GRANT.

ACT 2575—An act granting to the city of Long Beach the tide lands and submerged lands of the state of California within the boundaries of the said city.

History: Approved May 11, 1911, Stats. 1911, p. 1304.

Tide lands granted to Long Beach. Purposes for which lands may be used. Harbor improved without expense to state. Discrimination in rates. Right to fish reserved.

§ 1. There is hereby granted to the city of Long Beach, a municipal corporation of the state of California, and to its successors, all the right, title and interest of the state of California, held by said state by virtue of its sovereignty, in and to all the tide lands and submerged lands, whether filled or unfilled, within the present boundaries of said city, and situated below the line of mean high tide of the Pacific Ocean, or of any harbor, estuary, bay or inlet within said boundaries, to be forever held by said city, and by its successors, in trust for the uses and purposes, and upon the express conditions following, to wit:

(a) That said lands shall be used by said city and by its successors, solely for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said city, or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purpose whatsoever; provided, that said city, or its successors, may grant franchises thereon, for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, for purposes consistent with the trusts upon which said lands are held by the state of California and with the requirements of commerce or navigation at said harbor;

(b) That said harbor shall be improved by said city without expense to the state, and shall always remain a public harbor for all purposes of commerce and navigation, and the state of California shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands, or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the state of California;

(c) That in the management, conduct or operation of said harbor, or of any of the utilities, structures or appliances mentioned in paragraph (a), no discrimination in rates, tolls, or charges, or in facilities, for any use or service in connection therewith shall ever be made, authorized or permitted by said city or by its successors;

Reserving, however, in the people of the state of California the absolute right to fish in the waters of said harbor, with the right of convenient access to said waters over said lands for said purpose.

See Act 2574, annotations.

1. Power to accept grant.—The city of Long Beach is empowered by its charter to accept a grant of tideland from the state upon such trusts and conditions as may be imposed by law.—*City of Long Beach v. Lisenby*, 175 Cal. 575.

2. Power to use tidelands for harbor purposes and to create bonded indebtedness.—Under its charter and the act of 1911 (Stats. 1911, p. 1304), Long Beach has power to use the tide and submerged lands granted to it by the latter act for harbor construction to improve its harbor and to

incur a bonded indebtedness therefor.—*City of Long Beach v. Lisenby*, 175 Cal. 575.

Tidelands—Action to quiet title.—In an action to quiet title brought by the owner of land adjacent to and above ordinary high tide, against a municipality, claiming such land by dedication and acceptance as a public street, where the defendant, by oral compromise, and by answer, admitted plaintiff's title, the judgment declaring that plaintiff was the owner of the land was a determination, conclusive upon the city and the public, and operated to divest the public use and establish plaintiff's title, as

fully as if the city held the land in its proprietary capacity, or as if it were a natural person, even if the judgment was erroneous in point of law.—*Strand, etc., Co. v. Long Beach*, 173 Cal. 765.

3. Grant a present grant.—The grant of tide and submerged lands to the city of Long Beach, made by the act of May 1, 1911 (Stats. 1911, p. 1304) is a present grant and refers to conditions existing, and does not convey any lands then above mean high tide.—*Strand Improvement Co. v. Long Beach*, 173 Cal. 765, 769, 161 Pac. 975.

4. Power to dredge, etc., not given.—The

city of Long Beach is not empowered under subdivision 11, section 1, article II, of its charter, to improve the harbor by dredging, deepening, and improving channels and slips.—*City of Long Beach v. Lisenby*, 175 Cal. 575, 576, 166 Pac. 333.

Words and phrases—"Waterfront."—The word "waterfront" in subdivision 11, section 1, article II, of the Long Beach charter, means the land or land and buildings fronting on the body of water and does not include the water comprising the harbor and the underlying land.—*City of Long Beach v. Lisenby*, 175 Cal. 575.

CHAPTER 201.

LOS ANGELES CITY.

CONTENTS OF CHAPTER.

- ACT 2580. FREEHOLDERS' CHARTER.
- 2582. IRRIGATION IMPROVEMENT FUND BOND ACT.
- 2583. MAIN SEWER FUND BOND ACT.
- 2584. GENERAL IRRIGATION FUND BOND ACT.
- 2585. LOS ANGELES STREET BOND ACT.
- 2586. RATIFYING DEED TO T. A. SANCHEZ.
- 2587. RATIFYING CERTAIN ACTS OF CITY COUNCIL.
- 2591. POLLUTION OF PUBLIC ZANJAS.
- 2593. DEDICATION OF LAND FOR THE WIDENING OF VERMONT AVENUE.
- 2596. TIDE LAND GRANT.
- 2597. TIDE LANDS REQUIRED FOR PUBLIC PURPOSES.
- 2598. PROTECTION OF NAVIGATION ACT OF 1917.
- 2600. PROTECTION OF NAVIGATION ACT OF 1919.

FREEHOLDERS' CHARTER.

ACT 2580—Freeholders' charter.

History: Ratified at an election held October 20, 1888. Adopted January 31, 1889, Stats. 1889, p. 455. Amended (1) December 1, 1902, adopted January 30, 1903, Stats. 1903, p. 555; (2) December 5, 1904, adopted February 16, 1905, Stats. 1905, p. 980; (3) December 4, 1906, adopted February 19, 1907, Stats. 1907, p. 1160; (4) February 2, 1909, adopted March 12, 1909, Stats. 1909, p. 1289; (5) March 6, 1911, filed with the secretary of state March 25, 1911, Stats. 1911, p. 2051; (6) January 13, 1913, filed with the secretary of state February 4, 1913, Stats. 1913, p. 1513; (7) March 24, 1913, filed with the secretary of state April 7, 1913, Stats. 1913, p. 1629; (8) October 24, 1916, filed with the secretary of state January 17, 1917, Stats. 1917, p. 1686; (9) November 5, 1918, filed with the secretary of state January 24, 1919, Stats. 1919, p. 1430.

The city was originally incorporated in 1850, Stats. 1850, p. 155. This act was supplemented 1851, p. 329; 1852, p. 186; 1854, p. 205; 1862, p. 9. It was amended 1863-4, p. 80; 1865-6, p. 15; 1867-8, pp. 89, 97, 609; 1871-2, pp. 128, 623; 1873-4, p. 633; 1875-6, p. 692; 1877-8, p. 642. It was superseded by incorporating under the present freeholders' charter.

1. Constitutionality—Controlled by general statutes.—Under section 6, article XI, of the constitution, the provisions of the Los Angeles charter are controlled by general statutes.—*Davies v. Los Angeles*, 86 Cal. 37.

2. Same—Not repealed but superseded by general law.—Section 6, article XI, of

the constitution, as it stood prior to the amendment of 1896, is not to be construed as providing that charter provisions are repealed by a general law on the subject but that they are superseded during the operation of the paramount law.—*Byrne v. Drain*, 127 Cal. 663.

3. Same—Approval of charter.—The approval of the Los Angeles charter by a joint resolution of both houses of the legislature was sufficient under the constitution, to give it validity, and the enactment of a bill approved by the governor was not necessary.—*Brooks v. Fischer*, 79 Cal. 173.

4. Same—Same—Not exercise of "law-making power."—The legislature in approving a freeholder charter does not ex-

ercise the law-making power in the sense understood in section 13, article XI, of the constitution.—*Mesmer v. Board, etc.*, 23 Cal. App. 578.

5. **Same—Same—Legislature acts as distinct body.**—The legislature is a distinct body, consisting of the senate and assembly, and is empowered by the constitution to act independently in the approval of city charters framed under section 8, article XI, of the constitution.—*Brooks v. Fischer*, 79 Cal. 173.

6. **Same—Same—Governor's approval not required.**—The legislature and the law-making power are not synonymous, and, except in the enactment of laws, does not include the governor.—*Brooks v. Fischer*, 79 Cal. 173.

7. **Same—Same—Resolution sufficient—Title of resolution sufficient.**—A resolution "approving thirteen certain amendments to the charter of Los Angeles," without specifying the subject of such amendments, is not obnoxious to the constitutional requirement that the subject of every act must be expressed in the title, and each act must embrace but one subject.—*In re Pfahler*, 150 Cal. 71.

8. **Same—Words and phrases—"Legislative authority."**—The words "legislative authority" in section 8, article XI, of the constitution, were simply intended to designate the particular body which it was recognized would exist under some name or other in every municipality as the proper official agency to submit proper amendments to charters, and were not intended to define the powers of that body, or place it in a position where it would be beyond restrictions by the organic act of the city.—*In re Pfahler*, 150 Cal. 71.

9. **Same—Provisions of section 8, article XI, mandatory and prohibitory.**—The provisions of section 8, article XI, of the constitution, relating to the adoption and amendment of freeholder charters, is mandatory and prohibitory.—*Blanchard v. Hartwell*, 131 Cal. 263.

10. **Same—Amendment—Legislature power.**—The legislature has no power to mould or amend a freeholder charter when it is before it for approval.—*Mesmer v. Board, etc.*, 23 Cal. App. 578.

10a. **Same—Amending effect of state laws.**—A municipal freeholder charter in municipal affairs is superior to state laws, and the legislature has no power to amend or repeal such charter.—*Mesmer v. Board, etc.*, 23 Cal. App. 578.

10b. **Same—Same—Power of taxation for revenue.**—Under a freeholder charter conferring the power of taxing for purposes of revenue, the exercise of such power is a municipal affair, and such power can not be withdrawn or abrogated by the legislature.—*Ex parte Braun*, 141 Cal. 204.

11. **Same—Power to frame new charter.**—A freeholders' charter can be amended only in the manner prescribed by the constitution, at intervals of two years, and a new charter can not be framed by a second

board of freeholders and adopted by a majority vote.—*Blanchard v. Hartwell*, 131 Cal. 263.

12. **Same—Public service commission amendment.**—The public service commission amendment of 1911 of the Los Angeles charter is not violative of section 13, article XI, of the constitution, forbidding delegation of municipal functions to special commissions.—*Mesmer v. Board, etc.*, 23 Cal. App. 578.

13. **Same—Ownership and operation of electric power plants.**—The constitution does not forbid, either expressly or by implication, the acquisition, ownership or operation by a municipality of electric power plants for the public service, nor does it prohibit the granting of power to acquire, own, and operate such plants.—*Clark v. Los Angeles*, 160 Cal. 30.

14. **Same—Section 207 constitutional.**—Section 207, charter of Los Angeles, is constitutional and valid, and is not in conflict with section 6, article XI, of the constitution, nor with the provisions of the Civil Code concerning the manner of creating contracts.—*Frick v. Los Angeles*, 115 Cal. 512.

15. **Same—Entire charter not invalid because of few provisions.**—An entire municipal charter can not be held invalid, because a few of its provisions, were, at the time of its adoption, inconsistent with general statute.—*Brooks v. Fischer*, 79 Cal. 173.

16. **Same—No power to establish police court.**—A police or other inferior court of a city can not be established by freeholder charter.—*People v. Toal*, 3 Cal. Unrep. 227.

17. **Same—Exercise of privilege to create police court—Creation of second police court by legislature.**—The legislature can not create another police court in a city which has exercised the permissive authority of section 8½, article XI, of the constitution, and created a police court by its freeholder charter.—*Fleming v. Hance*, 153 Cal. 162.

18. **Same—Power to establish police court permissive only.**—Section 8½, article XI, of the constitution, authorizing the establishment of police courts by freeholder charters, is permissive only, and does not preclude the legislature from establishing such courts where the municipality has not exercised this permissive authority.—*Fleming v. Hance*, 153 Cal. 162.

19. **Same—Provision for police court not validated by subsequent constitutional amendment.**—A provision in the Los Angeles charter for a police court was void, ab initio and was not revived or validated by the addition of section 8½, article XI, of the constitution, authorizing such a provision in freeholder charters.—*Fleming v. Hance*, 153 Cal. 162.

19a. **Same—Police court provision invalid—Prosecution of police court cases.**—The act creating a police court in Los Angeles is invalid, as to the requirement that the prosecuting attorney in attendance upon such court for the prosecution of state

offense shall be paid by the city.—*Fleming v. Hance*, 153 Cal. 162.

19b. Same—Same—Same. — Prosecutions for violations of the charter and ordinances of Los Angeles are "municipal affairs," and where the charter regulates the subject, it controls the general statute prescribing the duties of district attorney as to that matter.—*Fleming v. Hance*, 153 Cal. 162.

19c. Same — Same — Same. — A county prosecuting attorney and his assistants acting at the request of the city attorney of Los Angeles in prosecuting violations of the city charter and ordinances, do so as his deputies, and in the absence of charter or ordinance authority can not enforce a claim against the city for such services.—*Fleming v. Hance*, 153 Cal. 162.

20. Same — Provision as to deposit of public money.—The provisions of section 44 of the charter, relating to the deposit of public moneys is unconstitutional and void under section 13, article II, of the constitution.—*Yarnell v. Los Angeles*, 87 Cal. 603.

21. Same—Incurring indebtedness in excess of revenue.—In the purchase of ground and the erection of an administration building, and the payment therefor out of the revenues of the water department, the prohibition of section 18, article XI, of the constitution, as to incurring indebtedness in excess of the revenue for any one year, is not applicable.—*Mesmer v. Board*, 23 Cal. App. 578.

22. Construction and effect—Section 536, Civil Code.—No provisions of the Los Angeles charter adopted in 1889, impaired section 536, Civil Code, as to a grant of a right of way to telegraph companies in the state.—*Postal, etc., Co. v. Los Angeles*, 160 Cal. 129.

23. Same—Section 424, 426, Penal Code.—Section 44 of the Los Angeles charter, relative to the deposit of public funds is in conflict with sections 424 and 426 of the Penal Code.—*Yarnell v. Los Angeles*, 87 Cal. 603.

24. Same — Legislative enactments. — Charter provisions have the force and effect of legislative enactments, and are subject to the same rules of construction and interpretation.—*Dalton v. Leland*, 22 Cal. App. 481.

25. Same—Same—Judicial knowledge.—The 1911 amendment of the Los Angeles charter has the effect of a law and is a matter of judicial knowledge.—*Clark v. Los Angeles*, 160 Cal. 30.

26. Same—Same—Statute within meaning of section 1622, Civil Code.—The charter of Los Angeles is a statute within the meaning of section 1622 of the Civil Code, providing that all contracts may be oral except when required by statute to be in writing.—*Frick v. Los Angeles*, 115 Cal. 512.

27. Same—Improvement of Los Angeles river.—The charter of Los Angeles authorized the city to exercise the police power of the state for local purposes, and the authorities of the city had power to improve the channel and banks of the Los Angeles

river as they might deem proper.—*De Baker v. Southern, etc., Co.*, 106 Cal. 257.

28. Same—Power to regulate public utility corporations.—Subdivision 30, section 2, article I, of the Los Angeles charter, expressly confers upon that city the power to regulate public service corporations.—*Pinney & Boyle Co. v. Los Angeles, etc., Corp.*, 168 Cal. 12, 15, Ann. Cas. 1918D, 471, L. R. A. 1915C, 282, 141 Pac. 620.

29. Same—Same—Electric power company.—A corporation engaged in the business of supplying gas and electricity to the inhabitants of a city, and in furnishing electricity for power to be used in the consumer's private business, is a public utility.—*Pinney & Boyle v. Los Angeles, etc., Corp.*, 168 Cal. 12, 14, Ann. Cas. 1918D, 471, L. R. A. 1915C, 282, 141 Pac. 620.

30. Same—Test of character of utility.—The use which the consumer makes of a commodity does not furnish the test, as to whether or not the regulatory powers of boards and commissions in dealing with public utilities may be invoked.—*Pinney & Boyle Co. v. Los Angeles, etc., Corp.*, 168 Cal. 12, 14, Ann. Cas. 1918D, 471, L. R. A. 1915C, 282, 141 Pac. 620.

31. Same—Same.—It is the duty which the purveyor or producer has undertaken to perform and so owes to the public generally or to any defined portion of it, as the purveyor of a commodity, or as an agency in the performance of a service, which stamps the purveyor or the agency as being a public service utility.—*Pinney & Boyle Co. v. Los Angeles, etc., Corp.*, 168 Cal. 12, 14, Ann. Cas. 1918D, 471, L. R. A. 1915C, 282, 141 Pac. 620.

32. Same—Police power of rate fixing.—The power of a municipality, in the reasonable exercise of its police power, is not limited, in the matter of rate fixing, to the establishment of a maximum rate, leaving the public utility free to agree with the consumer for a less rate.—*Pinney & Boyle Co. v. Los Angeles, etc., Corp.*, 168 Cal. 12, 15, Ann. Cas. 1918D, 471, L. R. A. 1915C, 282, 141 Pac. 620.

33. Same—Same—Objects of rate regulation.—The prevention of favoritism and discrimination is one of the primary and most important objects of rate regulation.—*Pinney & Boyle Co. v. Los Angeles, etc., Corp.*, 168 Cal. 12, 15, Ann. Cas. 1918D, 471, L. R. A. 1915C, 282, 141 Pac. 620.

34. Same—Ordinance fixing rate not discriminatory.—An ordinance which fixes the rates to be charged by a public service corporation for a definite term, and prohibits the charge of lesser rates, is not discriminatory and does not deny the consumers due process of law, because it gives the public service corporation the right to apply for a reduction of rates during the term and does not accord the same right to the consumers.—*Pinney & Boyle Co. v. Los Angeles, etc., Corp.*, 168 Cal. 12, 16, Ann. Cas. 1918D, 471, L. R. A. 1915C, 282, 141 Pac. 620.

35. Same—Effect of ordinance on pre-existing contract.—A contract between a

consumer and a public service corporation as to the rates to be charged for service is conclusively presumed to have been made in contemplation of the power of the proper board or tribunal to fix rates in every case where such power exists and may have been thereafter legally exercised.—*Pinney & Boyle Co. v. Los Angeles, etc., Corp.*, 163 Cal. 12, 18, Ann. Cas. 1918D, 471, L. R. A. 1915C, 282, 141 Pac. 620.

36. Same—Power to regulate street car fares.—By the charter amendments of 1911 Los Angeles was vested with power to regulate street car fares, and where that city adopted regulations under that power, such regulations supersede general statutes. *Suydam v. Los Angeles*, 27 Cal. App. 157.

37. Same—Railroad commission without jurisdiction.—The city charter of Los Angeles gives that city the power "to prescribe the character and quality of any public utility service," and the commission is without jurisdiction to compel a gas company to resume the distribution of natural or "mixed gas" or to require a company controlling a natural gas supply to deliver to certain distributing companies such quantities as they may desire to purchase, except where the point of delivery is in unincorporated territory.—*Los Angeles v. Southern California Gas Co.*, 5 R. C. D. 13.

38. Same—Same.—The commission has no jurisdiction in matters relating to the operation of street railroads in Los Angeles.—6 R. C. D. 946.

39. Same—Power to acquire, etc., public utilities.—The city of Los Angeles is authorized by its charter to acquire, construct, and maintain docks, warehouses, wharves, canals, waterways, and to open streets to the navigable waters in its limits.—*Clark v. Los Angeles*, 160 Cal. 317.

40. Same—Same—Electric power.—The supplying of electric power to the inhabitants of a city for their private use is a public use, and a dedication of a plant for that purpose is a dedication to a public use.—*Clark v. Los Angeles*, 160 Cal. 30.

41. Same—Same—Same.—The supplying of electric power for motive service to the inhabitants of a city is a public service in which the city may engage.—*Clark v. Los Angeles*, 160 Cal. 30.

42. Same—Power to establish electric light plant.—Under subdivision 7, section 2, article I, of the Los Angeles charter, as amended in 1909, the city was empowered to establish, operate and maintain an electric light plant to supply its inhabitants with electricity for private use, and to incur a bonded indebtedness therefor.—*Clark v. Los Angeles*, 160 Cal. 30.

43. Same—Power of public service commissions—Erection of administration building.—The Los Angeles board of public service commissioners are empowered under the charter to purchase ground and erect an administration building for its use, and to pay the cost thereof from the revenue of the water department.—*Mesmer v. Board, etc.*, 23 Cal. App. 578.

44. Same—Purchase and use of surplus

water.—Under the power to acquire water and water rights, granted by its charter, Los Angeles had a right to buy for public use surplus water supplied from an outside source, and for that purpose to purchase the entire supply at such source, including the water plant, and to operate the same and, after supplying the persons entitled to use the water, to devote the surplus to the use of the city.—*Fellows v. Los Angeles*, 151 Cal. 52.

45. Same—Construction of public works by day labor.—Under its charter Los Angeles may construct public works by day labor, and without letting a contract, and neither section 148 nor section 207 of the charter prevents.—*Perry v. Los Angeles*, 157 Cal. 146.

46. Same—Power of police commissioners is quasi judicial.—The power conferred upon the board of police commissioners by section 95a of the charter is limited and quasi judicial, and is subordinate to the power of the city council and mayor to regulate the liquor traffic.—*Grumbach v. Leland*, 154 Cal. 679.

47. Same—Same—Granting of permits.—The duty of the board of police commissioners to grant a permit to one who has complied with the rules and regulations prescribed by the council is ministerial, and they can not arbitrarily refuse to grant such permit.—*Grumbach v. Leland*, 154 Cal. 679.

48. Same—Source of power of taxation.—The source of the power granted municipalities under freeholder charters to raise money for municipal purposes by taxation is the direct grant of the people through the charter, and not any grant of the legislature.—*Ex parte Braun*, 141 Cal. 204.

49. Same—License taxes—Section 3366, Political Code.—The provisions of section 3366, Political Code, are not applicable to a freeholder charter city where the charter confers the power of imposing and collecting license taxes for revenue.—*Ex parte Braun*, 141 Cal. 204.

50. Same—Forbids discrimination in license taxes.—The provisions of the Los Angeles charter do not require all occupation licenses to be graded according to the amount of business done, but it forbids discrimination between persons engaged in the same business, and does not forbid a uniform tax upon all persons engaged in the same business.—*Los Angeles v. Los Angeles, etc., Co.*, 152 Cal. 765.

51. Same—Bonds for school house.—A provision in the Los Angeles charter giving the city authority to issue bonds for a school house within the city limits, can not effect the power conferred on the trustees of a school district lying partly within and partly without the city, under sections 1880-1887, Political Code, to issue bonds for a like purpose.—*Los Angeles School District v. Longdon*, 148 Cal. 380.

52. Same—Limit of taxation—Bonds for waterworks.—The limitation of two million dollars indebtedness prescribed by the Los Angeles charter does not include the bonds

issued under the authority of the constitution and general laws of the state for a waterworks system and sewage system for the benefit of the city.—*Los Angeles v. Hance*, 137 Cal. 490.

53. Same—Initiative, referendum and recall.—An initiative and referendum provision may be incorporated in a freeholder charter, and such a provision is not obnoxious to section 4, article IV, of the federal constitution, which does not prohibit the direct exercise of legislative power by the people of a subdivision of a state, in local affairs.—*In re Pfahler*, 150 Cal. 71.

53a. Same—Same.—An initiative and referendum provision in the Los Angeles charter is not obnoxious to section 13, article XI, of the constitution.—*In re Pfahler*, 150 Cal. 71.

53b. Same—Same.—It is sufficient that a charter is consistent with the constitution as to municipal affairs, and a provision for the initiative and referendum in a freeholders' charter is unaffected by the fact that the municipal corporation act confers no such right on other municipal corporations.—*In re Pfahler*, 150 Cal. 71.

53c. Same—Prohibition of occupations.—The enumeration, in subdivision 21, section 2, of article I, of the Los Angeles charter, of certain trades, callings and occupations which may be prohibited, is not a limitation either of the general police power conferred by section 11, article XI, of the constitution, or of that conferred by subdivision 34, section 2, article I of the charter.—*In re Montgomery*, 163 Cal. 457, 459, Ann. Cas. 1914A, 130, 125 Pac. 1070.

53d. Same—License tax on insurance agents.—An ordinance imposing a license tax upon insurance agents, unconstitutional as in violation of section 14, article XIII, of the constitution.—*Hughes v. Los Angeles*, 168 Cal. 764, 145 Pac. 94.

54. Claims—Necessity for demand.—Sections 216 and 222 make a previous demand a prerequisite to the maintenance of an action against the city for the recovery of taxes paid, and a complaint which fails to allege such a demand fails to state a cause of action.—*Farmers, etc., Bank v. Los Angeles*, 151 Cal. 655.

55. Same—Public administrator.—Where a claim is made for statutory services as attorney for the public administrator under section 21, article VI, charter of Los Angeles, the burden is on the county counsel to show that he rendered such services in conducting the ordinary proceedings in probate of the estate.—*Estate of Murphy*, 171 Cal. 697, 700, 154 Pac. 839.

56. City printing—Contract for letting.—Under the charter the initial steps for the letting of a contract for the city printing may be taken by the council without an ordinance.—*Earl v. Bowen*, 146 Cal. 754.

57. Same—Same—Signing.—The signing of a contract for the city printing by the city clerk was a mere ministerial act, involving no exercise of discretionary power, could be delegated, and the order of the city council directing the clerk to sign the

contract carried with it the authority to sign and whether he signs before or after approval by the council is immaterial to the validity of the contract.—*Earl v. Bowen*, 146 Cal. 754.

58. Library fund—Expenditures from.—The question as to the appropriateness of an expenditure out of the Los Angeles library fund is one for the directors, and if there could be any state of circumstances to justify it will be presumed that such state was shown and acted upon by them.—*Kelso v. Teale*, 106 Cal. 477.

59. Same—Demand for single item.—A demand against the Los Angeles library fund for the expenses of a delegate to the world congress of librarians and the American library association conference, is for a single item within the meaning of section 215 of the charter.—*Kelso v. Teale*, 106 Cal. 477.

60. Parks—Acquisition of land for.—The provisions of section 119b does not prevent Los Angeles from acquiring land for park purposes subject to use for another purpose to which it has been dedicated, where the two uses are consistent and capable of existing together.—*Los Angeles v. Los Angeles etc. Co.*, 31 Cal. App. 100.

61. Same—Acceptance of gift of land for.—The acceptance of a gift from a private person to erect and maintain buildings upon a public park of the City of Los Angeles is an exercise of a legislative function not vested in the city council by subdivision 16, section 2 of the city charter, but is withheld by the express reservation of section 12, and vested in the board of park commissioners by subdivisions (c) and (d) of section 118, and section 119 of the charter.—*O'Melveny v. Griffith*, 178 Cal. 1, 5, 171 Pac. 934.

62. Same—Power of commissioners.—The board of park commissioners of the City of Los Angeles is vested by the charter with the management and control of the city park system, and of the erection and maintenance of all buildings thereon, and an ordinance which has the effect to deprive it of such management and control and the erection of such buildings thereon is void.—*O'Melveny v. Griffith*, 178 Cal. 1, 4, 171 Pac. 934.

63. Streets—Vrooman act.—The street law provides a complete scheme for street work, and governs so far as it goes, and the Los Angeles charter can not make a different procedure by requiring more or less.—*Hellman v. Shoulters*, 114 Cal. 136.

64. Same—Same—"Municipal affairs" amendment.—The provisions of the Los Angeles charter which were in conflict, at the time of its adoption, with the Vrooman act were nullified by that act, and were not revived or reinstated by the "municipal affairs" amendment of section 6, article XI of the constitution.—*Banaz v. Smith*, 133 Cal. 102.

65. Tunnels—Assessments for.—Neither section 2 nor any other part of the amended charter of Los Angeles (Stats. 1911, p. 2059) empowers the city to levy an assessment

upon a district for the purpose of raising the amount necessary for the initial establishment of a tunnel for public travel as distinguished from the repair or improvement of an existing subterranean avenue.—*Thompson v. Hance*, 174 Cal. 572, 578.

66. Ordinances—Words and Phrases—“Finally adopted,” “Final passage.”—The phrase “finally adopted” in section 39, and the phrase “final passage,” in section 198b of the Los Angeles charter are synonymous, and has reference to the favorable action on an ordinance by the city council, as distinct from its going into effect after such action and publication.—*Solomon v. Alexander*, 161 Cal. 23.

67. Same—Remedy of voters.—The only remedy left to the voters after an ordinance has gone into effect, under the Los Angeles charter, is by initiative for its repeal, and not by referendum.—*Rushton v. Leland*, 15 Cal. App. 448.

68. Initiative, referendum and recall—Certification of petition.—The provision of section 198b of the Los Angeles charter that petitions for referendum shall be in all respects in accordance with the provisions of section 198a, refers solely to the form, substance and certification of the original petition, and not to the unlimited amendment thereof.—*Rushton v. Leland*, 15 Cal. App. 448.

69. Same—Amendment of petition after thirty days.—The provisions of section 198b of the Los Angeles charter with reference to petitions for referendum are not subject to the provision of section 198a with reference to petitions for the initiative allowing amendments after thirty days, notwithstanding the clause of the former section providing that the petition shall be in all respects in accordance with the provisions of the latter section.—*Rushton v. Leland*, 15 Cal. App. 448.

70. Same—Sufficiency of petition.—When, under the Los Angeles charter a petition signed by twenty-five per cent of the total vote cast at the last election is required to initiate proceedings for the recall of an officer, and the certificate of the clerk who is required to compare the petition with the great register, states that 2864 votes were

so cast, and that 784 names of qualified electors were signed to the petition, but such certificate also states “514 names were compared with the duplicate affidavits of registration, and the balance with the originals,” and by the pleadings and stipulations and briefs in mandamus it is shown that only 339 names were in fact on the great register, the proceedings are void.—*Davenport v. Los Angeles*, 146 Cal. 508.

71. Same—Time of filing petition.—The thirty-day period within which referendum petitions against ordinances may be filed commences to run from the date of the mayor's approval, and not from the date of publication.—*Solomon v. Alexander*, 161 Cal. 23.

72. Same—Same.—Construing sections 39 and 198b of the Los Angeles charter, a referendum petition against an ordinance should be filed within thirty days from the approval of the ordinance by the mayor and the thirty-day period does not begin from the date of the publication of the ordinance.—*Solomon v. Alexander*, 161 Cal. 23, 25, 113 Pac. 217.

73. Officers—Interest in contracts, etc.—The provisions of section 18 of the Los Angeles charter as forfeiture of office upon conviction of the offense of voting on or participating in any contract or transaction in which he is interested, was not superseded by the recall provisions of the charter, but are to be applied concurrently with those provisions.—*Betskouski v. Superior Court*, 34 Cal. App. 117.

74. Same—Same.—The charge against a member of the Los Angeles city council for violation of section 18 of the charter is not triable in the police court, but it must be tried in the superior court on an accusation under sections 758 and 772 of the Penal Code.—*Betskouski v. Superior Court*, 34 Cal. 117.

75. Same—Same—Clerk of police court.—The provision of the charter that all appointed officers of Los Angeles shall hold office for four years, etc., has no application to the office of clerk of the police court, which office is not provided for in the charter.—*Rowe v. Rose*, 26 Cal. App. 744.

IRRIGATION IMPROVEMENT FUND BOND ACT.

ACT 2582—An act to authorize the corporation, the mayor, and common council of the city of Los Angeles to issue bonds and to provide means for the improvement of irrigation in said city.

History: Approved February 28, 1876, Stats. 1875-76, p. 79.

This act authorized the issue of \$75,000 twenty-year seven per cent bonds for the irrigation improvement fund.

MAIN SEWER FUND BOND ACT.

ACT 2583—An act to authorize the corporation of the city of Los Angeles to issue bonds for building a main public sewer in said city, and to provide for their payment.

History: Approved March 23, 1876, Stats. 1875-76, p. 398.

This act authorized the issue of \$30,000 twenty-five-year seven per cent bonds for the purpose named and created the “main sewer fund.”

"GENERAL IRRIGATION FUND" BOND ACT.

ACT 2584—An act to authorize the corporation of the city of Los Angeles to issue bonds for improving the water supply of said city, and to provide for their payment.

History: Approved March 20, 1878, Stats. 1877-78, p. 387.

Act for improvement of irrigation.—Notwithstanding its title this was an act for the improvement of irrigation, and it authorized an election for \$60,000 thirty-year seven per cent bonds for the purpose and created the "general irrigation fund."

LOS ANGELES STREET BOND ACT.

ACT 2585—An act to authorize the issuance of bonds for the payment of damages for the widening and extension of Los Angeles street, in the city of Los Angeles.

History: Approved March 23, 1878, Stats. 1877-78, p. 419.

1. Act unconstitutional.—The court held that this act was unconstitutional because it attempted to legalize a void assessment, and also to make new assessments for local improvements in an incorporated city.—*Schumacker v. Taherman*, 56 Cal. 508.

RATIFYING DEED TO T. A. SANCHEZ.

ACT 2586—An act to legalize, ratify, and confirm certain acts of the mayor and common council of the city of Los Angeles.

History: Approved February 13, 1872, Stats. 1871-72, p. 93.

This act confirmed a deed by the city to one T. A. Sanchez.

RATIFYING CERTAIN ACTS OF CITY COUNCIL.

ACT 2587—An act to ratify certain acts and proceedings of the council of the city of Los Angeles.

History: Approved February 12, 1878, Stats. 1877-78, p. 74.

This act ratified acts of the council in reference to public works.

POLLUTION OF PUBLIC ZANJAS.

ACT 2591—An act concerning watercourses in the city of Los Angeles.

History: Approved April 2, 1870, Stats. 1869-70, p. 645.

This act declared certain zanjás public zanjás and provided a penalty for their defilement.

DEDICATION OF LAND FOR THE WIDENING OF VERMONT AVENUE.

ACT 2593—An act dedicating certain land in the city of Los Angeles for the purpose of widening Vermont avenue, and directing the board of trustees of the state normal school at Los Angeles to convey the same to the city of Los Angeles for that purpose.

History: Approved June 5, 1913. In effect August 10, 1913. Stats. 1913, p. 387.

Los Angeles normal school land dedicated for widening Vermont avenue.

§ 1. There is hereby dedicated to the public for the purpose of widening Vermont avenue in the city of Los Angeles, that portion of the school lands of the state normal school at Los Angeles described as follows, to wit: A strip twenty (20) feet in width lying along the west side of and adjacent to Vermont avenue between Monroe street and Willowbrook avenue.

Conveyance by board of trustees.

§ 2. The board of trustees of said state normal school are authorized and directed to deliver to said city of Los Angeles, a conveyance of said described strip of land, to be used for the purpose aforesaid, and to cause the said conveyance to be executed by its president or any member of the board whom they may designate for that purpose, and to be attested by its secretary under the seal of the said board.

TIDE LAND GRANT.

ACT 2596—An act granting to the city of Los Angeles the tide lands and submerged lands of the state within the boundaries of the said city.

History: Approved May 1, 1911, Stats. 1911, p. 1256. Amended April 20, 1917. In effect July 27, 1917. Stats. 1917, p. 159.

Tidelands granted to Los Angeles.

§ 1. There is hereby granted to the city of Los Angeles, a municipal corporation of the state of California, and to its successors, all the right, title and interest of the state of California, held by said state by virtue of its sovereignty, in and to all tidelands and submerged lands, whether filled or unfilled, within the present boundaries of said city, and situated below the line of mean high tide of the Pacific ocean, or of any harbor, estuary, bay or inlet within said boundaries, to be forever held by said city, and by its successors, in trust for the uses and purposes, and upon the express conditions, following, to wit:

Purposes for which lands may be used.

(a) That said lands shall be used by said city, and by its successors, solely for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said city, or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purpose whatsoever; provided, that said city, or its successors, may grant franchises thereon for limited periods, in any event not to exceed thirty years for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, in any event not to exceed thirty years for any and all purposes which shall not interfere with commerce or navigation, and are not inconsistent with the trusts upon which said lands are held by the state of California.

Harbor improved without expense to state.

(b) That said harbor shall be improved by said city without expense to the state, and shall always remain a public harbor for all purposes of commerce and navigation, and the state of California shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands, or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the state of California;

No discrimination in rates.

(c) That in the management, conduct or operation of said harbor, or of any of the utilities, structures or appliances mentioned in paragraph (a), no discrimination in rates, tolls, or charges, or in facilities, for any use or service in connection therewith shall ever be made, authorized or permitted by said city, or by its successors;

Right to fish reserved to people.

Reserving, however, in the people of the state of California, the absolute right to fish in the waters of said harbor, with the right of convenient access to said waters over said lands for said purposes. [Amendment of April 20, 1917. In effect July 27, 1917. Stats. 1917, p. 159.]

§ 2. This act shall take effect immediately.

1. Effect of act to revoke Banning lease.—The effect of the act of May 1, 1911 (1256), was to revoke, so far as it could do so, the Banning lease, by granting all the land embraced therein to the city of Los Angeles, to be used and managed for the public purposes of navigation.—*People v. Banning Co.*, 166 Cal. 630, 634, 138 Pac. 100.

TIDE LANDS REQUIRED FOR PUBLIC PURPOSES.

ACT 2597—An act declaring that all tide lands and submerged lands within the boundaries of the city of Los Angeles are required, and requiring such lands, for public purposes of commerce, navigation and fishing, and for purposes in aid thereof, and ratifying, approving and confirming the acts of the attorney general in bringing and prosecuting certain suits in the name of the people of the state of California, for the purpose of quieting title to, and for the recovery of the possession of said lands.

History: Approved June 6, 1913. In effect August 10, 1913. Stats. 1913, p. 413.

Tide lands within Los Angeles city required for public use.

§ 1. That all tide lands and submerged lands, whether filled or unfilled, within the present boundaries of the city of Los Angeles, a municipal corporation of this state, and situated below the line of mean high tide of the Pacific Ocean, or of any harbor, bay, inlet, estuary or other navigable water within the present boundaries of said city, are hereby declared to be, and the same are hereby, required for the public purposes of commerce, navigation and fishing, and for purposes in aid thereof.

Attorney general to bring suit for recovery.

§ 2. That the acts of the attorney general of this state in bringing and prosecuting certain suits in the courts of this state, in the name of and in behalf of the people thereof, against all persons, partnerships or private corporations claiming or possessing the tide lands and submerged lands described in section one of this act, for the purpose of quieting, in the state of California, the title to said lands, and for the recovery of possession of said lands by said state, be and the same are hereby ratified, approved and confirmed.

PROTECTION OF NAVIGATION ACT OF 1917.

ACT 2598—An act to appropriate money to be expended under the direction of the state board of control in co-operation with the federal government to carry out the project adopted by congress for the protection of the navigability of Los Angeles and Long Beach harbors, and providing for the future completion of the entire project.

History: Approved May 15, 1917. In effect July 27, 1917. Stats. 1917, p. 533.

Appropriation: protection of Los Angeles and Long Beach harbors.

§ 1. The sum of two hundred fifty thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to be expended under the direction of the state board of control in co-operation with the federal government to carry out the project adopted by congress for the protection of Los Angeles and Long Beach harbors in accordance with the report made by the war department and printed in house document numbered four hundred sixty-two, sixty-fourth congress, first session, with such modifications and amendments as may hereafter be adopted by the war department or by congress.

Manner of expenditure.

§ 2. The money appropriated by section one of this act shall be expended by the state board of control in such manner as will comply most fully with the requirements of the report of the war department referred to in section one hereof. To that end the said board may in its discretion cause the money herein appropriated to be paid over to the treasurer of the United States for expenditure by the war department or may enter into contracts or agreements to pay and may pay expenses that may be incurred by any other duly authorized agencies in furthering the purposes of this act. It is the intent and purpose of the state of California to provide a total of one million eighty

thousand dollars to be expended in carrying out said project in conjunction with the expenditure of a like amount by the federal government for said project. No contract, agreement or other obligation shall be entered into by the state board of control which, together with all other contracts, agreements and obligations entered into under this act, will commit or bind the state to the payment of a sum in the aggregate of more than said amount of one million eighty thousand dollars.

PROTECTION OF NAVIGATION ACT OF 1919.

ACT 2600—An act to appropriate money to be expended under the direction of the state board of control in co-operation with the federal government to carry out the project adopted by congress for the protection of the navigability of Los Angeles and Long Beach harbors.

History: Approved May 22, 1919. In effect July 22, 1919. Stats. 1919, p. 777.

Appropriation: protection of Los Angeles and Long Beach harbors.

§ 1. The sum of eight hundred thirty thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to be expended under the direction of the state board of control in co-operation with the federal government to carry out the project adopted by congress for the protection of Los Angeles and Long Beach harbors in accordance with the report made by the war department and printed in house document numbered four hundred sixty-two, sixty-fourth congress, first session, and in harmony with the provisions enacted, and moneys appropriated for said purposes by the forty-second session of the legislature, with such modifications and amendments as may hereafter be adopted by the war department or by congress.

§ 2. Of the amount appropriated by section one, two hundred fifty thousand dollars shall be available upon the taking effect of this act and five hundred eighty thousand dollars shall be available on July 1, 1921. The amount herein appropriated shall be expended by the state board of control in such manner as will comply most fully with the requirements of the report of the war department referred to in section one hereof. To that end the said board may in its discretion cause the money herein appropriated to be paid over to the treasurer of the United States for expenditure by the war department or may enter into contracts or agreements to pay and may pay expenses that may be incurred by any other duly authorized agencies in furthering the purposes of this act.

CHAPTER 202.

LOS ANGELES COUNTY.

References: Boundaries, see Kerr's Cyc. Political Code, § 3927.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

Superior judges, see Kerr's Cyc. Code Civil Procedure, § 67a.

See, generally, tits. "Expositions"; "Irrigation and Irrigation Districts"; "Trespassing Animals."

CONTENTS OF CHAPTER.

- ACT 2609. PROTECTION OF EL MONTE TOWNSHIP FROM OVERFLOW.
- 2622. BRIDGE ACROSS SANTA ANA RIVER.
- 2626. COUNTY CHARTER.
- 2627. "LOS ANGELES COUNTY FLOOD CONTROL ACT."
- 2628. "LOS ANGELES COUNTY FLOOD CONTROL DISTRICT"—BOND VALIDATION.
- 2631. "LOS NIETOS IRRIGATION DISTRICT."

PROTECTION OF EL MONTE TOWNSHIP FROM OVERFLOW.

ACT 2609—An act to authorize the board of supervisors of Los Angeles county to protect certain lands in El Monte township against the overflow of San Gabriel river.

History: Approved March 28, 1874, Stats. 1873-74, p. 768.

This act authorized the appointment of three commissioners, and levied an assessment for the cost of work.

BRIDGE ACROSS THE SANTA ANA RIVER.

ACT 2622—An act to authorize the board of supervisors of Los Angeles county to locate and build a bridge across the Santa Ana river in Los Angeles county, and to issue bonds for the payment of the same.

History: Approved February 4, 1874, Stats. 1873-74, p. 47.

COUNTY CHARTER.

ACT 2626—Charter of Los Angeles county.

History: Voted for and ratified at the general election November 5, 1912, filed with the secretary of state January 29, 1913, Stats. 1913, p. 1484.

1. Proceedings for removal of county officer—Sections 758, et seq., Penal Code.—The provisions of the Penal Code, §§ 758, et seq., and not of the Los Angeles county charter, which went into effect in June, 1913 (Stats. 1913, p. 1484), are applicable to a proceeding to remove a county officer serving a term for which he was elected in 1910, and commencing in January, 1911, in view of the provisions of the charter itself.—Hunt v. Superior Court, 178 Cal. 470, 471, 173 Pac. 1097; Lewis v. Superior Court, 178 Cal. 812, 173 Pac. 1099.

2. Construction—Compensation of elective officers.—Section 52 of the charter of Los Angeles county (Stats. 1913, p. 1500), relating to the power to increase or diminish the compensation of an elective county or township officer during his term and

three months preceding his election, means that the compensation of the sheriff during his term of office shall be controlled by whatever law was in existence on the ninety-first day preceding his election with respect to the salary of that office for and during the ensuing term.—Cline v. Lewis, 175 Cal. 315, 317, 165 Pac. 915.

3. Ordinances—Time of taking effect.—In the absence of any provision the charter of Los Angeles county determining the time when ordinances shall take, or as to the subjects of initiative and referendum, under section 7½, article XI, of the constitution, the provisions of the Political Code as a part of the general law of the state, controls.—Cline v. Lewis, 175 Cal. 315, 317, 165 Pac. 915.

“LOS ANGELES COUNTY FLOOD CONTROL ACT.”

ACT 2627—An act to create a flood control district to be called “Los Angeles County Flood Control District”; to provide for the control and conservation of flood and storm waters, and for the protection of harbors, waterways, public highways and property in said district from damage from such waters, and for the construction of works and the acquisition of property therefor; to authorize the incurring of indebtedness, and the voting, issuing and selling of bonds, and the levying and collecting of taxes by said district; to provide for the government and control of said district, and to define the powers and duties of the officers thereof.

History: Approved June 12, 1915. In effect August 11, 1915, Stats. 1915, p. 1502.

Los Angeles county flood control district created.

§ 1. A flood control district is hereby created, to be called “Los Angeles County Flood Control District,” and the boundaries and territory of said district shall be as follows:

All that portion of the county of Los Angeles lying south of the north line of township 5 north, San Bernardino base, excepting therefrom the islands of Santa Catalina and San Clemente, and the islands off the coast included in Los Angeles county.

Purposes of act.

§ 2. The objects and purposes of this act are to provide for the control of the flood and storm waters of said district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining or causing to percolate into the soil within said district, or to save or conserve in any manner, all or any of such waters, and to protect from damage from such flood or storm waters the harbors, waterways, public highways and property in said district.

Powers.

Said Los Angeles county flood control district is hereby declared to be a body corporate and politic, and as such shall have power:

1. To have perpetual succession.
2. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To take by grant, purchase, gift, devise or lease, hold, use, enjoy, and to lease or dispose of real or personal property of every kind within or without the district necessary to the full exercise of its powers.
5. To acquire or contract to acquire lands, rights of way, easements, privileges and property of every kind, and construct, maintain and operate any and all works or improvements within or without the district necessary or proper to carry out any of the objects or purposes of this act, and to complete, extend, add to, repair or otherwise improve any works or improvements acquired by it as herein authorized.
6. To have and exercise the right of eminent domain, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to the same use by any district or other public corporation or agency or otherwise, and may condemn any existing works or improvements in said district now used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district from damage from such flood or storm waters.
7. To incur indebtedness, and to issue bonds in the manner herein provided.
8. To cause taxes to be levied and collected for the purpose of paying any obligation of the district in the manner hereinafter provided.
9. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district, or any of the officers thereof, by this act.

Board of supervisors.

§ 3. The board of supervisors of Los Angeles county shall be, and they are hereby designated as, and empowered to act as, ex officio the board of supervisors of said Los Angeles county flood control district, and said board of supervisors is hereby vested with the same powers, and shall perform the same duties for and on behalf of said district, and the government thereof, to carry out the objects and purposes of this act that the board of supervisors of Los Angeles county now have or may hereafter have by law for said Los Angeles county, and shall also have such other or additional powers for said district as may be necessary to carry out any of the objects or purposes of this act above mentioned, or to exercise any of the said powers of said district; provided, that such powers and duties are not in conflict with the express terms of this act; and provided, further, that the provisions of article 9 of the charter of said Los Angeles county shall not be deemed to apply to said district.

Assistants.

The county counsel, county clerk, county assessor, county tax collector, county auditor and county treasurer of the county of Los Angeles, and their successors in office,

and all their assistants, deputies, clerks and employees, and all other officers of said Los Angeles county, their assistants, deputies, clerks and employees, shall be ex officio officers, assistants, deputies, clerks and employees respectively of said Los Angeles county flood control district, and shall respectively perform, unless otherwise provided by said board of supervisors, the same various duties for said district as for said Los Angeles county without additional compensation in order to carry out the provisions of this act.

Other officers.

Said board of supervisors may in their discretion appoint such other officers for said district as in their judgment may be deemed necessary, and prescribe their duties and fix their compensation, which said officers shall hold office during the pleasure of said board.

All ordinances, resolutions and other legislative acts for said district shall be adopted by said board of supervisors and certified to, recorded and published, in the same manner, except as herein otherwise expressly provided, as are ordinances, resolutions or other legislative acts for the county of Los Angeles.

Employment of engineers. Report of engineers.

§ 4. Said board of supervisors shall have jurisdiction and power, and it shall be their duty to employ by resolution a competent engineer or engineers to investigate carefully the best plan to control the flood and storm waters of said district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining or causing to percolate into the soil within said district, or to save or conserve in any manner, any or all of such waters, and to protect the harbors, waterways, public highways and property in said district from damage from such waters; and to obtain such other information in regard thereto as may be deemed necessary or useful for carrying out the purposes of this act, and such resolution shall direct such engineer or engineers to make and file a report with said board of supervisors which shall show:

1. A general description of the work to be done.
2. General plans, profiles, cross-sections and general specifications of the work to be done.
3. A general description of the lands, rights of way, easements and property proposed to be taken, acquired or injured in carrying out said work.
4. A map which shall show the location of the proposed work and improvements, and lands, rights of way, easements and property to be taken, acquired or injured in carrying out said work, and any other information in regard to the same that may be deemed necessary or useful.
5. An estimate of the cost of such work, including an estimate of the cost of lands, rights of way, easements and property proposed to be taken, acquired or injured in carrying out said work, and also of all incidental expenses likely to be incurred in connection therewith, including legal, clerical, engineering, superintendence, inspection, printing and advertising, and stating the total amount of bonds necessary to be issued to pay for the same.

Such engineer or engineers employed by said resolution shall have power and authority, subject to the control and direction of said board of supervisors, to employ such engineers, surveyors and others as may be required for making all surveys or doing any other work necessary for the making of such report.

The said board of supervisors may at any time remove any or all of the engineers or employees appointed or employed under this act, and may fill any vacancies occurring among them from any cause.

Adoption by resolution.

§ 5. After the report of the engineer or engineers provided for in the next preceding section has been filed with the said board of supervisors, said board shall consider the same, and may by resolution either adopt the same as filed, or may refer such report to such engineer or engineers, or to any other engineer or engineers, to be modified or changed, and when a report satisfactory to said board of supervisors has been filed with said board by any such engineer or engineers employed as aforesaid, the said board shall by resolution adopt said report, and state the amount of the entire estimated cost for which bonds are to be voted, and a finding in said resolution adopted by said board of supervisors as to the sufficiency of said report, and that the same complies with all the requirements of this act in relation thereto, shall be final and conclusive against all persons except the state of California upon suit commenced by the attorney general.

Special election.

§ 6. After the adoption of the report by said board of supervisors, as above provided, said board shall without delay call a special election and submit to the qualified electors of said district the proposition of incurring a bonded debt in the amount and for the purposes stated in said report.

Said board of supervisors shall call such special election by ordinance, and shall recite therein the objects and purposes for which the indebtedness is proposed to be incurred; provided, that it shall be sufficient to give a brief general description of such objects and purposes, and refer to the report adopted by said board of supervisors, and on file for particulars; and said ordinance shall also state the estimated cost of the proposed work and improvements, the amount of the principal of the indebtedness to be incurred therefor, and what part of such indebtedness shall be paid each and every year, and which shall be not less than one-fortieth of the whole amount of such indebtedness, and the rate of interest to be paid on said indebtedness, and shall fix the date on which such special election shall be held, the manner of holding the same, and the manner of voting for or against incurring such indebtedness. The rate of interest to be paid on such indebtedness shall not exceed six per centum per annum.

For the purposes of said election, said board of supervisors shall in said ordinance establish election precincts within the boundaries of the said district, and may form election precincts by consolidating the precincts established for general election purposes in said district to a number not exceeding six for each such bond election precinct, and shall designate a polling place and appoint two inspectors, two judges and two clerks for each of such precincts.

In all particulars not recited in such ordinance, such election shall be held as nearly as practicable in conformity with the general election laws of the state.

Said board of supervisors shall cause so much of said report as covers a general description of the work to be done, and the map showing the location of the proposed work and improvements, to be printed at least thirty days before the date fixed for such election, and a copy thereof furnished to every qualified elector of said district who shall apply for the same.

Said ordinance calling such election shall, prior to the date set for such election, be published ten times in a daily, or four times in a weekly, newspaper of general circulation, printed and published in said district, and designated by said board of supervisors for said purpose. No other notice of such election need be given.

Any defect or irregularity in the proceedings prior to the calling of such election shall not affect the validity of the bonds.

If at such election a majority of the votes cast are in favor of incurring such bonded indebtedness, then bonds of said district for the amount stated in such proceedings shall be issued and sold as in this act provided.

Bonds.

§ 7. The said board of supervisors shall, subject to the provisions of this act, prescribe by ordinance the form of said bonds, and of the interest coupons attached thereto. Said bonds shall be payable substantially in the following manner: A part to be determined by said board, and which shall not be less than one-fortieth part of the whole amount of such indebtedness shall be payable each and every year on a day and date, and at a place to be fixed by said board, and designated in such bonds, together with the interest on all sums unpaid on such date until the whole of said indebtedness shall have been paid.

Denominations. Interest.

The bonds shall be issued in such denominations as the said board of supervisors may determine, except that no bonds shall be of a less denomination than one hundred dollars, nor of a greater denomination than one thousand dollars, and shall be payable on the day and at the place fixed in said bonds, and with interest at the rate specified in such bonds, which rate shall not be in excess of six per centum per annum, and shall be payable semi-annually, and said bonds shall be signed by the chairman of the board of supervisors, and countersigned by the auditor of said Los Angeles county, and the seal of said district shall be affixed thereto. The interest coupons of said bonds shall be numbered consecutively and signed by the auditor of said Los Angeles county by his engraved or lithographed signature. In case any such officer whose signatures or countersignatures appear on the bonds or coupons shall cease to be such officer before the delivery of such bonds to the purchaser, such signature or countersignature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until the delivery of the bonds.

Sale of bonds.

§ 8. The said board of supervisors may issue and sell the bonds of such district authorized as hereinbefore provided at not less than par value, and the proceeds of the sale of such bonds shall be placed in the treasury of the county of Los Angeles to the credit of said district, and the proper record of such transactions shall be placed upon the books of said county treasury, and said district fund shall be applied exclusively to the purposes and objects mentioned in the ordinance calling such special bond election as aforesaid, subject to the provisions in this act contained. Payments from said district fund shall be made upon demands prepared, presented, allowed and audited in the same manner as demands upon the funds of the county of Los Angeles.

Bonds lien on property.

§ 9. Any bonds issued under the provisions of this act shall be a lien upon the property of the district, and the lien for the bonds of any issue shall be a preferred lien to that of any subsequent issue. Said bonds and the interest thereon shall be paid by revenue derived from an annual tax upon the real property within said district, and all the real property in the district shall be and remain liable to be taxed for such payments as hereinafter provided.

Tax levy.

§ 10. The board of supervisors shall levy a tax each year upon the taxable real property in such district sufficient to pay the interest on said bonds for that year, and such portion of the principal thereof as is to become due before the time for making the next general tax levy. Such tax shall be levied and collected on said real property at the time and in the same manner as the general tax levy for county purposes, and when collected shall be paid into the county treasury of said Los Angeles county to the credit of said district fund, and be used for the payment of the principal and interest on said

bonds, and for no other purpose. The principal and interest on said bonds shall be paid by the county treasury of said Los Angeles county in the manner provided by law for the payment of principal and interest on bonds of said county.

Political Code tax levy provisions adopted.

§ 11. The provisions of the Political Code of this state, prescribing the manner of levying, assessing, equalizing and collecting taxes, including the sale of property for delinquency, and the redemption from such sale, and the duties of the several county officers with respect thereto, are, so far as they are applicable, and not in conflict with the specific provisions of this act, hereby adopted and made a part hereof. Such officers shall be liable upon their several official bonds for the faithful discharge of the duties imposed upon them by this act.

Bonds legal investments for trust funds, etc.

§ 12. The bonds of said Los Angeles flood control district issued pursuant to this act, shall be legal investments for all trust funds, and for the funds of all insurance companies, banks, both commercial and savings, and trust companies, and for the state school funds, and whenever any money or funds may by law now or hereafter enacted be invested in bonds of cities, cities and counties, counties, school districts or municipalities in the state of California, such money or funds may be invested in the said bonds of said district issued in accordance with the provisions of this act, and whenever bonds of cities, cities and counties, counties, school districts or municipalities, may by any law now or hereafter enacted be used as security for the performance of any act, such bonds of said district may be so used.

This section of this act is intended to be and shall be considered the latest enactment of the matters herein contained, and any and all acts or parts of any acts in conflict with the provisions hereof are hereby repealed.

Value of bonds.

§ 13. All bonds issued by said district under the provisions of this act are hereby given the same force, value and use as bonds issued by any municipality in this state, and shall be free and exempt from all taxation within the state of California.

Tax levy for maintenance.

§ 14. The board of supervisors of said district shall have power, in any year, to levy a tax upon the taxable real property in said district, to carry out any of the objects or purposes of this act, and to pay the cost and expenses of maintaining, operating, extending and repairing any work or improvements of said district for the ensuing fiscal year, and said tax shall be levied and collected at the same time and in the same manner as the general tax levy for county purposes, and the revenue derived from said tax shall be paid into the county treasury to the credit of said district, and said board of supervisors shall have the power to control and order the expenditure thereof for said purposes; provided, however, that such tax levied under this section for any one fiscal year shall not exceed ten cents on each one hundred dollars of the assessed valuation of the real property in said district, exclusive of any tax levied to meet the bonded indebtedness of said district, and the interest thereon.

Letting contracts.

§ 15. All contracts for furnishing the labor, materials or supplies required for any improvement or work, or any portion thereof, to carry out this act, shall be let to the lowest responsible bidder. The said board of supervisors of said district shall advertise by five or more insertions in a daily newspaper of general circulation, or by two or more insertions in a weekly newspaper of general circulation, printed and published in said district, inviting sealed proposals for furnishing the labor, materials and sup-

plies for the proposed improvement or work before any contract shall be made therefor, and may let by contract separately any part of said work or improvement. The said board shall have the right to require such bonds as it may deem best from the successful bidder, to insure the faithful performance of the contract, and shall also have the right to reject any and all bids; provided, however, that nothing herein contained shall be construed as prohibiting said district itself, and when ordered by the said board of supervisors thereof, it shall have power to make proposed improvement or carry out any work or portion thereof without a contract therefor, and to purchase the materials and supplies, and employ the labor necessary for such purpose; and provided, further, that any improvement for which bonds are voted under the provisions of this act, shall be made in conformity with the report, plans, specifications and map theretofore adopted, as above specified, unless the doing of any of such work described in said report shall be prohibited by law, or be rendered contrary to the best interests of said district by some change of conditions in relation thereto, in which event said board of supervisors may, by a vote of four-fifths of all the members thereof, order necessary changes made in such proposed work or improvements, and may cause new plans and specifications to be made and adopted therefor.

Improvements along highways.

Any work or improvement provided for in this act may be located, constructed and maintained in, along or across any public road or highway in the county of Los Angeles, in such manner as to afford security for life and property, but the said board of supervisors of said district shall restore or cause to be restored such road or highway to its former state as near as may be, so as not to impair its usefulness.

Approval of plans and specifications.

The plans and specifications for any work proposed to be done, or improvements to be made, under this act, in any municipality in said district shall first be approved by the legislative body of such municipality before the commencement of such work or improvements, and before any contract shall be let therefor; provided, that in the event such legislative body shall refuse or neglect to approve the said plans and specifications for such work or improvement within thirty days after being requested by said board of supervisors so to do, then said board of supervisors shall omit the doing of such work or making of such improvements within such municipality, and such omission shall not affect the validity of its proceedings under this act, and the funds which were to be expended for such proposed work or improvement in said municipality may be expended elsewhere by said board of supervisors for carrying out the purposes of this act.

Rules and regulations.

§ 16. The said board of supervisors of said district shall have power to make and enforce all needful rules and regulations for the administration and government of said district, and to appoint or employ all needful agents, superintendents and engineers to properly look after the performance of any work provided for in this act, and to perform all other acts necessary or proper to accomplish the purposes of this act.

Power to acquire lands, rights of way, etc.

Said board of supervisors shall have power to do all work and to construct and acquire all improvements necessary or useful for carrying out any of the purposes of this act; and said board of supervisors shall have power to acquire either within or without the boundaries of said district, by purchase, condemnation, donation or by other lawful means in the name of said district, from private persons, corporations, reclamation districts, swamp land districts, levee districts, protection districts, drainage districts, irrigation districts, or other public corporations or agencies or districts,

all lands, rights of way, easements, property or materials necessary or useful for carrying out any of the purposes of this act; to make contracts to indemnify or compensate any owner of land or other property for any injury or damage necessarily caused by the exercise of the powers conferred by this act, or arising out of the use, taking or damage of any property, rights of way or easements, for any of such purposes; to compensate any reclamation district, protection district, drainage district, irrigation district or other district, public corporation or agency or district, for any right of way, easement or property taken over or acquired by said Los Angeles county flood control district as a part of its work of flood control or conservation or protection provided for in this act, and any such reclamation district, protection district, drainage district, irrigation district or other district or public corporation or agency is hereby given power and authority to distribute such compensation in any manner that may be now or hereafter allowed by law; to maintain actions to restrain the doing of any act or thing that may be injurious to carrying out any of the purposes of this act by said district, or that may interfere with the successful execution of said work, or for damages for injury thereto; to do any and all things necessary or incident to the powers hereby granted, or to carry out any of the objects and purposes of this act; to compel by injunction the owner or owners of any bridge, trestle, wire line, viaduct, embankment or other structure which shall be intersected, traversed or crossed by any channel, ditch, bed of any stream, waterway, conduit or canal, so to construct or alter the same as to offer a minimum of obstruction to the free flow of water through or along any such channel, ditch, bed of any stream, waterway, conduit or canal, and whenever necessary in the case of existing works or structures, to compel the removal or alteration thereof for such purpose.

Condemnation proceedings. Diverting waters of streams.

In case of condemnation proceedings, the said board of supervisors shall proceed in the name of said district, under the provisions of title VII, part III, of the Code of Civil Procedure of the state of California, which such provisions are hereby made applicable for that purpose, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provisions of this act is a public use subject to the regulation and control of the state in the manner prescribed by law, and said board of supervisors of said district is hereby vested with full power to do all other acts or things necessary or useful for the promotion of the work of the control of the flood and storm waters of said district, and to conserve such waters for beneficial and useful purposes, and to protect from damage from such storm or flood waters the harbors, waterways, public highways and property in said district; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons, to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the detriment of any person or persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless previous compensation be first ascertained and paid therefor, under the laws of this state authorizing the taking of private property for public uses; and provided, further, that nothing in this act contained shall be construed as in any way affecting the plenary power of any incorporated city, city and county, or town, or municipal or county water district, to provide for a water supply of such public corporation, or as affecting the absolute control of any properties of such public corporations necessary for such water supply, and nothing herein contained shall be construed as vesting any power of control over such properties in said Los Angeles county flood control district, or in any officer thereof, or in any person referred to in this act: and provided, further, that nothing in this act contained shall be deemed to authorize said board of supervisors to raise money for said district by any method or

system other than that by the issuing of bonds, or the levying of a tax upon the assessed value of all the real property in said district in the manner in this act provided.

Power to co-operate with state and with U. S.

§ 17. Said board of supervisors of said district shall have full power and authority to co-operate with and to act in conjunction with the state of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, for the purpose of carrying out the work of controlling the flood or storm waters of said district, or for the protection of property, or of any of the harbors, channels, waterways, roads or highways in said district, and to adopt a definite plan or system of work for any such purpose, and when so adopted, no substantial change shall thereafter be made in the same without the express consent of the officer, board, commission or department or agency of the state or federal government in conjunction with which the same was originally adopted.

Issuance of additional bonds.

§ 18. Whenever bonds have been issued by said district and the proceeds of the sale thereof have been expended as in this act authorized, and said board of supervisors shall by resolution passed by a vote of four-fifths of all its members determine that the public interest or necessity of said district demands the issuance of additional bonds for carrying out the work of flood control, or for any of the purposes of this act by said district, said board of supervisors may again proceed as in this act provided, and have a report made and submit to the qualified voters of said district the question of issuing additional bonds in the same manner and with like procedure as hereinbefore provided, and all the above provisions of this act for the issuing and sale of such bonds, and for the expenditure of the proceeds thereof, shall be deemed to apply to such issue of additional bonds.

Should proposition fail to carry.

§ 19. Should the proposition of issuing bonds submitted at any election under this act fail to receive the requisite number of votes of the qualified voters voting at such election to incur the indebtedness for the purpose specified, the said board of supervisors of said district shall have power and authority at the expiration of six months after such election, to call or order another election for incurring indebtedness and issuing bonds under the terms of this act, either for the same objects and purposes, or for any of the objects and purposes of this act.

Repeal of act not to affect bonds.

§ 20. No repeal or amendment of this act which shall in any way affect or release any of the property in said district from the obligations of any outstanding bonds or indebtedness of said district, shall go into effect or be valid or become operative until all such bonds and outstanding indebtedness have been fully paid and discharged.

Construction of act.

§ 21. This act, and every part thereof, shall be liberally construed to promote the objects thereof, and to carry out its intents and purposes.

Constitutionality.

§ 22. In case any section or sections, or part of any section, of this act, shall be found to be unconstitutional or invalid, for any reason, the remainder of the act shall not thereby be invalidated, but shall remain in full force and effect.

Title.

§ 23. This act may be designated and referred to as the "Los Angeles county flood control act," and any reference thereto by such designation shall be deemed sufficient for all purposes.

1. **Drainage act not superseded.**—The drainage act of 1903 was not superseded by this act, the purpose of the former being to dispose of the water, and of the latter to conserve it.—*Van De Water v. Pridham*, 33 Cal. App. 252, 164 Pac. 1136.

2. **Constitutionality — "Due process."** — Where, as in the case of the Los Angeles Flood Control District, the boundaries of an improvement district are fixed by the legislature, the constitutional guarantee of due process does not require the landowners to be accorded a hearing on the question of the inclusion of their lands within the district on the ground of the benefit to be derived by them from the contemplated improvement.—*Los Angeles F. C. District v. Hamilton*, 177 Cal. 119, 124, 169 Pac. 1028.

3. **Same—Fixing boundaries of district—Determination of question of benefits.**—The legislature, when it fixed the district itself, is supposed to have made proper inquiry and to have finally and conclusively determined the fact of benefits to the land included in the district, and the citizen has no constitutional right, under the due process guarantee, to any other or further hearing on the question.—*Los Angeles, etc., District v. Hamilton*, 177 Cal. 119, 169 Pac. 1028.

4. **Same—Mere passage of act is finding that district will serve public purpose.**—The mere passage of the act must be taken to impart a finding that the proposed work will answer a public purpose, that its execution will benefit the land within the district to such an extent as to warrant the imposition upon such land of the cost in manner provided, and the findings thus implied are as fully effective as if declared in express terms in the act itself.—*Los An-*

geles, etc., District v. Hamilton, 177 Cal. 119, 169 Pac. 1028.

5. **Same—Use of word "tax"—"A special assessment."**—The use of the word "tax" does not invalidate the act, where it is apparent that it is intended to designate a special assessment.—*Los Angeles, etc., District v. Hamilton*, 177 Cal. 119, 169 Pac. 1028.

6. **Same—Omission of work in non-consenting municipality.**—The provision in the act which authorizes the board to omit work within a municipality which withholds its approval does not invalidate the act.—*Los Angeles, etc., District v. Hamilton*, 177 Cal. 119, 169 Pac. 1028.

7. **Same—Ad valorem method of assessment.**—The legislature may apply the ad valorem method of assessment, without any judicial inquiry into, or determination of, the extent of the benefits.—*Los Angeles, etc., District v. Hamilton*, 177 Cal. 119, 169 Pac. 1028.

8. **Same—Issue of bonds without election.**—The legislature had the power to provide for the issue of the bonds of the district without an election by the people.—*Los Angeles, etc., District v. Hamilton*, 177 Cal. 119, 169 Pac. 1028.

9. **Same—Power to exempt property from assessment.**—In the absence of a constitutional provision to the contrary the legislature may exempt property from special assessments.—*Los Angeles, etc., Co. v. Hamilton*, 177 Cal. 119, 169 Pac. 1028.

10. **Effect of validation act.**—The ratifying and confirming act of 1917 (Act 2628) cured defects in proceedings organizing the district up to and including the issue of the bonds.—*Los Angeles, etc., District v. Hamilton*, 177 Cal. 119, 169 Pac. 1028.

"LOS ANGELES COUNTY FLOOD CONTROL DISTRICT"—BOND VALIDATION.

ACT 2628—An act to validate bonds of the Los Angeles county flood control district and all proceedings relating thereto, and making final and conclusive, except as therein provided, the official canvass of election returns of the election at which said bonds were voted.

History: Approved May 5, 1917. In effect July 27, 1917. Stats. 1917, p. 239.

Los Angeles county flood control district bonds validated.

§ 1. Bonds in the amount of four million four hundred fifty thousand dollars of the Los Angeles county flood control district, and all the acts and proceedings of said district, leading up to and including the authorizing and issuance of said bonds, are hereby legalized, ratified, confirmed and declared valid to all intents and purposes, which district was created by the Los Angeles county flood control act, approved June 12, 1915, and which bonds were authorized by virtue of an election held in said district on February 20, 1917, at which a majority of the votes cast were in favor of incurring such bonded indebtedness, as found and determined by the board of supervisors of said district upon canvassing such election returns, and which finding and

determination of the result of said election shall be and is hereby declared to be final and conclusive against all persons except the state of California upon suit commenced by the attorney general. Any such suit must be commenced within thirty days after this act takes effect and not otherwise.

And all said bonds when issued and sold as in said act provided shall be and are hereby declared to be legal and valid obligations of said district, and the faith and credit of said Los Angeles county flood control district is hereby pledged for the prompt payment and redemption of the principal and interest of said bonds and said bonds by their issuance shall be conclusive evidence of the regularity of all proceedings leading up thereto, and that they were duly authorized at said election.

1. Effect of act.—The effect of this act was to cure all defects of procedure in the organization of the district up to and including the issue of the bonds.—Los Angeles, etc., District v. Hamilton, 177 Cal. 119, 169 Pac. 1028.

LOS NIETOS IRRIGATION DISTRICT.

ACT 2631—An act to provide for and regulate irrigation in the township of Los Nietos, in the county of Los Angeles.

History: Approved March 20, 1878, Stats. 1877-78, p. 374.

1. The construction of a private irrigation district is not a dedication to the public.—An irrigating ditch constructed and controlled by two or more persons is private property, and though the irrigators are numerous, and their respective rights have not been accurately defined, and they

have elected a person to distribute the water, the mode they have adopted is not a dedication to the public, and such a ditch forms one of the exceptions referred to in section 6 of this act.—Cate v. Sanford, 54 Cal. 24.

LOS BANOS.

See Act 3094, note.

LOS GATOS.

See Act 3094, note.

LOS NIETOS.

See tit. "Los Angeles County."

CHAPTER 203.

LOS NIETOS COLLEGIATE INSTITUTE.

CONTENTS OF CHAPTER.

ACT 2636. TRUSTEES EMPOWERED TO ACQUIRE LAND.

TRUSTEES EMPOWERED TO ACQUIRE LAND.

ACT 2636—An act to confer further powers and privileges on the trustees of the Los Nietos Collegiate Institute.

History: Approved March 11, 1874, Stats. 1873-74, p. 341.

This act authorized the trustees to acquire not more than one hundred acres of land, by gift, or otherwise, for the purposes of the institution.

LOST PROPERTY.

See Kerr's Cyc. Political Code, §§ 3136-3157; Kerr's Cyc. Penal Code, § 485.

CHAPTER 204 LOST WARRANTS.

CONTENTS OF CHAPTER.

ACT 2646. PAYMENT OF LOST WARRANTS AUTHORIZED.

PAYMENT OF LOST WARRANTS AUTHORIZED.

ACT 2646—An act to provide for the payment of the controller of the state's warrants which have been lost or destroyed previous to payment by the state treasurer.

History: Approved March 31, 1891, Stats. 1891, p. 294.

Lost warrants. Affidavit. Bond.

§ 1. Whenever any warrant legally drawn by the controller of state shall have been lost or destroyed before the same has been paid by the state treasurer, the amount due thereon may be recovered by the legal owner or custodian thereof, by filing with the controller of state:

First. An affidavit setting forth the fact of the loss or destruction of such state warrant, giving the number, date, amount, and name of the payee, together with all material facts relative to the loss or destruction of the same.

Second. A bond of indemnity, with two good and sufficient sureties, in double the amount of the face of the particular warrant, which bond shall be referred to the attorney general and controller of state for approval or rejection.

Approval of bond.

§ 2. It shall be the duty of the attorney general and of the controller of state to examine and pass upon the sufficiency of the said bond, and to approve or reject the same, within thirty days after it shall have been filed with the controller of state.

Duplicate warrant.

§ 3. After the filing of the approved bond, the controller of state is hereby authorized and directed to issue and deliver to the legal owner or claimant, on demand a duplicate warrant for the full amount of the original warrant, and the treasurer of state is hereby authorized and directed to pay the duplicate, in lieu of the original warrant.

Entries on books.

§ 4. The controller and treasurer shall each make the proper entries on their books, showing such warrants to have been lost or destroyed, and the issuance of duplicate warrants in lieu thereof.

LOTTERIES.

See Kerr's Cyc. Penal Code, §§ 319-326.

LOWER LAKE.

See tit. "Lakeport."

LOYALTON.

See Act 3094, note.

LUMBER MANUFACTURERS.

See Kerr's Cyc. Penal Code, § 593a.

MADERA CITY.

See Act 3094, note.

CHAPTER 205.

MADERA COUNTY.

References: Boundaries, see Kerr's Cyc. Political Code, § 3928.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 2671. ORGANIZATION ACT.

ORGANIZATION ACT.

ACT 2671—To create the county of Madera, to define the boundaries thereof, to determine the county seat, and to provide for its organization and election of officers, and to classify said county.

History: Approved March 11, 1893, Stats. 1893, p. 163.

1. Determination of boundary.—The act of 1872 (Stats. 1871-72, p. 891), as amended by the act of 1874 (Stats. 1873-74, p. 100) is determinative of the boundary between Mariposa and Madera counties, and control the provisions of section 3938 of the Political Code.—County of Mariposa v. County of Madera, 142 Cal. 50.

2. Constitutionality—Fixing term of office of judge.—Section 14 of the Madera county organization act, so far as it at-

tempts to provide that the judge of the superior court elected under the act shall hold office until January 1897, conflicts with section 6 of article VI of the constitution, fixing the terms of such judges, and it is held that the term of such judge expires on the first Monday in January, 1895, and his successor is to be elected at the general election of 1894, for the full constitutional term.—People v. Markham, 104 Cal. 232.

CHAPTER 206.

MAD RIVER.

CONTENTS OF CHAPTER.

ACT 2676. IMPROVEMENT ACT OF 1878.

2677. IMPROVEMENT ACT OF 1911.

IMPROVEMENT ACT OF 1878.

ACT 2676—An act to improve Mad River and its north fork and to facilitate the driving of logs therein.

History: Approved March 30, 1878, Stats. 1877-78, p. 788.

This act granted to H. G. Vance, Nelson Young and R. Gross, their associates and successors, the right to improve the river.

IMPROVEMENT ACT OF 1911.

ACT 2677—An act to protect the banks of Mad River from erosion by means of brush and rock work along the banks thereof.

History: Approved April 21, 1911, Stats. 1911, p. 1057.

This act appropriated \$15,000 for preliminary surveys, estimates, plans, etc., under the direction of the department of engineering.

MANHATTAN BEACH.

See Act 3094, note.

MANTECA.

See Act 3094, note.

CHAPTER 207.

MANUFACTURERS.

References: False labels on manufactured goods, see Kerr's Cyc. Political Code, § 349a. Preference to local manufacturer in the purchase of public supplies, see Kerr's Cyc. Political Code, § 3247.

See, generally, tits. "Adulteration"; "Butter"; "Cheese"; "Foods"; "Fruits"; "Hours of Labor"; "Infants"; "Labor Bureau"; "Industrial Welfare Commission"; "Master and Servant"; "Public Health."

CONTENTS OF CHAPTER.

- ACT 2682. LABELING ARTICLES MADE FROM SHODDY.
- 2683. REGISTRATION OF FACTORIES.
- 2684. MEDICAL AND SURGICAL APPLIANCES IN FACTORIES.
- 2685. SANITATION OF FACTORIES.

LABELING ARTICLES MADE FROM SHODDY.

ACT 2682—An act providing for the labeling or stamping by the manufacturer, vendor, or person, offering for sale any article of hotel, boarding or lodging-house, or domestic or office furniture, the cushions whereof are stuffed in whole or in part with materials made of second-hand or cast-off clothing, rags, or cast-off, or second-hand material of any character, so that the label or stamp shall show the character of the materials with which such articles are so partly made or stuffed, and making the violation of any of the provisions of this act a misdemeanor.

History: Approved March 18, 1909, Stats. 1909, p. 400. Amended February 28, 1911, Stats. 1911, p. 88.

Shoddy cushions, stamp must show fact.

§ 1. All persons manufacturing in this state, in whole or in part, any article of hotel, boarding-house, lodging-house or domestic or office furniture, or beds or mattresses, or cushions, used or intended to be or that could be used by human beings, that are stuffed or made in whole or in part, with material composed in whole or in part from second-hand or cast-off clothing, rags, or second-hand, or cast-off material of any character whatever, or with shoddy, shall at the time of the completion of such manufacture attach to a conspicuous place upon each of such articles so manufactured by him, a label or stamp showing the correct character of the materials with which the cushion portion of such articles of furniture or beds or cushions or mattresses are stuffed, and no person so manufacturing any such articles shall allow the same or any thereof to leave his possession in the course of trade or business unless such label or stamp is so affixed, and no person shall sell, or offer for sale, in this state any of such articles of furniture, or beds, or mattresses, or cushions, whether the same are manufactured in this state or not, unless such a label or stamp is so affixed.

Penalty.

§ 2. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty, nor more than five hundred dollars, or imprisoned not more than six months, or by both such fine and imprisonment.

Duty of labor commissioner.

§ 3. It shall be the duty of the commissioner of the bureau of labor statistics to enforce the provisions of this act. The commissioner, his deputies and agents shall have all powers and authority of sheriffs to make arrests for violations of the provisions of this act. [New section approved March 1, 1911. Stats. 1911, p. 88.]

REGISTRATION OF FACTORIES.

ACT 2683—An act to provide for the registration of factories, workshops, mills and other manufacturing establishments.

History: Approved June 2, 1913. In effect August 10, 1913. Stats. 1913, p. 444. Amended May 5, 1917. In effect July 27, 1917. Stats. 1917, p. 270.

Registration of factories.

§ 1. The owner of any factory, workshop, mill or other manufacturing establishment, where five or more persons are employed, shall register such factory, workshop, mill or other manufacturing establishment with the bureau of labor statistics, giving the name of the owner, the name under which the business is carried on, the location of the plant, the address of the general offices or principal place of business and such other information as the commissioner of labor shall require. Such registration of existing factories, workshops, mills or other manufacturing establishments shall be made on or before January 1, 1914. All factories, workshops, mills or other manufacturing establishments hereafter established shall be so registered within thirty days after the commencement of business. Within thirty days after a change in the location of a factory, workshop, mill or other manufacturing establishment the owner thereof shall file with the commissioner of the bureau of labor statistics the new address.

Notice by commissioner of labor.

Whenever the commissioner of labor shall have been notified or otherwise becomes aware of the existence of a new factory, or factories, he shall forward a notification of said fact on or before the tenth day of each month to the state board of health and to the board of health or the health officer of the city and county wherein said factory or factories may be located. [Amendment of May 5, 1917. In effect July 27, 1917. Stats. 1917, p. 270.]

Enforcement of act.

§ 2. The bureau of labor statistics shall enforce the provisions of this act. The commissioner, his deputies and agents, shall have all the powers and authority of sheriffs or other peace officers, to make arrests for violations of the provisions of this act, and to serve any process or notice throughout the state.

Penalty.

§ 3. Any person, firm or corporation who violates or omits to comply with the provisions of this act is guilty of a misdemeanor, and shall upon conviction thereof, be punished by a fine of not less than twenty-five dollars or more than two hundred dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment. All fines imposed and collected under the provisions of this act shall be paid into the state treasury and credited to the contingent fund of the bureau of labor statistics.

MEDICAL AND SURGICAL APPLIANCES IN FACTORIES.

ACT 2684—An act to provide for the keeping of medical and surgical appliances in factories.

History: Approved May 19, 1913. In effect August 10, 1913. Stats. 1913, p. 511.

Medical chests in factories required.

§ 1. Every person, firm or corporation operating a factory or shop, or conducting any business in which power machinery is used for any manufacturing purpose, except for elevators or for heating or hoisting apparatus, where five or more persons are employed, shall at all times keep and maintain, in some accessible place upon the

premises upon which such factory, shop or business is located, free of expense to the employees, a medical or surgical chest which shall contain an adequate assortment of absorbent lint, absorbent cotton, sterilized gauze, plain and medicated, adhesive plaster, cotton and gauze bandages, also one tourniquet, one pair scissors, one pair tweezers, one jar carbolyzed petrolatum, one bottle antiseptic solution, and one first aid manual, all of which shall cost not less than six dollars, and to be used in the treatment of persons injured or taken ill upon the premises.

Penalty.

§ 2. Any person, firm or corporation violating this act shall be subject to a fine of not less than ten dollars nor more than fifty dollars for every week during which such violation continues.

SANITATION OF FACTORIES.

ACT 2685—An act to provide for the proper sanitary condition of factories and workshops and for the preservation of the health of the employees.

History: Approved February 6, 1889, Stats. 1889, p. 3. Amended March 23, 1901, Stats. 1901, p. 571; February 12, 1903, Stats. 1903, p. 16; February 22, 1909, Stats. 1909, p. 43.

This section was also amended March 23, 1901, Stats. 1901, p. 571.

Constitutionality.—Declared unconstitutional as an improper delegation of police power to the commissioner of labor.—*Schaezlein v. Cabaniss*, 135 Cal. 466, 87 Am. St. 122, 56 L. R. A. 733, 67 Pac. 755.

CHAPTER 208.

MAPS.

References: Assessment purposes, maps for, see Kerr's Cyc. Political Code, §§ 3654, et seq.

Boundaries, rule of evidence as to description of, referring to maps, see Kerr's Cyc. Code Civil Procedure, § 2077.

Maps as evidence, see Kerr's Cyc. Code Civil Procedure, § 1936.

Railroad maps, see Kerr's Cyc. Civil Code, § 466.

Stealing or mutilating, see Kerr's Cyc. Penal Code, §§ 113, 114.

Wagon-road maps, see Kerr's Cyc. Civil Code, § 513.

CONTENTS OF CHAPTER.

ACT 2690. RECORDING MAPS OF SUBDIVISIONS.

2691. CURATIVE ACT OF 1917.

2692. ALTERATION OR VACATION OF RECORDED MAPS.

RECORDING MAPS OF SUBDIVISIONS.

ACT 2690—An act requiring the recording of maps of subdivisions of land into lots for the purpose of sale, and prescribing the conditions on which such maps may be recorded and prohibiting the selling or offering for sale of land by reference to said maps unless the same are recorded.

History: Approved March 15, 1907, Stats. 1907, p. 290. Amended (1) June 11, 1913; in effect August 10, 1913, Stats. 1913, p. 568; (2) June 12, 1915; in effect August 8, 1915, Stats. 1915, p. 1512; (3) May 2, 1919; in effect July 22, 1919, Stats. 1919, p. 164; (4) May 2, 1919; in effect July 22, 1919, Stats. 1919, p. 177; (5) May 18, 1919; in effect July 22, 1919, Stats. 1919, p. 725. Prior act of March 9, 1893, Stats. 1893, p. 96, amended March 14, 1901, Stats. 1901, p. 288, repealed by the present act.

Map of subdivision must be recorded. Matters set forth.

§ 1. Whenever any tract or subdivision of land shall be laid out into lots for the purpose of selling the same by reference to a map or plat, the owner or owners thereof shall cause to be made out and filed with the county recorder of the county in which the same is situated, an accurate map or plat thereof on cloth, drawn and attested to

by a civil engineer or licensed surveyor from his own survey of the ground. Said engineer or surveyor shall, in making the surveys, leave sufficient permanent monuments so that another surveyor or engineer may retrace his work. The nature and location of these monuments shall be plainly shown on the map; provided, however, that on all maps of tracts filed for the purpose of showing as acreage, land previously subdivided into numbered or lettered lots or parcels, no survey or certificate by surveyor or engineer shall be required. The map shall also particularly set forth and describe:

First—All parcels of ground within such tract or subdivision used for public purposes or offered for dedication for public uses, whether they be intended for public highways, parks, courts, commons or other public uses and their dimensions and boundaries and the courses of their boundary lines.

Second—All lots intended for sale, or reserved for private purposes and not offered for dedication to the public use, either by number or letter, and their dimensions and boundaries and the courses of their boundary lines. All parcels of land offered for dedication as public highways and not accepted by the proper authorities upon presentation to them, shall also be designated by number or letter.

Third—The exact location of such tract or subdivision of land into lots with reference to adjacent subdivisions of land into lots, the maps or plats of which have been previously recorded, if any, or if none, then with reference to corners of a United States survey, or to some natural or artificial monument. [Amendment of May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 177.]

This section was also amended June 11, 1913, Stats. 1913, p. 586; June 12, 1915, Stats. 1915, p. 1512.

Map on cloth. Size. Scale.

§ 2. Every such map or plat shall be on cloth and clearly and legibly drawn in all its details upon tracing cloth of good quality. The size of the sheets of drawing cloth must be 18 by 26 inches or 13 by 18 inches. Marginal lines must be drawn around the entire sheet, leaving a margin of one inch from the edges of the sheets, and the name, title, or other designation, and all drawings, affidavits, certificates, acknowledgments, indorsements, acceptances of dedication, and notarial seals must be within said marginal lines. The scale to which the drawing is made must be large enough to show the details clearly, and two or more sheets must be used if one does not give sufficient room to accomplish this end. If more than one sheet is used, each sheet must be numbered, connections of one sheet to another clearly given and the number of the sheets used in the subdivision must be given in the affidavit. [Amendment approved June 11, 1913. Stats. 1913, p. 569. In effect August 10, 1913.]

Consent of owner. Certificate of auditor. Bond. Land intended for public use.

§ 3. Upon every such map or plat there shall be indorsed a consent to the making thereof, signed by the owner or owners of the tract or other subdivision of land shown thereon, and also by all other persons whose consent is necessary to pass a clear title to such land, and acknowledged by all the signers in the same manner as conveyances of real property; also a certificate from the county auditor, and from the auditor or other proper officer of any municipal corporation in which any part of such tract or other subdivision is situated, showing that there are no liens for unpaid state, county, municipal or other taxes, except taxes not yet payable against said tract or subdivision of land or any part thereof; also where a tax lien attaches against any such tract or subdivision or any part thereof a certificate of the clerk of the board of supervisors that a bond has been filed with said board as provided herein; and the owner or owners of any tract, or other subdivision of land shown thereon, shall execute and file with the board of supervisors of the county wherein such tract, or subdivision, or any part

thereof, is situated, a good and sufficient bond to be approved by and in amount to be fixed by said board of supervisors and by its terms made to inure to the benefit of the county wherein such tract, subdivision, or any part thereof, is situate, and conditioned for the payment of all taxes which are at the time of filing of said map, a lien against any such tract, or subdivision, or any part thereof, but not yet payable. Except that no tax bond, or certificate in regard to tax bond, by the clerk of the board of supervisors, shall be required on any map which may be recorded on or after the date upon which the taxes for the current year have become payable and before the date upon which the assessment for the next succeeding year is based. Upon every such map or plat which shows any parcels of land intended for public use and not previously dedicated therefor, there shall be indorsed a statement of the dedication of such parcels of land intended for public use, executed by the owner or owners, and by all other persons whose consent is necessary to pass a clear title to such parcels of ground to the public, and acknowledged by all persons executing the same in the same manner as conveyances of real property. [Amendment of May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 164.]

This section was also amended June 11, 1913, Stats. 1913, p. 569.

Approval of map by city or county governing body. Certificate of examination as to value of territory. Highways to conform to those surrounding.

§ 4. The map or plat so made, indorsed and acknowledged shall be submitted to the governing body of the city, city and county, or county having control of public highways in the territory shown on such map or plat, for the approval of such governing body before such map or plat is filed for record in the recorder's office; provided, that said map or plat shall not be accepted or approved by such governing body unless the same is accompanied by a certificate of the county surveyor and county assessor, if such tract or subdivision of land lies in unincorporated territory, or city engineer, if such there be, and the city assessor of any incorporated city or town, in which the whole or any part of such tract or subdivision of land is situated, showing that each and every lot and block therein has been carefully examined as to its value for residence or commercial uses with their suggestions and recommendations to such governing body; and provided, further, that whenever such tract or subdivision of land lies within an incorporated city or town, the map or plat thereof shall first be submitted by the governing body thereof to the city planning commission, if such there be, of such city or town, or, if there be no city planning commission, to the city engineer, if such there be. Said city planning commission, or city engineer, shall report thereon to the governing body within ten days after receipt of said map or plat. If such tract or subdivision of land is in unincorporated territory but within three miles from the exterior boundaries of any city or town, the map or plat thereof shall first be submitted by the county board of supervisors to the city planning commission, if such there be, or to such city engineer as above provided of the city or town lying nearest to such tract or subdivision of land, whereupon such commission shall make an examination of such map or plat and submit a report thereon with its suggestions and recommendations to the governing body of the municipality. Said governing body shall thereupon submit a report thereon, with its suggestions and recommendations to the said county board of supervisors. Such governing body after considering the report of the city planning commission, or the city engineer, as the case may be, and said county board of supervisors, after considering the report of said governing body, shall approve or disapprove such map or plat within thirty days after the same is submitted to it as above provided. In the event of the failure, refusal or neglect of said city planning commission, or city engineer to so report within said ten days to the said governing body it shall then be the duty of said commission or city engineer to forthwith transmit said map or plat to said governing

body for its action thereon. In the event of the failure, refusal or neglect of said governing body to so report to said county board of supervisors within twenty days after said county board has so filed said map or plat with said city planning commission, or city engineer, it shall then be the duty of said governing body to forthwith transmit said map or plat to said county board of supervisors for its action thereon. If approved, the said governing body or board of supervisors shall indorse, or cause to be indorsed, on said map, or plat its approval of the same. Without such approval the said map or plat shall not be filed for record or be recorded. Such governing body may require the public highways, if any, offered for dedication by said map or plat and the parcel or parcels of land, if any, therein reserved or indicated for highway or right of way purposes, and not offered for dedication to public use, to be as wide as and to conform, as near as practicable, to the adjoining, surrounding or neighboring streets or highways of said city, city and county, or county. If such map or plat offers for dedication any highways said governing body or board of supervisors shall indorse thereon which of the highways so offered for dedication are accepted on behalf of the public, and thereupon such highways which have been so accepted, and no others, shall be and become dedicated to the public use. [Amendment of May 18, 1919. In effect July 22, 1919. Stats. 1919, p. 725.]

This section was also amended June 11, 1913, Stats. 1913, p. 570; June 12, 1915, Stats. 1915, p. 1513.

Name of plat to be indorsed on map. Duty of recorder.

§ 5. Upon every such map or plat there shall be indorsed a name, title or designation, but no such tract or subdivision of land into lots shall be given any title, name or designation that is the same as the name of any existing city, town, tract or subdivision of land into lots in the same county, of which the map or plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion as to the identity thereof. Whenever any map or plat required by this act to be made shall be presented to a county recorder for filing or recording, he shall examine the title, name or designation indorsed thereon and compare the same with the records in his office, and if he finds that said title, name or designation violates this section in any respect, he shall refuse to file or record such map or plat, whether the same be offered for record as a separate map or as a licensed surveyor's record, or as a part of any deed or other instrument.

Map must comply with this act.

§ 6. No map or plat referred to in this act shall be accepted by the county recorder for filing or recording, unless the same shall in all respects comply with the provisions of this act, and the recorder shall be entitled, before accepting or refusing such map or plat, to sufficient time to enable him to examine the same. [Amendment approved June 11, 1913. Stats. 1913, p. 570. In effect August 10, 1913.]

Book of maps.

§ 7. When any map or plat referred to in this act is presented to the county recorder and is received and accepted by him, he shall paste or otherwise fasten the same securely in a book of maps which he shall keep in his office, and it shall be deemed to have been recorded and shall become a public record.

No sale of lots before filing map.

§ 8. No person shall sell or offer for sale any lot or parcel of land, by reference to any map or plat, unless such map or plat has been made, certified, indorsed, acknowledged and filed in all respects as provided in this act, or was filed or recorded prior to the taking effect of this act and in accordance with the laws in force at the time it was so filed or recorded, and no person shall sell or offer for sale any lot or parcel of land

by reference to any map or plat other than such recorded map or plat or true and correct copy thereof. [Amendment approved June 11, 1913. Stats. 1913, p. 570. In effect August 10, 1913.]

Penalty. Owners failing to file map may petition court for permission to file.

§ 9. Every person who violates any of the provisions of this act is guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty-five dollars and not more than five hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment, and the recordation of any map or plat which is not executed and approved as herein required shall be null and void; provided, however, that any owner or owners of any such tract or subdivision, who prior to the taking effect of this act caused to be prepared proper maps or plats thereof in conformity with the provisions of the act mentioned in section one hereof, and thereafter, through inadvertence or excusable neglect, failed to record the same prior to conveying lots shown thereon, may, within one year after this act takes effect, petition the superior court of the county wherein such land is situate for an order permitting such map or plat to be filed and recorded as in said act provided; and the court may, upon the hearing of such petition, if satisfied that good cause exists therefor, make such order. A copy of the petition shall be served upon the county recorder at least ten days prior to such hearing, and a certified copy of such order, if any be made, shall be filed with the map. [Amendment approved June 11, 1913. Stats. 1913, p. 571. In effect August 10, 1913.]

The amendatory act of 1913, p. 571, contained the following provision:

Repealed.

§ 8. An act entitled, "An act requiring the recording of maps of cities, towns, additions to cities or towns, or subdivisions of land into small lots or tracts for the purpose of sale, and providing a penalty for the selling or offering for sale any lots or tracts in cities, towns, additions to cities, towns, subdivisions, or additions thereto, before such maps are filed and recorded," approved March 9, 1893, and all acts and parts of acts in conflict with this act, are hereby repealed.

1. **Construction—Misdemeanor.**—The act makes it a misdemeanor both to sell and to offer for sale, by express reference to a map, where such map has not been recorded as the act requires.—*King v. Johnson*, 30 Cal. App. 63, 157 Pac. 531.

2. **Same—Not a revenue measure.**—The act is not a revenue measure, but a declaration of public policy, and the questions of the public interest in applying it, and of matters of private justice between individuals can not be considered.—*King v. Johnson*, 30 Cal. App. 63, 157 Pac. 531.

3. **Same—Benefit of vendees—Broker's right of recovery for services.**—The contention that the act was intended for the benefit of vendees only, and should not be construed to prevent a broker from recovering for services in selling lots which come within the provisions of the act, can not be maintained.—*King v. Johnson*, 30 Cal. App. 63, 157 Pac. 531.

4. **Same—Prohibiting sales without map.**—The act can only be construed as prohibiting sales where the property was designated, as being delineated on a map, to which express reference was made in the contract of purchase, and which had not been presented and filed for record as the

act requires.—*Baines v. Shank*, 12 Cal. App. 391, 107 Pac. 631.

See, also, *Schultz v. Redondo, etc., Co.*, 156 Cal. 439, 105 Pac. 118.

5. **Same—Violation of act by agent.**—An agent who knowingly sells land required by the act to be delineated on a map and the latter recorded, with a previous compliance with the act is guilty of an illegal act, and can not recover compensation therefor.—*King v. Johnson*, 30 Cal. App. 63, 157 Pac. 531.

6. **Same—Acts required of proprietor.**—The proprietor of land who has filed the map required by the act for record has done all that the act requires him to do, and the delay of the recorder in posting the map in the book of maps does not affect the right of such proprietor to thereafter make a sale, nor render such sale a criminal offense.—*Bentley v. Hurlburt*, 153 Cal. 796, 96 Pac. 890; *Hurlburt v. Bentley*, 153 Cal. 796, 96 Pac. 890.

7. **Same—Approval of county surveyor not required.**—The approval of the county surveyor is not required under the act, and if the map is in the form required by the act, the recorder is not authorized to make such approval a condition precedent to the

receiving and recording of the map.—*Bentley v. Hurlburt*, 153 Cal. 796, 96 Pac. 890; *Hurlburt v. Bentley*, 153 Cal. 796, 96 Pac. 890.

8. Same—Withdrawal of map after presentation for record.—The withdrawal of the map after presentation for record for the purpose of obtaining the approval of

the surveyor, at the recorder's request, does not constitute a withdrawal of the map so as to nullify the original presentation for record, and its subsequent recordation must be regarded as made pursuant to such original presentation.—*Bentley v. Hurlburt*, 153 Cal. 796; *Hurlburt v. Bentley*, 153 Cal. 796.

CURATIVE ACT OF 1917.

ACT 2691—An act to cure defects in maps or plats filed for record prior to January 1, 1917, and in deeds or conveyances referring to such maps.

History: Approved June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1653.

Defects cured in maps filed prior to January 1, 1917.

§ 1. Any map or plat recorded or filed with the county recorder of the county in which the lands shown on said map or plat are situated prior to the first day of January, one thousand nine hundred seventeen, shall for all purposes be deemed to have been properly so recorded or filed and to comply with all the requirements of the laws in force at the time it was so recorded or filed, notwithstanding any defect, omission or informality in the preparation or execution of such map or plat or of the affidavits, certificates, acknowledgments, indorsements, acceptances of dedication or other matters thereon or required to be thereon by any law in force at the time of such recording or filing, and all sales or conveyances of land by reference to any such map or plat shall be valid as though said map or plat had been made, certified, indorsed, acknowledged and filed in all respects in accordance with the laws in force at the time said map or plat was so recorded or filed. And any deed or conveyance referring to any such map or plat which, prior to the passage hereof, was copied into the proper book of records kept in the office of any county recorder shall impart after the passage hereof notice of its contents to subsequent purchasers and incumbrancers, notwithstanding any defect, omission or informality in the preparation or execution of such map or plat or of the affidavits, certificates, acknowledgments, indorsements, acceptances of dedication or other matters thereon or required to be thereon by any law in force at the time of such recording or filing.

ALTERATION OR VACATION OF RECORDED MAPS.

ACT 2692—An act to provide for the exclusion of any portion of the lands embraced within a subdivision or tract of land and for the alteration or vacation of recorded maps or plats thereof.

History: Approved May 7, 1919. In effect July 22, 1919. Stats. 1919, p. 329.

Exclusion of land from subdivision.

§ 1. Upon the application of the owners of at least two-thirds of the area of the land included within the boundaries of any tract or subdivision of land described in a recorded map or plat, the superior court of the county or city and county wherein such land is situated, may cause all or any portion of such land to be excluded from the subdivision or tract and the recorded map or plat thereof to be altered or vacated as hereinafter provided.

Petition.

§ 2. The application provided for in section one hereof shall be made by filing in the office of the county clerk of the county or city and county in which the tract or subdivision, or that portion of the land sought to be excluded, is situated, a petition signed and verified by the owners of at least two-thirds of the total area of the land included within the boundaries of the tract or subdivision, as shown on the recorded map or plat,

praying that all or such portions of the land included within such subdivision or tract as is described shall be excluded therefrom. Such petition shall also show the reasons therefor. The land sought to be excluded shall be accurately and distinctly described by reference to the recorded map or plat or by an accurate survey. The petition shall further show the names and addresses of all other owners of the land in the subdivision or tract so far as the same are known to the petitioners.

Notice of filing petition.

§ 3. Upon the filing of a petition as hereinbefore provided, any judge of the superior court of the county or city and county wherein such land is situated, shall make an order directing the clerk of such court to give notice of the filing of such petition. Said notice shall be for not less than thirty, nor more than fifty, days as shall be by such judge directed, by publication in some newspaper of general circulation within the county, or city and county, or if there is no newspaper published therein by posting in three of the principal places in the county or city and county. Such notice shall contain a statement of the nature of the petition together with a direction that any person may file his objection to the petition, in writing, at any time before the expiration of the time of posting or publication.

Hearing of application. Exclusion by court.

§ 4. When the time of posting or publication has expired there shall be filed with the clerk of the superior court an affidavit showing due posting or publication, whereupon the court may if no objection has been filed, proceed without further notice to hear the application. If upon such hearing the petitioners shall produce to said court satisfactory evidence of the necessity of the exclusion of said lands, and that the owners to two-thirds of the area of the land included within such tract or subdivision are such petitioners, and that there is no reasonable objection to making such exclusion, the court may proceed to exclude the lands sought to be excluded by the petition, and alter or vacate any recorded map or plat thereof, and enter its decree accordingly.

Hearing of objections.

§ 5. If objection is made to the petition which, in the judgment of the court is material, the court shall proceed to hear such objection and may adjourn the proceedings to such time as may be necessary upon proper notice to the petitioners.

Public highway not affected. Filing of decree.

§ 6. The exclusion of any territory herein provided for or the alteration or vacation of any recorded map or plat, shall not affect or vacate the whole or any part of any public highway. The exclusion of any land herein provided for or the alteration or vacation of any recorded map or plat, shall be complete with the filing in the office of the county recorder of the county or city and county in which such land is situated, of a copy of the decree of the superior court. The county recorder shall make, upon the face of any such recorded map or plat a memorandum stating briefly that such map or plat has been altered or vacated, whichever the case may be, and giving the date and reference of such degree.

New map filed.

§ 7. In case any land has been excluded and any map or plat altered pursuant to the provisions of this act, a new map or plat shall be filed with the county recorder in the manner provided by law showing the boundaries of such subdivision or tract as same appears after the exclusion and alteration.

MARICOPA.

See Act 3094, note.

CHAPTER 209.

MARIN COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3929.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

Fences, see tit. "Fences," Act 1493.

Herdling of sheep, see tit. "Sheep."

Navigable streams, see Kerr's Cyc. Political Code, § 2349.

Public schools, see Kerr's Cyc. Political Code, §§ 1619, 1858.

Marin Municipal Water District, see tit. "Municipal Water Districts," Act 3102.

CONTENTS OF CHAPTER.

ACT 2696. CORONER'S FEES IN STATE PRISON CASES.

2704. STOCK RUNNING AT LARGE.

CORONER'S FEES IN STATE PRISON CASES.

ACT 2696—An act for the relief of Marin county.

History: Approved April 8, 1861, Stats. 1861, p. 121.

This act provided that when the coroner of Marin County was required to inquire into the death of a convict in state prison, the fees should be a state and not a county charge. It also made the same provision where physicians were called in to inquire into the sanity of a convict at the state prison.

STOCK RUNNING AT LARGE.

ACT 2704—An act to prevent stock from running at large upon roads and highways in the county of Marin.

History: Approved March 25, 1876, Stats. 1875-76, p. 482.

The code commissioners say this act was modified by the estray law of 1897, p. 198, and 1901, p. 603; but see editor's note on chapter on "Estrays."

CHAPTER 210.

MARIPOSA COUNTY.

References: Boundaries, see Kerr's Cyc. Political Code, § 3930.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

Highways, see Kerr's Cyc. Political Code, §§ 2618, et seq.

CHAPTER 211.

MARKS AND BRANDS.

References: Altering, counterfeiting, defacing, etc., see Kerr's Cyc. Penal Code, §§ 349a, 356, 357, 358, et seq.

Marks and brands, see Kerr's Cyc. Political Code, §§ 3167, et seq.

See, generally, tits. "Adulteration"; "Butter"; "Cheese"; "Cold Storage"; "Dairies"; "Eggs"; "Foods"; "Fruits."

CONTENTS OF CHAPTER.

ACT 2727. MARKING CITRUS FRUIT CONTAINERS.

2728. MARKING FRESH AND DRIED FRUIT CONTAINERS.

2729. LABELING ARTICLES MANUFACTURED IN STATE PRISONS, ETC.

2730. PERPETUATION OF MARKS AND BRANDS.

MARKING CITRUS FRUIT CONTAINERS.

ACT 2727—An act to provide for the marking or branding of boxes or barrels containing citrus fruit for shipment, and fixing a penalty for the violation thereof, and for the appointment of an inspector under its provisions.

History: Approved March 23, 1901, Stats. 1901, p. 663.

Marking or branding of packages of citrus fruits.

§ 1. All citrus fruit contained in boxes or barrels, which shall hereafter be shipped, or offered for shipment in this state by any person, firm, or corporation, shall have stamped, stenciled, or printed in a conspicuous place on the outside of every such box or barrel, in clearly legible letters, a statement truly and correctly designating the county and immediate locality in which such fruit was grown. Such statement shall be placed thereon by the shipper of said fruit.

Penalty for violation.

§ 2. Any person, firm, or corporation violating any of the provisions or requirements of section 1 of this act shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than two hundred dollars nor more than five hundred dollars.

Inspector to be appointed. Duty to report violation of statute.

§ 3. The governor of the state of California, upon the passing of this act, shall appoint one inspector of citrus fruit shipments, to serve without compensation, whose duty it shall be to examine boxes and barrels used in the shipment of citrus fruits; and upon the discovery by said inspector of any violation of the requirements of this act he shall forthwith give notice thereof to the district attorney of the county in which the offense was committed, and upon receiving such notice it shall be the duty of such district attorney to prosecute the offender under the provisions of this act.

§ 4. This act shall take effect immediately on and after its passage.

See, post, Act 2728, and Ex parte Hayden, 147 Cal. 649, 82 Pac. 315. Also, see tit. "Fruit," various acts relating to fruit containers.

MARKING FRESH AND DRIED FRUIT CONTAINERS.

ACT 2728—An act to provide for the marking, branding, or labeling of boxes, barrels, or packages containing fruits, fresh or dried, and fixing a penalty for the violation thereof, and for the appointment of inspectors under its provisions.

History: Approved March 20, 1903, Stats. 1903, p. 338.

See *Kerr's Cyc. Penal Code*, § 349a, and Act 2727, and tit. "Fruit."

The act is unconstitutional as an improper exercise of the police power.—Ex parte Hayden, 147 Cal. 649.

1. Purpose of act.—The act is for the purpose of obtaining for the fruit raisers of

favorable and well advertised localities an advantage for their product, and not to prevent the shipping of diseased or falsely labeled fruit, and is not for the benefit of the public health, welfare, safety, or morals, and is unconstitutional.—Ex parte Hayden, 147 Cal. 649.

LABELING OF ARTICLES MANUFACTURED IN STATE PRISONS, ETC.

ACT 2729—An act requiring the labeling of articles offered for sale and intended for personal wear, manufactured in state penitentiaries, reform schools or other institutions supported at public expense, and requiring that notice that such goods are on sale, shall be conspicuously posted in places where said goods are offered for sale.

History: Approved May 5, 1917. In effect July 27, 1917. Stats. 1917, p. 249.

Articles manufactured at state institutions must be labeled.

§ 1. No person, persons, firm or corporation, by themselves, their agents or employees shall sell, offer for sale or expose for sale, or have in his or their possession for sale, any article intended for personal wear which was manufactured at a state penitentiary, state reform school or at any other institution supported at public expense and located without the boundaries of the state of California, unless said article shall have affixed, stamped or imprinted thereon, a label in letters three-eighths of an inch in height, designating the state penitentiary, state reform school or other public institution, where said article was manufactured.

Notice that articles manufactured at state institutions are for sale.

§ 2. No person, persons, firm or corporation, by themselves, their agents or employees shall sell, offer for sale or expose for sale, or have in his or their possession for sale, any article intended for personal wear which was manufactured at a state penitentiary, state reform school or at any other institution supported at public expense and located without the boundaries of the state of California unless there is kept on exhibition in a conspicuous place, where said article is exposed or offered for sale, a notice at least twelve inches in length by six inches in height, stating that goods so manufactured are on sale there.

Penalty.

§ 3. Whoever shall knowingly violate any of the provisions or sections of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished for the first offense by a fine of not less than twenty dollars nor more than one hundred dollars; or by imprisonment in the county jail for not less than ten days and not exceeding thirty days; and for each subsequent offense by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment in the county jail for not less than twenty days nor more than one hundred days, or by both such fine and imprisonment, at the discretion of the court.

Duty of district attorney.

§ 4. It shall be the duty of the district attorney of each and every county in this state, upon application, to attend to the prosecution in the name of the people of any action brought for the violation of any of the provisions of this act within his district.

PERPETUATION OF MARKS AND BRANDS.

ACT 2730—An act to perpetuate marks, brands and counterbrands established in the several counties of the state under sections three thousand one hundred sixty-eight and three thousand one hundred sixty-nine of the Political Code, to provide methods of perpetuation and declaring all marks, brands and counterbrands not so perpetuated to be inoperative and void.

History: Approved April 16, 1917. In effect July 27, 1917. Stats. 1917, p. 138.

Notice to perpetuate marks, brands, and counterbrands.

§ 1. The county recorder of each county in whose office there are recorded more than one hundred marks, brands and counterbrands under the provisions of section three thousand one hundred sixty-eight of the Political Code, shall, within thirty days after this law goes into effect, cause to be published in a newspaper of general circulation in such county, the following notice:

“Every person, who, under and by virtue of compliance with section three thousand one hundred sixty-eight of the Political Code, owns a mark, brand or counterbrand, must, within three months after final publication of this notice, notify the county recorder of his desire to continue and perpetuate such mark, brand and counterbrand. This notification must be in words of positive and reasonable intendment and must be either by registered letter or by personal application addressed to said county recorder. Any person failing to so continue and perpetuate such mark, brand and counterbrand, shall lose all right, title and interest therein.

First publication: (naming date).

Last publication: (naming date).

“.....
“County recorder of.....county.”

Publication.

§ 2. The notice set forth in section one shall be published six times at intervals of four weeks, final publication to be not more than five months later than the original publication thereof.

Continuance of marks, etc.

§ 3. Every person desiring to continue and perpetuate any mark, brand and counterbrand must comply with the provisions set forth in the notice under section one, and the county recorder shall, upon such compliance, write or stamp opposite the record of such mark, brand or counterbrand the word "perpetuated."

Marks, etc., deemed abandoned.

§ 4. At the termination of three months after final publication of notice set forth in section one, the county recorders of the several counties shall transfer the records of all marks, brands and counterbrands perpetuated under section three to a new book set apart for the purpose described in section three thousand one hundred sixty-eight of the Political Code, and all marks, brands and counterbrands in the custody of the county recorders of the several counties not so continued and perpetuated shall be deemed to have been abandoned by the owner thereof and to be inoperative and void.

§ 5. Nothing in this act shall be construed as repealing sections three thousand one hundred sixty-eight and three thousand one hundred sixty-nine of the Political Code.

MARRIAGE.

See Kerr's Cyc. Civil Code, §§ 55, et seq.

MARRIED WOMEN.

See Kerr's Cyc. Civil Code, and Kerr's Cyc. Code Civil Procedure.

CHAPTER 212.**MARSHALL MONUMENT.****CONTENTS OF CHAPTER.****ACT 2746. GUARDIAN OF MARSHALL MONUMENT.****GUARDIAN OF MARSHALL MONUMENT.**

ACT 2746—An act to provide for the appointment of a guardian for the Marshall monument and grounds, prescribing his duties, and appropriating money therefor.

History: Approved March 31, 1891, Stats. 1891, p. 424. Amended May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1352.

The amendment of 1919 fixed the salary of the guardian at \$75 per month.

CHAPTER 213.**MARTINEZ.**

Reference: Incorporation, see Act 3094, note.

CONTENTS OF CHAPTER.**ACT 2753. RELEASE OF LAND COVERED BY CARQUINEZ STRAITS.****RELEASE OF LANDS COVERED BY CARQUINEZ STRAITS.**

ACT 2753—An act to provide for the disposition of certain property of the state.

History: Passed April 21, 1851, Stats. 1851, p. 307.

This act released to the town of Martinez the lands covered by Carquinez Straits lying opposite to it.

CHAPTER 214.

MARYSVILLE.

Reference: Incorporation, see Act 3094, note.

CONTENTS OF CHAPTER.

- ACT 2759. BOARD OF CITY LEVEE COMMISSIONERS.
2760. LEVEE FUNDING ACT OF 1876.

BOARD OF CITY LEVEE COMMISSIONERS.

ACT 2759—An act concerning the construction and repair of levees in the city of Marysville, and the mode of raising revenue therefor.

History: Approved March 6, 1876, Stats. 1875-76, p. 131.

LEVEE FUNDING ACT OF 1876.

ACT 2760—An act to provide for the funding of the levee indebtedness of the city of Marysville.

History: Approved February 18, 1876, Stats. 1875-76, p. 60.

CHAPTER 215.

MASTER AND SERVANT.

References: See, generally, tits. "Hours of Labor"; "Immigration"; "Industrial Accident Commission"; "Industrial Welfare Commission"; "Infants"; "Insurance"; "Labor Bureau"; "Laborers"; "Liens"; "Manufacturers"; "Motor Vehicles."

CONTENTS OF CHAPTER.

- ACT 2770. DAY OF REST FROM LABOR.
2772. CAMP SANITATION.
2772a. FURNISHING PURE DRINKING WATER.
2773. LUNCH HOUR IN SAWMILLS, ETC.
2774. MISREPRESENTATIONS AS TO CONDITIONS OF EMPLOYMENT.
2774a. ADVERTISEMENTS FOR EMPLOYEES DURING STRIKES, ETC.
2774b. INTERFERENCE WITH POLITICAL ACTIVITIES OF EMPLOYEES.
2774c. TIPPING ACT.
2774d. "SPOTTER" ACT.
2775. TEMPORARY FLOOR ACT.
2776. SCAFFOLDING ACT.
2777. PAYMENT OF WAGES BY NEGOTIABLE ORDER.
2778. PAYMENT OF WAGES ACT OF 1919.
2779. SEASONAL LABOR WAGES.
2779a. ENFORCED PURCHASE ACT.
2779b. SERVICE LETTERS FOR EMPLOYEES.
2779c. COST OF BONDS AND PHOTOGRAPHS.
2779d. SEMI-MONTHLY PAY DAYS FOR COUNTY EMPLOYEES.
2781. "THE WORKMEN'S COMPENSATION, INSURANCE AND SAFETY ACT OF 1917."
2782. EMPLOYER'S CASUALTY REPORTS.
2783. EMPLOYER'S HOSPITAL SERVICE.
2784. VOCATIONAL RE-EDUCATION AND REHABILITATION.

DAY OF REST FROM LABOR.

ACT 2770—An act to provide for a day of rest from labor.

History: Approved February 27, 1893, Stats. 1893, p. 54.

Employee entitled to one day's rest in seven.

§ 1. Every person employed in any occupation of labor shall be entitled to one day's rest therefrom in seven; and it shall be unlawful for any employer of labor to cause his employees, or any of them to work more than six days in seven; provided, however, that the provisions of this section shall not apply to any case of emergency.

Meaning of term "day's rest."

§ 2. For the purposes of this act, the term day's rest shall mean and apply to all cases, whether the employee is engaged by the day, week, month, or year, and whether the work performed is done in the day or night time.

Penalty for violation of act.

§ 3. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor.

§ 4. This act shall take effect and be in force thirty days from and after its passage.

CAMP SANITATION.

ACT 2772—An act regulating the sanitation and ventilation in and at camps where five or more persons are employed; and providing a penalty for the violation thereof.

History: Approved May 29, 1913. In effect August 10, 1913. Stats. 1913, p. 328. Entire act, except title amended and two new sections, 7 and 8, added May 18, 1915. In effect August 8, 1915. Stats. 1915, p. 497. Amended again May 5, 1919. In effect July 22, 1919. Stats. 1919, p. 244.

Camps to be kept clean.

§ 1. In or at any camp where five or more persons are employed, bunk houses, tents or other suitable sleeping places must be provided for all the employees. Such bunk houses, tents or other sleeping places must be in good structural condition, and so constructed as to provide shelter to the occupants against the elements and so as to exclude dampness in inclement weather. The bunk houses, tents and other sleeping places shall be kept in a cleanly state, and free from vermin and matter of an infectious and contagious nature, and the grounds around such bunk houses, tents or other sleeping places shall be kept clean and free from accumulations of dirt, filth, garbage, and other deleterious matter. [Amendment of May 5, 1919. In effect July 22, 1919. Stats. 1919, p. 245.]

Air space in bunk house. Bunks.

§ 2. Every bunk house, tent or other sleeping place used for the purpose of a lodging or sleeping apartment in such camp, shall contain sufficient air space to insure an adequate supply of fresh air for each person occupying such bunk house, tent or other sleeping place. Suitable bunks or beds shall be provided for all employees. Such bunks or beds shall be made of steel, canvas or other sanitary material, and shall be so constructed as to afford reasonable comfort to the persons occupying the same. [Amendment of May 5, 1919. In effect July 22, 1919. Stats. 1919, p. 245.]

Kitchen, etc., to be kept clean.

§ 3. Every mess house, dining room, mess tent, dining tent, kitchen or other structure where food is cooked, prepared or served in such camp shall be kept in a clean and sanitary state and the openings of such structures shall be screened. [Amendment of May 18, 1915. In effect August 8, 1915. Stats. 1915, p. 498.]

Bathing facilities. Toilet facilities.

§ 4. For every such camp there shall be provided convenient and suitable bathing facilities of a reasonable nature to suit conditions, which shall be kept in a clean and sanitary condition. For every such camp there shall be provided convenient and suitable privy or other toilet facilities, which shall be kept in a clean and sanitary state. A privy other than a water-closet shall consist of a pit at least two feet deep, with suitable shelter over the same, and the openings of the shelter and pit shall be enclosed by screening or other suitable fly netting. No privy pit shall be filled with excreta to

nearer than one foot from the surface of the ground and the excreta in the pit shall be covered with earth, ashes, lime or other similar substance. [Amendment of May 5, 1919. In effect July 22, 1919. Stats. 1919, p. 245.]

Garbage disposal.

§ 5. All garbage, kitchen wastes and other rubbish in such camp shall be deposited in suitable covered receptacles which shall be emptied daily or oftener if necessary, and the contents burned, buried or otherwise disposed of in such a way as not to be or become offensive or insanitary. All drainage from the kitchen sink shall be carried through a covered drain to a covered cesspool or septic tank or otherwise disposed of in such a way as not to become offensive or insanitary. [Amendment of May 5, 1919. In effect July 22, 1919. Stats. 1919, p. 245.]

Duty of employees.

§ 6. It shall be the duty of any person, firm, corporation, agent or officer of a firm or corporation employing persons to work in or at camps to which the provisions of this act apply and the superintendent or overseer in charge of the work in or at such camps to carry out the provisions of this act. At every such camp such owner, superintendent or overseer shall appoint a responsible person to assist in keeping the camp clean. [Amendment of May 5, 1919. In effect July 22, 1919. Stats. 1919, p. 246.]

Commission of immigration and housing to administer act.

§ 7. The commission of immigration and housing of California shall administer this act and secure the enforcement of the provisions thereof, and for such purposes shall have the right to enter and inspect all camps to which the provisions of this act apply. Any camp coming under the provisions of this act which does not conform to the provisions of this act is hereby declared a public nuisance and if not made to so conform within five days, or within such longer period of time as may be allowed by the commission of immigration and housing of California, after written notice given by the said commission, shall be abated by proper action brought for that purpose in the superior court of the county in which such camp, or the greater portion thereof, is situated. [New section added May 18, 1915. In effect August 8, 1915. Stats. 1915, p. 498.]

Violation of provisions. Penalty.

§ 8. Any person, firm, corporation, agent or officer of a firm or corporation, or any superintendent or overseer in charge of the work in or at any camp coming under the provisions of this act, who shall violate or fail to comply with the provisions of this act, is guilty of a misdemeanor, and shall upon conviction thereof, be punished by a fine of not more than two hundred dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment. [New section added May 18, 1915. In effect August 8, 1915. Stats. 1915, p. 498.]

The amending act of 1915 contained the following provision:

Appropriation.

§ 2. Out of any money in the state treasury not otherwise appropriated the sum of ten thousand dollars or so much thereof as may be necessary is hereby appropriated to be expended by the commission of immigration and housing of California in accordance with law to carry out the provisions of this act.

FURNISHING PURE DRINKING WATER.

ACT 2772a—An act to require employers of labor to furnish, without charge, pure drinking water to their employees during working hours.

History: Approved May 24, 1915. In effect August 8, 1915. Stats. 1915, p. 815.

Employers must furnish pure drinking water.

§ 1. Every employer of labor in this state shall, without making a change therefor, provide fresh and pure drinking water to his employees during working hours. Access to such drinking water shall be permitted at reasonable and convenient times and places.

Penalty for violation.

Any violation of the provisions of this act shall be deemed a misdemeanor and punishable for each offense by a fine of not less than twenty-five dollars (\$25.00), nor more than one hundred dollars (\$100.00), or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment.

LUNCH HOUR IN SAWMILLS, ETC.

ACT 2773—An act to provide for a lunch hour for laborers in sawmills, shake-mills, shingle-mills, and logging camps.

History: Approved February 28, 1901, Stats. 1901, p. 75.

Lunch-hour for laborers in lumber camps and mills.

§ 1. Every person, corporation, copartnership, or company operating a sawmill, shake-mill, shingle-mill, or logging-camp, in the state of California, shall allow to his or its employees, workmen, and laborers a period of not less than one hour at noon for the midday meal.

Punishment for violating statute.

§ 2. Any person, corporation, copartnership, or company, his or its agents, servants, or managers, violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than two hundred dollars nor less than one hundred dollars for each violation of the provisions of this act.

§ 3. This act shall take effect and be in force on the first day of April, nineteen hundred and one.

MISREPRESENTATIONS AS TO CONDITIONS OF EMPLOYMENT.

ACT 2774—An act to prevent misrepresentations of conditions of employment, making it a misdemeanor to misrepresent the same, and providing penalties therefor.

History: Approved March 20, 1903, Stats. 1903, p. 269. Amended April 10, 1915. In effect August 8, 1915. Stats. 1915, p. 52.

Misrepresentations of conditions of employment prohibited.

§ 1. It shall be unlawful for any person, partnership, company, corporation, association, or organization of any kind, directly or through any agent or attorney, to induce, influence, persuade, or engage any person to change from one place to another in this state or to change from any place in any state, territory, or country to any place in this state, or to change from any place in this state to any place in any state, territory or country, to work in any branch of labor, through or by means of knowingly false representations, whether spoken, written, or advertised in printed form, concerning the kind or character of such work, the compensation therefor, the sanitary conditions relating to or surrounding it, or the existence or non-existence of any strike, lockout, or other labor dispute affecting it and pending between the proposed employer or employers and the persons then or last theretofore engaged in the performance of the labor for which the employee is sought. [Amendment of April 10, 1915. In effect August 8, 1915. Stats. 1915, p. 52.]

Penalty.

§ 2. Any violation of section one or section two hereof shall be deemed a misdemeanor, and shall be punished by a fine of not exceeding two thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

Act takes effect when.

§ 3. This act shall take effect on the date of its passage.

As to misrepresentations of employment of union labor, see Kerr's Cyc. Penal Code, § 349c.

ADVERTISEMENTS FOR EMPLOYEES DURING STRIKES, ETC.

ACT 2774a—An act to regulate advertisements and solicitations for employees during strikes, lockouts and other labor troubles.

History: Approved June 7, 1913. In effect August 10, 1913. Stats. 1913, p. 678.

Advertising for labor during strikes.

§ 1. If any person, firm, or corporation, acting either for himself, or itself, or as the agent of another person, firm, or corporation, during the continuance of a strike, lockout, or other labor trouble among his, or its employees, or among the employees of the person, firm, or corporation, for whom he, or it is acting, advertises for employees in the newspapers, or by posters, or otherwise, or solicits persons to work for him, or the persons, firm, or corporation, for whom he is acting, in the place of the strikers, he shall plainly and explicitly mention in such advertisements or oral or written solicitations, that a strike, lockout or other labor disturbance exists; provided, that the foregoing provisions shall not apply to advertisements or solicitations published solely or made within the same city or locality where the strike, lockout or other labor disturbance exists.

Penalty.

§ 2. If any person, firm, association or corporation violates any provision of this act, he or it shall be punished by a fine not less than twenty-five dollars and not exceeding two hundred and fifty dollars for each offense.

INTERFERENCE WITH POLITICAL ACTIVITIES OF EMPLOYEES.

ACT 2774b—An act prohibiting employers of labor from interfering with the political activities of their employees and providing penalties for a violation hereof.

History: Approved April 10, 1915. In effect August 8, 1915. Stats. 1915, p. 47.

Political activities of laborers not to be interfered with.

§ 1. It shall be unlawful for any employer of labor to make, adopt or enforce any rule, regulation or policy forbidding or preventing his employees, or any of them, from engaging or participating in politics or from becoming candidates or a candidate for public office, or controlling or directing, or tending to control or direct the political activities or affiliations of such employees or any of them; or to coerce or influence or attempt to coerce or influence such employees or any of them through or by means of threat of discharge or loss of employment to adopt or follow or refrain from adopting or following any particular course or line of political action or political activity. The expression "employer of labor" as herein used shall be deemed to mean and include any person, firm or corporation regularly having in his or its employ twenty or more employees.

Penalty.

§ 2. Any employer violating the provisions of this act shall upon conviction thereof, if an individual, be punishable by imprisonment in the county jail for not to exceed

one year or by a fine of not to exceed one thousand dollars or by both such fine and imprisonment, and, if a corporation, by a fine of not to exceed five thousand dollars. In all prosecutions hereunder the person, firm or corporation violating this act, shall be held responsible for the acts of his or its managers, officers, agents and employees.

§ 3. Nothing herein contained shall be construed to prevent the injured employee from recovering damages from his employer for injury suffered through a violation of this act.

TIPPING ACT.

ACT 2774c—An act to prohibit employers or certain agents or representatives of employers from demanding or receiving any money or other consideration from an employee as a condition of employment or of continuing to perform services in such employment; and to provide for the enforcement of this act by the commissioner of the bureau of labor statistics; and to provide a penalty for the violation thereof; and to repeal an act entitled "An act to forbid managers, superintendents, foremen and other persons having authority from their respective employers to hire, employ, or direct the services of other persons in such employments, to demand or receive any fee, gift or other remuneration in consideration of any such hiring, employment or permission to continue to perform work or services in such employment; and to provide for the enforcement of this act by the commissioner of the bureau of labor statistics," approved April 12, 1915.

History: Approved May 5, 1917. In effect July 27, 1917. Stats. 1917, p. 257. Prior act of April 12, 1915; in effect August 8, 1915, Stats. 1915, p. 61, repealed by the present act.

Employer receiving gifts or part of tips from employees guilty of misdemeanor.

§ 1. Any employer or agent or representative of an employer or other person having authority from his employer to hire, employ or direct the services of other persons in the employment of said employer, who shall demand or receive directly or indirectly from any person then in the employment of said employer, any fee, gift or other remuneration or consideration, or any part or portion of any tips or gratuities received by such employee while in the employment of said employer, in consideration or as a condition of such employment or hiring or employing any person to perform such services for such employer or of permitting said person to continue in such employment, is guilty of a misdemeanor and upon conviction thereof shall be fined not more than three hundred (\$300.00) dollars for such offense, or by imprisonment for not more than six months or by both fine and imprisonment. All fines imposed or collected under provision of this act shall be paid into the state treasury and credited to the contingent fund of the bureau of labor statistics.

Employment agencies excepted.

§ 2. Nothing contained in this act shall be construed to apply to employment agencies or employment agents licensed and operating under the laws of the state of California.

Enforcement.

§ 3. This act shall be enforced by the commissioner of the bureau of labor statistics.

Stats. 1915, p. 61, repealed.

§ 4. An act entitled "An act to forbid managers, superintendents, foremen and other persons having authority from their respective employers to hire, employ, or direct the services of other persons in such employments to demand or receive any fee, gift, or other remuneration in consideration of any such hiring, employment or permission to continue to perform work or services in such employment; and to provide for

the enforcement of this act by the commissioner of the bureau of labor statistics," approved April 12, 1915, and designated chapter fifty-six of the statutes of 1915, is hereby repealed.

The act is invalid as in conflict with the "due process" clause of the federal constitution and with section 13, article I of the California constitution.—In re Farb, 178 Cal. 592.

"SPOTTER" ACT.

ACT 2774d—An act providing that any public service corporation, agent, superintendent, or manager thereof employing special agents, detectives, or so-called spotters shall, before disciplining or discharging any employee upon a report by such special agent, detective, or so-called spotters, give notice and accord a hearing to such employee upon his request therefor, and providing for the punishment for the violation thereof.

History: Approved April 14, 1915. In effect August 8, 1915. Stats. 1915, p. 69.

Employee not to be discharged on "spotter's" report without hearing.

§ 1. It shall be unlawful for any public service corporation, agent, superintendent or manager thereof, employing any special agent, detective, or person commonly known as "spotter" for the purpose of investigating, obtaining and reporting to the employer, its agent, superintendent or manager, information concerning its employees to discipline or discharge any employee in its service, where such act of discipline or the discharge is based upon a report by such special agent, detective or spotter, which report involves a question of integrity, honesty or a breach of rules of the employer, unless such employer, its agent, superintendent or manager, shall give notice and accord a hearing to the employee thus accused, when requested by said employee, at which hearing said employer shall state specific charges on which said act or discharge is based and at which said accused employee shall have the right to furnish testimony in his defense.

Penalty.

§ 2. Each and every violation of this act by any person, firm, association or corporation shall be deemed a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars and not more than three hundred dollars, or by imprisonment in the county jail for a period of not more than one year, or by both such fine and imprisonment. In case of a public service corporation committing any violation of this act the imprisonment when imposed shall be imposed upon the officers or agents thereof committing such offense.

1. Constitutionality—"Due process."—Held unconstitutional as in contravention of the "due process" clause of the federal constitution, and section 13, article I of the constitution of California.—In re Farb, 178 Cal. 592, 596, 174 Pac. 320.

TEMPORARY FLOOR ACT.

ACT 2775—An act to provide for temporary floors in buildings more than three stories high in the course of construction and for the protection of the life and limb of workmen employed in such buildings from falling through joists or girders and from falling bricks, rivets, etc.

History: Approved March 6, 1909, Stats. 1909, p. 157. Entire act, except title, amended April 26, 1911, Stats. 1911, p. 1112.

Temporary floors in buildings more than two stories high.

§ 1. Any building more than two stories high in the course of construction shall have joists, beams or girders of each and every floor below the floor or level where any work is being done, or about to be done, covered with flooring laid close together, or with such other suitable material to protect workmen engaged in such building from

falling through joists or girders, and from falling planks, bricks, rivets, tools, or any other substance whereby life and limb are endangered.

Not to be removed.

§ 2. Such flooring shall not be removed until the same is replaced by the permanent flooring in such building.

Duty of contractor.

§ 3. It shall be the duty of the general contractor having charge of the erection of such building to provide for the flooring as herein required, or to make such arrangements as may be necessary with subcontractors in order that the provisions of this act may be carried out.

Duty of owner.

§ 4. It shall be the duty of the owner or the agent of the owner of such building to see that the general contractor or subcontractor carry out the provisions of this act.

When contractor fails to provide.

§ 5. Should the general contractor or subcontractors of such building fail to provide for the flooring of such building, as herein provided, then it shall be the duty of the owner or the agent of the owner of such building to see that the provisions of this act are carried out.

Misdemeanor.

§ 6. Failure upon the part of the owner, agent of the owner, general contractor, or subcontractors to comply with the provisions of this act shall be deemed a misdemeanor and shall be punishable as such.

§ 7. This act shall take effect within sixty days.

SCAFFOLDING ACT.

ACT 2776—An act to regulate certain scaffolding or staging for the protection of workmen; requiring that in addition to the duties imposed by any law upon employers using or directing or permitting the use of scaffolding or staging swung or suspended from an overhead support such employers shall be subject to the provisions of this act; fixing penalties for a violation hereof to be the same as provided in section 402c of the Penal Code; and providing for the enforcement of this act by the commissioner of the bureau of labor statistics.

History: Approved April 22, 1913. In effect August 10, 1913. Stats. 1913, p. 49.

Safety rail on scaffolding.

§ 1. All scaffolding or staging, swung or suspended from an overhead support which is more than twenty feet from the ground or floor, shall have a safety rail of wood or other equally rigid material of sufficient strength to bear any sudden strain there against equal to four times the weight of an ordinary man, such rail to be properly secured and braced in a manner to withstand a sudden strain as hereinbefore prescribed; such rail to rise at least thirty-four inches above the floor or floors or main portions of such scaffolding or staging, and extending along the entire length of the outside and the ends thereof, and properly attached thereto to withstand any strain as hereinbefore provided; and such scaffolding or staging shall be fastened so as to prevent the same from swaying from the building or structure, or place of work where such scaffolding or staging is being used. Any and all parts of such scaffolding or staging shall be of sufficient strength to support, bear, or withstand, with safety, any

weight of persons, tools, appliances, or materials that may be placed thereupon or that are to be supported thereby while such scaffolding or staging is being used for any of the purposes thereof.

Safety lines.

§ 2. In addition to the duties imposed upon an employer by any law regulating or relating to scaffolding or staging, it shall be the duty of such employer who uses or permits the use of scaffolding or staging, as defined in section one of this act, in connection with construction, alteration, repairing, painting, cleaning or the doing of any other kind of work upon any building structure, or other thing or place of work, to furnish safety lines to tie all hooks and hangers back on the roof of such building, structure or other thing or place of work, and to provide safety lines hanging from the roof, securely tied thereto, and one such line to be provided between each pair of hangers or falls and near the ends of all such scaffolding or staging. When planks are used for the platforms or floors of such scaffolding or staging, they shall be not less than fourteen inches in width, and not less than one and one half inches in thickness, and shall be of wood free from knots or fractures impairing the strength of such planks. Not more than two men shall be allowed or placed to work between two hangers or falls upon such scaffolding or staging.

Penalty.

§ 3. Any violation of the provisions of this act shall be punishable as provided in section four hundred and two c of the Penal Code, and shall be in addition to the penalties provided therein for the violation of any of the provisions of the said section.

§ 4. It shall be the duty of the commissioner of the bureau of labor statistics to enforce the provisions of this act.

PAYMENT OF WAGES BY NEGOTIABLE ORDER.

ACT 2777—An act prohibiting the issuance as payment for wages of any evidence of indebtedness unless the same is negotiable and payable without discount, and providing that the same must be payable upon demand.

History: Approved March 1, 1911, Stats. 1911, p. 259. Amended June 5, 1915. In effect August 8, 1915. Stats. 1915, p. 1215.

Wage checks must be negotiable.

§ 1. No person, firm or corporation shall issue, in payment of or as an evidence of indebtedness for wages due an employee, any order, check, memorandum, or other acknowledgment of indebtedness, unless the same is negotiable, and is payable upon demand without discount in cash at some bank or other established place of business in the state; and no person, firm or corporation shall issue in payment of wages due, or wages to become due an employee, or as an advance on wages to be earned by an employee, any scrip, coupons, cards or other thing redeemable in merchandise or purporting to be payable or redeemable otherwise than in money. But nothing herein contained shall be construed to prohibit an employer from guaranteeing the payment of bills incurred by an employee for the necessities of life or for the tools and implements used by such employee in the performance of his duties; provided, however, that the provisions of this act shall not apply to counties, cities and counties, municipal corporations, quasi-municipal corporations or school districts organized and existing under the laws of this state. [Amendment of June 5, 1915. In effect August 8, 1915. Stats. 1915, p. 1215.]

Penalty.

§ 2. Any person, firm or corporation, or agent or officer thereof, who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction

thereof, shall be punished by a fine not to exceed five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. [Amendment of June 5, 1915. In effect August 8, 1915. Stats. 1915, p. 1215.]

1. Constitutionality upheld.—The act of March 1, 1911, as amended July 5, 1915 (1215) relative to payment of wages is valid and constitutional as applied to the ordinary transactions between employers and employees of the character referred to in the act.—*In re Ballestra*, 173 Cal. 657, 658, 161 Pac. 120.

2. Same.—Reasonable regulation of right of contract.—The right to make a contract

is subject to reasonable regulations, which are valid if they do not impose unreasonable burdens upon individuals.—*In re Ballestra*, 173 Cal. 657, 658, 161 Pac. 120.

3. Sufficiency of affidavit to charge an offense under act of March 1, 1911, as amended July 5, 1915 (1215) relative to payment of wages.—*In re Ballestra*, 173 Cal. 657, 658, 161 Pac. 120.

PAYMENT OF WAGES ACT OF 1919.

ACT 2778—An act to regulate the payment of wages or compensation for labor or service in private employments, establishing regular pay days, providing penalties for the violation of its provisions, authorizing the commissioner of the bureau of labor statistics to enforce this act, defining the duties of district attorneys relative to its enforcement, providing for the collection of certain penalties by civil action at the direction of said commissioner and for the disposition of penalties so collected; repealing an act entitled "An act providing for the time of payment of wages," approved May 1, 1911, as amended April 28, 1915, and repealing an act entitled "An act to regulate the payment of wages or compensation of employees in private employment; to provide for regular pay days in such employment; providing a penalty for the violation thereof; and authorizing the commissioner of the bureau of labor statistics to enforce the provisions of this act," approved June 8, 1915.

History: Approved May 6, 1919. In effect July 22, 1919. Stats. 1919, p. 294. Prior act of May 1, 1911, Stats. 1911, p. 1268. Amended April 28, 1915; in effect August 8, 1915, Stats. 1915, p. 299; and act of June 8, 1915; in effect August 8, 1915, Stats. 1915, p. 1292, repealed by the present act.

Wages of discharged employee.

§ 1. Whenever an employer discharges an employee, the wages or compensation for labor or service earned and unpaid at the time of such discharge shall become due and payable immediately. Whenever an employee not having a written contract for a definite period quits or resigns his employment, the wages or compensation shall become due and payable not later than seventy-two hours thereafter, unless such employee shall have given seventy-two hours previous notice of his intention to quit, in which latter case such employee shall be entitled to his wages or compensation at the time of quitting.

Wages due semi-monthly. Exceptions.

§ 2. All wages or compensation other than those mentioned in section one of this act earned by any person in any employment not exempt by section eleven of this act, shall become due and payable semimonthly or twice during each calendar month, on days to be designated in advance by the employer as the regular pay days; provided, however, that services rendered between the first and fifteenth days, inclusive, of any calendar month shall be paid for between the sixteenth and the twenty-sixth day of the month during which services were rendered, and for all services rendered between the sixteenth and the last day, inclusive, of any calendar month, said services shall be paid for between the first and tenth day of the following month; provided, however, that in agricultural, viticultural and horticultural pursuits, in stock or poultry raising, and in household domestic service, and when the employees in the said employments are boarded and lodged by the employer, the wages or compensation due any employee

remaining in such employment shall become due and payable monthly or once in each calendar month, on a day designated in advance by the employer as the regular pay day, but no two successive such pay days to be more than thirty-one days apart, and the payment or settlement shall include all amounts due for labor or service up to the regular pay day.

What wages shall include.

§ 3. The wages or compensation subject to the provisions of this act shall include all amounts for labor or service performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, or other method of calculating the same, or whether the labor or service is performed under contract, subcontract, partnership, subpartnership, station plan, or other agreement for the performance of labor or service; provided, that the labor or service to be paid for is performed personally by the person demanding payment. Nothing contained in this act shall in any way limit or prohibit the payment of wages or compensation at more frequent intervals, or in greater amounts, or in full when or before due.

Notice of time and place of payment. In case of strike.

§ 4. Every employer shall post and keep posted conspicuously at the place of work, if practicable, or otherwise where it can be seen as employees come or go to their place of work, or at the office or nearest agency for payment kept by the employer, a notice specifying the regular pay days and the time and place of payment, also any changes in those regards occurring from time to time. Every employee who is discharged shall be paid at the place of discharge, and every employee who quits or resigns shall be paid at the office or agency of the employer in the county or city and county where such employee has been performing the labor or service for the employer. All payments of money or compensation shall be made in the manner provided by law. In the happening of any strike, the unpaid wages or compensation earned by such striking employees shall become due and payable on the employer's next regular pay day, and the payment or settlement shall include all amounts due such striking employees without abatement or reduction, and the employer shall return to each such striking employee any deposit or money or other guaranty required by him from such employee for the faithful performance of the duties of the employment. Any violation of the provisions of this section shall be punishable as for a misdemeanor, and any failure to post any notice as in this section prescribed shall be deemed prima facie evidence of a violation of this act.

Failure of employer to pay.

§ 5. In the event that an employer shall wilfully fail to pay, without abatement or reduction, any wages or compensation of any employee who is discharged or who resigns or quits, as in section one of this act provided, then as a penalty for such non-payment the wages or compensation of such employees shall continue from the due date thereof at the same rate until paid, or until an action therefor shall be commenced; provided, that in no case shall such wages continue for more than thirty days; and provided, further, that no such employee who secretes or absents himself to avoid payment to him, or who refuses to receive the payment when fully tendered to him, including any penalty then accrued under the provisions of this section, shall be entitled to any benefit under this act for such time as he so avoids payment.

Refusal of employer to pay.

§ 6. Any person, firm, association, or corporation, or agent, manager, superintendent, or officer thereof, who having the ability to pay, shall wilfully refuse to pay the wages due and payable when demanded, as herein provided, or falsely deny the amount or validity thereof, or that the same is due, with intent to secure for himself, his employer

or other person, any discount upon such indebtedness, or with intent to annoy, harass, or oppress, or hinder, or delay, or defraud, the person to whom such indebtedness is due, shall, in addition to any other penalty imposed upon him by this act, be guilty of a misdemeanor.

Enforcement by bureau of labor statistics.

§ 7. It shall be the duty of the commissioner of the bureau of labor statistics to inquire diligently for any violations of this act, and to institute the actions for penalties herein provided, and to enforce generally the provisions of this act.

Enforcement by district attorney.

§ 8. Nothing herein contained shall be construed to limit the authority of the district attorney of any county or city and county to prosecute actions, both civil and criminal, for such violations of this act as may come to his knowledge, or to enforce the provisions hereof independently and without specific direction of the commissioner of the bureau of labor statistics.

Constitutionality.

§ 9. If any section, sentence, clause, or part of this act, is for any reason held to be unconstitutional, such decision shall not affect the remaining portion of this act. The legislature hereby declares that it would have passed this act, and each section, sentence, clause, or part thereof, irrespective of the fact that one or more sections, sentences, clauses, or parts be declared unconstitutional.

Public employment excepted.

§ 10. Nothing in this act shall apply to the payment of wages or compensation of employees directly employed by any county, city and county, incorporated city or town, or other municipal corporation. Nor shall anything herein apply to employees directly employed by the state, any department, bureau, office, board, commission, or institution thereof. All other employments shall for the purposes of this act be deemed private employments and subject to the provisions hereof.

Acts, Stats. 1911, p. 1268, Stats. 1915, p. 299, and Stats. 1915, p. 1292, repealed.

§ 11. An act entitled "An act providing for the time of payment of wages," approved May 1, 1911, as amended April 28, 1915; and an act entitled "An act to regulate the payment of wages or compensation of employees in private employments; providing a penalty for the violation thereof; and authorizing the commissioner of the bureau of labor statistics to enforce the provisions of this act," approved June 8, 1915, are hereby repealed; but such repeal shall not affect any prosecution or action for the violation of either of said acts commenced within the time allowed by the statute of limitations of actions.

1. **Constitutionality—Uniform operation of law.**—The act of 1911 as amended in 1915 was not obnoxious to section 11, article I, of the constitution, as to the uniform operation of laws.—*Moore v. Indian Spring, etc., Co.*, 37 Cal. App. 370, 174 Pac. 378.

2. **Same—Not a local or special act.**—The act of 1913 as amended in 1915, is not a local or special law within the meaning of subdivision 33, section 25, article IV of the constitution.—*Moore v. Indian Spring, etc., Co.*, 37 Cal. App. 370, 174 Pac. 378.

3. **Same—"Due process"**—The act of 1913 as amended in 1915, was not violative of the "due process" clause of the federal constitution.—*Moore v. Indian Spring, etc., Co.*, 37 Cal. App. 370, 174 Pac. 378.

4. **Same—Imprisonment on mesne process.**—The act of 1913 is unconstitutional in so far as it permits an imprisonment on mesne process for debt.—*In re Crane*, 26 Cal. App. 22, 145 Pac. 733.

SEASONAL LABOR WAGES.

ACT 2779—An act regulating the payment of wages earned in seasonal labor and prescribing the powers and duties of the commissioner of the bureau of labor statistics, in relation thereto.

History: Approved May 28, 1913. In effect August 10, 1913. Stats. 1913, p. 343.

"Seasonal labor" defined.

§ 1. For the purpose of this act the term "seasonable labor" shall include all work performed by any person employed for a period of time greater than one month, and where the wages for such work are not to be paid at any fixed intervals of time, but at the termination of such employment, and where the work is to be performed outside of this state; provided, that such person is hired within this state and the wages earned during such employment are to be paid in this state at the termination of such employment.

Wages paid in presence of examiner.

§ 2. Upon application of either the employer or the employee, the wages earned in seasonal labor, shall be paid in the presence of the commissioner of the bureau of labor statistics or an examiner appointed by him.

Wages disputes.

§ 3. The commissioner shall hear and decide all disputes arising from wages earned in seasonal labor and he shall allow or reject any deductions made from such wages; provided, however, that he shall reject all deductions made for gambling debts incurred by the employee during such employment and for liquor sold to the employee during such employment.

Findings filed.

§ 4. After final hearing by the commissioner, he shall file in the office of the bureau of labor statistics, a copy of the findings upon facts and his award.

Award, wages due.

§ 5. The amount of the award of the commissioner shall be conclusively presumed to be the amount of the wages due and unpaid to the employee at the time of the termination of the employment, and prosecution may be commenced under the provisions of an act entitled, "An act providing for the time of payment of wages," approved May 1, 1911.

May issue subpoenas.

§ 6. The commissioner or any examiner appointed by him, shall have power and authority to issue subpoenas to compel attendance of witnesses or parties, and the production of books, papers or records and to administer oaths. Obedience to such subpoenas shall be enforced by the courts of any county or city and county.

Not applicable to seamen.

§ 7. This act shall not be construed to apply to the wages earned by seamen or other persons, where the payment of wages is regulated by federal statute.

ENFORCED PURCHASE ACT.

ACT 2779a—An act prohibiting employers of labor from coercing employees in the purchase of things of value, and prescribing a penalty for the violation of the provisions hereof.

History: Approved April 26, 1917. In effect July 27, 1917. Stats. 1917, p. 207.

Unlawful to force employee to patronize employer.

§ 1. It shall be unlawful for any employer of labor, or any officer, agent or employee of any employer of labor to make, adopt or enforce any rule or regulation compelling or coercing any employee to patronize said employer, or any other person, firm or corporation, in the purchase of any thing of value; provided, however, that nothing herein shall be interpreted as prohibiting any employer of labor from prescribing the weight, color, quality, texture, style, form and make of uniforms required to be worn by their employees.

Penalty.

§ 2. Any person, whether as an individual, or as an agent or employee of a firm, or as an officer, agent or employee of a corporation, who shall violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment.

SERVICE LETTERS FOR EMPLOYEES.

ACT 2779b—An act to provide for the furnishing by public utility corporations, to employees thereof leaving their service, of service letters.

History: Approved June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1520.

Service letters by public utility corporations.

§ 1. Every public utility corporation shall, upon request therefor made to it by any employee thereof leaving its service, give to such employee a letter covering and stating the period during which such service was and kind of service rendered to such corporation by such employee.

Penalty.

§ 2. Every public utility corporation violating the provisions of this act shall, for each offense, suffer a fine of not less than twenty-five dollars, nor more than one hundred dollars; which fine shall be collected by the district attorney of the county in which such corporation has its principal place of business.

COST OF BONDS AND PHOTOGRAPHS.

ACT 2779c—An act to require employers to pay the cost of bonds and photographs required of and furnished by employees or applicants for employment.

History: Approved April 20, 1917. In effect July 27, 1917. Stats. 1917, p. 151.

Employer must pay for bond or photograph.

§ 1. Whenever a bond or photograph of an employee or applicant for employment is required by any employer of labor, said employer shall pay the cost of such bond or photograph.

Penalty.

§ 2. Any person violating any provision of this act shall be guilty of a misdemeanor, punishable by a fine not less than twenty-five dollars nor exceeding five hundred dollars.

Enforcement.

§ 3. The commissioner of the bureau of labor statistics of the state of California shall enforce the provisions of this act.

SEMI-MONTHLY PAY DAYS FOR COUNTY EMPLOYEES.

ACT 2779d—An act to provide for semi-monthly pay days of laborers in the employ of any county of the first or second class.

History: Approved May 22, 1917. In effect July 27, 1917. Stats. 1917, p. 800.

Semi-monthly pay days of county employees.

§ 1. The wages of all employees of any county of the first or second class, whose compensation is based on a daily rate of payment, shall be paid at not less than two stated times in each calendar month, and at substantially equal intervals.

Penalty for violation.

§ 2. Any officer, employer or agent of any county of the first or second class, or of any department or institution thereof, who fails, refuses or neglects to comply with the requirements of this act, in so far as the payments are prescribed or controlled by him, is guilty of a misdemeanor.

THE WORKMEN'S COMPENSATION, INSURANCE AND SAFETY ACT OF 1917.

ACT 2781—An act to promote the comfort, health, safety and general welfare of the people of this state as affected by injury causing the disability or death of employees in the course of their employment, providing for a complete plan of workmen's compensation by creating a liability on the part of immediate employers, principal employers, contracting employers and their insurance carriers to compensate employees and their dependents for such disability or death, irrespective of the fault of any party, providing the means and methods of enforcing such liability and providing for certain liens upon compensation; and regulating compensation insurance coverage against such liability, securing the payment of compensation and confirming the establishment and transactions of the state compensation insurance fund; and requiring safety in all employments and places of employment in this state and providing the means and methods of enforcing such safety; and requiring reports of industrial injuries; and providing penalties for offenses, as defined herein, by employers, their officers and agents, and by employees and other persons and corporations; and defining the powers and duties of the industrial accident commission under this act, and providing for a review of its orders, decisions and awards; and repealing sections two, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, fifty-one, fifty-two, fifty-three, fifty-four, fifty-five, fifty-six, fifty-seven, fifty-eight, fifty-nine, sixty, sixty-one, sixty-two, sixty-three, sixty-four, sixty-five, sixty-six, sixty-seven, sixty-eight, sixty-nine, seventy, seventy-one, seventy-two, seventy-three, seventy-four, seventy-five, seventy-five a, seventy-six, seventy-seven, seventy-eight, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, eighty-six and eighty-seven of chapter one hundred seventy-six, statutes of 1913, and all other acts and parts of acts inconsistent herewith, except sections one, three, four, five, six, seven, eight, nine, ten, eleven, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven, forty-eight, forty-nine, fifty, eighty-eight and ninety of said chapter one hundred seventy-six, statutes of 1913.

History: Approved May 23, 1917. In effect January 1, 1918. Stats. 1917, p. 831. Amended May 22, 1919; in effect July 22, 1919, Stats. 1919, p. 910. Prior act of April 8, 1911; in effect September 1, 1911, Stats. 1911, p. 796, commonly known as the "Roseberry Act," was repealed by the act of May 26, 1913; in effect January 1, 1914, Stats. 1913, p. 279, known as the "Boynton Act," which was amended (1) May 27, 1915; in effect August 8, 1915, Stats. 1915, p. 913; (2) June 3, 1915; in effect August 8, 1915, Stats. 1915, p. 1079; (3) June 8, 1915; in effect August 8, 1915, Stats. 1915, p. 1302; (4) by the present act. The amendments made by the present act, eliminated the compensation provisions of the "Boynton Act," and left only the administrative and insurance features of the original act, which appears under the title "Industrial Accident Commission," Act 2106.

TABLE OF CORRESPONDING SECTIONS, ACTS OF 1913 AND 1917.

<i>Act of 1913.</i>	<i>Act of 1917.</i>	<i>Act of 1913.</i>	<i>Act of 1917.</i>
§ 2. Corresponding section....	§ 3	§ 22. Corresponding section....	§ 17
§ 7. Corresponding section....	§ 4	§ 23. Corresponding section....	§ 18
§ 12. Corresponding section....	§ 6	§ 24. Corresponding section....	§ 19
§ 13. Corresponding section....	§ 7	§ 25. Corresponding section....	§ 20
§ 14. Corresponding section....	§ 8	§ 26. Corresponding section....	§ 21
§ 15. Corresponding section....	§ 9	§ 27. Corresponding section....	§ 22
§ 16. Corresponding section....	§ 11	§ 28. Corresponding section....	§ 23
§ 17. Corresponding section....	§ 12	§ 29. Corresponding section....	§ 24
§ 18. Corresponding section....	§ 13	§ 30. Corresponding section....	§ 25
§ 19. Corresponding section....	§ 14	§ 31. Corresponding section....	§ 26
§ 20. Corresponding section....	§ 15	§ 32. Corresponding section....	§ 27
§ 21. Corresponding section....	§ 16	§ 33. Corresponding section....	§ 28

*Act of 1913.**Act of 1917.**Act of 1913.**Act of 1917.*

§ 34.	Corresponding section...	§ 30
§ 35.	Corresponding section...	§ 31
§ 51.	Corresponding section...	§ 33
§ 52.	Corresponding section...	§ 34
§ 53.	Corresponding section...	§ 35
§ 54.	Corresponding section...	§ 36
§ 55.	Corresponding section...	§ 37
§ 56.	Corresponding section...	§ 38
§ 58.	Corresponding section...	§ 40
§ 59.	Corresponding section...	§ 41
§ 60.	Corresponding section...	§ 42
§ 61.	Corresponding section...	§ 43
§ 62.	Corresponding section...	§ 44
§ 63.	Corresponding section...	§ 45
§ 64.	Corresponding section...	§ 46
§ 65.	Corresponding section...	§ 47
§ 66.	Corresponding section...	§ 48
§ 67.	Corresponding section...	§ 49
§ 68.	Corresponding section...	§ 50
§ 69.	Corresponding section...	§ 51

§ 70.	Corresponding section...	§ 52
§ 71.	Corresponding section...	§ 53
§ 72.	Corresponding section...	§ 54
§ 73.	Corresponding section...	§ 55
§ 74.	Corresponding section...	§ 56
§ 75.	Corresponding section...	§ 57
§ 75a.	Corresponding section...	§ 58
§ 76.	Corresponding section...	§ 59
§ 77.	Corresponding section...	§ 60
§ 78.	Corresponding section...	§ 61
§ 79.	Corresponding section...	§ 62
§ 80.	Corresponding section...	§ 63
§ 81.	Corresponding section...	§ 64
§ 82.	Corresponding section...	§ 65
§ 83.	Corresponding section...	§ 66
§ 84.	Corresponding section...	§ 67
§ 85.	Corresponding section...	§ 68
§ 86.	Corresponding section...	§ 69
§ 87.	Corresponding section...	§ 70

ANALYSIS OF ACT.

- § 1. INTENTION OF ACT. SOCIAL PUBLIC POLICY OF STATE DECLARED.
- § 2. TITLE.
- § 3. DEFINITIONS: "COMMISSION"; "COMMISSIONER"; "COMPENSATION"; "INJURY"; "DAMAGES"; "PERSON"; "INSURANCE CARRIER"; "SINGULAR AND PLURAL."
- § 4. ASSISTANT TO ATTORNEY.
- § 5. POWERS AND DUTIES.
- § 6. EMPLOYER'S LIABILITY. MISCONDUCT OF INJURED EMPLOYEE. RECOVERY OF COMPENSATION.
- § 7. "EMPLOYER."
- § 8. "EMPLOYEE"; "INDEPENDENT CONTRACTOR"; PARTNER RECEIVING WAGES; "CASUAL"; WATCHMEN; EMPLOYEES OF STATE, ETC. WORKMEN UNDER PARTNERSHIP AGREEMENT.
- § 9. CHANGE OF PHYSICIANS. EMPLOYER MAINTAINING HOSPITAL STAFF. TIME OF DISABILITY PAYMENTS. DISABILITY LESS THAN SEVEN DAYS. DISABILITY MORE THAN SEVEN DAYS. AMOUNT OF DISABILITY PAYMENTS. AGGREGATE DISABILITY PAYMENTS. COMPUTATION OF PAYMENTS WHEN DISABILITY PERMANENT. ONLY ONE PAYMENT. PERMANENT DISABILITIES PRESUMED TO BE TOTAL. SCHEDULE FOR DETERMINATION OF PERMANENT DISABILITIES. DEATH BENEFITS. IF DECEASED EMPLOYEE LEAVES DEPENDENTS. IF EMPLOYEE LEAVES PERSONS PARTIALLY DEPENDENT. IF NO DEPENDENTS.
- § 10. INSPECTION OF HOSPITAL FACILITIES. REPORTS OF RECEIPTS, ETC. FACILITIES DECLARED INADEQUATE.
- § 11. RIGHT TO INSTITUTE PROCEEDINGS BARRED, WHEN. PERIODS WITHIN WHICH PROCEEDINGS FOR COLLECTION MAY BE COMMENCED. GUARDIAN FOR MINOR OF INCOMPETENT. REFUSAL TO SUBMIT TO MEDICAL TREATMENT. PREVIOUS DISABILITY DOES NOT AFFECT LATER DISABILITY. PAYMENTS NOT DUE EMPLOYEE. AFFIRMATIVE DEFENSE.
- § 12. AVERAGE ANNUAL EARNINGS. AVERAGE WEEKLY EARNINGS. WHEN LESS THAN FIVE DAYS OR SEASONAL. OVERTIME, BOARD, ETC. IF INJURED EMPLOYEE IS UNDER 21.
- § 13. WEEKLY LOSS IN WAGES IN CASE OF TEMPORARY PARTIAL DISABILITY.
- § 14. WHO ARE DEEMED WHOLLY DEPENDENT. DISTRIBUTION OF DEATH BENEFIT. COMMISSION MAY REASSIGN DEATH BENEFIT.
- § 15. NOTICE TO EMPLOYER.
- § 16. MEDICAL EXAMINATION OF EMPLOYEE. IF EMPLOYEE REFUSES TO SUBMIT TO EXAMINATION.
- § 17. HEARING ON DISPUTES. SERVICE OF NOTICE. JURISDICTION OF COMMISSION. BUT ONE CAUSE OF ACTION. DEATH OF EMPLOYER.
- § 18. DEFENDANT'S ANSWER. APPLICATION FOR RELIEF. DISMISSAL OF APPLICATION. ATTACHMENT OF DEFENDANT'S PROPERTY.
- § 19. TESTIMONY. STIPULATION OF FACTS. EVIDENCE. AFFIRMATIVE DEFENSES. AUTOPSY.
- § 20. FINDINGS AND AWARD. AMENDING ORDERS, ETC.

- § 21. FINDINGS FILED IN THE SUPERIOR COURT. JUDGMENT ROLL. STAY OF EXECUTION. ENTRY OF SATISFACTION.
- § 22. REVIEW OF FINDINGS, ETC.
- § 23. FEES. COSTS.
- § 24. CLAIM NOT ASSIGNABLE. LIEN AGAINST AMOUNT DUE AS COMPENSATION. NOTICE OF CLAIM. AWARD BY COMMISSION. EXCESSIVE CLAIM FOR LEGAL SERVICES. PREFERENCE OF CLAIM FOR COMPENSATION.
- § 25. LIABILITY OF PRINCIPAL EMPLOYERS AND CONTRACTORS. LIMITATIONS ON LIABILITY.
- § 26. "EMPLOYEE." SUITS FOR DAMAGES FROM PERSON OTHER THAN EMPLOYER. IF EMPLOYEE JOINS IN SUIT.
- § 27. RIGHT TO COMPROMISE. VALID RELEASE OR COMPROMISE AGREEMENT. AWARD BASED ON RELEASE OR COMPROMISE AGREEMENT. CONTENTS OF RELEASE OR COMPROMISE AGREEMENT.
- § 28. COMPENSATION PAYABLE IN LUMP SUM. DETERMINATION OF AMOUNT OF COMMUTED PAYMENT. MANNER OF MAKING LUMP SUM PAYMENT. PAYMENTS FROM STATE COMPENSATION INSURANCE FUND.
- § 29. WAYS OF SECURING PAYMENT OF COMPENSATION. ACTION AGAINST EMPLOYER. RIGHT TO ATTACH PROPERTY.
- § 30. RIGHT OF EMPLOYER TO INSURE IN MUTUAL COMPANIES, ETC. LIABILITY NOT REDUCED BY INSURANCE, ETC. INSURANCE CARRIER DIRECTLY LIABLE TO EMPLOYEE. LIEN OF EMPLOYEE ON AMOUNT OWING ON POLICY. EMPLOYER RELIEVED FROM LIABILITY BY INSURANCE CARRIER. ORDER OF COMMISSION. INSURANCE CARRIER SUBROGATED TO RIGHTS OF EMPLOYER. STATE FUND MAY INSURE.
- § 31. "LIMITED COMPENSATION POLICY."
- § 32. ORGANIZATION OF STATE COMPENSATION INSURANCE FUND CONTINUED.
- § 33. DEFINITIONS: "PLACE OF EMPLOYMENT"; "EMPLOYMENT"; "EMPLOYER"; "EMPLOYEE"; "ORDER"; "GENERAL ORDER"; "LOCAL ORDER"; "SAFE" AND "SAFETY"; "SAFETY DEVICE" AND "SAFEGUARD."
- § 34. EMPLOYER TO MAKE EMPLOYMENT SAFE.
- § 35. USE OF SAFETY DEVICES.
- § 36. CONSTRUCTION OF UNSAFE PLACE.
- § 37. EMPLOYER NOT TO INTERFERE WITH SAFETY DEVICES.
- § 38. JURISDICTION OF COMMISSION OVER PLACES OF EMPLOYMENT.
- § 39. POWER OF COMMISSION TO PRESCRIBE DEVICES, STANDARDS, ETC.
- § 40. NOTICE OF HEARING TO CONSIDER GENERAL SAFETY ORDER.
- § 41. ORDER TO MAKE EMPLOYMENT SAFE.
- § 42. TIME FOR COMPLIANCE WITH ORDER.
- § 43. INVESTIGATION OF UNSAFE EMPLOYMENT.
- § 44. OBEYING ORDER.
- § 45. REVIEW OF ORDERS.
- § 46. POWERS OF SUPERVISORS, ETC., NOT AFFECTED.
- § 46½. RESTRAINING INJUNCTION AGAINST UNSAFE EMPLOYMENTS.
- § 47. MUSEUMS OF SAFETY AND HYGIENE. LECTURES. ADVISERS.
- § 48. ORDER ADMISSIBLE AS EVIDENCE.
- § 49. PENALTY FOR VIOLATION.
- § 50. SEPARATE AND DISTINCT OFFENSE.
- § 51. ACCIDENT PREVENTION FUND. PERCENTAGE OF AMOUNT OF GROSS PREMIUMS. ESTIMATES SUBMITTED TO BOARD OF CONTROL. REVOLVING FUND.
- § 52. UNLAWFUL TO DIVULGE CONFIDENTIAL INFORMATION.
- § 53. REPORTS OF INJURIES. FILLING OUT BLANKS. INFORMATION NOT OPEN TO PUBLIC INSPECTION.
- § 54. INVESTIGATION OF INJURIES. INSPECTORS, ETC., MAY ENTER PLACE OF EMPLOYMENT. PENALTY FOR VIOLATION.
- § 55. PROCEEDINGS INSTITUTED BEFORE COMMISSION. ORDERS, ETC., PRIMA FACIE LAWFUL.
- § 56. SERVICE OF NOTICE, ETC.
- § 57. POWERS OF COMMISSION. RULES OF PRACTICE. REPRESENTATION OF MINORS, ETC. APPOINT TRUSTEES TO APPEAR FOR MINOR OR INCOMPETENT. JOINDER OF INTERESTED PERSONS. NOTICES. PROOFS. CONTROVERSIES OVER INSURANCE POLICIES. ACTING AS ARBITRATOR.
- § 58. CONTROVERSIES OVER INJURIES OUTSIDE OF STATE.
- § 59. REFERENCE OF CASES. REFEREES. OBJECTION TO APPOINTMENT. OATH OF REFEREE. REPORT OF REFEREE. ORDER, ETC., BASED ON REPORT OF REFEREE. HEARINGS BY REFEREES.
- § 60. COMMISSION NOT BOUND BY STATUTORY RULES OF EVIDENCE AND PROCEDURE.

- § 61. POWER OF COMMISSION TO ADMINISTER OATHS, ETC. WITNESS FEES AND MILEAGE.
- § 62. POWER OF SUPERIOR COURT TO COMPEL ATTENDANCE OF WITNESSES, ETC.
- § 63. GENERAL POWERS OF COMMISSION. POWER TO ISSUE WRITS, ETC.
- § 64. APPLICATION FOR REHEARING. NO CAUSE FOR ACTION UNLESS APPLICATION FOR REHEARING. GROUNDS FOR APPLICATION. SERVICE UPON ADVERSE PARTIES. REHEARING. CHANGING ORDER, ETC. ACTION WITHIN 30 DAYS.
- § 65. GROUNDS FOR REHEARING OF ORDER AWARDING COMPENSATION.
- § 66. GROUNDS FOR REHEARING OF ORDER NOT PERTAINING TO COMPENSATION. RIGHT OF COMMISSION TO ADOPT NEW RULES.
- § 67. APPLICATION FOR WRIT OF REVIEW. RECORD OF COMMISSION. JUDGMENT OF COURT. JURISDICTION OF COURTS LIMITED.
- § 68. ORDER, ETC., SUSPENDED BY APPLICATION FOR REHEARING. STAY OF ORDER BY COURT. WRITTEN UNDERTAKING BY PETITIONER.
- § 69. INTERPRETATION BY COURT. EMPLOYERS ENGAGED IN INTERSTATE COMMERCE.
- § 70. OTHER EMPLOYEES MAY COME UNDER PROVISIONS OF ACT. OTHER EMPLOYERS SUBJECT TO COMPENSATION PRIVILEGES, WHEN. STATE EMPLOYMENTS. ACCEPTANCE OF ACT OF 1913 CONTINUED.
- § 71. REPEALED. CONTINUED.
- § 72. PROCEEDINGS, ETC., UNDER ACT OF 1913 NOT DISTURBED.
- § 73. [COMPENSATION PROVISIONS HAVE NO RETROACTIVE EFFECT.]
- § 74. IN EFFECT WHEN.

Intention of act. Social public policy of state declared.

§ 1. This act and each and every part thereof is an expression of the police power and is also intended to make effective and apply to a complete system of workmen's compensation the provisions of section seventeen and one-half of article XX and section twenty-one of article XX of the constitution of the state of California. A complete system of workmen's compensation includes adequate provision for the comfort, health, safety and general welfare of any and all employees and those dependent upon them for support to the extent of relieving from the consequences of any injury incurred by employees in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment, full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury, full provision for adequate insurance coverage against the liability to pay or furnish compensation, full provision for regulating such insurance coverage in all its aspects including the establishment and management of a state compensation insurance fund, full provision for otherwise securing the payment of compensation, and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any matter arising under this act to the end that the administration of this act shall accomplish substantial justice in all cases expeditiously, inexpensively and without innumbrance of any character; all of which matters contained in this section are expressly declared to be the social public policy of this state, binding upon all departments of the state government.

Title.

§ 2. This act shall be known and may be cited as the "workmen's compensation, insurance and safety act of 1917" and shall apply to the subjects mentioned in its title.

Definitions.

§ 3. The following terms as used in this act shall, unless a different meaning is plainly required by the context be construed as follows:

"Commission."

(1) The term "commission" means the industrial accident commission of the state of California as created under the provisions of chapter one hundred seventy-six of the laws of 1913.

"Commissioner."

(2) The term "commissioner" means one of the members of the commission.

"Compensation."

(3) The term "compensation" means compensation under this act and includes every benefit or payment conferred by sections six to thirty-one, inclusive, of this act upon an injured employee, or in the event of his death, upon his dependents, without regard to negligence.

"Injury."

(4) The term "injury," as used in this act, shall include any injury or disease arising out of the employment including injuries to artificial members. In case of aggravation of any disease existing prior to such injury, compensation shall be allowed only for such proportion of the disability due to the aggravation of such prior disease as may reasonably be attributed to the injury.

"Damages."

(5) The term "damages" means the recovery allowed in an action at law as contrasted with compensation under this act.

"Person."

(6) The term "person" includes an individual, firm, voluntary association, or a public, quasi-public or private corporation.

"Insurance carrier."

(7) The term "insurance carrier" includes the state compensation insurance fund and any private company, corporation, mutual association, reciprocal or interinsurance exchange authorized under the laws of this state to insure employers against liability for compensation under this act and any employer to whom a certificate of consent to self-insure has been issued.

Singular and plural.

(8) Whenever in this act the singular is used, the plural shall be included; where the masculine gender is used, the feminine and neuter shall be included. [Amendment of May 22, 1919. In effect July 22, 1919. Stats. 1919, p. 911.]

Assistant to attorney.

§ 4. The commission shall have power and authority to appoint an assistant to its attorney, who shall be an attorney at law of this state, and who shall hold office at the pleasure of the commission. It shall be the right and duty of such assistant attorney to perform any of the duties of the attorney of the commission under the direction of the commission or its attorney.

Powers and duties.

§ 5. Said commission is hereby vested with full power, authority and jurisdiction under the provisions of this act and charged with the duties defined by the provisions of this act in addition to all other power, authority, jurisdiction and duties conferred upon it and exercised by it as heretofore created, constituted and existing.

Employer's liability.

§ 6. (a) Liability for the compensation provided by this act, in lieu of any other liability whatsoever to any person, shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment and for the death of any such employee if the injury shall proximately

mately cause death, in those cases where the following conditions of compensation concur:

(1) Where, at the time of the injury, both the employer and employee are subject to the compensation provisions of this act.

(2) Where, at the time of the injury, the employee is performing service growing out of and incidental to his employment and is acting within the course of his employment.

(3) Where the injury is proximately caused by the employment, either with or without negligence, and is not caused by the intoxication of the injured employee, or is not intentionally self-inflicted.

Misconduct of injured employee.

(4) Where the injury is caused by the serious and wilful misconduct of the injured employee, the compensation otherwise recoverable by him shall be reduced one-half; provided, however, that such misconduct of the employee shall not be a defense to the claim of the dependents of said employee, if the injury results in death, or to the claim of the employee, if the injury results in a permanent partial disability equaling or in excess of seventy per cent of total; and provided, further, that such misconduct of said employee shall not be a defense where his injury is caused by the failure of the employer to comply with any provision of law, or any safety order of the commission, with reference to the safety of places of employment; and provided, further, that in case of an injury suffered by an employee under sixteen years of age, it shall be conclusively presumed that such injury was not caused by serious and wilful misconduct.

Recovery of compensation.

(b) Where such conditions of compensation exist, the right to recover such compensation, pursuant to the provisions of this act, shall be the exclusive remedy against the employer for the injury or death; provided, that where the employee is injured by reason of the serious and wilful misconduct of the employer, or his managing representative, or if the employer be a partnership, on the part of one of the partners, or if a corporation, on the part of an executive or managing officer or general superintendent thereof, the amount of compensation otherwise recoverable for injury or death, as hereinafter provided, shall be increased one-half, any of the provisions of this act as to maximum payments or otherwise to the contrary notwithstanding, provided, however, that said increase of award shall in no event exceed two thousand five hundred dollars.

(c) In all other cases where the conditions of compensation do not concur, the liability of the employer shall be the same as if this act had not been passed. [Amendment of May 22, 1919. In effect July 22, 1919. Stats. 1919, p. 912.]

“Employer.”

§ 7. The term “employer” as used in sections six to thirty-one, inclusive, of this act shall be construed to mean: The state, and each county, city and county, city, school district, irrigation district, all other districts established by law and all public corporations and quasi-public corporations and public agencies therein, and every person, firm, voluntary association, and private corporation, including any public service corporation, who has any person in service under any appointment or contract of hire, or apprenticeship, express or implied, oral or written, and the legal representative of any deceased employer. [Amendment of May 22, 1919. In effect July 22, 1919. Stats. 1919, p. 913.]

“Employee.”

§ 8. (a) The term “employee” as used in sections six to thirty-one, inclusive, of this act shall be construed to mean: every person in the service of an employer

as defined by section seven hereof under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also including minors, whether lawfully or unlawfully employed, and all elected and appointed paid public officers, and all officers and members of boards of directors of quasi-public or private corporations, while rendering actual service for such corporations for pay, but excluding any person whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer, and also excluding any employee engaged in household domestic service, farm, dairy, agricultural, viticultural or horticultural labor, in stock or poultry raising and any person holding an appointment as deputy clerk, deputy sheriff or deputy constable appointed for the convenience of such appointee, who receives no compensation from the county or municipal corporation or from the citizens thereof for services as such deputy; provided, that such last exclusion shall not deprive any person so deputized from recourse against any private person employing him for injury occurring in the course of and arising out of such employment.

"Independent Contractor." Partner receiving wages.

(b) Any person rendering service for another, other than as an independent contractor, or as expressly excluded herein, is presumed to be an employee within the meaning of this act. The term "independent contractor" shall be taken to mean, for the purposes of this act: any person who renders service, other than manual labor, for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished. A working member of a partnership receiving wages irrespective of profits from such partnership shall be deemed an employee within the meaning of this section.

"Casual."

(c) The term "casual" as used in this section shall be taken to refer only to employments where the work contemplated is to be completed in not exceeding ten working days, without regard to the number of men employed, and where the total labor cost of such work is less than one hundred dollars. The phrase "course of the trade, business, profession or occupation of his employer" shall be taken to include all services tending toward the preservation, maintenance or operation of the business, business premises or business property of the employer. The words "trade, business, profession or occupation of his employer" shall be taken to include any undertaking actually engaged in by him with some degree of regularity, the trade name, articles of incorporation or principal business of the employer to the contrary notwithstanding.

Watchmen.

(d) Watchmen for nonindustrial establishments, paid by subscription by several persons, shall not be held to be employees within the meaning of this act. In other cases where watchmen, paid by subscription by several persons, have at the time of the injury sustained by them taken out and maintained in full force and effect insurance upon themselves as self-employing persons conferring benefits equal to those conferred by this act, the employer shall not be liable under this act.

Employees of state, etc.

(e) It shall not be a defense to the state, or any political subdivision or institution thereof, or public or quasi-public corporation, that a person injured while rendering service for it was not lawfully employed by reason of the violation of any civil service or other law, rule, or regulation respecting the hiring of employees.

Workmen under partnership agreement.

(f) Workmen associating themselves under a partnership agreement, the principal purpose of which is the performance of the labor on a particular piece of work, shall be deemed employees of the person having such work executed, and, in the event the average weekly earnings are not otherwise ascertainable, shall be deemed to be employed at an average weekly wage of twelve dollars; provided, however, that if such workmen shall have taken out and maintained in full force and effect insurance, in an insurance carrier as defined in this act, insuring to themselves and all persons employed by them benefits identical with those conferred by this act, the person for whom such work is to be done shall not be liable as an employer under this act.

§ 9. Where liability for compensation under this act exists, such compensation shall be furnished or paid by the employer and be as provided in the following schedule:

Change of physicians. Employer maintaining hospital staff.

(a) Such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may reasonably be required to cure and relieve from the effects of the injury, the same to be provided by the employer, and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employee in providing the same; provided, that if the employee so requests, the employer shall tender him one change of physicians and shall nominate at least three additional practicing physicians competent to treat the particular case, or as many as may be available if three can not reasonably be named, from whom the employee may choose; the employee shall also be entitled, in any serious case, upon request, to the services of a consulting physician to be provided by the employer; all of said treatment to be at the expense of the employer. If the employee so requests, the employer must procure certification by the commission or a commissioner of the competency for the particular case of the consulting or additional physicians; provided, further, that the foregoing provisions regarding a change of physicians shall not apply to those cases where the employer maintains, for his own employees, a hospital and hospital staff, the adequacy and competency of which have been approved by the commission. Nothing contained in this section shall be construed to limit the right of the employee to provide, in any case, at his own expense, a consulting physician or any attending physicians whom he may desire. Controversies between employer and employee, arising under this section, shall be determined by the commission, upon the request of either party.

Time of disability payments.

(b) If the injury causes temporary disability, a disability payment which shall be payable for one week in advance as wages on the eighth day after the injured employee leaves work as a result of the injury. If the injury causes permanent disability, a disability payment which shall be payable for one week in advance as wages on the eighth day after the injury. Such indemnity shall thereafter be payable on the employer's regular pay day, but not less frequently than twice in each calendar month, unless otherwise ordered by the commission, subject, however, to the following limitations:

Disability less than 7 days.

(1) If the period of disability does not last longer than seven days from the day the employee leaves work as the result of the injury, no disability payment whatever shall be recoverable.

Disability more than 7 days.

(2) If the period of disability lasts longer than seven days from the day the employee leaves work as the result of the injury, no disability payment shall be recoverable for the first seven days of disability suffered.

Amount of disability payments.

2. The disability payment shall be as follows:

(1) If the injury causes temporary total disability, sixty-five per cent of the average weekly earnings during the period of such disability, consideration being given to the ability of the injured employee to compete in an open labor market;

(2) If the injury causes temporary partial disability, sixty-five per cent of the weekly loss in wages during the period of such disability;

(3) If the temporary disability caused by the injury is at times total and at times partial the weekly disability payment during the period of each such total or partial disability shall be in accordance with paragraphs one and two of this subdivision respectively;

Aggregate disability payments.

(4) Paragraphs one, two, and three of this subdivision shall be limited as follows: Aggregate disability payments for a single injury causing temporary disability shall not exceed three times the average annual earnings of the employee, nor shall the aggregate disability period for such temporary disability in any event extend beyond two hundred forty weeks from the date of the injury.

Computation of payments when disability permanent.

(5) If the injury causes permanent disability, the percentage of disability to total disability shall be determined and the disability payment computed and allowed as follows: For a one per cent disability, sixty-five per cent of the average weekly earnings for a period of four weeks; for a ten per cent disability, sixty-five per cent of the average weekly earnings for a period of forty weeks; for a twenty per cent disability, sixty-five per cent of the average weekly earnings for a period of eighty weeks; for a thirty per cent disability, sixty-five per cent of the average weekly earnings for a period of one hundred twenty weeks; for a forty per cent disability, sixty-five per cent of the average weekly earnings for a period of one hundred sixty weeks; for a fifty per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred weeks; for a sixty per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks; for a seventy per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks, and thereafter ten per cent of such weekly earnings during the remainder of life; for an eighty per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks and thereafter twenty per cent of such weekly earnings during the remainder of life; for a ninety per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks and thereafter thirty per cent of such weekly earnings during the remainder of life; for a hundred per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks and thereafter forty per cent of such weekly earnings during the remainder of life.

(6) The payment for permanent disabilities intermediate to those fixed by the foregoing schedule shall be computed and allowed as follows: If under seventy per cent, sixty-five per cent of the average weekly earnings for four weeks for each one per cent of disability; if seventy per cent or over, sixty-five per cent of the average weekly earnings for two hundred forty weeks and thereafter one per cent of such weekly earn-

ings for each one per cent of disability in excess of sixty per cent to be paid during the remainder of life.

(7) In determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his age at the time of such injury, consideration being given to the diminished ability of such injured employee to compete in an open labor market.

Only one payment.

(8) Where an injury causes both temporary and permanent disability, the injured employee shall not be entitled to both a temporary and permanent disability payment, but only to the greater of the two.

Permanent disabilities presumed to be total.

(9) The following permanent disabilities shall be conclusively presumed to be total in character: Loss of both eyes or the sight thereof; loss of both hands or the use thereof; an injury resulting in a practically total paralysis; an injury to the brain resulting in incurable imbecility or insanity. In all other cases, permanent total disability shall be determined in accordance with the fact.

(10) The percentage of permanent disability caused by any injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any injury previously suffered or any permanent disability caused thereby.

Schedule for determination of permanent disabilities.

(11) The commission may prepare, adopt, and from time to time amend, a schedule for the determination of the percentages of permanent disabilities, such table to be based upon the proper combinations of the factors indicated in subdivision seven above. Such schedule shall be available for public inspection and without formal introduction in evidence shall be prima facie evidence of the percentage of permanent disability to be attributed to each injury covered by said schedule.

3. The death of an injured employee shall not affect the liability of the employer under subsections (a) and (b) of this section, so far as such liability has accrued and become payable at the date of the death, and any accrued and unpaid compensation shall be paid to the dependents, if any, or, if there are no dependents, to the personal representative of the deceased employee or heirs or other persons entitled thereto, without administration, but such death shall be deemed to be the termination of the disability.

Death benefits.

(c) If the injury causes death, either with or without disability, the burial expense of the deceased employee as hereinafter limited and a death benefit which shall be payable in installments equal to sixty-five per cent of the average weekly earnings of the deceased employee, upon the employer's regular pay day, but not less frequently than twice in each calendar month, unless otherwise ordered by the commission, which death benefit shall be as follows:

If deceased employee leaves dependents.

(1) In case the deceased employee leaves a person or persons wholly dependent upon him for support, such dependents shall be allowed the reasonable expense of his burial, not exceeding one hundred dollars, and a death benefit, which shall be a sum sufficient, when added to the disability indemnity which at the time of death has accrued and become payable, under the provisions of subsection (b) hereof, and the said burial expense, to make the total disability indemnity, cost of burial and death benefit equal to three times his average annual earnings, such average annual earnings

to be taken at not less than three hundred thirty-three dollars, and thirty-three cents nor more than one thousand six hundred sixty-six dollars and sixty-six cents.

If employee leaves persons partially dependent.

(2) In case the deceased employee leaves no person wholly dependent upon him for support, but one or more persons partially dependent therefor, the said dependents shall be allowed the reasonable expense of his burial, not to exceed one hundred dollars, and, in addition thereto, a death benefit which shall amount to three times the annual amount devoted by the deceased to the support of the person or persons so partially dependent; provided, that the death benefit shall not be greater than a sum sufficient, when added to the disability indemnity which, at the time of the death, has accrued and become payable under the provisions of subsection (b) hereof, together with the cost of the burial of such deceased employee, to make the total disability indemnity, cost of burial and death benefit equal to three times his average annual earnings, such average annual earnings to be taken at not less than three hundred thirty-three dollars and thirty-three cents nor more than one thousand six hundred sixty-six dollars and sixty-six cents.

If no dependents.

(3) If the deceased employee leaves no person dependent upon him for support, the death benefit shall consist of the reasonable expense of his burial, not exceeding one hundred dollars and such other benefit as may be provided by law.

(d) Payment of compensation in accordance with the order and direction of the commission shall discharge the employer from all claims therefor. [Amendment of May 22, 1919. In effect July 22, 1919. Stats. 1919, pp. 913-917.]

Inspection of hospital facilities. Reports of receipts, etc. Facilities declared inadequate.

§ 10. The commission shall have power to inspect and determine the adequacy of hospitals and hospital facilities supplied by employers or by mutual associations of employees, with or without the concurrence of the employer, for the treatment of injuries coming within the provisions of this act. No part of any contribution paid by employees or deducted from their wages for the maintenance of such hospital facilities shall be devoted to the payment of any portion of the cost of providing compensation prescribed by this act. Nothing contained in this section shall be taken to prevent any hospital association or medical department furnishing the treatment prescribed in this act free of charge to employees. Every such hospital shall make to the commission from time to time, upon demand, but not less frequently than once a year, reports of receipts, disbursements and services rendered to or for employees. If in the judgment of the commission the services or equipment of any hospital are inadequate to meet the reasonable requirements of medical treatment contemplated in section nine (a) of this act, the commission may, after notice and an opportunity to be heard, declare such facilities to be inadequate and thereafter injured employees of such employer may procure treatment elsewhere, and the reasonable cost thereof shall be a charge against such employer under said section nine (a). Any finding of the commission, after such notice, determining the fact of such inadequacy, shall be conclusive evidence in any proceeding for compensation of the fact of such inadequacy during the period covered by such finding. Such finding of inadequacy may be amended, modified or rescinded by the commission at any time upon good cause appearing therefor.

Right to institute proceedings barred when. Periods within which proceedings for collection may be commenced.

§ 11. (a) Unless compensation is paid or an agreement for its payment made within the time limited in this section for the institution of proceedings for its collection, the right to institute such proceedings shall be barred; provided, that the filing of an appli-

cation with the commission for any portion of the benefits prescribed by this act shall render this section inoperative as to all further claims of any person or persons for compensation arising from the same transaction, and the right to present such further claims shall be governed by the provisions of section twenty (d) and section sixty-five (b) of this act.

(b) The periods within which proceedings for the collection of compensation may be commenced are as follows:

(1) Proceedings for the collection of the benefit provided by subsection (a) of section nine or for the collection of the disability payment provided by subsection (b) of said section nine must be commenced within six months from the date of the injury, except as otherwise provided in this act.

(2) Proceedings for the collection of the death benefit provided by subsection (c) of said section nine must be commenced within one year from the date of death, and in any event within two hundred forty weeks from the date of the injury, and can only be maintained when it appears that death ensued within one year from the date of the injury, or that the injury causing death also caused disability which continued to the date of the death and for which a disability payment was made, or an agreement for its payment made, or proceedings for its collection commenced within the time limited for the commencement of proceedings for the recovery of the disability payment.

(c) The payment of compensation, or any part thereof, or agreement therefor, shall have the effect of extending the period within which proceedings for its collection may be commenced, six months from the date of the agreement or last payment of such compensation, or any part thereof, or the expiration of the period covered by any such payment; provided, however, that nothing contained in this section shall be construed to bar the right of any injured employee to institute proceedings for the collection of compensation within two hundred forty-five weeks after the date of the injury upon the grounds that the original injury has caused new and further disability; and the jurisdiction of the commission, in such cases, shall be a continuing jurisdiction at all times with such period; provided, further, that the provisions of this section shall not apply to an employee who is totally disabled and bedridden as a result of his injury, during the continuance of such condition or until the expiration of six months thereafter.

Guardian for minor or incompetent.

(d) If an injured employee, or in the case of his death, one or more of his dependents, shall be under twenty-one years of age or incompetent at any time when any right or privilege accrues to such person under the provisions of this act, a general guardian, appointed by the court, or a guardian ad litem or trustee appointed by the commission or a commissioner may, on behalf of any such person, claim and exercise any such right or privilege with the same force and effect as if no such disability existed; and no limitation of time provided by this act shall run against any such person under twenty-one years of age or incompetent unless and until such guardian or trustee is appointed. The commission shall have power to determine the fact of the minority or incompetency of any injured employee and may appoint a trustee to receive and disburse compensation payments for the benefit of such minor or incompetent and his family.

Refusal to submit to medical treatment.

(e) No compensation shall be payable in case of the death or disability of an employee if his death is caused, or if and so far as his disability is caused, continued, or aggravated, by an unreasonable refusal to submit to medical treatment, or to any

surgical treatment, the risk of which is, in the opinion of the commission, based upon expert medical or surgical advice, inconsiderable in view of the seriousness of the injury.

Previous disability does not affect later disability.

(f) The fact that an employee has suffered a previous disability, or receives compensation therefor, shall not preclude him from compensation for a later injury, or his dependents from compensation for death resulting therefrom, but in determining compensation for the later injury, or death resulting therefrom, his average annual earnings shall be fixed at such sum as will reasonably represent his annual earning capacity at the time of the later injury.

Payments not due employee.

(g) Any payment, allowance or benefit received by the injured employee during the period of his incapacity, or by his dependents in the event of his death, which by the terms of this act was not then due and payable or when there is any dispute or question concerning the right to compensation, shall not, in the absence of any agreement, be construed to be an admission of liability for compensation on the part of the employer, or the acceptance thereof as a waiver of any right or claim which the employee or his dependents may have against the employer, but any such payment, allowance or benefit may be taken into account by the commission in fixing the amount of the compensation to be paid.

Affirmative defense.

(h) The running of the period of limitations prescribed by this section is an affirmative defense and operates to bar the remedy and not to extinguish the right of the employee. It may be waived, and failure to present such defense prior to the submission of the cause for decision shall be a sufficient waiver.

Average annual earnings.

§ 12. (a) The average annual earnings referred to in section nine hereof shall be fifty-two times the average weekly earnings referred to in said section; in computing such earnings the average weekly earnings shall be taken at not less than six dollars and forty-one cents nor more than thirty-two dollars and five cents, and three times the average annual earnings shall be taken at not less than one thousand dollars nor more than five thousand dollars, and between said limits said average weekly earnings shall be arrived at as follows:

Average weekly earnings.

(1) If the injured employee has worked in the same employment, whether for the same employer or not, during at least two hundred sixty days of the year preceding his injury, his average weekly earnings shall consist of ninety-five per cent of six times the daily earnings at the time of such injury where the employment is for six full working days a week. Where his employment is for five, five and one-half, six and one-half or seven working days a week, the average weekly earnings shall be ninety-five per cent of five, five and one-half, six and one-half or seven times the daily earnings at the time of the injury, as the case may be.

(2) If the injured employee has not so worked in such employment during at least two hundred sixty days of such preceding year, his average weekly earnings shall be based upon the daily earnings, wage or salary of an employee of the same class working at least two hundred sixty days of such preceding year in the same or a similar kind of employment in the same or a neighboring place, computed in accordance with the provisions of the preceding subdivision.

(3) If the earnings be irregular or specified to be by the week, month, or other period, then the average weekly earnings mentioned in subdivisions (1) and (2) above shall be ninety-five per cent of the average earnings during such period of time, not exceeding one year, as may conveniently be taken to determine an average weekly rate of pay.

When less than 5 days, or seasonal.

(4) Where the employment is for less than five days per week or is seasonal or where for any reason the foregoing methods of arriving at the average weekly earnings of the injured employee can not reasonably and fairly be applied, such average weekly earnings shall be taken at ninety-five per cent of such sum as shall reasonably represent the average weekly earning capacity of the injured employee at the time of his injury, due consideration being given to his actual earnings from all sources and employments during the year preceding his injury; provided, that the earnings from other occupations shall not be allowed in excess of the rate of wages paid at the time of the injury.

Overtime, board, etc.

(b) In determining such average weekly earnings, there shall be included overtime and the market value of board, lodging, fuel, and other advantages received by the injured employee, as part of his remuneration, which can be estimated in money, but such average weekly earnings shall not include any sum which the employer may pay to the injured employee to cover any special expenses entailed on him by the nature of his employment.

If injured employee is under 21.

(c) If the injured employee is under twenty-one years of age, and his incapacity is permanent, his average weekly earnings shall be deemed, within the limits fixed, to be the weekly sum that under ordinary circumstances he would probably be able to earn after attaining the age of twenty-one years, in the occupation in which he was employed at the time of the injury or in any occupation to which he would reasonably have been promoted if he had not been injured, and if such probable earnings after attaining the age of twenty-one years can not reasonably be determined, such average weekly earnings shall be based upon three dollars a day for a six-day week.

Weekly loss in wages in case of temporary partial disability.

§ 13. The weekly loss in wages in case of temporary partial disability shall consist of the difference between the average weekly earnings of the injured employee, computed according to the provisions of section nine, and the weekly amount which the injured employee will probably be able to earn during the disability, to be determined in view of the nature and extent of the injury. In computing such probable earnings due regard shall be given to the ability of the injured employee to compete in an open labor market. If evidence of exact loss of earnings be lacking, such weekly loss in wages may be computed from the proportionate loss of physical ability or earning power caused by the injury.

Who are deemed wholly dependent.

§ 14. (a) The following shall be conclusively presumed to be wholly dependent for support upon a deceased employee; provided, that these presumptions shall not apply in favor of aliens who are nonresidents of the United States at the time of the injury.

(1) A wife upon a husband with whom she was living at the time of his injury, or for whose support such husband was legally liable at the time of his injury.

(2) A child or children under the age of eighteen years, or over said age, but physically or mentally incapacitated from earning, upon the parent with whom he or they are living at the time of the injury of such parent or for whose maintenance such parent was legally liable at the time of injury, there being no surviving dependent parent.

(b) In all other cases, questions of entire or partial dependency and questions as to who constitute dependents and the extent of their dependency shall be determined in accordance with the fact, as the fact may be at the time of the injury of the employee.

(c) No person shall be considered a dependent of any deceased employee unless in good faith a member of the family or household of such employee, or unless such person bears to such employee the relation of husband or wife, child, posthumous child, adopted child or stepchild, father or mother, father-in-law or mother-in-law, grandfather or grandmother, brother or sister, uncle or aunt, brother-in-law or sister-in-law, nephew or niece.

Distribution of death benefit.

(d) 1. If there is one or more persons wholly dependent for support upon a deceased employee, such person or persons shall receive the entire death benefit, and any person or persons partially dependent shall receive no part thereof.

2. If there is more than one such person wholly dependent for support upon a deceased employee, the death benefit shall be divided equally among them.

3. If there is more than one person partially dependent for support upon a deceased employee, and no person wholly dependent for support, the amount allowed as a death benefit shall be divided among the persons so partially dependent in proportion to the relative extent of their dependency.

Commission may reassign death benefit.

(e) The commission may, anything in this act contained to the contrary notwithstanding, set apart or reassign the death benefit to any one or more of the dependents in accordance with their respective needs and as may be just and equitable, and may order payment to a dependent subsequent in right, or not otherwise entitled, upon good cause being shown therefor. Such death benefit shall be paid to such one or more of the dependents of the deceased or to a trustee appointed by the commission or a commissioner for the benefit of the person or persons entitled, as may be determined by the commission. The person to whom the death benefit is paid for the use of the several beneficiaries shall apply the same in compliance with the findings and directions of the commission. In the event of the death of a dependent beneficiary of any deceased employee, if there be no surviving dependent, the death of such dependent shall terminate the death benefit, which shall not survive to the estate of such deceased dependent, except that payments of such death benefit accrued and payable at the time of the death of such sole remaining dependent shall be paid upon the order of the commission to the heirs of such dependent, or, if none, to the heirs of the deceased employee, without administration. [Amendment of May 22, 1919. In effect July 22, 1919. Stats. 1919, p. 917.]

Notice to employer.

§ 15. No claim to recover compensation under this act shall be maintained unless within thirty days after the occurrence of the injury which is claimed to have caused the disability or death, notice in writing, stating the name and the address of the person injured, the time and the place where the injury occurred, and the nature of the injury, and signed by the person injured or some one in his behalf, or in case of his death, by a dependent or some one in his behalf, shall be served upon the employer; provided, however, that knowledge of such injury, obtained from any source, on the part of such employer, his managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, shall be equivalent to such service; and provided, further, that the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under this act if it is found

as a fact in the proceedings for the collection of the claim that there was no intention to mislead or prejudice the employer in making his defense, and that he was not in fact so misled or prejudiced thereby.

Medical examination of employee.

§ 16. (a) Whenever the right to compensation under this act would exist in favor of any employee, he shall, upon the written request of his employer, submit from time to time, as may be reasonable, to examination by a practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any physician selected by the commission or any member or referee thereof.

If employee refuses to submit to examination.

(b) The request or order for such examination shall fix a time and place therefor, due consideration being given to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician provided and paid for by himself present at any examination required by his employer. So long as the employee, after such written request of the employer, shall fail or refuse to submit to such examination or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended; and if he shall fail or refuse to submit to examination after direction by the commission, or any member or referee thereof, or shall in any way obstruct the same, his right to the disability payments which shall accrue during the period of such failure, refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to report or testify as to the results thereof.

Hearing on disputes. Service of notice.

§ 17. (a) Upon the filing with the commission by any party in interest, his attorney, or other representative authorized in writing, of an application in writing stating the general nature of any dispute or controversy concerning compensation, or concerning any right or liability arising out of, or incidental thereto, jurisdiction over which is vested by this act in the commission, a time and place shall be fixed for the hearing thereof, which hearing, unless otherwise agreed to by all the parties thereto, must be held not less than ten days nor more than thirty days after the filing of such application. The person filing such application shall be known as the applicant and the adverse party shall be known as the defendant. A copy of said application, together with a notice of the time and place of hearing thereof, shall forthwith be served upon all adverse parties and may be served either as a summons in a civil action or in the same manner as any other notice that is authorized or required to be served under the provisions of this act. A notice of the time and place of hearing shall also be served upon the applicant.

Jurisdiction of commission.

(b) The jurisdiction of the commission shall include any controversy relating to or arising out of the provisions of sub-section (a) of section nine of this act, unless an express agreement shall have been made between the persons or institutions rendering such treatment and the employer or insurance carrier fixing the amount to be paid for the services.

But one cause of action.

(c) There shall be but one cause of action for each transaction coming within the provisions of this act, and all claims brought for medical expense, disability payments, death benefits, burial expense, liens or any other matter arising out of such transaction may, in the discretion of the commission, be joined in the same proceeding at any time.

Death of employer.

(d) The death of an employer subsequent to the sustaining of an injury by an employee shall not impair the right of such employee to proceed before the commission against the estate of such employer, and the failure of such employee or his dependents to cause the claim to be presented to the executor or administrator of the estate shall not in any way bar or suspend such right. [Amendment of May 22, 1919. In effect July 22, 1919. Stats. 1919, p. 918.]

Defendant's answer.

§ 18. (a) If any defendant desires to disclaim any interest in the subject-matter of the claim in controversy, or considers that the application is in any respect inaccurate or incomplete, or desires to bring any fact, paper or document to the attention of the commission as a defense to the claim, or otherwise, he may, within five days after the service of the application upon him, file with or mail to the commission his answer setting forth the particulars in which the application is inaccurate or incomplete, and the facts upon which he intends to rely. A copy of such answer must be forthwith served upon all adverse parties. Evidence upon matters not pleaded by answer shall be allowed only upon such terms and conditions as may be imposed by the commission or commissioner or referee holding the hearing.

Application for relief.

(b) If the defendant fails to appear or answer, no default shall be taken against him, but the commission shall proceed to the hearing of the matter upon such terms and conditions as it may deem proper. Such defendant failing to appear or answer, or subsequently contending that no service was made upon him, or claiming to be aggrieved in any other manner by want of notice of the pendency of the proceedings, may apply to the commission for relief substantially in accordance with the provisions of section four hundred seventy-three of the Code of Civil Procedure, and the commission is hereby authorized to afford such relief. No right to relief, including the claim that the findings and award of the commission or judgment entered thereon are void upon their face, shall accrue to such defendant in any court unless prior application shall have been made to the commission in accordance with this subsection, and in no event shall any application to any court be allowed except as prescribed in sections sixty-seven and sixty-eight of this act.

Dismissal of application.

(c) If upon the filing of an application, such application shows upon its face that the applicant is not entitled to compensation, the commission may, upon its own motion or upon the motion of the adverse party, and after opportunity to the applicant to be heard orally or in writing, and upon good cause appearing therefor, dismiss the application prior to any hearing thereon. The pendency of such motion or notice of intended dismissal shall not, unless otherwise ordered by the commission, delay the hearing upon the application upon its merits.

Attachment of defendant's property.

(d) Upon the filing of an application by or on behalf of an injured employee or his dependents or any other party in interest, the commission may, in its discretion, in the cases mentioned in section four hundred twelve of the Code of Civil Procedure, direct the county clerk of any county or city and county to issue writs of attachment authorizing the sheriff to attach the property of the defendant in an amount not to exceed the greatest probable award against him in such matter, to be fixed by the commission, as security for the payment of any compensation which may thereafter be awarded. The provisions of part two, title seven, chapter four, of the Code of Civil Procedure of

this state, as far as applicable to proceedings before the commission, shall govern the proceedings upon attachment, and the commission shall be substituted for the superior court in said provisions for the purpose of this act. No writ of attachment shall be issued except upon the order of the commission or a commissioner, and such order shall not be made where it appears from the application or affidavit in support thereof that the employer was, at the time of the injury to the employee, insured against liability imposed by this act in any insurance carrier licensed to do business in the state of California. If it should at any time after the levying of an attachment be made to appear that such employer was so insured, and the requisites for dismissing said employer from the proceeding and substituting the insurance carrier as defendant under any of the methods prescribed under section thirty (e) of this act be established, the commission must forthwith discharge the attachment. In levying such attachment, preference must be given to the real property of the employer.

Testimony.

§ 19. (a) No pleadings, other than the application and answer, shall be required. The hearing on the application may be adjourned from time to time and from place to place in the discretion of the commission or commissioner or referee holding such hearing. Either party shall have the right to be present at any hearing, in person or by attorney or by any other agent, and to present such testimony as shall be pertinent under the pleadings, but the commission may, with or without notice to either party, cause testimony to be taken, or inspection of the premises where the injury occurred to be made, or the time-books and pay roll of the employer to be examined by any commissioner or referee appointed by the commission, and may from time to time direct any employee claiming compensation to be examined by a regular physician; the testimony so taken and the results of any such inspection or examination to be reported to the commission for its consideration.

Stipulation of facts.

(b) The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the commission. The commission may thereupon make its findings and award based upon such stipulation, or may in its discretion set the matter down for hearing and take such further testimony or make such further investigations as may be necessary to enable it to completely determine the matter in controversy.

Evidence.

(c) The commission may receive as evidence, either at or subsequent to a hearing, and use as proof of any fact in dispute, the following matters, in addition to sworn testimony presented in open hearing.

- (1) Reports of attending or examining physicians.
- (2) Reports of special investigators appointed by the commission or a commissioner or referee to investigate and report upon any scientific or medical question.
- (3) Reports of employers containing copies of time sheets, book accounts, reports and other records, properly authenticated.
- (4) Properly authenticated copies of hospital records of the case of the injured employee.
- (5) All publications of the commission.
- (6) All official publications of state and United States governments.
- (7) Excerpts from expert testimony received by the commission upon similar issues of scientific fact in other cases and the prior decisions of the commission upon such issues; provided, however, that transcripts of all testimony taken without notice and

copies of all reports and other matters added to the record, otherwise than during the course of an open hearing, be served upon the parties to the proceeding, and opportunity be given to produce testimony in explanation or rebuttal before decision is rendered.

Affirmative defenses.

(d) The burden of proof lies upon the party holding the affirmative of the issue. The following are affirmative defenses, and the burden of proof shall rest upon the employer to establish them:

(1) That an injured person claiming to be an employee is an independent contractor or otherwise excluded from the protection of this act, where there is proof that such injured person was at the time of his injury actually performing service for the alleged employer.

(2) Intoxication of an employee causing his injury.

(3) Wilful misconduct of an employee causing his injury.

(4) Aggravation of disability by unreasonable conduct of the employee.

(5) Prejudice to the employer by failure of the employee to give notice, as required by section fifteen.

Autopsy.

(e) Where it is represented to the commission, either before or after the filing of an application that an employee has died as a result of injuries sustained in the course of his employment, the commission may require an autopsy and the report of the physician performing such autopsy may be received in evidence in any proceedings theretofore or thereafter brought. If at the time such autopsy is requested the body of such employee be in the custody of the coroner, the coroner must, upon the request of the commission or of any party interested, afford reasonable opportunity for the attendance of any physicians named by the commission at any autopsy ordered by him. If the coroner should not require, or shall have already performed such autopsy, he shall permit an autopsy or re-examination to be performed by physicians named by the commission. No fee shall be charged by the coroner for any service, arrangement or permission given by him.

If the body is not in the custody of the coroner, the commission shall have authority to authorize the performance of such autopsy and the exhumation of the body for such purpose if necessary. If the dependents, or a majority thereof, of any such deceased employee, having the custody of the body of such deceased employee, shall refuse to allow the performance of such autopsy, such autopsy shall not be held; but upon the hearing of any stipulation for compensation it shall be a disputable presumption that the injury or death was not due to causes entitling the claimants to benefits under this act.

Findings and award.

§ 20. (a) After final hearing by the commission, it shall, within thirty days, make and file (1) its findings upon all facts involved in the controversy and (2) its award which shall state its determination as to the rights of the parties.

(b) The commission in its award may fix and determine the total amount of compensation to be paid and specify the manner of payment, or may fix and determine the weekly disability payment to be made and order payment thereof during the continuance of such disability.

(c) If, in any proceeding under sections six to thirty-one, inclusive, of this act, it is proved that an injury has been suffered for which the employer would be liable to pay compensation if disability had resulted therefrom, but it is not proved that any inca-

capacity had resulted, the commission may, instead of dismissing the application, award a nominal disability indemnity, if it appears that disability is likely to result at a future time.

Amending orders, etc.

(d) The commission shall have continuing jurisdiction over all its orders, decisions and awards made and entered under the provisions of sections six to thirty-one, inclusive, of this act and may at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter or amend any such order, decision or award made by it upon good cause appearing therefor, such power including the right to review, grant or regrant, diminish, increase or terminate, within the limits prescribed by this act, any compensation awarded, upon the grounds that the disability of the person in whose favor such award was made has either recurred, increased, diminished or terminated; provided, that no award of compensation shall be rescinded, altered or amended after two hundred forty-five weeks from the date of the injury. Any order, decision or award rescinding, altering or amending a prior order, decision or award shall have the same effect as is herein provided for original orders, decisions or awards.

Findings filed in superior court.

§ 21. (a) Any party affected thereby may file a certified copy of the findings and award of the commission with the clerk of the superior court of any county, or city and county, and judgment must be entered by the clerk in conformity therewith immediately upon the filing of such findings and award.

Judgment roll.

(b) The certified copy of the findings and award of the commission and a copy of the judgment shall constitute the judgment roll. The pleadings, all orders of the commission, its original findings and award, and all other papers and documents filed in the cause shall remain on file in the office of the commission.

Stay of execution.

(c) The commission, or any member thereof, may stay the execution of any judgment entered upon an award of the commission, upon good cause appearing therefor and upon such terms and conditions as may be imposed. A certified copy of such order shall be filed with the clerk entering judgment. Where it is deemed desirable to stay the enforcement of an award and a certified copy of said findings and award has not been issued by the commission, the commission, or any member thereof, may order such certified copy to be withheld with the same force and under the same conditions as it might issue a stay of execution if said certified copy had been issued and judgment entered thereon.

Entry of satisfaction.

(d) When a judgment is satisfied in fact, otherwise than upon an execution, the commission may, upon motion of either party or of its own motion, order the entry of satisfaction of the judgment to be made, and upon filing a certified copy of such order with the said clerk, he shall thereupon enter such satisfaction, and not otherwise.

Review of findings, etc.

§ 22. The orders, findings, decisions or awards of the commission made and entered under sections six to thirty-one, inclusive, of this act may be reviewed by the courts specified in sections sixty-seven and sixty-eight hereof and within the time and in the manner therein specified and not otherwise.

Fees. Costs.

§ 23. No fees shall be charged by the clerk of any court for the performance of any official service required by this act, except for the docketing of awards as judgments and for certified copies of transcripts thereof. In all proceedings under this act before the commission, costs as between the parties shall be allowed or not in the discretion of the commission and the commission may, in its discretion, where payments of compensation have been unreasonably delayed, allow the beneficiary thereof interest thereon, at not to exceed one and one-half per cent per month, during such period of delay.

Claim not assignable.

§ 24. (a) No claim for compensation shall be assignable before payment, but this provision shall not affect the survival thereof, nor shall any claim for compensation, or compensation awarded, adjudged or paid, be subject to be taken for the debts of the party entitled to such compensation, except as hereinafter provided. No compensation, whether awarded or voluntarily paid, shall be paid to any attorney at law or in fact or other agent, but shall be paid directly to the claimant entitled to the same, unless otherwise ordered by the commission. Any payment made to such attorney at law or in fact or other agent in violation of the provisions of this section shall not be credited to the employer.

Lien against amount due as compensation.

(b) The commission may fix and determine and allow as a lien against any amount to be paid as compensation:

(1) A reasonable attorney's fee for legal services pertaining to any claim for compensation or application filed therefor and the reasonable disbursements in connection therewith.

(2) The reasonable expense incurred by or on behalf of the injured employee, as defined in subsection (a) of section nine hereof.

(3) The reasonable value of the living expenses of an injured employee or of his dependents, subsequent to the injury.

(4) The reasonable burial expenses of the deceased employee, not to exceed the sum of one hundred dollars.

(5) The reasonable living expenses of the wife or minor children of the injured employee, or both, subsequent to the date of the injury, where such employee has deserted or is neglecting his family, to be allowed in such proportion as the commission shall deem proper, upon application of the wife or guardian of the minor children.

Notice of claim. Award by commission.

(c) If notice in writing be given to the employer setting forth the nature and extent of any claim that may be allowed as a lien, the said claim shall be a lien against any amount thereafter to be paid as compensation, subject to the determination of the amount and approval thereof by the commission. The commission may, in its discretion, order the amount of such claims as fixed and allowed by it paid directly to the person entitled, either in a lump sum or in installments. Where it appears in any proceeding pending before the commission that a lien should be allowed if the same had been duly requested by the party entitled thereto, the commission may, in its discretion, and without any request for such lien having been made, order the payment of such claim to be made directly to the person entitled, in the same manner and with the same effect as though such lien had been regularly requested, and the award to such person shall constitute a lien against unpaid compensation due at the time of service of said award.

Excessive claim for legal services.

(d) No claim or agreement for the legal services or disbursements mentioned in paragraph (1) of subsection (b) hereof, or for the expense mentioned in paragraph (2) of said subsection (b), in excess of a reasonable amount, shall be valid or binding in any respect, and it shall be competent for the commission to determine what constitutes such reasonable amount.

Preference of claim for compensation.

(e) A claim for compensation for the injury or death of any employee, or any award of judgment entered therein, shall have preference over all other unsecured debts of the employer or insurance carrier. [Amendment of May 22, 1919. In effect July 22, 1919. Stats. 1919, p. 919.]

Liability of principal employers and contractors.

§ 25. The liability of principal employers and contracting employers, general or intermediate, for compensation under this act, when other than the immediate employer of the injured employee, shall be as follows:

(a) When any such employer undertakes to do, or contracts with another to do, or to have done, any work, either directly or through contractors or subcontractors, then such principal employer or contracting employer shall be liable to pay to any employee injured while engaged in the execution of such work, or to his dependents in the event of his death, or to any other person, any compensation which the immediate employer is liable to pay, and the commission shall have jurisdiction to determine all controversies arising under this section.

(b) The person entitled to such compensation shall have the right to recover the same directly from his immediate employer, and in addition thereto the right to enforce in his own name, in the manner provided by this act, the liability for compensation imposed upon other persons by this section, either by making such other persons parties to the original application or by filing a separate application; provided, however, that payment in whole or in part of such compensation by either the immediate employer or other person shall, to the extent of such payment, be a bar to recovery against the other.

(c) When any person, other than the immediate employer, shall have paid any compensation for which he would not have been liable independently of this section, he shall, unless he caused the injury, be entitled to recover the full amount so paid from the person primarily liable therefor, and jurisdiction to determine his claim shall be vested in the commission; provided, that such right of reimbursement against the person primarily liable for compensation shall not exist in favor of any insurance carrier insuring such other persons upon whom liability is imposed by this section, in any case where the immediate employer shall have joined with any of such other persons in taking out such policy of insurance or shall have contributed to the payment of the premium for such insurance, with the intent of securing joint protection thereby, anything in the policy to the contrary notwithstanding.

Limitations on liability.

(d) The liability imposed by this section shall be subject to the following limitations:

(1) Such liability shall exist only in cases where the injury occurred on or in or about the premises on which the principal employer or contracting employer, whether general or intermediate, has undertaken to execute or to have executed any work, or when such premises or work are otherwise under his control or management.

(2) Such liability shall not exist in the event that the immediate employer, or other person primarily liable for the compensation shall, previous to the suffering of such injury, have taken out, and maintained in full force and effect, compensation insurance with any insurance carrier, covering his full liability for compensation.

(3) The commission may, in its discretion, order that execution against such principal employer or contracting employer be stayed until execution against the immediate employer shall be returned unsatisfied.

(e) The findings and award of this commission entered against the immediate employer shall be conclusive for or against all persons upon whom liability is imposed by this section as to the fact and extent of liability of such immediate employer.

"Employee." Suits for damages from person other than employer. If employee joins in suit.

§ 26. The term "employee," as used in this section shall include the person injured and any other person in whom a claim may arise by reason of the injury or death of such injured person. The death of the employee, or of any other person, shall not abate any right of action established by this section. The claim of an employee for compensation shall not affect his right of action for damages arising out of injury or death against any person other than the employer; and any employer having paid, or having become obligated to pay, compensation, may likewise bring an action against such other person to recover said damages. If either such employee or such employer shall bring such action against such third person, he shall forthwith notify the other in writing, by personal service or registered mail, of such fact and of the name of the court in which such suit is brought, filing proof thereof in such action, and, if the action be brought by either, the other may, at any time before trial on the facts, join as party plaintiff or must consolidate his action, if brought independently. If the suit be prosecuted by the employer alone evidence of any expenditures which the employer has paid or become obligated to pay by reason of said injury or death shall be admissible, and such expenditures shall be deemed a part of the damages, including a reasonable attorney's fee to be fixed by the court; and if in such suit the employer shall recover more than the amount he has paid or become obligated to pay as compensation he shall pay the excess to the injured employee or other person entitled. If the employee joins in or prosecutes such suit, evidence of the amount of disability indemnity or death benefit paid by the employer shall not be admissible, but proof of all other expenditures on account of said injury or death shall be admissible and shall be deemed part of the damages. The court shall, on application, allow as a first lien against any judgment recovered by the employee the amount of the employer's expenditures for compensation. When any injury or death shall have been suffered by an employee, no release or settlement of any claim for damages by reason of such injury or death and no satisfaction of judgment in such proceedings, shall be valid without the written consent of either both employer and employee, or one of them, together with the consent of the commission or the court in which any such action may be pending. [Amendment of May 22, 1919. In effect July 22, 1919. Stats. 1919, p. 920.]

Right to compromise.

§ 27. (a) No contract, rule or regulation shall exempt the employer from liability for the compensation fixed by this act, but nothing in this act contained shall be construed as impairing the right of the parties interested to compromise, subject to the provisions herein contained, any liability which may be claimed to exist under this act on account of such injury or death, or as conferring upon the dependents of any injured employee any interest which such employee may not divert by such compromise or for which he, or his estate, shall, in the event of such compromise by him, be accountable to such dependents or any of them.

Valid release or compromise agreement.

(b) The compensation herein provided shall be the measure of the responsibility which the employer has assumed for injuries or death that may occur to employees in

his employment when subject to the provisions of this act, and no release of liability or compromise agreement shall be valid unless it provide for the payment of full compensation in accordance with the provisions of this act or unless it shall be approved by the commission.

Award based on release or compromise agreement.

(c) A copy of such release or compromise agreement signed by both parties shall forthwith be filed with the commission. When such release or compromise agreement is filed with the commission and approved by it, the commission may of its own motion, or on the application of either party, without notice, enter its award based upon such release or compromise agreement.

Contents of release or compromise agreement.

(d) Every such release or compromise agreement shall be in writing, duly executed and attested by two disinterested witnesses, and shall specify the date of the accident, the average weekly wages of the employee, determined according to section twelve hereof, the nature of the disability, whether total or partial, permanent or temporary, the amount paid or due and unpaid to the employee up to the date of the release or agreement or death, as the case may be, and, if any, the amount of the payment or benefits then or thereafter to be made, and the length of time that such payment is to continue. In case of death there shall also be stated in such release or compromise agreement the date of death, the name of the widow, if any, the names and ages of all children, if any, and the names of all other dependents, if any, and whether such dependents be total or partial, and the amount paid or to be paid as a death benefit and to whom such payment is to be made.

Compensation payable in lump sum.

§ 28. (a) At the time of making its award, or at any time thereafter, the commission on its own motion, either with or without notice, or upon application of either party with due notice to the other, may, in its discretion, commute the compensation payable under this act to a lump sum, if it appears that such commutation is necessary for the protection of the person entitled thereto, or for the best interest of either party, or that it will avoid undue expense or hardship to either party, or that the employer has sold or otherwise disposed of the greater part of his assets, or is about to do so, or that the employer is not a resident of this state, and the commission may order such compensation paid forthwith or at some future time.

Determination of amount of commuted payment.

(b) The amount of the commuted payment shall be determined in accordance with the following provisions:

(1) If the injury causes temporary disability, the commission shall estimate the probable duration thereof and the probable amount of the temporary disability payments therefor, in accordance with the provisions of section nine hereof, and shall fix the lump sum payment at such amount so determined.

(2) If the injury causes permanent disability or death, the commission shall fix the total amount of the permanent disability payment or death benefit payable therefor in accordance with the provisions of said section nine, and shall estimate the present value thereof, assuming interest at the rate of six per cent per annum, disregarding the probability of the beneficiary's death in all cases except where the percentage of permanent disability is such as to entitle the beneficiary to a life pension, and then taking into consideration the probability of the beneficiary's death only in estimating the present value of such life pension.

Manner of making lump sum payment.

(c) The commission in its discretion may order the lump sum payment, determined as hereinbefore provided, paid directly to the injured employer or his dependents, or deposited with any savings bank or trust company authorized to transact business in this state, that will agree to accept the same as a deposit bearing interest, or the commission may order the same deposited with the state compensation insurance fund. Any such amount so deposited, together with all interest derived therefrom, shall thereafter be held in trust for the injured employee, or in the event of his death, for his dependents, and the latter shall have no further recourse against the employer. Payments from said fund, when so deposited, shall be made by the trustee only in the same amounts and at the same time as fixed by order of the commission and until said fund and interest thereon shall be exhausted. In the appointment of the trustee preference shall be given, in the discretion of the commission, to the choice of the injured employee or his dependents. Upon the making of such payment, the employer shall present to the commission a proper receipt evidencing the same, executed either by the injured employee or his dependents, or by the trustee, and the commission shall thereupon issue its certificate in proper form evidencing the same, and such certificate, upon filing with the clerk of the superior court in which any judgment upon an award may have been entered, shall operate as a satisfaction of said award and shall fully discharge the employer from any further liability on account thereof.

Payments from state compensation insurance fund.

(d) The commission may, where the employer is uninsured and the payments of compensation awarded are to be paid for a considerable time in the future, determine the present worth of said future payments, discounted at the rate of three per cent per annum, and order the said present worth paid into the state compensation insurance fund, which fund shall thereafter pay to the beneficiaries of said award the future payments as they become due.

Ways of securing payment of compensation.

§ 29. (a) Every employer as defined in section seven hereof, except the state and all political subdivisions or institutions thereof, shall secure the payment of compensation in one or more of the following ways:

1. By insuring and keeping insured against liability to pay compensation in one or more insurance carriers duly authorized to write compensation insurance in this state.

2. By securing from the commission a certificate of consent to self-insure, which may be given upon his furnishing proof satisfactory to the commission of ability to carry his own insurance and pay any compensation that may become due to his employees, the commission may, in its discretion, require such employer to deposit with the state treasurer a bond or securities, but not both a bond and securities, approved by the commission, in an amount to be determined by the commission. Such certificate may be revoked at any time for good cause shown. So long as the certificate of consent to self-insure has not been revoked, and the self-insurer has deposited with the state treasurer such bond or securities, the self-insurer shall not be required or obliged to pay into the state compensation insurance fund any sums covering liability for compensation, excepting life pensions; but shall be permitted, and such permission is hereby given the self-insurer, to fully administer any and all such compensation benefits assessed against the said insurer.

Action against employer. Right to attach property.

(b) If any employer shall fail so to secure the payment of compensation, any injured employee or his dependents may proceed against such employer by filing an application

for compensation with the commission, and, in addition thereto, such injured employee or his dependents may bring an action at law against such employer for damages, the same as if this act did not apply, and shall be entitled in such action to the right to attach the property of the employer, at any time upon or after the institution of such action, in an amount to be fixed by the court, to secure the payment of any judgment which may ultimately be obtained. Such judgment shall include a reasonable attorney's fee to be fixed by the court. The provisions of the Code of Civil Procedure, except in so far as they may be inconsistent with this act, shall govern the issuance of and proceedings upon such attachment; provided, that if as a result of such action for damages a judgment is obtained against such employer in excess of the compensation awarded under this act, the compensation awarded by the commission, if paid, or if security approved by the court be given for its payment, shall be credited upon such judgment; provided, further, that in such action it shall be presumed that the injury to the employee was a direct result and grew out of the negligence of the employer, and the burden of proof shall rest upon the employer to rebut the presumption of negligence. In such proceeding it shall not be a defense to the employer that the employee may have been guilty of contributory negligence, or assumed the risk of the hazard complained of, or that the injury was caused by the negligence of a fellow servant. No contract, rule or regulation shall be allowed to restore to the employer any of the foregoing defenses. [Amendment of May 22, 1919. In effect July 22, 1919. Stats. 1919, pp. 921, 922.]

Right of employer to insure in mutual companies, etc.

§ 30. (a) Nothing in this act shall affect the organization of any mutual or other insurance company, or any existing contract for insurance, or the right of the employer to insure in mutual or other companies, in whole or in part, against liability for the compensation provided by this act; or to provide by mutual or other insurance, or by arrangement with his employees, or otherwise, for the payment to such employees, their families, dependents or representatives, of sick, accident or death benefits, in addition to the compensation provided for by this act; or the right of the employer to waive the waiting period provided for herein by insurance coverage; provided, however, that it shall be unlawful for any employer to exact or receive from any employee any contribution, or make or take any deduction from the earnings of any employee, either directly or indirectly, to cover the whole or any part of the cost of compensation under this act, and it shall be a misdemeanor so to do.

Liability not reduced by insurance, etc.

(b) Liability for compensation shall not be reduced or affected by any insurance, contribution, or other benefit whatsoever due to or received by the person entitled to such compensation, except as otherwise provided by this act, and the person so entitled shall, irrespective of any insurance or other contract, except as otherwise provided in this act, have the right to recover such compensation directly from the employer, and in addition thereto, the right to enforce in his own name, in the manner provided in this act, either by making the insurance carrier a party to the original application or by filing a separate application, the liability of any insurance carrier, which may, in whole or in part, have insured against liability for such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance company shall, to the extent thereof, be a bar to recovery against the other of the amount so paid; and provided, further, that as between the employer and the insurance company, payment by either directly to the employee, or to the person entitled to compensation, shall be subject to the conditions of the insurance contract between them.

Insurance carrier directly liable to employee.

(c) Every contract insuring against liability for compensation, or insurance policy evidencing the same, must contain a clause to the effect that the insurance carrier shall be directly and primarily liable to the employee and, in the event of his death, to his dependents, to pay the compensation, if any, for which the employer is liable; that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this act, be jurisdiction of the insurance carrier; and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer under the provisions of this act.

Lien of employee on amount owing on policy.

(d) Such policy must also provide that the employee shall have a first lien upon any amount which shall become owing on account of such policy to the employer from the insurance carrier, and that in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the employee or his dependents, the said insurance carrier may and shall pay the same directly to the said employee or his dependents, thereby discharging, to the extent of such payment, the obligations of the employer to the employee; and such policy shall not contain any provisions relieving the insurance carrier from payment when the employer becomes insolvent or is discharged in bankruptcy, or otherwise, during the period that the policy is in operation or the compensation remains owing. Every contract insuring against liability for compensation, provided by this act, or insurance policy evidencing the same shall be conclusively presumed to contain all of the provisions required by this act.

Employer relieved from liability by insurance carrier.

(e) (1) If the employer shall be insured against liability for compensation with any insurance carrier, and if after the suffering of any injury such insurance carrier shall serve or cause to be served upon any person claiming compensation against such employer a notice that it has assumed and agreed to pay the compensation, if any, for which the employer is liable, and shall file a copy of such notice with the commission, such employer shall thereupon be relieved from liability for compensation to such claimant and the insurance carrier shall, without notice, be substituted in place of the employer in any proceeding theretofore or thereafter instituted by such person to recover such compensation, and the employer shall be dismissed therefrom. Such proceedings shall not abate on account of such substitution but shall be continued against such insurance carrier. If at the time of the suffering of an injury for which compensation is claimed, or may be claimed, the employer shall be insured against liability for the full amount of compensation payable, or that may become payable, the employer may serve or cause to be served upon any person claiming compensation on account of the suffering of such injury and upon the insurance carrier a notice that the insurance carrier has in its policy contract or otherwise, assumed and agreed to pay the compensation, if any, for which the employer is liable, and may file a copy of such notice with the commission. If it shall thereafter appear to the satisfaction of the commission that the insurance carrier has, through the issuance of its contract of insurance or otherwise, assumed such liability for compensation, such employer shall thereupon be relieved from liability for compensation to such claimant and the insurance carrier shall, after notice, be substituted in place of the employer in any proceeding theretofore or thereafter instituted by such person to recover such compensation, and the employer shall be dismissed therefrom. Such proceeding shall not abate on account of such substitution, but shall be continued against such insurance carrier.

Order of commission.

(2) The commission may, with or without the filing of the notice required by the preceding paragraph, enter its order relieving the employer from liability where it appears from the pleadings, stipulations or proof that an insurance carrier joined as party to the proceeding is liable for the full compensation which the employer in such proceeding is liable to pay.

Insurance carrier subrogated to rights of employer.

(f) Where any employer is insured against liability for compensation with any insurance carrier and such insurance carrier shall have assumed the liability of the employer therefor in the manner provided by this section, or shall have paid any compensation for which the employer is liable, or furnished or provided any medical services required by this act, such insurance carrier shall be subrogated to all the rights and duties of such employer and may enforce any such rights of its own name.

State fund may insure.

(g) The state compensation insurance fund may insure against any liability fixed under this act to the same extent as any insurance carrier.

"Limited compensation policy."

§ 31. (a) If any insurance policy shall be issued covering liability for compensation, which policy shall contain any limitation as to the compensation payable, such limitation shall be printed in the body of such policy in bold-face type and in addition thereto the words "limited compensation policy" shall be printed on the top of the policy in bold-face type not less than eighteen point in size. Failure to observe the foregoing requirement shall render such policy unlimited.

(b) No insurance carrier shall insure against the liability of the employer for the additional compensation recoverable under the provisions contained in section six (b) hereof.

Organization of state compensation insurance fund continued.

§ 32. Nothing contained in this act shall be taken or construed to limit, interfere with, disturb, or render ineffective in any degree, the creation, existence, organization, control, management, contracts, rights, powers, duties and liabilities of the state compensation insurance fund, but all such matters and things are hereby expressly confirmed, saved and continued.

Definitions.

§ 33. The following terms, as used in sections thirty-three to fifty-four, inclusive, of this act, shall, unless a different meaning is plainly required by the context, be construed as follows:

"Place of employment."

(1) The phrase "place of employment" shall mean and include every place, whether indoors or out or underground, or elsewhere, and the premises appurtenant thereto, where, either temporarily or permanently, any industry, trade, work or business is carried on, or where any process or operation directly or indirectly related to any industry, trade, work or business, is carried on, including all construction work, and where any person is directly or indirectly employed by another, but shall not include any place where persons are employed solely in household domestic service, or any place of employment, concerning the safety of which jurisdiction may have been vested by law heretofore or hereafter in any other commission or public authority.

"Employment."

(2) The term "employment" shall mean and include any trade, work, business, occupation or process of manufacture, or any method of carrying on such trade, work, business, occupation or process of manufacture, including construction work, in which any person may be engaged, except where persons are employed solely in household domestic service.

"Employer."

(3) The term "employer" shall mean and include every person, firm, voluntary association, corporation, officer, agent, manager, representative or other person having control or custody of any employment, place of employment or of any employee.

"Employee."

(4) The term "employee" shall mean and include every person who may be required or directed by any employer, to engage in any employment, or to go to work or be at any time in any place of employment.

"Order."

(5) The term "order" shall mean and include any decision, rule, regulation, direction, requirement or standard of the commission or any other determination arrived at or decision made by such commission under the safety provisions of this act.

"General order."

(6) The term "general order" shall mean and include such order, made under the safety provisions of this act, as applies generally throughout the state to all persons, employments or places of employment, or all persons, employments or places of employment of a class under the jurisdiction of the commission. All other orders of the commission shall be considered special orders.

"Local order."

(7) The term "local order" shall mean and include any ordinance, order, rule or determination of any board of supervisors, city council, board of trustees or other governing body of any county, city and county, city, or any school district or other public corporation, or an order or direction of any other public official or board or department upon any matter over which the industrial accident commission has jurisdiction.

"Safe" and "Safety."

(8) The terms "safe" and "safety" as applied to an employment or a place of employment shall mean such freedom from danger to the life or safety of employees as the nature of the employment will reasonably permit.

"Safety device" and "Safeguard."

(9) The terms "safety device" and "safeguard" shall be given a broad interpretation so as to include any practicable method of mitigating or preventing a specific danger. [Amendment of May 22, 1919. In effect July 22, 1919. Stats. 1919, pp. 922, 923.]

Employer to make employment safe.

§ 34. Every employer shall furnish employment which shall be safe for the employees therein and shall furnish a place of employment which shall be safe for employees therein, and shall furnish and use such safety devices and safeguards, and shall adopt and use such practices, means, methods, operations and processes as are

reasonably adequate to render such employment and place of employment safe, and shall do every other thing reasonably necessary to protect the life and safety of such employees.

Use of safety devices.

§ 35. No employer shall require, permit or suffer any employee to go or be in any employment or place of employment which is not safe, and no such employer shall fail to furnish, provide and use safety devices and safeguards or fail to adopt and use methods and processes reasonably adequate to render such employment and place of employment safe, and no such employer shall fail or neglect to do every other thing reasonably necessary to protect the life and safety of such employees, and no such employer shall occupy or maintain any place of employment that is not safe.

Construction of unsafe place.

§ 36. No employer, owner or lessee of any real property in this state shall construct or cause to be constructed any place of employment that is not safe.

Employee not to interfere with safety devices.

§ 37. No employee or other person shall remove, displace, damage, destroy or carry off any safety device, safeguard, notice or warning, furnished and provided for use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any employee, including himself, in such employment, or place of employment, or fail or neglect to do every other thing reasonably necessary to protect the life and safety of such employees. [Amendment of May 22, 1919. In effect July 22, 1919. Stats. 1919, p. 924.]

Jurisdiction of commission over places of employment.

§ 38. The commission is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment and place of employment to be safe, and requiring the protection of the life and safety of every employee in such employment or place of employment.

Power of commission to prescribe devices, standards, etc.

§ 39. The commission shall have power, after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise:

(1) To declare and prescribe what safety devices, safeguards or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law or lawful order.

(2) To fix such reasonable standards and to prescribe, modify and enforce such reasonable orders for the adoption, installation, use, maintenance and operation of safety devices, safeguards and other means or methods of protection, to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of employees in employments and places of employment.

(3) To fix and order such reasonable standards for the construction, repair and maintenance of places of employment as shall render them safe.

(4) To require the performance of any other act which the protection of the life and safety of employees in employments and places of employment may reasonably demand.

(5) To declare and prescribe the general form of industrial injury reports, the injuries to be reported and the information to be furnished in connection therewith,

and the time within which such reports shall be filed. Nothing in this act contained shall be construed to prevent the commission from requiring supplemental injury reports.

Notice of hearing to consider general safety order.

§ 40. Upon the fixing of a time and place for the holding of a hearing for the purpose of considering and issuing a general safety order or orders as authorized by section thirty-nine hereof, the commission shall cause a notice of such hearing to be published in one or more daily newspapers of general circulation published and circulated in the city and county of San Francisco, and also in one or more daily newspapers of general circulation published and circulated in the county of Los Angeles, such newspapers to be designated by the commission for that purpose. No defect or inaccuracy in such notice or in the publication thereof shall invalidate any general order issued by the commission after hearing had.

Order to make employment safe.

§ 41. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that any employment or place of employment is not safe or that the practices or means or methods or operations or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of employees in such employment or place of employment, the commission shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employment and place of employment and may in said order direct that such additions, repairs, improvements or changes be made and such safety devices and safeguards be furnished, provided and used, as are reasonably required to render such employment or place of employment safe, in the manner and within the time specified in said order.

Time for compliance with order.

§ 42. The commission may, upon application of any employer, or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order, and any person affected by such order may petition the commission for an extension of time, which the commission shall grant if it finds such an extension of time necessary.

Investigation of unsafe employment.

§ 43. Whenever the commission shall learn or have reason to believe that any employment or place of employment is not safe or is injurious to the welfare of any employee it may, of its own motion, or upon complaint, summarily investigate to same with or without notice or hearings, and after a hearing upon such notice as it may prescribe, the commission may enter and serve such order as may be necessary relative thereto, anything in this act to the contrary notwithstanding.

Obeying order.

§ 44. Every employer, employee and other person shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commission in connection with the matters herein specified, or in any way relating to or affecting safety of employments or places of employment, or to protect the life and safety of employees in such employments or places of employment, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation.

Review of orders.

§ 45. The orders of the commission, general or special, its rules or regulations, findings and decisions, made and entered under the safety provisions of this act, may be reviewed by the courts specified in sections sixty-seven and sixty-eight of this act and within the time and in the manner therein specified and not otherwise.

Powers of supervisors, etc., not affected.

§ 46. Nothing contained in this act shall be construed to deprive the board of supervisors of any county, or city and county, the board of trustees of any city, or any other public corporation or board or department, of any power or jurisdiction over or relative to any place of employment; provided, that whenever the commission shall, by order, fix a standard of safety for employments or places of employment, such order shall, upon the filing by the commission of a copy thereof with the clerk of the county, city and county, or city to which it may apply, establish a minimum requirement concerning the matters covered by such order and shall be construed in connection with any local order relative to the same matter and to amend or modify any requirement in such local order not up to the standard of the order of the commission.

Restraining injunction against unsafe employments.

§ 46½. If the condition of any employment or place of employment or the operation of any machine, device or apparatus shall constitute a serious menace of the lives or safety of persons about it, the commission, or a commissioner, may apply to the superior court of the county in which such place of employment, machine, device or apparatus is situated, for an injunction restraining the use or operation thereof until such condition shall be corrected. The said application accompanied by affidavit showing that such place of employment, machine, device or apparatus is being operated in violation of a general or special safety order of the commission, and that such use or operation constitutes a menace to the life or safety of any person or persons employed thereabout, accompanied by a copy of the order or orders applicable thereto shall constitute a sufficient prima facie showing to warrant, in the discretion of the court, the immediate granting of a temporary restraining order. No bond shall be required from the commission as a prerequisite to the granting of any restraining order. When in the opinion of the industrial accident commission a machine or any part thereof is in a dangerous condition or is not properly guarded or is dangerously placed, the use thereof shall be prohibited by the commission, and a notice to that effect shall be attached thereto. Such notice shall not be removed except by an authorized representative of the commission, nor until the machinery is made safe and the required safeguards or safety appliances or devices are provided, and in the meantime such unsafe or dangerous machinery shall not be used. [New section added by amendment of May 22, 1919. In effect July 22, 1919. Stats. 1919, p. 924.]

Museums of safety and hygiene.

§ 47. The commission shall have further power and authority:

(1) To establish and maintain museums of safety and hygiene in which shall be exhibited safety devices, safeguards and other means and methods for the protection of the life and safety of employees, and to publish and distribute bulletins on any phase of this general subject.

Lectures.

(2) To cause lectures to be delivered, illustrated by stereopticon or other views, diagrams or pictures, for the information of employers and their employees and the general public in regard to the causes and prevention of industrial accidents, occupational diseases and related subjects.

Advisers.

(3) To appoint advisers who shall, without compensation, assist the commission in establishing standards of safety and the commission may adopt and incorporate in its general orders such safety recommendations as it may receive from such advisers.

Order admissible as evidence.

§ 48. Every order of the commission, general or special, its rules and regulations, findings and decisions, made and entered under the safety provisions of this act shall be admissible as evidence in any prosecution for the violation of any of the said provisions and shall, in every such prosecution, be conclusively presumed to be reasonable and lawful and to fix a reasonable and proper standard and requirement of safety, unless, prior to the institution of the prosecution for such violation or violations, proceedings for a rehearing thereon or a review thereof shall have been instituted as provided in sections sixty-four to sixty-eight, inclusive, of this act and not then finally determined.

Penalty for violation.

§ 49. Every employer, employee or other person who, either individually or acting as an officer, agent or employee of a corporation or other person, violates any safety provision contained in sections thirty-four, thirty-five, thirty-six or thirty-seven of this act, or any part of any such provision, or who shall fail or refuse to comply with any such provision or any part thereof, or who, directly or indirectly, knowingly induces another so to do is guilty of a misdemeanor. In any prosecution under this section it shall be deemed prima facie evidence of a violation of any such safety provision, that the accused has failed or refused to comply with any order, rule, regulation or requirement of the commission relative thereto and the burden of proof shall thereupon rest upon the accused to show that he has complied with such safety provision.

Separate and distinct offense.

§ 50. Every violation of the provisions contained in sections thirty-four, thirty-five, thirty-six or thirty-seven of this act, or any part or portion thereof, by any person or corporation is a separate and distinct offense, and, in the case of a continuing violation thereof, each day's continuance thereof shall constitute a separate and distinct offense.

Accident prevention fund. Percentage of amount gross premiums. Estimates submitted to board of control. Revolving fund.

§ 51. All fines imposed and collected under prosecutions for violations of the provisions of sections thirty to fifty-four of this act shall be paid into the state treasury to the credit of the "accident prevention fund," which fund is hereby created. In addition to other sources of income of said accident prevention fund, the state compensation insurance fund shall pay into the said accident prevention fund, on or before the first Monday in July, 1918, and annually thereafter, the sum of two per cent upon the amount of the gross premiums received by it upon its business done in this state during the preceding calendar year, less return premiums and reinsurance in companies or associations authorized to do business in this state, which payment is intended to be the equivalent of the taxes imposed upon private insurance companies by the laws of this state relating to revenue and taxation. The state compensation insurance fund shall also pay into the said accident prevention fund interest from September 1, 1917, at the rate of four per cent per annum, payable quarterly, upon the sum of one hundred thousand dollars heretofore advanced by the state to said state compensation insurance fund as long as the said fund shall retain the said sum of one hundred thousand dollars. The commission is authorized to draw from said accident prevention fund toward the support of its department of safety. The commission shall submit from

time to time to the state board of control an estimate of the amount it desires to withdraw from the accident prevention fund, and when such estimate shall be approved by the state board of control, the controller is directed to draw his warrant on said fund in favor of said commission for such amount, and the treasurer is authorized and directed to pay the same. The commission shall account to the state board of control and to the state controller for all moneys so received, furnishing proper vouchers therefor. The said accident prevention fund shall be a revolving fund.

Unlawful to divulge confidential information.

§ 52. It shall be unlawful for any member of the commission, or for any officer or employee of the commission, to divulge to any person not connected with the administration of this act any confidential information obtained from any person, concerning the failure of any other person to keep any place of employment safe, or concerning the violation of any order, rule or regulation issued by the commission. Any member of the commission or any officer or employee of the commission divulging such confidential information shall be guilty of a misdemeanor.

Reports of injuries.

§ 53. (a) Every employer of labor, without any exceptions, and every insurance carrier, and every physician or surgeon who attends any injured employee, is hereby required to file with the commission, under such rules and regulations as the commission may from time to time make, a full and complete report of every injury to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person; provided, that such report shall not be required unless disability resulting from such injury lasts through the day of the injury or requires medical service other than ordinary first aid treatment. Where the injury results in death a report shall be made by the employer to the commission by telephone or telegraph forthwith. Such reports shall be furnished to the commission in such form and such detail as the commission shall from time to time prescribe, and shall make specific answers to all questions required by the commission under its rules and regulations. It shall be unlawful for any person, firm, corporation, agent or officer of a firm or corporation, to fail or refuse to comply with any of the provisions of this section, and any such person, firm, corporation, agent or officer of a firm or corporation, who fails or refuses to comply with the provisions of this section shall be guilty of a misdemeanor for each and every offense and upon conviction thereof shall be punishable by a fine of not less than ten dollars nor more than one hundred dollars. Any such employer or insurance carrier who shall furnish such report shall be exempt from furnishing any similar report or reports authorized or required under the laws of this state.

Filling out blanks.

(b) Every employer or insurance carrier receiving from the commission any blanks with directions to fill out the same shall cause the same to be properly filled out so as to answer fully and correctly each question propounded therein; in case he is unable to answer any such questions a good and sufficient reason shall be given for such failure.

Information not open to public inspection.

(c) No information furnished to the commission by an employer or an insurance carrier shall be open to public inspection or made public except on order of the commission, or by a commissioner or referee in the course of a proceeding. Any officer or employee of the commission who, in violation of the provisions of this subsection, divulges any such information shall be guilty of a misdemeanor. [Amendment of May 22, 1919. In effect July 22, 1919. Stats. 1919, p. 924.]

Investigation of injuries.

§ 54. (a) The commission shall investigate the cause of all industrial injuries occurring within the state in any employment or place of employment, or directly or indirectly arising from or connected with the maintenance or operation of such employment or place of employment, resulting in disability or death and requiring, in the judgment of the commission, such investigation; and the commission shall have the power to make such orders or recommendations with respect to such injuries as may be just and reasonable; provided, that neither the order nor the recommendation of the commission shall be admitted as evidence in any action for damages or any proceeding to recover compensation, based on or arising out of such injury or death.

Inspectors, etc., may enter place of employment.

(b) For the purpose of making any investigation which the commission is authorized to make under the provisions of this section, or for the purpose of collecting statistics or examining the provision made for the safety of employees, any member of the commission, or other person designated by the commission for that purpose, may enter any place of employment; and in the performance of such duties shall have the power to subpoena witnesses, administer oaths and take testimony.

Penalty for violation.

(c) Any employer, insurance carrier, responsible agent or employee of such employer or insurance carrier, or any other person who shall violate or omit to comply with any of the provisions of this section, or who shall in any way obstruct or hamper the commission, any commissioner or other person conducting any investigation authorized to be undertaken or made by the commission, shall be guilty of a misdemeanor. [Amendment of May 22, 1919. In effect July 22, 1919. Stats. 1919, p. 925.]

Proceedings instituted before commission.

§ 55. (a) All proceedings for the recovery of compensation, or concerning any right or liability arising out of or incidental thereto, or for the enforcement against the employer or an insurance carrier of any liability for compensation imposed upon him by this act in favor of the injured employee, his dependents or any third person, or for the determination of any question as to the distribution of compensation among dependents or other persons, or for the determination of any question as to who are dependents of any deceased employee, or what persons are entitled to any benefit under the compensation provisions of this act, or for obtaining any order which by this act the commission is authorized to make, or for the determination of any other matter, jurisdiction over which is vested by this act in the commission, shall be instituted before the commission, and not elsewhere, except as otherwise in this act provided, and the commission is hereby vested with full power, authority and jurisdiction to try and finally determine all such matters, subject only to the review by the courts in this act specified and in the manner and within the time in this act provided.

Orders, etc., prima facie lawful.

(b) All orders, rules and regulations, findings, decisions and awards of the commission shall be in force and shall be prima facie lawful; and all such orders, rules and regulations, findings, decisions and awards shall be conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by the commission or upon a review by the courts in this act specified and within the time and in the manner herein specified.

Service of notice, etc.

§ 56. (a) Any notice, order or decision required by this act to be served upon any person or party either before, during or after the institution of any proceeding before

the commission, may be served in the manner provided by chapter five, title fourteen of part two of the Code of Civil Procedure of this state, unless otherwise directed by the commission or a member thereof, in which event the same shall be served in accordance with the order or direction of said commission or member thereof. The commission or a commissioner may also, in the cases mentioned in the Code of Civil Procedure of this state, order service to be made by publication of the notice of time and place of hearing. Where service is ordered to be made by publication the date of the hearing may be fixed at more than thirty days from the date of filing the application.

(b) Any such notice, order or decision affecting the state or any city and county, city, school district or public corporation therein, shall be served upon the same officer, officers, person or persons, upon whom the service of similar notices, orders or decisions is authorized by law.

Secretary, etc., have powers of peace officers.

(c) The secretary, assistant secretaries and the inspectors appointed by the commission shall have all the powers conferred by law upon peace officers to carry weapons, make arrests and serve warrants and other process in this state.

Powers of commission.

§ 57. (a) The commission shall have full power and authority:

Rules of practice.

(1) To adopt reasonable and proper rules of practice and procedure.

Representation of minors, etc.

(2) To regulate and provide the manner, and by whom, minors and incompetent persons shall appear and be represented before it.

Appoint trustee to appear for minor or incompetent.

(3) To appoint a trustee or guardian ad litem to appear for and represent any such minor or incompetent upon such terms and conditions as it may deem proper; and such guardian or trustee must, if required by the commission or a commissioner, give a bond in the same form and of the same character required by law from a guardian appointed by the courts and in such an amount as the commission or a commissioner may fix and determine, such bond to be approved by the commission or a commissioner, and such guardian or trustee shall not be discharged from liability until he shall have filed an account with the commission or with the probate court and such account shall have been approved. The trustee or guardian shall be entitled to receive such compensation for his services as shall be fixed and allowed by the commission or by the probate court.

Joinder of interested persons.

(4) To provide for the joinder in the same proceeding of all persons interested therein, whether as employer, insurance carrier, employee, dependent, creditor or otherwise.

Notices.

(5) To regulate and prescribe the kind and character of notices, where not otherwise prescribed by this act, and the service thereof.

Proofs.

(6) To regulate and prescribe the nature and extent of the proofs and evidence.

Controversies over insurance policies.

(b) The commission shall also have jurisdiction to determine controversies arising out of insurance policies issued to self-employing persons, conferring benefits identical with those prescribed by this act.

Acting as arbitrator.

The commission may try and determine matters referred to it by the parties under the provisions of part three, title ten, of the Code of Civil Procedure, with respect to controversies arising out of insurance issued to self-employing persons under the provisions of this act. Such controversies may be submitted to it by the signed agreement of the parties, or by the application of one party and the submission of the other to its jurisdiction, with or without an express request for arbitration. The state compensation insurance fund must submit to the commission, the consent of the other party being obtained, all controversies susceptible of being arbitrated under this section. In acting as arbitrator under the provisions of this section, the commission shall have all the powers which it may lawfully exercise in compensation cases, and its findings and award upon such arbitration shall have the same conclusiveness and be subject to the same mode of reopening, review and enforcement as in compensation cases. No fee or cost shall be charged by the commission to any party for arbitrating the issues presented under this section.

Controversies over injuries outside of state.

§ 58. The commission shall have jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this state in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this state, and any such employee or his dependents shall be entitled to the compensation or death benefits provided by this act.

Reference of cases.

§ 59. The commission may upon the agreement of the parties, upon the application of either, or of its own motion, and either with or without notice, direct and order a reference in the following cases:

(1) To try any or all of the issues in any proceeding before it, whether of fact or of law, and to report a finding, order, decision or award to be based thereon.

(2) To ascertain a fact necessary to enable the commission to determine any proceeding before it or to make any order, decision or award that the commission is authorized to make under this act, or that is necessary for the information of the commission.

Referees.

(b) The commission may appoint one or more referees in any proceeding, as it may deem necessary or advisable, and may refer matters arising out of the same proceeding to different referees. It may also, in its discretion, appoint general referees who shall hold office during the pleasure of the commission. Any referee appointed by the commission shall have such powers, jurisdiction and authority as is granted under the law, by the order of appointment and by the rules of the commission, and shall receive such salary or compensation for his services as may be fixed by the commission.

Objection to appointments.

(c) Any party to the proceeding may object to the appointment of any person as referee upon any one or more of the grounds specified in section six hundred forty-one of the Code of Civil Procedure and such objection must be heard and disposed of by the commission. Affidavits may be read and witnesses examined as to such objections.

Oath of referee.

(d) Before entering upon his duties, the referee must be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and determine the matters and issues referred to him, and to make just findings and report according to his understanding.

Report of referee.

(e) The referee must report his findings in writing to the commission within fifteen days after the testimony is closed. Such report shall be made in the form prescribed by the commission and shall include all matters required to be included in the order of reference or by the rules of the commission. The facts found and conclusions of law must be separately stated.

Order, etc., based on report of referee.

(f) Upon the filing of the report of the referee, the commission may confirm, adopt, modify or set aside the same or any part thereof and may, either with or without further proceedings, and either with or without notice, enter its order, findings, decision or award based in whole or in part upon the report of the referee, or upon the record in the case.

Hearings by referees.

(g) The provisions of the preceding subdivisions of this section shall not be construed to prevent the commission from requiring its referees merely to hold hearings and to make return of the testimony to the commission.

Commission not bound by statutory rules of evidence and procedure.

§ 60. (a) All hearings and investigations before the commission or any member thereof, or any referee appointed thereby, shall be governed by this act and by the rules of practice and procedure adopted by the commission, and in the conduct thereof neither the commission nor any member thereof, nor any referee appointed thereby, shall be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in such manner, through oral testimony and written and printed records, as is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this act. No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, rule or regulation made, approved or confirmed by the commission; nor shall any order, award, rule or regulation be invalidated because of the admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the said common law or statutory rules of evidence and procedure.

Depositions.

(b) The commission, or a commissioner or referee, or any party to the action or proceeding, may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state, and to that end may compel the attendance of witnesses and the production of books, documents, papers and accounts; provided, that depositions taken outside of the state may be taken before any officers authorized to administer oaths.

Power of commission to administer oaths, etc. Witness fees and mileage.

§ 61. The commission and each member thereof, its secretary, assistant secretaries and referees, shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state. Each witness who shall appear, by order of the commission or a member thereof, or a referee appointed thereby, shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the commission. When any witness who

has not been required to attend at the request of any party is subpoenaed by the commission, his fees and mileage may be paid from the funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the commission, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the commission, member thereof, or referee as directed in the subpoena. All fees and mileage to which any witness is entitled, under the provisions of the section, may be collected by action therefor instituted by the person to whom such fees are payable.

Power of superior court to compel attendance of witnesses, etc.

§ 62. The superior court in and for the county, or city and county, in which any inquiry, investigation, hearing or proceeding may be held by the commission or any member thereof or referee appointed thereby, shall have the power to compel the attendance of witnesses, the giving of testimony and the production of papers, including books, accounts and documents, as required by any subpoena issued by the commission or member thereof or referee. The commission or any member thereof or the referee, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the superior court in and for the county, or city and county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or the production of said papers, and that the witness has been subpoenaed in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers required by the subpoena, or has refused to answer questions propounded to him in the course of such proceeding, and ask an order of said court, compelling the witness to attend and testify or produce said papers before the commission. The court, upon the petition of the commission or such member thereof or referee, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he had not attended and testified or produced said papers before the commission, member thereof or referee. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission or member thereof or referee and that the witness was legally bound to comply therewith, the court shall thereupon enter an order that said witness appear before the commission or member thereof or referee at a time and place to be fixed in such order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative, and shall not be construed to impair or interfere with the power of the commission or a member thereof to enforce the attendance of witnesses and the production of papers, and to punish for contempt in the same manner and to the same extent as courts of record.

General power of commission.

§ 63. (a) The commission is hereby vested with full power, authority and jurisdiction to do and perform any and all things, whether herein specifically designated, or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction conferred upon it under this act.

Power to issue writs, etc.

(b) The commission and each member thereof shall have power to issue writs or summons, warrants of attachment, warrants of commitment and all necessary process

in proceedings for contempt, in like manner and to the same extent as courts of record. The process issued by the commission or any member thereof shall extend to all parts of the state and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the commission or any member thereof. The person executing any such process shall receive such compensation as may be allowed by the commission, not to exceed the fees now prescribed by law for similar services, and such fees shall be paid in the same manner as provided herein for the fees of witnesses.

Application for rehearing.

§ 64. (a) Any party or person aggrieved directly or indirectly by any final order, decision, award, rule or regulation of the commission, made or entered under any provision contained in this act, may apply to the commission for a rehearing in respect to any matters determined or covered by such final order, decision, award, rule or regulation and specified in the application for rehearing within the time and in the manner hereinafter specified, and not otherwise.

No cause for action unless application for rehearing.

(b) No cause of action arising out of any such final order, decision or award shall accrue in any court to any person until and unless such person shall have made application for such rehearing, and such application shall have been granted or denied; provided, that nothing herein contained shall be construed to prevent the enforcement of any such final order, decision, award, rule or regulation in the manner provided in this act.

Grounds for application.

(c) Such application shall set forth specifically and in full detail the grounds upon which the applicant considers said final order, decision, award, rule or regulation is unjust or unlawful, and every issue to be considered by the commission. Such application must be verified upon oath in the same manner as required for verified pleadings in courts of record and must contain a general statement of any evidence or other matters upon which the applicant relies in support thereof. The applicant for such hearing shall be deemed to have finally waived all objections, irregularities and illegalities concerning the matter upon which such rehearing is sought other than those set forth in the application for such rehearing.

Service upon adverse parties.

(d) A copy of such application for rehearing shall be served forthwith upon all adverse parties by the party applying for such rehearing, and any such adverse party may file an answer thereto within ten days thereafter. Such answer must likewise be verified. The commission may require the application for rehearing to be served on such other persons or parties as may be designated by it.

Rehearing.

(e) Upon filing of an application for a rehearing, if the issues raised thereby have theretofore been adequately considered by the commission, it may determine the same by confirming without hearing its previous determination, or if a rehearing is necessary to determine the issues raised, or any one or more of such issues, the commission shall order a rehearing thereon and consider and determine the matter or matters raised by such application. If at the time of granting such rehearing it shall appear to the satisfaction of the commission that no sufficient reason exists for taking further testimony, the commission may reconsider and redeterminate the original cause without setting a

time and place for such further rehearing. Notice of the time and place of such hearing, if any, shall be given to the applicant and adverse parties, and to such other persons as the commission may order.

Changing order, etc. Action within 30 days.

(f) If after such rehearing and a consideration of all the facts, including those arising since the making of the order, decision or award involved, the commission shall be of the opinion that the original order, decision or award, or any part thereof, is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change or modify the same. An order, decision or award made after such rehearing, abrogating, changing or modifying the original order, decision or award, shall have the same force and effect as an original order, decision or award, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order, decision or award, unless so ordered by the commission. An application for a rehearing shall be deemed to have been denied by the commission unless it shall have been acted upon within thirty days from the date of filing; provided, however, that the commission may, upon good cause being shown therefor, extend the time within which it may act upon such application for not exceeding thirty days.

Grounds for rehearing of order awarding compensation.

§ 65. (a) At any time within twenty days after the service of any final order or decision of the commission awarding or denying compensation, or arising out of or incidental thereto, any party or parties aggrieved thereby may apply for such rehearing upon one or more of the following grounds and upon no other grounds:

- (1) That the commission acted without or in excess of its powers.
- (2) That the order, decision or award was procured by fraud.
- (3) That the evidence does not justify the findings of fact.
- (4) That the applicant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.
- (5) That the findings of fact do not support the order, decision or award.

(b) Nothing contained in this section shall, however, be construed to limit the grant of continuing jurisdiction contained in subsection (d) of section twenty of this act.

Grounds for rehearing of order not pertaining to compensation.

§ 66. (a) At any time within twenty days after the service of any final order, decision, rule or regulation, other than an order or award pertaining to compensation, any party or parties, person or persons aggrieved thereby or otherwise affected, directly or indirectly, may apply for such rehearing upon one or more of the following grounds and upon no other grounds:

- (1) That the commission acted without or in excess of its powers.
- (2) That the order or decision was procured by fraud.
- (3) That the order, decision, rule or regulation is unreasonable.

Right of commission to adopt new rules, etc.

(b) Nothing contained in this section shall be construed to limit the right of the commission, at any time and from time to time, to adopt new or different rules or regulations or new or different standards of safety, or to abrogate, change or modify any existing rule, regulation or standard, or any part thereof, or to deprive the commission of continuing jurisdiction over the same, or to prevent the enforcement in the manner provided by this act, of any rules, regulations or standards of the commission, or any part thereof when so adopted, or changed, or modified.

Application for writ of review.

§ 67. (a) Within thirty days after the application for a rehearing is denied, or, if the application is granted, within thirty days after the rendition of the decision on the rehearing, any party affected thereby may apply to the supreme court of this state, or to the district court of appeal of the appellate district in which such person resides, for a writ of certiorari or review, hereinafter referred to as a writ of review, for the purpose of having the lawfulness of the original order, rule, regulation, decision or award, or the order, rule, regulation, decision or award on rehearing inquired into and determined.

Record of commission.

(b) Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day the cause shall be heard in the court unless for good cause the same be continued. No new or additional evidence may be introduced in such court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether:

- (1) The commission acted without or in excess of its powers.
- (2) The order, decision or award was procured by fraud.
- (3) The order, decision, rule or regulation was unreasonable.
- (4) If findings of fact are made, such findings of fact support the order, decision or award under review.

Judgment of court.

(c) The findings and conclusions of the commission on questions of fact shall be conclusive and final and shall not be subject to review; such questions of fact shall include ultimate facts and the findings and conclusions of the commission. The commission and each party to the action or proceeding before the commission shall have the right to appear in the review proceeding. Upon the hearing the court shall enter judgment either affirming or setting aside the order, decision or award or may remand the case for further proceedings before the commission.

Jurisdiction of courts limited.

(d) The provisions of the Code of Civil Procedure of this state relating to writs of review shall, so far as applicable and not in conflict with this act, apply to proceedings in the courts under the provisions of this section. No court of this state, except the supreme court and the district courts of appeal to the extent herein specified, shall have jurisdiction to review, reverse, correct or annul any order, rule, regulation, decision or award of the commission, or to suspend or delay the operation or execution thereof, or to restrain, enjoin or interfere with the commission in the performance of its duties; provided, that a writ of mandamus shall lie from the supreme court or the district courts of appeal in all proper cases.

Order, etc., suspended by application for rehearing.

§ 68. (a) The filing of an application for a rehearing shall have the effect of suspending the order, decision, award, rule or regulation affected, in so far as the same applies to the parties to such application, unless otherwise ordered by the commission, for a period of ten days, and the commission may, in its discretion and upon such terms and conditions as it may by order direct, stay, suspend or postpone the same during the pendency of such rehearing.

Stay of order by court.

(b) The filing of an application for, or the pendency of, a writ of review, shall not of itself stay or suspend the operation of the order, decision, award, rule or regulation

of the commission subject to review, but the court before which such application is filed may, in its discretion, stay or suspend in whole or in part the operation of the order, decision, award, rule or regulation of the commission subject to review, upon such terms and conditions as it may by order direct, except as provided in the following subsection.

Written undertaking by petitioner.

(c) The operation of any order or award entered by the commission under the provisions of sections six to thirty-one, inclusive, of this act, or any judgment entered thereon, shall not at any time be stayed by the court to which petition is made for a writ of review, unless a written undertaking be executed on the part of the petitioner by two or more sureties, to the effect that they are bound in double the amount named in such order, award or judgment; that if the order, award or judgment appealed from, or any part thereof, be affirmed, or the proceeding upon review be dismissed, the petitioner shall pay the amount directed to be paid by the order, award or judgment, or the part of such amount as to which the order, award or judgment is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the petitioner; and that, if the said petitioner does not make such payment within thirty days after the filing with the commission of the remittitur from the reviewing court, judgment may be entered, on motion of the adverse party, in his favor, and to which the said undertaking may be transferred, in any superior court in which a certified copy of the order or award may be filed against the sureties for such amount, together with interest that may be due thereon, and the damages and costs which may be awarded against the said petitioner. The provisions of the Code of Civil Procedure, except in so far as they may be inconsistent with this act, are applicable to said undertaking. Such undertaking shall be filed with the commission, and the certificate of the commission, or any proper officer thereof, of the filing and approval of such undertaking, is sufficient evidence of the compliance of the petitioner with the provisions of this subsection.

Interpretation by court.

§ 69. (a) Whenever this act, or any part or section thereof, is interpreted by a court, it shall be liberally construed by such court with the purpose of extending the benefits of the act for the protection of persons injured in the course of their employment.

Constitutionality.

(b) If any section, subsection, subdivision, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, subdivision, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses or phrases is declared unconstitutional.

Employers engaged in interstate commerce.

(c) This act shall not be construed to apply to employers or employments which, according to law, are so engaged in interstate commerce as not to be subject to the legislative power of the state, or to employees injured while they are so engaged, except in so far as this act may be permitted to apply under the provisions of the constitution of the United States or the acts of congress.

Other employers may come under provisions of act.

§ 70. (a) Any employer, having in his employment any employee not included within the term "employee" as defined by section eight of this act or not entitled to compensation under this act, and any such employee, may, by their joint election, elect to come under the compensation provisions of this act in the manner hereinafter provided.

(b) Such election on the part of the employer shall be made by filing with the commission a written statement to the effect that he accepts the compensation provisions of this act, which, when filed, shall operate, within the meaning of section six of this act, to subject him to the compensation provisions thereof, and of all acts amendatory thereof, for the term of one year from the date of filing, and thereafter without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or succeeding year, file in the office of the commission a notice in writing that he withdraws his election. Such acceptance shall be held to include employees whose employment is both casual and not in the course of the trade, business, profession or occupation of the employer, unless expressly excluded therefrom. In case any employer is insured against liability for compensation under this act, he shall be deemed to have so elected during the period that such policy shall remain in force, without filing such written notice with the commission, as to all classes of employees covered by such policy of insurance, anything in this act to the contrary notwithstanding.

Other employers subject to compensation privileges when.

(c) Any employee in the service of any employer who has made an election in either of the modes above prescribed, shall be deemed to have accepted, and shall, within the meaning of section six of this act, be subject to the compensation provisions of this act, and of any act amendatory thereof, at the time of the injury for which liability is claimed:

(1) The employer charged with such liability is subject to the compensation provisions of this act, whether the employee has actual notice thereof or not; and

(2) Such employee shall not, at the time of entering into the employment, have given to his employer notice in writing that he elects not to be subject to the compensation provisions of this act; or, in the event that such employment was entered into in advance of the election by the employer, such employee shall have given to his employer notice in writing that he elects to be subject to such provisions, or without giving either of such notices, shall have remained in the service of such employer for five days after the employer has filed his election, in which case the time at which the employee becomes subject to said compensation provisions shall be deemed to be at the beginning of said period.

State employments.

(d) The state, and all political or other subdivisions thereof, as defined in section seven, and all state institutions, shall be conclusively presumed to have elected to come within the provisions of this act as to all employments otherwise excluded from this act.

Acceptance of act of 1913 continued.

(e) All written acceptances filed by employers with the commission prior to the taking effect of this act, accepting the provisions of the workmen's compensation, insurance and safety act, chapter one hundred seventy-six, statutes of 1913, and all acts amendatory thereof, shall, unless written notice be given to the contrary by said employer within sixty days after the taking effect of this act, be deemed acceptances of the provisions of this act, and all acts amendatory thereof, in accordance with the provisions of this section.

Repealed. Continued.

§ 71. Sections two, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five,
Gen. Laws—100

twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, fifty-one, fifty-two, fifty-three, fifty-four, fifty-five, fifty-six, fifty-seven, fifty-eight, fifty-nine, sixty, sixty-one, sixty-two, sixty-three, sixty-four, sixty-five, sixty-six, sixty-seven, sixty-eight, sixty-nine, seventy, seventy-one, seventy-two, seventy-three, seventy-four, seventy-five, seventy-five a, seventy-six, seventy-seven, seventy-eight, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, eighty-six and eighty-seven of chapter one hundred seventy-six, statutes of 1913, and all other acts and parts of acts inconsistent herewith, are hereby repealed; provided, that nothing contained in this act shall be construed as limiting or repealing sections one, three, four, five, six, seven, eight, nine, ten, eleven, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven, forty-eight, forty-nine, fifty, eighty-eight and ninety of the said chapter one hundred seventy-six, statutes of 1913.

Proceedings, etc., under act of 1913 not disturbed.

§ 72. Nothing contained in this act shall be construed to limit, interfere with, disturb, or render ineffective in any degree, any matter, proceeding or transaction pending, done or performed under the provisions of chapter one hundred seventy-six, statutes of 1913, and all acts amendatory thereof, or supplementary thereto, by the industrial accident commission, or any department or division thereof, or to affect any right or liability accrued or accruing or to accrue under said acts, but each and every part thereof are hereby expressly saved and continued under the jurisdiction of said industrial accident commission, with full power, authority and jurisdiction, and with the right and duty in said industrial accident commission to fully administer and dispose of the same.

[Compensation provisions have no retroactive effect.]

§ 73. The compensation provisions of this act, except procedural provisions, shall not apply to any injury sustained prior to the taking effect hereof.

In effect when.

§ 74. This act shall take effect on the first day of January, 1918.

I. CONSTITUTIONALITY.

II. ROSEBERRY ACT.

III. CONSTRUCTION OF ACT.

IV. LIABILITY FOR COMPENSATION.

1. Employer.

- a. In general.
- b. Identity of employer.
- c. "Gross negligence"—Serious and willful misconduct of employer.

2. Insurance carrier.

V. RIGHT TO COMPENSATION.

1. Employee.

- a. In general.
- b. Employment.
- c. Minors.
- d. Official.
- e. Independent contractor.
- f. Partners as employees.

VI. CONDITIONS OF COMPENSATION.

- a. Arising out of employment.
- b. Course of employment.
- c. Proximately caused by employment.

VII. CONDITIONS AVOIDING LIABILITY FOR COMPENSATION.

1. Excluded employments.

- a. In general.
- b. Domestic service.
- c. Farm labor.
- d. Horticulture.
- e. Casual and not in usual course of employer's business.

2. Serious and willful misconduct of employee.

VIII. AWARD OF COMPENSATION.

1. Compensation.

- a. In general.
- b. Medical and surgical treatment.
- c. Death benefit.
- d. Burial expenses.
- e. Liens.

2. Computation.

- a. Disability.
- b. Earnings.

3. Dependency.

IX. PAYMENT OF COMPENSATION.**X. PRACTICE AND PROCEDURE.****1. Jurisdiction.**

- a. In general.
- b. Interstate commerce.
- c. Maritime jurisdiction.
- d. Extraterritorial.

2. Notice of injury.**3. Application.****4. Evidence.****5. Instructions.****6. Findings.****7. Orders.****8. Statute of limitations.****9. Judgment or award.**

- a. Finality and conclusiveness.
- b. Alteration, amendment, etc.

10. Rehearing.**11. Review.****XI. MISCELLANEOUS.****1. Release.****2. Assignment of claim.****3. Subrogation.****4. Election of remedies.****5. Action against tort-feasor.****6. Jurisdiction of state courts.****I. CONSTITUTIONALITY.****1. Roseberry act.****2. Same—Not "class legislation."****3. Same—Jurisdiction of supreme court.****4. Same—Industrial Accident Commission validly constituted.****5. Act of 1913. Not unconstitutional as to payment to aliens.****6. Same—Not inimical to federal constitution.****7. Same—Provision as to death benefits constitutional.****8. Same—Valid marriage immaterial to dependency.****9. Object of constitutional amendment.****10. Same—Discrimination as to burial expenses.****11. Same—"Due process."****12. Same—Same—Employer's freedom from liability not a property right.****13. Same—Same—Change of existing rules as to liability.****14. Same—"Classification."****15. Same—Same—Exception from benefits of certain classes.****16. Same—Extra hazardous occupations.****17. Same—Legislative power to create new liability.****18. Same—Legislative power—Injuries outside of employment.****18a, 18b. Same—Same—Settlement of disputes arising under the constitutional provision only.****19-19b. Same—Same—Settlement of disputes other than those between employer and employee.****20. Same—Legislative power to vest commission with judicial functions.****21. Same—Subsection 17 (a) (3).****22. Same—Hearsay testimony.****23. Act of 1917—Increase of compensation for serious and wilful misconduct of employer.****24. Same—Sections 25 and 58 not violative of federal or state constitutions.****25. Same—Section 30—Liability of third persons.****26-32. Same—Extra territorial operation.****33. Same—Imposes charge on industry, not on individual.****34. Same—Section 8b—Definition of "independent contractor."****35. Same—Same—"Employers," "employees," "employment."****36. Same—Same.**

1. Roseberry act.—The general scheme of the workmen's compensation act of 1911 (Stats. 1911, p. 796) is constitutional, the provisions allowing awards for death benefits are valid, and the act authorizes awards for injuries received by mariners in navigable waters.—*North Pacific S. S. Co. v. Industrial Acc. Com.*, 174 Cal. 500, 501, 163 Pac. 910.

2. Same — Not "class legislation."—The Roseberry act is not "class legislation" and not unconstitutional on that ground.—*Bloxham v. Tehama, etc., Co.*, 29 Cal. App. 326, 155 Pac. 654.

3. Same—Jurisdiction of supreme court.—In the absence of some special constitutional authorization—and there was none such when the Roseberry act was passed—the constitutional jurisdiction of the supreme court could not be taken away or impaired by legislative act.—*Great Western Power Co. v. Pillsbury*, 170 Cal. 180, 182, 149 Pac. 35.

4. Same—Industrial accident commission validly constituted.—The industrial accident commission is a validly constituted commission empowered to apply the Roseberry act to cases arising before January 1, 1914.—*Great Western Power Co. v. Pillsbury*, 170 Cal. 180, 182, 149 Pac. 35.

5. Act of 1913—Not unconstitutional as to payment to aliens.—The workmen's compensation, insurance and safety act of 1913 is not unconstitutional because of a requirement as to payment to aliens.—*Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 414, Ann. Cas. 1917E, 390, 156 Pac. 491.

6. Same—Not inimical to federal constitution.—The provisions in the workmen's compensation, insurance and safety act of 1913, relative to death benefits are not inimical to the federal constitution.—*Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 414, Ann. Cas. 1917E, 390, 156 Pac. 491.

See, also, *Kirkpatrick v. Industrial Accident Commission*, 31 Cal. App. 668, 161 Pac. 274.

7. Same—Provision as to death benefits constitutional.—The provision for death benefits to dependents in the act of 1913, is constitutional.—*Kirkpatrick v. Industrial Accident Commission*, 31 Cal. App. 668, 161 Pac. 274.

See, also, *Western, etc., Co. v. Pillsbury*,

172 Cal. 407, Ann. Cas. 1917E, 390, 156 Pac. 491.

8. Same—Valid marriage immaterial to dependency.—The legislature had the right to make the requirement of a valid marriage inapplicable in determining the question of dependency.—*Temescal Rock Company v. Industrial Accident Co.*, 180 Cal. 637, 182 Pac. 447; (*Rodriguez v. Temescal Rock Company*, 5 I. A. C. Dec. 202.)

9. Object of constitutional amendment.—The object and purpose of section 21, article 20, of the constitution, was to establish the authority of the legislature to pass laws making the relation of employer and employee subject to a system of rights and disabilities different from those prevailing at the common law, and it is to be given a reasonable interpretation.—*Western Metal Supply Co. v. Pillsbury*, (Cal.) 3 I. A. C. Dec. 109 (*Mason v. Western, etc., Co.*, 1 I. A. C. Dec. 284).

10. Same—Discrimination as to burial expenses.—The legislature had power to make a discrimination in allowing burial expenses in cases of partial dependency and not in cases of total dependency, and the provisions of the act in that respect are not invalid.—*Northern, etc., Co. v. Industrial Accident Commission*, 34 Cal. App. 2, 166 Pac. 828.

11. Same—"Due process."—The act of 1913 is held not violative of the "due process" and "equal protection" clauses of the federal constitution, and to be a valid exercise of the police power.—*Western Indemnity Co. v. Pillsbury*, 170 Cal. 686, 701, 151 Pac. 398.

12. Same—Same—Employer's freedom from liability not a property right.—Freedom from liability on the part of an employer who has been guilty of no fault is not a fundamental property right.—*Western Indemnity Co. v. Pillsbury*, 170 Cal. 686, 696, 151 Pac. 398.

13. Same—Same—Change of existing rules as to master's liability.—A law which disturbs no vested right of property, which is not retroactive in its operation upon the conduct of persons, but which, looking to the future merely changes the existing rules governing the liability of masters for injuries caused by accidents occurring to their servants while in the service, does not come within the scope of the fourteenth amendment.—*Western Indemnity Co. v. Pillsbury*, 170 Cal. 686, 698, 151 Pac. 398.

14. Same—"Classification."—The classification of the legislature in excluding certain kinds of employees from the benefit of the act is held to be reasonable, and not arbitrary.—*Western Indemnity Co. v. Pillsbury*, 170 Cal. 686, 702, 151 Pac. 398.

15. Same—Same—Exception from benefits of certain classes.—The exception of casual, farm, and other employees from the benefit of the act does not make the Boynton act special legislation, and does not invalidate the act as a non-compliance with the provisions of section 21, article XX, of the constitution.—*Western Indemnity Co. v.*

Pillsbury, 170 Cal. 686, 701, 702, 151 Pac. 398.

16. Same—Extra hazardous occupations.—The fact that the act is not limited in its application to extra hazardous occupations is immaterial so far as concerns the fourteenth amendment.—*Western Indemnity Co. v. Pillsbury*, 170 Cal. 686, 699, 151 Pac. 398.

17. Same—Legislative power to create new liability.—Section 21, article XX, of the constitution measures and limits the power to create a new liability arising out of the relations of employer and employee and a tribunal to settle disputes arising out of such to be created liability.—*Pacific Coast Casualty Co. v. Pillsbury*, 171 Cal. 319, 322, 153 Pac. 24.

18. Same—Legislative power—Injuries outside of employment.—If the provisions of paragraph (e) of section 16 of the act constitute an exception to the rule of compensation which exclude all other exceptions, and authorize the commission to award compensation for subsequent injuries not occurring during the employment, it is beyond the authority given the legislature by the constitution, and that paragraph must be construed so as to have no effect whatever upon the question of compensation for such injuries that do not occur during the employment, except when the complication named arises.—*Pacific Coast Casualty Co. v. Pillsbury*, 171 Cal. 319, 324, 153 Pac. 24.

18a. Same—Same—Settlement of disputes arising under the constitutional provision only.—The legislature is empowered to provide for the settlement of disputes only which are contemplated by section 21, article XX, of the constitution.—*Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 156 Pac. 491; *Carstens v. Pillsbury*, 172 Cal. 572, 158 Pac. 218.

18b. Section 25 of the act of 1917 is unconstitutional in so far as it attempts to authorize the commission to award compensation against a third person not an employer.—*Perry v. Industrial Accident Commission*, 180 Cal. 497, 181 Pac. 788, 789; *Pacific Gas and Electric Co. v. Industrial Accident Commission*, 180 Cal. 497, 180 Pac. 788, 789; *Kendall v. Perry*, 5 I. A. C. Dec. 167.

19. Same—Same—Settlement of disputes other than those between employer and employee.—The legislature can not empower the commission to settle disputes and allow compensation from an employer to a person who has been or is an employee, for a personal injury which was not incurred by him "in the course of" his employment, or which happened after the employment had ceased and was not the natural and proximate result of the employment, or of some injury which did occur in the course of his employment.—*Pacific Coast Casualty Co. v. Pillsbury*, 171 Cal. 319, 322, 153 Pac. 24.

19a. The provisions of section 21, article XX, of the constitution, grants the power to confer judicial power upon the commis-

sion "to create and enforce a liability on the part of all employers" only, and this does not include the power to create and enforce the liability of any person not an employer.—*Carstens v. Pillsbury*, 172 Cal. 572, 158 Pac. 218.

19b. The amendment of section 21, article XX, of the constitution, does not ratify the legislation in section 30 of the act of 1913, which was held unconstitutional in *Carstens v. Pillsbury*, 172 Cal. 572, 158 Pac. 218; *Perry v. Industrial Accident Commission*, 180 Cal. 497, 181 Pac. 788, 789; *Pacific Gas and Electric Co. v. Industrial Accident Commission*, 180 Cal. 497, 181 Pac. 788, 789. (*Kendall v. Perry*, 5 I. A. C. Dec. 167.)

20. Same—Legislative power to vest commission with judicial functions.—The power to determine the existence of a right to an award and to fix the amount thereof is a judicial power which, in view of section 1, article VI, of the constitution, in the absence of a special enabling provision of the constitution, the legislature can not vest in the commission in the absence of a special enabling provision therefor, and such provision is found in section 21, article XX, of the constitution.—*Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 410, Ann. Cas. 1917E, 390, 156 Pac. 491, 3 I. A. C. Dec. 109 (*Mason v. Western Metal, etc., Co.*, 1 I. A. C. Dec. 284).

21. Same—Power of legislature to provide for death benefits.—Independently of section 21, article XX, of the constitution, the commission has no power to make an award against an employer in favor of the dependents of a deceased employee, where death is the result of accident.—*Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 410, Ann. Cas. 1917E, 390, 156 Pac. 491, 3 I. A. C. Dec. 109 (*Mason v. Western Metal, etc., Co.*, 1 I. A. C. Dec. 284).

21. Same—Subsection 17 (a) (3).—Subsection 17 (a) (3) of the act of 1913 as amended in 1915 is not unconstitutional as a grant of legislative power to the industrial accident commission in permitting such body to fix the multiplier in computing annual earnings, but is a grant of judicial power.—*City of Los Angeles v. Industrial Accident Commission*, 25 Cal. App. Dec. 100, 4 I. A. C. Dec. 227.

22. Same—Hearsay testimony.—The provisions of section 77 (a) of the act of 1913 as amended in 1915, permitting hearsay testimony of statements made by a deceased employee relating directly to his injury, are constitutional.—*Western Indemnity Co. v. Industrial Accident Commission*, 174 Cal. 315, 163 Pac. 60, 4 I. A. C. Dec. 39.

23. Act of 1917—Increase of compensation for serious and wilful misconduct of employer.—The provisions of section 6b of the act for the increase of compensation by one-half where the injury was caused by the serious and wilful misconduct of the employer are constitutional.—*Horst Co. v. Industrial Accident Commission*, (Cal.) 193 Cal. 105.

24. Same—Sections 25 and 58 not violative of federal or state constitution.—Sec-

tion 58 of the act is not violative of section 10, of article I, section 2, of article IV, or section 1, of article XIV, of the amendments of the federal constitution, and section 25 of the act is not violative of section 21, of article XX, of the constitution of California.—*Owe Ming v. Alaska Packers Association*, 6 I. A. C. Dec. 67. Award in this case annulled by the supreme court on ground of unconstitutionality of section 58 (?).

25. Same—Section 30—Liability of third persons.—Under the constitution the legislature has no power to confer judicial authority to inquire into, determine and enforce liability under section 30, workmen's compensation, insurance and safety act, in favor of an employee against persons other than his immediate employee.—*Thaxter v. Finn*, 178 Cal. 270, 272, 173 Pac. 163.

26. Same—Extra-territorial operation.—The legislature has power to provide for the creation of a compulsory obligation to compensate for an injury suffered elsewhere as an incident of a contract of employment entered into in this state, whether the contracting employee be a citizen of this state or not.—*Quong Ham Wah Co. v. Industrial Accident Commission* (Cal.), 6 I. A. C. Dec. 248 (*Owe Ming v. Alaska Packers Association*, 6 I. A. C. Dec. 67).

27. Section 58 of the act of 1917 is unconstitutional.—*Quong Ham Wah Co. v. Industrial Accident Commission* (Cal.), 6 I. A. C. Dec. 248 (*Owe Ming v. Alaska Packers Association*, 6 I. A. C. Dec. 67).

28. Inasmuch as a non-resident, under the act has no standing before the commission or before any California court, to make a claim for compensation under the act, no member of the class discriminated against in section 58 of the act can ever raise the constitutional question, and, therefore, any person whose rights are directly affected thereby may assail its constitutionality.—*Quong Ham Wah Co. v. Industrial Accident Commission*, 59 Cal. Dec. 18, 6 I. A. C. Dec. 248 (*Owe Ming v. Alaska etc.*, 6 I. A. C. Dec. 67).

Affirmed on rehearing as to right of employer to raise constitutional question.—*Quong Ham Wah Co. v. Industrial Accident Commission* (Cal.), 192 Pac. 1021.

29. The fact that a person's own rights are directly affected entitles him to attack the constitutionality of the act.—*Quong Ham Wah Co. v. Industrial Accident Commission* (Cal.), 6 I. A. C. Dec. 248 (*Owe Ming v. Alaska Packers Association*, 6 I. A. C. Dec. 67).

But see *Estabrook Co. v. Industrial Accident Commission*, 177 Cal. 767, 769, 177 Pac. 848.

30. Section 58 of the act of 1917 so far as it attempts to provide a substantial privilege as an incident to a contract of employment in this state to citizens of this state, and that such privilege shall not be incident to identical contracts entered into in this state by citizens of other states, is in contravention of the equal privileges and immunities clause of the federal constitu-

tion.—*Quong Ham Wah Co. v. Industrial Accident Commission* (Cal.) 192 Pac. 1021.

32. **Section 58 of the act of 1917** is not invalid because in contravention of the equal privileges and immunities clause of the constitution of the United States, but the effect of that clause is merely to extend the operation of that section so as to give the residents of other states the same privileges, without regard to the intent of the legislature.—*Quong Ham Wah Co. v. Industrial Accident Commission* (Cal.), 192 Pac. 1021.

33. **Same—Imposes charge on industry not on individual.**—The act is constitutional only because it imposes a charge upon the branch of industry and not upon the individual employer, and gives the latter an opportunity to protect himself by insurance.—*Miller & Lux, Inc., v. Industrial Accident Commission*, 179 Cal. 764, 7 A. L. R. 1191, 178 Pac. 960, 6 I. A. C. Dec. 34.

34. **Same—Section 8b—Definition of "independent contractor."**—The effect of the definition of "independent contractor," as given in section 8(b) of the act of 1917, is to restrict that term and enlarge correspondingly the meaning of the term "employee," and to extend the jurisdiction of the commission beyond the limits of the original constitutional grant of section 21, article XX, of the constitution.—*Flickenger v. Industrial Accident Commission*, 58 Cal. Dec. 374, 184 Pac. 851, 6 I. A. C. Dec. 169 (*Reeves v. Flickenger*, 5 Cal. App. Dec. 127, 5 I. A. C. Dec. 173, 6 I. A. C. Dec. 11).

35. **Same—Same—"Employers," "employees," "employment."**—The terms "employers," "employees," and "employment," as used in the 1911 amendment to section 21, article XX, of the constitution, must be construed in the light of their meaning at the time of the adoption of that amendment, and can not be extended by legislative definition.—*Flickenger v. Industrial Accident Commission*, 58 Cal. Dec. 374, 185 Pac. 851, 6 I. A. C. Dec. 169 (*Reeves v. Flickenger*, 28 Cal. App. Dec. 127, 5 I. A. C. Dec. 173, 6 I. A. C. Dec. 11).

36. **Same—Same.**—The amendment of November 5, 1918, of section 21, article XX, of the constitution, did not validate section 8 (b) of the act.—*Simpson v. Decker*, 6 I. A. C. Dec. 216.

II. ROSEBERRY ACT.

37-39. **Requires election of both employer and employee.**

40. State not liable.

41. State not liable as an employer.

41a. No right of action against a municipality.

42. Liability of employer—Negligence of physician.

43. Act compensates injury in course of employment.

44. Injury while performing, under employer's order, services outside employment.

45, 46. Assumption of risk abolished.

47. Same—Not a defense.

48-49a. Employee no longer assumes known hazard.

50. Assumption of risk presupposes employer's negligence.

51. Same—Negligence of employer not shown.

52. Defenses of assumption of risk and fellow servant's negligence not available.

53. Negligence of fellow servant is negligence of employer.

54. Employer responsible for negligence of fellow servant and unsafe place of employment.

55. Employer liable where injured employee had direction and control of negligent co-employee.

56, 56a. Contributory negligence does not bar recovery.

57-59. Same—Where employee's negligence slight and employer's gross by comparison.

60. Same—Same—Diminish damages proportionately.

61. Same—Defense not destroyed by the act.

62. Question of proportionate negligence for the jury.

63. Instruction as to definition of gross negligence.

64. Instruction as to law of proportionate negligence.

65. Contributory negligence without fault of employer.

66. Contributory negligence—Slight negligence of employer.

67. Contributory negligence—Violation of statute—Conclusive presumption.

68, 69. Same—Violation of statute proximate cause of injury.

37. **Requires election of both employer and employee.**—The application of the employees' liability act of 1911, depends upon the election of both employer and employee.—*Miller v. Pillsbury*, 164 Cal. 199, 203, Ann. Cas. 1914B, 886, 128 Pac. 327.

38. **The Roseberry act** (Stats. 1911, p. 796) is elective or optional, and requires both parties to a contract of employment to elect to come under the act.—*Miller v. Pillsbury*, 164 Cal. 199, Ann. Cas. 1914B, 886, 128 Pac. 327.

39. **The Roseberry act** made application to the system of compensation for accidental injuries adopted by it, elective.—*Great Western Power Co. v. Pillsbury*, 170 Cal. 180, 183, 149 Pac. 35.

40. **State not liable.**—A sovereign state can not be required to compensate employees for injuries received in its service, and no right of recovery against it for such injuries, in the absence of statute.—*Miller v. Pillsbury*, 164 Cal. 199, Ann. Cas. 1914B, 886, 128 Pac. 327.

41. **State not liable as employer.**—The state of California is not an employer within the meaning of the employer's liability act of 1911, and is not bound by the provisions of section 4 thereof to make compensation to an employee for personal in-

juries.—*Miller v. Pillsbury*, 164 Cal. 199, 201, Ann. Cas. 1914B, 886, 128 Pac. 327.

41a. No right of action against a municipality.—No right of action is given by the act of 1911 (1115) against a municipality for a personal injury except where the officer charged with the duty of repairing a street should be innocent of knowledge or notice of the condition of the street from which the accident became possible.—*Coffey v. City of Berkeley*, 170 Cal. 258, 262, 149 Pac. 559.

42. Liability of employer—Negligence of physician.—The liability of an employer, under the Roseberry act and at common law, for the negligence of a physician engaged by him to treat his employee is secondary, and depends upon the showing of negligence on the part of the physician.—*Foreman v. Hunter Lumber Co.*, 36 Cal. App. 763, 173 Pac. 408.

43. Act compensates injury in course of employment.—When the Roseberry act limits its protection to an employee who shall sustain injury "while engaged in the line of his duty or in the course of his employment as such" it means no more than to deny the right to invoke the act to one who, during the hours of his employment, is engaged in some undertaking which is not a part of his duty under his employment, as where he occupied in affairs of his own, or where he undertakes something not in the course of his duty, as a mere volunteer.—*Burian v. Los Angeles Cafe Co.*, 173 Cal. 625, 628, 161 Pac. 4.

44. Injury while performing, under employer's order, services outside employment.—Where an employee was performing services imposed upon him by his employer under circumstances moving him to undertake them, he is entitled to the remedial provisions of the Roseberry act, although such services were outside the duties of his usual vocation and employment.—*Burian v. Los Angeles Cafe Co.*, 173 Cal. 625, 627, 161 Pac. 4.

45. Assumption of risk abolished.—The provision of section 1 of the employer's liability act of 1911 (Stats. 1911, p. 796), abolishing the doctrine of assumption of risk, applies to all actions based on the negligence of the employer brought by an employee, irrespective of whether the parties elected to come under the act or not.—*Hughes v. Warman Steel Casting Co.*, 174 Cal. 556, 565, 163 Pac. 885.

46. Under the Roseberry act the assumption of risk of a known hazard is not a defense to a claim for damages for personal injuries by an employee against an employer.—*Earl v. San Francisco Bridge Co.*, 31 Cal. App. 339, 160 Pac. 570; *Reynolds v. E. Clemens Horst Co.*, 35 Cal. App. 711, 170 Pac. 1082.

47. Same—Not a defense.—A right of action for the death of a mining employee can not, in view of the employer's liability act of 1911, be defeated on the ground of employee's assumption of risk.—*Crabbe v. Mammoth, etc., Co.*, 168 Cal. 500, 502, 143 Pac. 714.

48. Employee no longer assumes known hazard.—Where an employee's work required him to pass over boards temporarily laid for construction work and not for use as a platform or place for the workmen to walk, in using such boards for purposes of passing he did not, since the enactment of the Roseberry act, assume the risk of their unsafe condition.—*Morrill v. Stone & Webster, etc., Co.*, 177 Cal. 199, 170 Pac. 405.

49. An employee did not, under the Roseberry act, assume the risk arising from the dangers of the place in which he was at work.—*Nolen v. F. O. Engstrom Co.*, 175 Cal. 464, 166 Pac. 346.

49a. In an action by a fireman against a railroad company for injuries caused by a permanent signboard maintained by the company so close to the track as to strike the plaintiff while performing service on a passing engine, it was proper, under the Roseberry act (1911-796) to give an instruction that the fireman did not assume the risk of the unsafe position of the sign unless he fully understood, comprehended and appreciated the dangers incident thereto.—*Humphres v. Western Pacific Ry. Co.*, 173 Cal. 428, 430, 160 Pac. 415.

50. Assumption of risk presupposes employer's negligence.—Assumption of risk by an employee presupposes and must be based upon some act of negligence on the part of the employer.—*Burian v. Los Angeles Cafe Co.*, 173 Cal. 625, 628, 161 Pac. 4.

51. Same—Negligence of employer not shown.—An employer restaurant owner is not guilty of negligence in directing a minor employed by him as a waiter, doing the work and getting the wages of an adult, to carry a hundred and fifty pound box, without giving him assistance or warning him of the danger of injury in doing so.—*Burian v. Los Angeles Cafe Co.*, 173 Cal. 625, 629, 161 Pac. 4.

52. Defenses of assumption of risk and fellow servant's negligence not available.—The defenses of assumption of risk and negligence of a fellow servant were not available to a defendant employer under the employer's liability act of 1911 (Stats. 1911, p. 796).—*Scherer v. Danziger*, 178 Cal. 253, 255, 173 Pac. 85.

53. Negligence of fellow servant is negligence of employer.—In view of the employer's liability act (1911-796) negligence of fellow servant is the negligence of the employer, and not a defense in action by an employee for personal injuries.—*Scott v. McPherson*, 168 Cal. 783, 785, 145 Pac. 529.

54. Employer responsible for negligence of fellow servant and unsafe place of employment.—Under the act of 1911 (796), an employer is responsible for an injury to an employee resulting from the negligence of a co-employee, and for all dangers arising from the employment itself and the place where it was carried on.—*Lassen v. Southern Pacific Co.*, 173 Cal. 71, 72, 159 Pac. 143.

55. Employer liable where injured employee had direction and control of negligent co-employee.—Under the Roseberry

act, abolishing the fellow servant defense, an employer is liable for injury resulting from the negligence of a fellow servant, notwithstanding the fact that the injured employee had the direction and control of his culpable fellow employee.—*Gibson v. Kennedy, etc., Co.*, 172 Cal. 294, 302, 156 Pac. 56.

56. Contributory negligence does not bar recovery.—An employee's right of action was not destroyed by the fact of contributory negligence, under the employer's liability act of 1911 (Stats. 1911, p. 796).—*Scherer v. Danziger*, 178 Cal. 253, 255, 173 Pac. 85.

56a. Under the act of 1911 (796) the contributory negligence of an employee does not bar recovery against his employer for an injury caused by the latter's or a co-employee's negligence, if it was slight and that of the employer or co-employee was gross by comparison, but the jury may diminish the amount of the recovery in proportion to the negligence charged to him.—*Lassen v. Southern Pacific Co.*, 173 Cal. 71, 73, 159 Pac. 143.

57. Same—Where employee's negligence slight and employer's gross by comparison.—Under the Roseberry act contributory negligence does not bar a recovery where it is slight and that of the employer gross by comparison, but the damages may be diminished by such contributory negligence.—*Tubbs v. Stone & Webster, etc., Co.*, 30 Cal. App. 705, 159 Pac. 242; *Gideon v. Howard*, 33 Cal. App. 5, 164 Pac. 11; *Lincoln v. Pacific Electric Ry. Co.*, 33 Cal. App. 83, 91, 164 Pac. 412; *West v. Jesse A. Linney & Co.*, 33 Cal. App. 164, 164 Pac. 608.

58. Where an employee's contributory negligence was slight and his employer's gross by comparison, his right of recovery is not barred completely, under the Roseberry act.—*Cozad v. Raisch Improvement Co.*, 175 Cal. 619, 166 Pac. 1000.

59. Under the employer's liability act of 1911 (Stats. 1911, p. 796) an employee was entitled to recover, even though guilty of contributory negligence, if such contributory negligence was slight and that of the employer gross by comparison.—*Scherer v. Danziger*, 178 Cal. 253, 256, 173 Pac. 85.

60. Same—Same—Diminish damages proportionately.—Under employer's liability act of 1911 (Stats. 1911, p. 796) an employee could recover notwithstanding his contributory negligence, the jury being permitted to diminish the damages "in proportion to the amount of negligence attributable to such employee."—*Scherer v. Danziger*, 178 Cal. 253, 256, 173 Pac. 85.

61. Same—Defense not destroyed by the act.—The defense of contributory negligence was not destroyed by the Roseberry act, but on the contrary the act clearly recognizes such defense.—*Schuh v. R. H. Herron Co.*, 177 Cal. 13, 19, 169 Pac. 682.

62. Question of proportionate negligence for the jury.—The question whether a plaintiff employee was guilty of such gross negligence as to bar him from recovery

under the Roseberry act (Stats. 1911, p. 796), in view of the evidence as his inexperience and disregard of directions of his superior, was a question for the jury.—*McGuire v. Miller & Lux*, 178 Cal. 644, 645, 174 Pac. 898.

63. Instruction as to definition of "gross negligence."—It was not error in an instruction on the law of contributory negligence, as qualified by the Roseberry act, to omit a definition of "gross" negligence, in the absence of a request for a more definite instruction.—*Bruce v. Western, etc., Co.*, 177 Cal. 25, 169 Pac. 660.

64. Instruction as to law of proportionate negligence.—It is proper, under the Roseberry act (1911-796) to instruct a jury in an action by an employee against an employer, to the effect that plaintiff's contributory negligence, if any, shall not bar a recovery where such contributory negligence was slight and that of the employer gross by comparison, but that the damages might be diminished by the jury in proportion to the amount of negligence attributable to such employee.—*Humphres v. Western Pacific Ry. Co.*, 173 Cal. 428, 436, 160 Pac. 415.

65. Contributory negligence without fault of employer.—The Roseberry act does not impose liability on an employer for injury to an employee due solely to the latter's own negligence and without the fault of the former.—*Spivok v. Independent Sash and Door Co.*, 173 Cal. 438, 440, 160 Pac. 565.

66. Contributory negligence—Slight negligence of employer.—The provisions of the Roseberry act have no application to a case where, if the employer was guilty of negligence at all it was extremely slight as compared with the very gross negligence of the employee.—*Hontz v. San Pedro, etc., Co.*, 173 Cal. 750, 759, 161 Pac. 971.

67. Contributory negligence — Violation of statute—Conclusive presumption of negligence.—In view of the provisions of the Roseberry act declaring that it is to be conclusively presumed that an employee was not guilty of contributory negligence in any case where the employer's violation of any statute for the safety of his employees contributed to the injury, the refusal of all instructions based on contributory negligence was proper under the facts of the present case.—*Frinier v. C. J. Kubach Co.*, 177 Cal. 722, 171 Pac. 952.

68. Same—Violation of statute proximate cause of injury.—Where the presumption declared by the Roseberry act to be conclusive rests upon the violation of a statute regulating the hours of labor of minors, it must be shown not only that the employee was working during the forbidden hours, but also that that fact contributed proximately to the injury.—*Williams v. Southern Pacific Co.*, 173 Cal. 525, 533, 160 Pac. 660.

69. To warrant the presumption contained in the Roseberry act not only must the injury be shown, but it must also be shown that the employer's violation of a

statute for the safety of employees contributed to the injury.—*Williams v. Southern Pacific Co.*, 173 Cal. 525, 533, 160 Pac. 660.

III. CONSTRUCTION OF ACT.

70. State laws superseded by federal act in interstate commerce.—All state laws upon the subject of employer's liability for his employees' injuries are superseded by the federal act, so far as relates to persons employed in interstate commerce, and the California commission has no jurisdiction to make an award to any one so employed.—*Smith v. Industrial Accident Commission*, 26 Cal. App. 560, 147 Pac. 600.
71. Strict construction not to be given.—The aim of section 21, article XX, of the constitution, is to enlarge the power of the legislature, or to remove doubts upon its power to legislate on a given subject and the courts are not to give it too strict and literal an interpretation.—*Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 414, Ann. Cas. 1917E, 390, 156 Pac. 491.
72. New system of law of master and servant.—Section 21, article XX, of the constitution was designed to empower the
73. Commission vested with judicial power to determine liability of employer.—Section 21, article XX, of the constitution, authorizes the legislature to create and enforce a liability on the part of an employee for an award to the dependents of a deceased employee where death resulted from accident and was authorized thereunder to vest in the commission the judicial power to determine such liability.—*Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 410, Ann. Cas. 1917E, 390, 156 Pac. 491.
74. Statute adopted from another state—Rule of construction.—The rule that when a statute is adopted and re-enacted from another state, it is so adopted and re-enacted in consonance with the judicial construction given it in the courts of the state of its origin, applies to the clauses of the workmen's compensation act of California taken literally from the workmen's compensation act of England.—*Ocean, etc., Co. v. Industrial Accident Commission*, 173 Cal. 313, 317, L. R. A. 1917B, 336, 159 Pac. 1041.
75. Law operates on status.—This law operates upon the status of employer and employee, and affixes certain rights and obligations to that status.—*North Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 2, L. R. A. 1917E, 642, 162 Pac. 93.
76. Relations depend upon the statute not on contract.—The relation of employer and employee has its inception in a contract, but once the relation is created, its incidents depend not upon the agreement of the parties, but upon the provisions of the workmen's compensation act.—*North Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 2, L. R. A. 1917E, 642, 162 Pac. 93.
77. Liability of employer arises from act not from contract.—The liability of an employer to pay compensation to his injured employee, under this act, arises from the act itself and not from any agreement of the parties.—*North Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 2, L. R. A. 1917E, 642, 162 Pac. 93.
78. Act is compulsory and is not dependent on election and consent of parties.—Under a compulsory statute, such as the California workmen's compensation act, the correlative rights and obligations of the employer and employee are not founded upon contract, as in the case of statutes whose compensation provisions are dependent upon the election and consent of the parties.—*North Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 3, L. R. A. 1917E, 642, 162 Pac. 93.
79. Section 75—Nature and extent of proof.—If the effect of section 75 of the act is to confer upon the commission power to enact laws prescribing the nature and extent of proof necessary to justify an award, it would be a delegation of power which the
70. State laws superseded by federal act in interstate commerce.—All state laws upon the subject of employer's liability for his employees' injuries are superseded by the federal act, so far as relates to persons employed in interstate commerce, and the California commission has no jurisdiction to make an award to any one so employed.—*Smith v. Industrial Accident Commission*, 26 Cal. App. 560, 147 Pac. 600.
71. Strict construction not to be given.—The aim of section 21, article XX, of the constitution, is to enlarge the power of the legislature, or to remove doubts upon its power to legislate on a given subject and the courts are not to give it too strict and literal an interpretation.—*Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 414, Ann. Cas. 1917E, 390, 156 Pac. 491.
72. New system of law of master and servant.—Section 21, article XX, of the constitution was designed to empower the
73. Commission vested with judicial power to determine liability of employer.—Section 21, article XX, of the constitution, authorizes the legislature to create and enforce a liability on the part of an employee for an award to the dependents of a deceased employee where death resulted from accident and was authorized thereunder to vest in the commission the judicial power to determine such liability.—*Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 410, Ann. Cas. 1917E, 390, 156 Pac. 491.
74. Statute adopted from another state—Rule of construction.—The rule that when a statute is adopted and re-enacted from another state, it is so adopted and re-enacted in consonance with the judicial construction given it in the courts of the state of its origin, applies to the clauses of the workmen's compensation act of California taken literally from the workmen's compensation act of England.—*Ocean, etc., Co. v. Industrial Accident Commission*, 173 Cal. 313, 317, L. R. A. 1917B, 336, 159 Pac. 1041.
75. Law operates on status.—This law operates upon the status of employer and employee, and affixes certain rights and obligations to that status.—*North Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 2, L. R. A. 1917E, 642, 162 Pac. 93.
76. Relations depend upon the statute not on contract.—The relation of employer and employee has its inception in a contract, but once the relation is created, its incidents depend not upon the agreement of the parties, but upon the provisions of the workmen's compensation act.—*North Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 2, L. R. A. 1917E, 642, 162 Pac. 93.
77. Liability of employer arises from act not from contract.—The liability of an employer to pay compensation to his injured employee, under this act, arises from the act itself and not from any agreement of the parties.—*North Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 2, L. R. A. 1917E, 642, 162 Pac. 93.
78. Act is compulsory and is not dependent on election and consent of parties.—Under a compulsory statute, such as the California workmen's compensation act, the correlative rights and obligations of the employer and employee are not founded upon contract, as in the case of statutes whose compensation provisions are dependent upon the election and consent of the parties.—*North Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 3, L. R. A. 1917E, 642, 162 Pac. 93.
79. Section 75—Nature and extent of proof.—If the effect of section 75 of the act is to confer upon the commission power to enact laws prescribing the nature and extent of proof necessary to justify an award, it would be a delegation of power which the

legislature to establish a system of law making the relations of master and servant subject to new rights and liabilities different from those at common law.—*Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 414, Ann. Cas. 1917E, 390, 156 Pac. 491.

73. Commission vested with judicial power to determine liability of employer.—Section 21, article XX, of the constitution, authorizes the legislature to create and enforce a liability on the part of an employee for an award to the dependents of a deceased employee where death resulted from accident and was authorized thereunder to vest in the commission the judicial power to determine such liability.—*Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 410, Ann. Cas. 1917E, 390, 156 Pac. 491.

74. Statute adopted from another state—Rule of construction.—The rule that when a statute is adopted and re-enacted from another state, it is so adopted and re-enacted in consonance with the judicial construction given it in the courts of the state of its origin, applies to the clauses of the workmen's compensation act of California taken literally from the workmen's compensation act of England.—*Ocean, etc., Co. v. Industrial Accident Commission*, 173 Cal. 313, 317, L. R. A. 1917B, 336, 159 Pac. 1041.

75. Law operates on status.—This law operates upon the status of employer and employee, and affixes certain rights and obligations to that status.—*North Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 2, L. R. A. 1917E, 642, 162 Pac. 93.

76. Relations depend upon the statute not on contract.—The relation of employer and employee has its inception in a contract, but once the relation is created, its incidents depend not upon the agreement of the parties, but upon the provisions of the workmen's compensation act.—*North Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 2, L. R. A. 1917E, 642, 162 Pac. 93.

77. Liability of employer arises from act not from contract.—The liability of an employer to pay compensation to his injured employee, under this act, arises from the act itself and not from any agreement of the parties.—*North Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 2, L. R. A. 1917E, 642, 162 Pac. 93.

78. Act is compulsory and is not dependent on election and consent of parties.—Under a compulsory statute, such as the California workmen's compensation act, the correlative rights and obligations of the employer and employee are not founded upon contract, as in the case of statutes whose compensation provisions are dependent upon the election and consent of the parties.—*North Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 3, L. R. A. 1917E, 642, 162 Pac. 93.

79. Section 75—Nature and extent of proof.—If the effect of section 75 of the act is to confer upon the commission power to enact laws prescribing the nature and extent of proof necessary to justify an award, it would be a delegation of power which the

legislature is not authorized, under section 21, article XX, of the constitution, to make.—*Englebreton v. Industrial Accident Commission*, 170 Cal. 793, 797, 151 Pac. 421.

80. Fault or negligence of employer necessary.—Some fault or negligence on the part of the employer proximately causing the injury was essential to recovery in an action by employee against employer for personal injuries prior to the act of 1913 (1913-279).—*Bracquee v. Mottet Co.*, 175 Cal. 258, 259, 165 Pac. 696.

81. Commission exercises judicial functions.—In awarding compensation under the act the commission exercises judicial functions.—*Carstens v. Pillsbury*, 172 Cal. 572, 158 Pac. 218.

See, also, *Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 156 Pac. 491; *Pacific Coast Casualty Co. v. Pillsbury*, 171 Cal. 319, 153 Pac. 26.

82. Award against third person not authorized.—The commission is not empowered to make an award of compensation against the owner of a building in favor of an injured employee of the independent contractor who is erecting the same, or of a sub-contractor to whom such independent contractor has let the erection of a portion of the same.—*Carstens v. Pillsbury*, 172 Cal. 572, 158 Pac. 218.

83. Taking evidence secretly.—"Due process."—No power is given to the commission to take evidence secretly, and if it were given it would be in violation of the "due process" clause of the federal constitution.—*Carstens v. Pillsbury*, 172 Cal. 572, 158 Pac. 218.

84. Section 24—Read and construed as entirety.—Section 24 must be read and construed as an entirety and in the light of the rule that an unconstitutional construction should not be given, if another meaning is reasonably discoverable from the language.—*Mesmer & Rice v. Industrial Accident Commission*, 26 Cal. App. Dec. 220, 5 I. A. C. Dec. 22 (Wilson v. Mesmer & Rice, 4 I. A. C. Dec. 139).

85. Comparative negligence ignored—Roseberry act repealed.—In an action for damages for death of an employee, against an employer, where the cause of action arose March 4, 1914, an instruction which ignored the "comparative negligence" provisions of the Roseberry act, was not for that reason erroneous, in view of the fact that that act was repealed by the act of 1913 to take effect January 1, 1914.—*Brown v. Lemon Cove Ditch Co.*, 36 Cal. App. 94, 171 Pac. 705.

86. Repeal of Roseberry act—Intent as to inclusion of county officers.—The fact that the act of 1911 (p. 797, § 6) expressly excluded elected or appointed officers of a county, and the act of 1913, did not, is not sufficient to show a legislative intent to include such officers in the later act.—*Mono Co. v. Industrial Accident Commission*, 175 Cal. 752, 755, 167 Pac. 377.

87. Compensation for disease authorized.—The act of 1917 authorizes an award of compensation for disease, provided the other

conditions of the act are met, and is not for that reason unconstitutional.—*San Francisco v. Industrial Accident Commission* (Cal.), 191 Pac. 26; *Engels, etc., Co. v. Industrial Accident Commission* (Cal.), 192 Pac. 845.

88. Accident injury — "Accident."—The word "accident" in section 12 of the Boynton act is to be construed as popularly understood, to referred to unexpected and unintentional injuries sustained by employees.—*Fidelity & Cas. Co. v. Industrial Accident Commission*, 177 Cal. 614, 616, L. R. A. 1918F, 856, 171 Pac. 429.

89. Same—Assault may be accidental.—The fact that an injury was the result of a wilful or criminal assault does not exclude the possibility that it was accidental.—*Western Indemnity Co. v. Pillsbury*, 170 Cal. 686, 705, 151 Pac. 398.

90. An injury may be accidental, even though it be intentionally inflicted by a third person.—*Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 418, Ann. Cas. 1917E, 390, 156 Pac. 491, 3 I. A. C. Dec. 109 (*Mason v. Western, etc., Co.*, 1 I. A. C. Dec. 284).

91. Same—Killing of night watchman.—The death of a night watchman killed while on the premises he was employed to watch, under circumstances tending to show that he was killed in the performance of his duty, is held to be death from accident within the meaning of the act.—*Western, etc., Co. v. Pillsbury*, 173 Cal. 135, 141, 159 Pac. 423, 3 I. A. C. Dec. 109 (*Mason v. Western, etc., Co.*, 1 I. A. C. Dec. 284).

92. Same—Injury from use of wood alcohol.—A show card writer, while using wood alcohol to clean apparatus used in making special dyes, had his vision impaired by the exposure of the optic nerve to the vapor of the alcohol in unusual quantity, and it was held that this was an "injury sustained by accident" within the meaning of section 12 of the act of January 1, 1914.—*Fidelity, etc., Co. v. Industrial Accident Commission*, 177 Cal. 614, L. R. A. 1918F, 856, 171 Pac. 429, 5 I. A. C. Dec. 38 (*DeWitt v. Jacoby Bros.*, 1 I. A. C. Dec. 170).

93. Same—Construction of English decisions.—The phrase "injury sustained by accident" as used in section 12 of the act of 1914 was taken from the English act with the construction placed on it prior to its incorporation in the California act, and is to be liberally interpreted to make it applicable to injuries to workmen which are unexpected and unintentional.—*Fidelity, etc., Co. v. Industrial Accident Commission*, 177 Cal. 614, L. R. A. 1918F, 856, 171 Pac. 429, 5 I. A. C. Dec. 38 (*DeWitt v. Jacoby Bros.*, 1 I. A. C. Dec. 170).

IV. LIABILITY FOR COMPENSATION.

1. Employer. a. In general.

94. Term defined.

95. Reclamation district not an employer.

96. Reclamation districts exempted.

97. No compensation to others than employees authorized.

98. Injury to employee of sub-contractor.
- 98a. Injury to member of train crew employed by grading contractor.
99. Injury to municipal election officer—Non-liability of city.
- b. Identity of employer.*
100. Decided according to facts—Not on what parties thought.
- 101-103. Loan of employees.
104. Owner of pumping plant—Employee of independent contractor.
105. Owner of building—Employee of independent contractor.
- 106, 107. Employee of sub-contractor of independent contractor.
108. Farmer—County.
109. Foreman, and water and power company.
110. Fighting fire on premises of third person.
111. Railroad conductor—Grading contractor.
112. Member of railroad train crew—Grading contractor.
113. Flagman employed by two railroads.
- 114, 115. Night watchman employed by several corporations.
116. Millwright doing special work at foreman's request.
- 116a. Employee of teaming company working for lumber company.
- 117, 118. Caddy at country club.
119. Special police officer employed by private property owners.
- 119a. Citizen aiding peace officer to make arrest.
- 120, 120b. Copartners assignment to creditor.
121. Partnership furnishing skilled labor to corporation.
122. Hired by one partner, paid by another.
123. Joint liability of partners.
124. Lessor and lessee.
125. Persons holding themselves out as partners.
- 125a. Assignee for creditors—Owners of business.
- 125b. Joint liability of principal and immediate employers.
- a. "Gross negligence"—Serious and wilful misconduct of employer.*
126. Remedy of act exclusive.
127. Option of employee in case of gross negligence of employer.
128. Option of employee—Demurrer to complaint.
129. Employee's action for damages—Proof required.
130. "Gross negligence."
131. Failure to house gears.
132. Same—Not gross negligence.
133. "Wilful misconduct."
134. Same—Disregard of safety order of commission.
135. Statutory duty to provide safe place to work.
136. Same—Instruction exacting greater than statutory degree of care.
137. "Serious and wilful misconduct"—Proof under the act of 1917.
138. Same—Failure to comply with safety order of commission.
- 139, 140. Same—Defined.
- 140a, 141. Same—Increase of compensation.
- 2. Insurance carrier.*
142. Employer member of association, not "insurance carrier."
143. Policy specifically designating employees covered.
144. One of two joint employers insured—Insurance carrier and other employer liable.
145. Construction of policy—Mining superintendent not included.
146. Employee specifically covered—Insurance carrier can not claim non-liability because illegally employed.
147. Policy excluding executive officers—Mining superintendent not executive officer.
148. "Executive officer"—Dummy director not executive officer.
149. Same—Director executive officer.
150. Interpretation of policy—"General farm work excluding the operation of farm machinery."
151. Same—Same—Assistant to tractor engineer.
152. Assignment or change of interest.
- 152a. Assignment for benefit of creditors.
153. Padding of payroll without carrier's knowledge.
154. Insurance carrier—Loss of right to do business in state.
155. Policy specifically covering chauffeurs.
156. Clause of policy excluding "construction of sewers."
157. Rescission of policy for misrepresentation after commencement of proceedings.
158. Liability of insurance carrier—After accrual of rights.
- 159, 160. Insurance carrier bound by representation of agent.
161. Renewal of policy dated after injury.
162. Waiver of illegal employment.
163. Illegal employment of minor.
164. Policy covering all employees—Minor illegally employed.
- 165, 166. Condition against illegal employment.
167. Requirement as to notice must be complied with.
168. Compliance with requirement as to notice must be proved.
- 168a. Liability of carrier must be valid and enforceable to relieve employer of liability.

1. Employer. a. In general.

94. Term defined—"Employer" and "employee."—Every person who has any person in service under a contract of hire, express or implied, is an "employer"; and every

person thus in service is an "employee."—*Kirkpatrick v. Industrial Accident Commission*, 31 Cal. App. 668, 161 Pac. 274.

95. Reclamation district not an employer.—Reclamation district No. 900 is not a public corporation within the definition of section 284, Civil Code.—*Bettencourt v. Industrial Accident Commission*, 175 Cal. 559, 560, 166 Pac. 323.

96. Reclamation districts exempted.—Reclamation districts are exempted from the operation of the act, being neither public nor private corporation within the meaning of section 13 of the act defining "employers" but are governmental mandatories or agents vested with limited powers to accomplish limited and specific work.—*Bettencourt v. Industrial Accident Commission*, 175 Cal. 559, 166 Pac. 323, 4 I. A. C. Dec. 210; *Hartford, etc., Co. v. Reclamation, etc.*, No. 900, Yolo County, 3 I. A. C. Dec. 266.

97. No compensation to other than employees authorized.—Under the terms of section 21, of article 20, of the constitution, the commission has no jurisdiction to award compensation for injuries to other than employees of the person against whom compensation is claimed.—*Thaxter v. Finn*, 54 Cal. Dec. 620, 4 I. A. C. Dec. 433 (*Thaxter v. Thaxter*, 1 I. A. C. Dec. 196).

98. Injury to employee of sub-contractor.—Neither the owner of a building nor the contractor for the erection thereof is liable for the injury, or to pay compensation therefor to an injured employee of a sub-contractor on such building.—*Thaxter v. Finn*, 54 Cal. Dec. 620, 4 I. A. C. Dec. 433 (*Thaxter v. Thaxter*, 1 I. A. C. Dec. 196).

98a. Injury to member of train crew, employed by grading contractor.—A member of a train crew employed by a contractor engaged in grading a roadbed for an electric railway company, who received an injury while hauling materials for laying the track on a portion of the grade that had been completed, is not to be considered, in so far as such hauling was concerned, an employee of the railway company, notwithstanding it was no part of the contractor's contract to lay track, where the track was laid at the contractor's request, and was necessary to enable him to complete his contract.—*Georgia Casualty Co. v. Industrial Accident Company*, 177 Cal. 289, 170 Pac. 625, 5 I. A. C. Dec. 16 (on rehearing of 53 Cal. Dec. 705, 4 I. A. C. Dec. 170; *Sims v. Sherer & Co.*, 3 I. A. C. Dec. 197).

99. Injury to municipal election officer.—Non-liability of city.—A judge of an election board at a municipal election is not an employee of the municipality within the meaning of that term as used in the act, and is not entitled to compensation from the city for injuries received while taking the election returns in his own automobile to the city hall after the counting of the ballots.—*City of Los Angeles v. Industrial Accident Commission*, 35 Cal. App. 31, 169 Pac. 260, 4 I. A. C. Dec. 322 (*Meehan v. City of Los Angeles*, 4 I. A. C. Dec. 52).

b. Identity of employer.

100. Decided according to facts.—Not on what parties thought.—The determination of the identity of the employer can not be arrived at merely on the ground of what the parties themselves thought in relation to employment, but must be decided in accordance with the facts.—*Hartman v. Ralston Iron Works*, 4 I. A. C. Dec. 13.

101. Loan of employees.—Where an employee of a corporation was loaned to another corporation to assist in certain emergency work, in which the former had no interest or control over, and the employee was retained on the payroll of the former and received full wages, which were reimbursed by the latter, and the workman was injured while so employed, it was held that there was no community of interest of said corporations as to control or ultimate benefit in the work and the former corporation was not liable.—*Marken v. Yellow Aster, etc., Co.*, 6 I. A. C. Dec. 101.

102. When two individuals maintaining adjoining plants habitually loaned employees to each other for mutual convenience, and the employees were paid and controlled by each employer, respectively, during the period of their service for him. It is held the individual to whom the employees were loaned was the employer of such employee while working for him.—*Frederick v. Dallerup*, 6 I. A. C. Dec. 110.

103. An employee temporarily loaned by his employer for service to another, who pays and controls him, without profit on the transaction to the first employer, was held to be an employee of the second individual while so engaged.—*Proctor v. Lindgren Co.*, 5 I. A. C. Dec. 115.

104. Owner of pumping plant.—Employee of independent contractor.—The commission is without the power to make an award against the owner of the land and in favor of an employee of an independent contractor engaged in installing a pumping plant thereon.—*Western Indemnity Co. v. Industrial Accident Commission*, 172 Cal. 766, 767, 158 Pac. 1033.

105. Owner of building.—Employee of independent contractor.—The commission has no power to award compensation against the owner of property erecting a building thereon, through an independent contractor, whose only relation to the injured person employed by such contractor is such ownership.—*Carstens v. Pillsbury*, 172 Cal. 572, 578, 158 Pac. 218.

106. Employee of sub-contractor of independent contractor.—The industrial accident commission has no jurisdiction to award, against an owner, compensation under the act in favor of the injured employee of a sub-contractor of an independent contractor.—*First Church v. Industrial Accident Commission*, 173 Cal. 552, 553, 160 Pac. 675.

107. A sub-contractor to whom was sublet the work of excavating, refilling and resurfacing a trench for a drainage conduit, and not the contractor for the construction of the conduit, is liable for the

compensation of a laborer employed by such sub-contractor for an injury sustained in excavating such trench to a depth exceeding that called for by the sub-contract at the actual cost of the labor of such extra excavation.—*Worswick, etc., Co. v. Industrial Accident Commission*, 58 Cal. Dec. 453, 185 Pac. 953, 6 I. A. C. Dec. 226; *Employer's, etc., Co. v. Industrial Accident Commission*, 58 Cal. Dec. 453, 185 Pac. 953, 6 I. A. C. Dec. 226.

Also, *Worswick, etc., Co. v. Industrial Accident Commission*, 58 Cal. Dec. 460, 185 Pac. 953; *Employer's, etc., Co. v. Industrial Accident Commission*, 58 Cal. Dec. 460, 461, 185 Pac. 953.

108. Farmer—County.—A farmer who constructs a fence between his farm and the county highway is the employer of the carpenter who builds the fence, although the county reimburses him for the cost of the fence.—*Jenkins v. Rhinehart*, 6 I. A. C. Dec. 180.

109. Foreman and water and power company.—Where a foreman, employed by a water and power company, was authorized to employ laborers for the company, and employed a teamster in accordance with such authority, such teamster was an employee of the company, and not of such foreman, notwithstanding the fact that he was employed to drive the foreman's team, hired to the company.—*Yolo, etc., Co. v. Industrial Accident Commission*, 35 Cal. App. 14, 168 Pac. 1146.

110. Fighting fire on premises of third person.—A section hand engaged in fighting fire on the property of another person, and receiving pay from such other person, was not in the employ of the railroad company, although he was directed to perform the service by his foreman.—*London, etc., Co. v. Industrial Accident Commission*, 173 Cal. 642, 643, 161 Pac. 2.

111. Railroad conductor—Grading contractor.—A conductor, employed and paid by a grading contractor, in charge of a construction train, engaged in hauling materials for laying track upon a portion of the roadbed already completed, which, although not within the contract, and intended for permanent use, was being laid at the request of the contractor, and was necessary, according to the terms of the contract, to the use of the steam shovel to complete the grading contract, was an employee of the contractor, and not of the railroad company.—*Georgia C. Company v. Industrial Accident Commission*, 177 Cal. 289, 291, 170 Pac. 621.

112. Member railroad train crew—Grading contractor.—Where a member of a railroad train crew employed by a grading contractor was injured while hauling materials for the laying of the track upon a completed portion of the grade, the laying of the track being incidental to the work of grading, it was held that such member is not to be regarded as an employee of the railroad company for the time being, notwithstanding the work when completed would be a part of the equipment of the

railroad company.—*Georgia Casualty Co. v. Industrial Accident Commission*, 53 Cal. Dec. 705, 4 I. A. C. Dec. 170 (*Simms v. Sherer & Co.*, 3 I. A. C. Dec. 197).

113. Flagman employed by two railroads.—A flagman employed by one of two railroad companies, having separate and distinct systems but whose tracks ran parallel at a street crossing, to warn the operators of the trains of both companies at such crossing, under an oral arrangement between the two companies that one was to employ him and pay his wages and render a monthly bill for one-half of such wages, was an employee of both companies.—*San Francisco-Oakland Terminal Railways v. Industrial Accident Commission*, 180 Cal. 121, 179 Pac. 386, 6 I. A. C. Dec. 45.

114. Night watchman employed by several corporations.—A night watchman employed at a fixed monthly salary is an employee within the meaning of the act, even though also employed as a night watchman by other corporations under separate contracts for monthly compensation from each.—*Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 416, Ann. Cas. 1917E, 390, 156 Pac. 491.

115. Where several corporations employed a night watchman under separate and independent contracts calling for the payment of a separate monthly salary from each of them, they did not constitute an "association" within the meaning of section 13 of the act.—*Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 416, Ann. Cas. 1917E, 390, 156 Pac. 491.

116. Millwright doing special work at foreman's request.—Where a millwright was requested by the foreman of another department of his employer's plant to do certain work on Saturday afternoon and Sunday, when the plant would be closed, and it was usual for said millwright to do work as requested, and nothing was said to him to communicate that it would be working for any one else than his regular employer or that such work was in fact the private work of said foreman, it was held that in doing such work he was in the course of his regular employment, and not working for the foreman.—*Baker v. Heard, etc., Co.*, 4 I. A. C. Dec. 200.

116a. Employee of teaming company working for lumber company.—The accidental death of the employee of a teaming company, while hauling lumber for a lumber company, under his employer's direction, is compensable, and the teaming company is liable to his dependents for such compensation.—*Kirkpatrick v. Industrial Accident Commission*, 31 Cal. App. 668, 161 Pac. 274.

117. Caddy at country club.—The fact that an injured caddy employed by a country club reported for duty and was employed on specific days does not militate at all against the proposition that he was an employee within the meaning of section 14, workmen's compensation act, and entitled to compensation thereunder.—*Claremont C.*

Club v. Industrial Acc. Com., 174 Cal. 395, 398, 163 Pac. 209.

118. A country club, owning and maintaining a golf links for its members, the general control of which is vested in appropriate committees of the club, the club providing caddies under the supervision of a caddy master, the caddies being stationed in a caddy house provided by the club until their services are requisitioned, and their wages being paid according to a schedule fixed by the club committee, is an employer within the meaning of section 13, workmen's compensation act, notwithstanding such caddies are paid by the individual members playing, whom they attend, and are under the exclusive control of such member while in attendance.—Claremont C. Club v. Industrial Acc. Com., 174 Cal. 395, 397, 163 Pac. 209.

119. **Special police officer employed by private property owners.**—Where a special police officer was employed and paid by private property owners to patrol their property at night, with the privilege on his part of substituting another patrolman in his stead, and the officer undertook to watch certain property on his beat and to station an extra guard during the day on a bridge across a public street which traversed said property, and for the services of such day guard the property owner paid to the officer a daily sum, and said day guard reported for instructions to said property owner, who withdrew him from the day patrolling and placed him on day guard on the property, without consulting the officer, it was held that such guard was an employee of the property owner, under an appointment of hire.—Hartman v. Ralston Iron Works, 4 I. A. C. Dec. 13.

119a. **Citizen aiding peace officer to make arrest.**—Where a citizen volunteered his services to aid a peace officer in making an arrest at a threatened breach of the peace and his offer of aid was accepted by the arresting officer and he was injured while so assisting said officer, it was held that since said citizen rendered said aid solely by reason of a duty imposed upon him by law, he was not an employee of the municipality at the time of said injury.—Richardson v. City of Santa Rosa, 4 I. A. C. Dec. 380.

120. **Copartners assignment to creditor.**—Where copartners, as individuals, gave a power of attorney to a creditor authorizing him to manage the business in the interest of certain creditors, and there was no assignment by the partnership, and no sale or transfer or assignment for the benefit of creditors, an insurance carrier for such partnership is not released from liability for compensation insurance to employees of the partnership who are injured.—United States Fidelity & Guaranty Co., v. Industrial Acc. Com., 174 Cal. 616, 622, 163 Pac. 1013.

120a. **The insurer of a partnership** against injuries to employees is not released from liability by reason of the fact that the injuries occurred after the partners had made an individual assignment of the assets

and business to a creditor to hold until such creditor and certain other creditors were paid.—United States, etc., Co. v. Industrial Accident Commission, 174 Cal. 616, 163 Pac. 1013, 4 I. A. C. Dec. 79; (Maffia v. Aquilino, 3 I. A. C. Dec. 15; Zanotti v. Aquilino, 3 I. A. C. Dec. 53).

120b. **Where an employer transferred his business and all his employees, including applicant, to another person, and the applicant continued to work under the exclusive control of the latter until the date of the injury, it was held such circumstances were sufficient to put the applicant on inquiry as to the identity of his employee.**—Pierce v. Rosenberg, 6 I. A. C. Dec. 241.

121. **Partnership furnishing skilled labor to corporation.**—Where a partnership under contract supplied skilled labor to a corporation for a percentage of the payroll, it was held that the partnership and corporation were joint employers.—Coulter v. Wellman, 5 I. A. C. Dec. 67.

122. **Hired by one partner, paid by another.**—An employee who was hired and directed by one partner and paid by another partner, held to have been an employee of the partnership and not of the second partner.—Mendez & Arneill v. Boge, 5 I. A. C. Dec. 32.

123. **Joint liability of partners.**—A cement manufacturing company and a partnership engaged in installing and handling large machinery are jointly liable for the death of an employee while performing services on the grounds of the cement company, upon an arrangement entered into between the cement company and the partnership by which the latter was to secure and furnish employees to perform such services, the cement company furnishing the materials and exercising direction and control over such employees.—Ocean, etc., Corporation v. Industrial Accident Commission, 179 Cal. 432, 177 Pac. 273, 5 I. A. C. Dec. 228; Aetna, etc., Co. v. Industrial Accident Commission, 179 Cal. 432, 177 Pac. 273, 5 I. A. C. Dec. 228; Employers, etc., Co. v. Industrial Accident Commission, 179 Cal. 432, 177 Pac. 273, 5 I. A. C. Dec. 228 (Coulter v. Wellman, 5 I. A. C. Dec. 64).

124. **Lessor and lessee joint employers.**—Under the facts of this case, an arrangement entered into was incorporated as a lease and not as a partnership, and the lessor and lessee as joint employers of a carpenter employed by said parties jointly, and not as copartners.—Perry v. Johnson, 4 I. A. C. Dec. 163.

125. **Persons holding themselves out as partners.**—Where two individuals permitted the use of their names in the firm's business, were interested in its management and in the lease of the real estate used in its business, obtained credit from a bank for the firm by representing themselves as copartners, and took over much of its property upon dissolution, such conduct was sufficient to establish that they were co-employees with the firm, notwithstanding

their contrary testimony.—*Pierce v. Rosenberg*, 6 I. A. C. Dec. 239.

125a. Assignee for creditors—Owners of business.—Where the full control of a wine business was turned over to a creditor by power of attorney, the creditor to manage the business for the benefit of himself and the owners of the business, it was held that the employees of the business were sole employees of the business and not of the manager.—*Zanotti v. Aquilino & Lagomarsino Co.*, 3 I. A. C. Dec. 53.

125b. Joint liability of principal and immediate employers.—The principal and the immediate employer were held jointly liable for compensation where the employee was injured on premises on which principal employer's work was to be done.—*Kesson v. Duncan*, 5 I. A. C. Dec. 121.

c. "Gross negligence"—Serious and wilful misconduct of employer.

126. Remedy of act exclusive—Gross negligence of employer.—The remedy afforded by the act is exclusive of all other statutory or common law remedies, except, as provided by section 12 (b), that the employee may, at his option, maintain an action for damages in the conditions named.—*Helme v. Great Western, etc., Co.*, 30 Cal. App. Dec. 84, 58 Cal. Dec. 483, 185 Pac. 510, 6 I. A. C. Dec. 161.

127. Option of employee in case of gross negligence of employer.—Under the industrial compensation act the only cases in which an employee is given an option to claim compensation under the act or bring an action at law, are where the injury was caused by the employer's gross negligence, and where it was caused by his wilful misconduct of a specified character.—*San Francisco Stevedoring Co. v. Pillsbury*, 170 Cal. 321, 322, 149 Pac. 586.

128. Option of employee—Demurrer to complaint.—The sustaining of a demurrer to the complaint in an action by an employee against his employer simply determines that the allegations of the complaint do not state a cause of action within the case named in the industrial compensation act as giving the employee an option to proceed in an action at law, and does not bar his right to claim compensation under the act.—*San Francisco Stevedoring Co. v. Pillsbury*, 170 Cal. 321, 322, 149 Pac. 586.

129. Employee's action for damages.—Where an employee, seeking recovery for personal injuries by an action at law, relies upon the failure of his employer to house certain gears on a machine used for packing bran, to recover he must allege and prove by a preponderance of evidence (1) that defendant's failure to house the gears was of itself "gross negligence," or "wilful misconduct"; (2) that such failure was the personal failure of an elective officer or officers of defendant corporation, as for example, a director or directors; and (3) that such failure indicated a wilful disregard of the life, limb and bodily safety of defendant's employees.—*Helme v. Great*

Western, etc., Co., (Cal. App.) 185 Pac. 510, 6 I. A. C. Dec. 161.

130. "Gross negligence."—"Gross negligence," within the meaning of section 12(b) of the act of 1913 is the entire failure to exercise care, or the exercise of so slight a degree of care as to justify the belief that there is an entire indifference to the interest and welfare of the employee.—*Helme v. Great Western, etc., Co.*, (Cal. App.) 185 Pac. 510, 6 I. A. C. Dec. 161.

131. Failure to house gears.—Failure to house the gears of a bran packing machine by a milling company is not wilful misconduct within the meaning of section 12(b) of the act, unless the housing was made a duty by some general or special order of the commission, or by the act itself, and some one of the company's elective officers, with a wilful disregard of the life, limb, or bodily safety of defendant's employees, having actual knowledge of the peril incident to the unhoused gears, or having what in law is equivalent to such actual knowledge, consciously failed to house the gears, so as to avert injury.—*Helme v. Great Western, etc., Co.*, (Cal. App.) 185 Pac. 510, 6 I. A. C. Dec. 161.

132. Same—Not gross negligence.—A simple failure to house the gears of a machine does not show gross negligence, unless the employer appears to have consciously violated some order of the commission, or some particular safety provision of the act itself.—*Helme v. Great Western, etc., Co.*, (Cal. App.) 185 Pac. 510, 6 I. A. C. Dec. 161.

133. "Wilful misconduct."—"Wilful misconduct," within the meaning of section 12(b) of the act, means something different from and more than negligence, however gross, and to constitute such wilful misconduct, there must be actual knowledge, or that which in law is deemed the equivalent of actual knowledge, of the peril to be apprehended from the failure to act, coupled with a conscious failure to act to avert injury.—*Helme v. Great Western, etc., Co.*, (Cal. App.) 185 Pac. 510, 6 I. A. C. Dec. 161.

134. Same—Disregard of safety order of commission.—The duty of a corporation and its executive or managing officer to comply with the requirements of sections 33-36, of the act of 1917, and provide safe conditions of employment, and with an order of the commission requiring the safeguarding of all transmission shafting, could not be delegated so as to free them from responsibility therefor, and constituted serious and wilful misconduct on the part of the employer, which was the proximate cause of an injury to an employee, and entitled the latter to an increase of one-half of her compensation under section 6(b) of the act.—*Hamilton v. E. Clemens Horst Co.*, 6 I. A. C. Dec. 185.

135. Statutory duty to provide safe place of employment.—It is the statutory duty of a milling company in the absence of a special or general order of the commission, given and made in the mode provided by

the act, to use such devices and safeguards as are "reasonably adequate" to render the place of employment safe, and as free from danger to the life and safety of its employees as the nature of the employment will reasonably permit.—*Helme v. Great Western, etc., Co.* (Cal. App.) 185 Pac. 510, 6 I. A. C. Dec. 161.

136. Same—Instruction exacting greater than statutory degree of care.—An instruction which declares that it was the duty of defendant to provide such safety devices over the gears as would tend to mitigate or prevent the danger of plaintiff coming in contact with them, was error, in that it exacted of defendant a greater degree of care than the act requires.—*Helme v. Great Western, etc., Co.* (Cal. App.) 185 Pac. 510, 6 I. A. C. Dec. 161.

137. Serious and wilful misconduct—**Proof under act of 1917.**—Under the act of 1913 the injured employee was required to bring home the serious and wilful misconduct referred to in section 12(b) to an elective officer of his corporation employer; but this requirement is not made by the act of 1917, and it is sufficient that the officer charged with such conduct should be invested with the general conduct and control of the particular place, whether elective or appointed.—*Horst Co. v. Industrial Accident Commission*, (Cal.) 193 Pac. 105.

138. Same — Failure to comply with safety order of commission.—The failure of the president and general manager of a corporation, owning and operating a vegetable drying plant, to comply with a safety order of the commission requiring the boxing of all transmission shafting within seven feet of the floor or ground constituted serious and wilful misconduct.—*Horst Co. v. Industrial Accident Commission*, (Cal.) 193 Pac. 105.

139. Same — Defined. — "Serious misconduct" on the part of an employer means conduct which the employer either knew, or ought to have known, if he had turned his mind to the matter, to be conduct likely to jeopardize the safety of his employees.—*Horst Co. v. Industrial Accident Commission*, (Cal.) 193 Pac. 105.

140. "Serious misconduct" may be defined as conduct that an average workman in being guilty of either would know, or ought to know, if he turned his mind to consider the matter, to be conduct likely to jeopardize his own and his fellow workmen's safety.—*Horst Co. v. Industrial Accident Commission*, (Cal.) 193 Pac. 105.

140a. Same—Increase of compensation.—The increase of compensation on account of the serious and wilful misconduct of the employer includes the disability indemnity, but not the expense of medical treatment to which the injured employee is entitled.—*Hamilton v. E. Clemens Horst Co.*, 6 I. A. C. Dec. 185.

141. The increase of one-half compensation provided for by section 6(b) of the act of 1917, where the employer's serious and wilful misconduct was the proximate cause of the injury is to be paid by the

employer and not by the insurance carrier.—*Hamilton v. E. Clemens Horst Co.*, 6 I. A. C. Dec. 185.

2. Insurance carrier.

142. Employer member of association—Not "insurance carrier."—Where an employer is a member of an association of employers in the same line of business, the by-laws of which association provide for the reimbursement to its members, out of dues collected for that purpose, of amounts which they had actually paid as compensation to injured employees, it was held that such an arrangement is not a contract of insurance within the meaning of section 34 of the act; that the insurer is not an "insurance carrier" as defined by subdivision 6 of section 2 of the act and that the commission is without jurisdiction to determine the respective rights and liabilities of the parties to such an arrangement.—*Eris v. Rohde*, 4 I. A. C. Dec. 86.

143. Policy specifically designating employees covered.—A workmen's compensation policy covering employees specifically designated as miners, hoistmen, surface trammes, timekeeper and roustabout, millmen, blacksmith and helper, and cook and waiter, does not include the occupation of a mine superintendent, where there is nothing in the contract from which an intent to extend the policy beyond the employees specifically designated.—*Pacific Coast C. Co. v. Industrial Accident Commission*, 176 Cal. 24, 25, 167 Pac. 539.

144. One of two joint employers insured—Insurance carrier and other employer liable.—Where one of two joint employers was insured against liability for compensation and nothing was said as to the interests of the other employer, and an injury occurred which was covered by said insurance and the insurance carrier was insured, it was held that the insurance carrier and the other employer were jointly liable for compensation.—*Perry v. Johnson*, 4 I. A. C. Dec. 163.

145. Construction of policy—Mining superintendent not included.—In the present case a mining superintendent was held not included in the policy of insurance covering employees of a mining company.—*Pacific, etc., Co. v. Industrial Accident Commission*, 176 Cal. 24, 167 Pac. 539, 4 I. A. C. Dec. 272 (*Angus v. White Gulch Mining Co.*, 3 I. A. C. Dec. 87).

146. Employee specifically covered—Insurance carrier can not claim non-liability because illegally employed.—Where a policy of insurance was issued upon an old application for a single employee and at the time of the application no inquiry was made as to whether such employee was legally employed or not, the insurance carrier can not afterwards claim non-liability because of the fact that the employee was an errand boy under 15 years and illegally employed under section 10 of the California child labor law.—*Sharon v. Bornstein*, 5 I. A. C. Dec. 166.

147. Policy excluding executive officers—Mining superintendent not executive officer.

—An assistant superintendent of a mining company also occupying the position of a nominal director of the company was held not to be actually employed in an executive capacity within the meaning of the policy which excluded the executive offices of the assured.—*Aby v. Casualty & Guaranty Co.*, 5 I. A. C. Dec. 160.

148. "Executive officer"—Dummy director not executive officer.—An executive officer is one who acts in an official capacity regardless whether or not he is on the board of directors, and a "dummy director" is not an executive officer, unless in addition to his nominal executive office, he is actually employed in an executive capacity.—*Morgan v. Morgan Improvement Co.*, 4 I. A. C. Dec. 66.

149. Same—Director executive officer.—A director of a corporation was held in the present case to be an executive officer of the corporation within the meaning of an insurance policy which covered the risk of "clerical office employees, excluding executive officers."—*Kohnhorst v. Employers, etc., Co., Corporation*, 4 I. A. C. Dec. 138.

150. Interpretation of policy—"General farm work, excluding the operation of farm machinery."—Where an insurance policy contained under the manual classification of kind of occupation the statement "general farm work excluding the operation of farm machinery (no blasting)" and contained as estimated pay roll of all employees and an estimated advance premium, and provided that the estimated pay roll included the entire remuneration of all persons employed in the service of the employer in his business operations and was given to fix the estimated advance premium and that if the employer should make any extension or change in his business, he should pay an additional premium, it was held that the quoted statement merely afforded a basis for computing the advance premium and did not exclude the operation of farm machinery from the occupations covered by the policy.—*Dobson v. Ellis*, 4 I. A. C. Dec. 357.

151. Same—Same—Assistant to tractor engineer.—The engineer of a caterpillar engine used to pull a disc harrow is not covered by the policy, but a person whose duty it was to stand at one end of the field and hold a lantern to guide the engineer on his return from the other end, is covered, since he was assisting in plowing the field, and not in the special part of the work requiring the operation of machinery.—*Maryland, etc. Co., v. Industrial Accident Commission*, 178 Cal. 491, 173 Pac. 993, 5 I. A. C. Dec. 154. (*Dobson v. Ellis*, 4 I. A. C. Dec. 357).

152. Assignment or change of interest.—Where a policy issued by an insurance carrier, contained a clause to the effect that no assignment or change of interest should be valid unless endorsed in the policy and signed by an officer of the carrier, the insurance ceases on such transfer, notwithstanding the business continued to be conducted by the new owner under the same firm name.—*Disberg v. Karber*, 5 I. A. C. Dec. 30.

152a. Assignment for benefit of creditors.—Where the full control of a wine business was turned over to a creditor by power of attorney to manage for the benefit of himself and other creditors and the owners of the business, it was held that the liability of the insurance carrier continued to cover the employees of the owners after such transfer of control.—*Zanotti v. Aquilino & Lagomarsino Co.*, 3 I. A. C. Dec. 53.

153. Padding of pay roll without carrier's knowledge.—A subcontractor's employees were not insured by the contractor's insurance policy, where the latter's premium was estimated from his pay roll which, without the carrier's knowledge contained the subcontractor's pay roll.—*Alvarado v. Donaldson*, 5 I. A. C. Dec. 84.

154. Insurance carrier—Loss of right to do business in state.—The fact that the insurance carrier, after the injury, has lost the right to do business in the state, can not deprive the employee of the right to give the notice required by section 34 of the act.—*Weiser v. Industrial Accident Commission*, 172 Cal. 538, 540, 157 Pac. 593.

155. Policy specifically covering chauffeurs.—Policy of insurance carrier covering employer's business operations in connection with his electrical store, and specifically covering chauffeurs, was held to cover a fatal injury to a chauffeur incurred while driving the automobile used in the employer's business while carrying as a passenger a former employee, under his employer's instruction, from the office of another company to her home.—*Millard v. Kennedy*, 6 I. A. C. Dec. 118.

156. Clause of policy excluding "construction of sewers."—Under an insurance policy, covering liability of a company engaged in road or street making, a clause that the policy shall cover changes in and extensions of the business of the insured, does not cover the excavation of a trench for a conduit for the drainage of a swimming tank where it contained a proviso that it should not cover the "construction of sewers."—*Worswick etc. Co. v. Industrial Accident Commission*, 58 Cal. Dec. 453, 185 Pac. 953, 6 I. A. C. Dec. 226; *Employer's etc. Co. v. Industrial Accident Commission*, 58 Cal. Dec. 453, 185 Pac. 953, 6 I. A. C. Dec. 226; *Worswick etc. Co. v. Industrial Accident Commission*, 58 Cal. Dec. 460, 461, 185 Pac. 953, 6 I. A. C. Dec. 223, 224; *Employer's etc. Co. v. Industrial Accident Commission*, 58 Cal. Dec. 460, 461, 185 Pac. 953, 6 I. A. C. Dec. 223, 224.

157. Rescission of policy for misrepresentation after commencement of proceeding.—A policy can not be avoided after the commencement of proceedings for a death benefit.—*Mann v. Johnson*, 4 I. A. C. Dec. 253.

158. Liability of insurance carrier—After accrual of rights.—Where the rights of an applicant for a death benefit had accrued at the time of the injury and before cancellation

tion of the policy, the policy could not be avoided because of the employer's misrepresentations.—*Mann v. Johnson*, 4 I. A. C. Dec. 253.

159. Insurance carrier bound by representations of his agent.—An insurance carrier was held bound by the representations of his agent that the policy was in full force and effect at the time of the injury, notwithstanding the failure of the agent to account for the premium received by him and the issue of a five day's notice of cancellation to which the attention of the local agent was called and promised to correct the matter, but failed to do so.—*Marion v. Fuller*, 4 I. A. C. Dec. 281.

160. An insurance carrier is bound by the act of his agent in renewing an old policy so as to date from its expiration according to the custom of such insurance carrier.—*Lamb v. Pond*, 5 I. A. C. Dec. 99.

161. Renewal of policy dated after injury.—Where a renewal policy, dated from the expiration of the old policy according to the custom of the insurance carrier, although issued after an injury was held to have protected the employer and employee covered by the old policy.—*Lamb v. Pond*, 5 I. A. C. Dec. 99.

162. Waiver of illegal employment.—The illegality of the employment of a minor is not waived by an insurance carrier where it had no knowledge of such illegality.—*Maryland Casualty Co. v. Industrial Accident Commission*, 179 Cal. 716, 178 Pac. 858, 6 I. A. C. Dec. 30.

163. Illegal employment of minor.—An award under the act against an insurance carrier of the employers of a minor of the age of fifteen years and two months without the issuance of the certificate required by the child labor law of 1915, and its presentation to his employers; and the illegal character of the employment is not changed by the fact that he was injured after school hours, where he was employed six days in the week and during the whole day; nor is it changed by the fact that such minor was attending night school.—*Maryland Casualty Co. v. Industrial Accident Commission*, 179 Cal. 716, 178 Pac. 858, 6 I. A. C. Dec. 30.

164. Policy covering all employees—Minor illegally employed covered.—A policy of indemnity issued by an insurance carrier to cover all employees legally employed is not void ab initio, because of the illegal employment of a minor, but would attach as to such minor upon the issuance to him of a proper certificate or to any other employee who might take his place.—*Maryland Casualty Co. v. Industrial Accident Commission*, 179 Cal. 716, 178 Pac. 858, 6 I. A. C. Dec. 30.

165. Condition against illegal employment.—Where there was a condition in the policy that no person should be employed in violation of law, the employment of a minor below the legal age in violation of law voided the policy notwithstanding condition of the same policy, providing that no default as to any condition of the policy

shall affect the right of the employee to compensation.—*Clarke v. Gise*, 5 I. A. C. Dec. 219.

166. Where an insurance policy excluded minors employed in violation of law and no written permit of employment was obtained for a minor employee, though oral assurance was given, it was held that the insurance carrier was not liable.—*Yeager v. Universal, etc., Co.* 5 I. A. C. Dec. 131.

167. Requirement as to notice must be complied with.—The provisions of the policy with reference to notice from the employer to the insurance carrier must be complied with and the presumption of section 30 can not be relied upon.—*Fry v. McKay*, 5 I. A. C. Dec. 136.

168. Compliance with requirement as to notice must be proved.—The notice required by the policy to be given by the employer to the insurance carrier must be proved in a claim by the employer's physician against the insurance carrier.—*Fry v. McKay*, 5 I. A. C. Dec. 136.

168a. Liability of carrier must be valid and enforceable to relieve employer of liability.—It is held that the assumption of liability of the insurance carrier must be valid and enforceable in order to relieve the employer from liability under the terms of the act.—*Hoover v. Kuykendall*, 3 I. A. C. Dec. 51.

V. RIGHT TO COMPENSATION.

1. Employee. a. In general.

169. Who are employees—Personal control.
170. "Employee"—Broad interpretation to be given.
171. Boxer in bout at social club.
172. Volunteer services—Fireman.
173. Same—Picket for labor union.
174. Tentative engagement without pay—Porter at county hospital.
175. Contract of hire not necessary—Appointment sufficient.
176. Teamster for share of daily earnings without sharing losses.
177. Husband as employee of wife.
178. Lumber tallyman—Procured through association.
179. Flagman for two railroads.

b. Employment.

180. "Manual labor"—Expressman.
181. Compensation—On commission and salary.
- 181a. Salesman on commission—Injury in hotel fire.
182. Donation of services—No intention of hiring.
183. Employee furnished by agency—Commencement of employment.
184. Continuation of employment after engaging in outside work.
185. Work while final negotiations for employment pending.
186. Termination of employment—Effect of letter refusing increase in salary.
- 186a. Chauffeur selling second-hand automobiles on commission.

c. Minors.

- 187. Work for parent—Positive evidence of employment required.
- 188. Same—Unemancipated minor son.
- 189. Fourteen-year-old Mexican—Employee of motion picture company.
- 189a. Employee as taxi-driver.
- 190. Majority of female employee.

d. Official.

- 191. Justice of the peace not an employee.
- 192. Sheriff not an employee.
- 193. Citizen aiding peace officer to make an arrest not an employee.
- 194. Judge of an election board not an employee.
- 195. A teamster employed at a municipal woodyard.
- 196. Employment on behalf of municipality.

e. Independent contractor.

- 197. Test of independent employment.
- 198. Employee and independent contractor—Distinction.
- 199, 200. Woodchopper on piecework basis—Employee.
- 201. Woodchopper—Employee.
- 202-206. Same—Independent contractor.
- 207. A tie cutter on a piecework basis.
- 208. Lumber piler—Employee.
- 209. Driver of bakery wagon—Selling bread on commission—Employee.
- 210. Same—Choosing own time, not conclusive.
- 211. Laundry collector on commission basis—Employee.
- 212. Real estate salesman on commission basis.
- 213. Traveling salesman on commission basis—Employee.
- 213a. A salesman with exclusive sales rights, on commission—Employee.
- 214. Foreman of a "station gang" on the Hetch-Hetchy project—Employee.
- 215. Expressman—Employee.
- 216. School boy engaged to assist in janitor work—Employee.
- 217. Shingle maker on piecework basis—Employee.
- 218. Cemetery employment—Employee.
- 219. Trim sawyer for lumber mill—Employee.
- 220. Newspaper carrier—Employee.
- 221. Newsboy—Independent contractor—Employee.
- 222. Painters—Employees.
- 223. Same—Independent contractor.
- 224. Farmer hauling pipe for his own farm for contractor—Employee.
- 225. Foreman of water company, furnishing team and driver; both held employees of company.
- 226. Italians pruning vines, etc.—Employees.
- 227. Truck driver—Independent contractor.
- 228. Aviator—Independent contractor.

- 229. Teaming and grading—Independent contractor.
- 229a. Teamster using own time—Hauling tanbark at fixed price per ton.
- 230. Window washer—Independent contractor.

f. Partners as employees.

- 231. Act of 1917—Working partner receiving wages.
- 232. Act of 1913—Partner receiving wages.

2. Dependent.

- 233. "Member of family"—Definition.
- 234. Daughter-in-law and grandchild.
- 235. Termination of assumed obligation to support sister.
- 236. Non-resident parents—Presumption as to dependency.
- 237. Minor child of divorced parents.
- 238. Same—Father's statutory obligation not ended by divorce decree.
- 239. Dependency of father on minor son.
- 240. Stepmother.
- 241. Invalid son—Wife's earnings.
- 242-244a. Wife—Interlocutory decree of divorce without alimony.
- 245. Divorce—No condition as to support of children—No dependency of children.
- 246. Illegitimate minor children living with his family.
- 246a. Same—Finding supported by evidence.
- 247. Woman and employee living together in good faith as husband and wife, though not married.
- 248. Woman and employee living together—No legal liability for support.
- 249. Woman married to employee without divorce from previous husband.
- 250. Wife separated from employee because of latter's desertion—Decree for separate maintenance.
- 251. Wife living separate and apart from husband against his will.
- 252. Wife's justified desertion of employee.
- 253. Remarriage of widow of deceased employee.
- 254. Wife confined in insane asylum.
- 255. Stranger to the blood—Housekeeper for employee.

1. Employee. a. In general.

169. **Who are employees—Personal control.**—Whether one is an employee within the meaning of the workmen's compensation act or not, depends upon those particular circumstances which tend to show whether, at the precise time of the accident for which compensation is sought, the petitioner had power to exercise over the applicant such personal control as to attribute to him the characteristic of an employee.—*Brown v. Industrial Acc. Com.*, 174 Cal. 457, 460, 163 Pac. 664.

170. **"Employee"—Broad interpretation to be given.**—As to liberal construction of the act by giving the term "employee" a

broad interpretation.—*Western Indemnity Co. v. Pillsbury*, 172 Cal. 807, 159 Pac. 721.

Who is a workman within the meaning of the workmen's compensation act.—See note to *Walker v. Crystal Palace Football Club*, Ann. Cas. 1913C, 28.

The subject of workmen's compensation acts is elaborately discussed in Labatt's work on Master and Servant (2d ed.). See, also, Honnold's Treatise on American and English Workmen's Compensation Laws, with the 1918 supplement.

171. Boxer in bout at social club.—An injury to a boxer in a bout at a social club is not compensable.—*Andrich v. Young*, 5 I. A. C. Dec. 171.

172. Volunteer services.—Fireman.—A voluntary fireman is in the service of the city under a contract of hire even though he serves without pay.—*Noyes v. City of Eureka*, 5 I. A. C. Dec. 163.

173. Same.—Picket for labor union.—Where a member of a labor union volunteered for picket duty which was not compulsory, and he worked for only such time as he desired and he received strike benefits regardless of any service as picket, it was held that said picket was not an employee of said labor union.—*Olsen v. Riggers & Stevedores Union*, 4 I. A. C. Dec. 252.

174. Tentative engagement without pay.—Porter at county hospital.—A patient in a county hospital engaged as a porter on trial is during such tentative engagement, an employee of the hospital.—*Hippensteel v. County of Fresno*, 4 I. A. C. Dec. 304.

175. Contract of hire not necessary.—Appointment sufficient.—An appointment of hire is sufficient without a contract of hire, to create the status of employer and employee under the provisions of sections 13 and 14 of the act.—*Hartman v. Ralston Iron Works*, 4 I. A. C. Dec. 13.

176. Teamster for share of daily earnings without sharing losses.—Where one drives another's team and wagon for one-half the daily earnings, less the cost of the feed of the team, without sharing losses, he is an employee and not a partner.—*Hieronimus v. California, etc., Co.*, 6 I. A. C. Dec. 19.

177. Husband as employee of wife.—There is considerable doubt whether under the laws of California, either a husband or a wife can be an employee of the other.—*Braun v. Braun*, 4 I. A. C. Dec. 90.

178. Lumber tallyman.—Procured through association.—A tallyman is an employee of a lumber shipper though his services are procured through the tallyman's association.—*Holcomb v. Standard Oil Co.*, 5 I. A. C. Dec. 216.

179. Flagman for two railroads.—A flagman performing duties for two adjoining railroads was held to be a joint employee of both, although directed and paid by one company only.—*Robinson v. San Francisco, etc., Railways*, 5 I. A. C. Dec. 138.

b. Employment.

180. "Manual labor"—Expressman.—The work of an expressman is manual labor

within the meaning of the act, although he also furnishes a truck.—*Reeves v. Flickenger*, 5 I. A. C. Dec. 173.

181. Compensation.—On commission and salary.—The fact that the compensation of an employee is partly by salary and partly by commission, does not affect the employer's liability, where the latter is entitled to all the employee's working hours, and to direct his labor, and such employee would be entitled to compensation if injured while earning commission as when earning salary.—*Cameron v. Pillsbury*, 173 Cal. 83, 84, 159 Pac. 149.

181a. Salesman on commission.—Injury in hotel fire.—A salesman on commission does not come within the benefits of the act of 1913, and his injuries and losses in a fire in a hotel where he was stopping for the night, in a town where he was to be located indefinitely, are not compensable.—*Forman v. Industrial Accident Commission*, 31 Cal. App. 441, 160 Pac. 857.

182. Donation of services.—No intention of hiring.—An applicant for compensation was not working in the employment of another within the meaning of section 8(a) of the act of 1917, where he donated his services, and there was no intention to enter into a contract of hire or apprenticeship.—*Hitchcock v. American National Red Cross*, 6 I. A. C. Dec. 58.

183. Employee furnished by agency.—Commencement of employment.—Where an employee was furnished by an employment agency for work on a state highway and was killed in an automobile accident while on his way to the place of his employment sixty miles distant, it was held that under the circumstances the contract of employment had been consummated when the arrangement was entered into and that adverse action by the foreman on the job after the employee reached such place would be a discharge and not a refusal to confirm the employment.—*McGillivray v. California Highway Commission*, 5 I. A. C. Dec. 181, 5 I. A. C. Dec. 208.

184. Continuation of employment after engaging in outside work.—In this case it was held that the relation of employer and employee continued after salary of a masseuse was discontinued and she was allowed to engage in outside work and keep the tips and fees collected from her patients, her duties remaining the same and she continuing to receive her board and lodging.—*McLean v. Guenther*, 4 I. A. C. Dec. 300.

185. Work while final negotiations for employment pending.—Work performed pending final negotiations as to the terms of the employment is held to be work performed pursuant to a contract of hire and an injury sustained in course thereof is compensable.—*Kendall v. Perry*, 5 I. A. C. Dec. 167.

186. Termination of employment.—Effect of letter refusing increase in salary.—A letter written by an employer to his employee in answer to a request for a raise of salary, which gave the latter the option of leaving

or of continuing the employment at the existing salary, did not have the effect of terminating the employment, and a finding of the commission that the employment still existed can not be disturbed.—*Krobitzsch v. Industrial Accident Commission*, 58 Cal. Dec. 445, 185 Pac. 396, 6 I. A. C. Dec. 218 (*Starkey v. Krobitzsch*, 6 I. A. C. Dec. 61).

186a. Chauffeur selling second-hand automobiles on commission.—Where the chauffeur employed by an automobile owner is incidentally given, by the proprietor of the garage where the automobile is kept, opportunity in his leisure moments to aid in the sale of second-hand automobiles on commission, but is under no duty to do so nor under the control or direction of the proprietor, it was held that he was not in the employment of the proprietor.—*Lane v. Herrick*, 3 I. A. C. Dec. 29.

c. Minors.

187. Work for parent, etc.—Positive evidence of employment required.—Where services are being rendered by a minor child to its parent, by a wife to a husband or by a husband for the benefit of his wife and family, the normal presumption is that the services were rendered in the course of the duties arising out of such relationship, unless there be positive evidence to establish an additional relationship.—*Braun v. Braun*, 4 I. A. C. Dec. 90.

188. Same—Unemancipated minor son.—The father of a minor of 19 years of age living with his parents at their home on the father's ranch, is not entitled to payment from the insurance carrier which issued its policy protecting against claims for injuries on the part of his employees and for medical and other expenses incurred, by him, growing out of an injury to his son received while the son was rendering services to his father, where the evidence shows that the minor had not been emancipated, and therefore unable to enter into a valid contract of hiring.—*Aetna, etc., Co. v. Industrial Accident Commission*, 175 Cal. 91, L. R. A. 1918F, 194, 165 Pac. 15, 4 I. A. C. Dec. 119 (*Aetna, etc., Co. v. Rieck*, 3 I. A. C. Dec. 163).

189. Fourteen-year-old Mexican — Employee of motion picture company.—A fourteen-year-old Mexican boy was held under the circumstances of this case to have been an employee of a motion picture company.—*Villaneva v. Fox Film Co.*, 4 I. A. C. Dec. 191.

189a. Employee as taxi-driver.—In this case, the applicant for compensation, who was a boy sixteen years old, was held to be an employee of the defendant as a taxi-driver.—*Ellis v. Pedroni*, 4 I. A. C. Dec. 258.

190. Majority of female employee.—Under the provisions of the act a female employee attains her majority at twenty-one years of age.—*Michaud v. Gouanillon*, 6 I. A. C. Dec. 264.

d. Official.

191. Justice of the peace not an employee.—A duly elected and qualified justice

of the peace is not an employee within the meaning of the compensation act.—*Meadows v. County of Kings*, 4 I. A. C. Dec. 274.

192. Sheriff not an employee.—A sheriff is not an "employee" within the meaning of section 14 of the act, which defines an employee to be every person in the service of an employer as defined by section 13 of the act "under any appointment or contract of hire or apprenticeship."—*Mono County v. Industrial Accident Commission*, 175 Cal. 751, 167 Pac. 377, 4 I. A. C. Dec. 269 (*Dolan v. Mono County*, 3 I. A. C. Dec. 358).

193. Citizen aiding peace officer to make arrest not an employee.—Where a citizen volunteered his services to aid a peace officer in making an arrest at a threatened breach of the peace and his offer of aid was accepted by the arresting officer and he was injured while so assisting said officer, it was held that since said citizen rendered said aid solely by reason of a duty imposed upon him by law, he was not an employee of the municipality at the time of said injury.—*Richardson v. City of Santa Rosa*, 4 I. A. C. Dec. 380.

194. Judge of an election board not an employee.—The judge of an election board at a municipal election is not an employee of the city, and is not entitled to compensation under the act for injuries received while performing the political duty, not within the control of the city, so as to require it to provide means for his safety, of carrying the election returns from the polling place to the city hall.—*Los Angeles v. Industrial Accident Commission*, 35 Cal. App. 31, 169 Pac. 260.

195. A teamster employed at a municipal woodyard for unemployed persons, to perform all such services as were required by him by the superintendent, was held to be an employee of the city within the meaning of the compensation act.—*North v. City of Oakland*, 4 I. A. C. Dec. 231.

196. Employment on behalf of municipality.—A helper hired by a municipal employee in the belief of both parties that he was authorized to do so for the municipality, was held not to have been an employee of the defendant municipality and since it was understood by the parties that the employment was by the city, the said employee was not the employer of the helper.—*Good v. City of San Bernardino*, 5 I. A. C. Dec. 116.

e. Independent contractor.

197. Test of independent employment.—The test of an independent contractor is that he renders services in the course of an independent employment or occupation, following his employer's desires only as to the results of his work, but not in the means whereby it is to be accomplished.—*Brown v. Industrial Accident Commission*, 174 Cal. 457, 460, 163 Pac. 664.

198. Employee and independent contractor—Distinction.—As to distinction be-

tween a "servant" or "employee" and an independent contractor.—*Western Indemnity Co. v. Pillsbury*, 172 Cal. 807, 159 Pac. 721.

199. Woodchopper on piecework basis—Employee.—A woodchopper working on a piecework basis was held under the circumstances of the present case to be an employee and not an independent contractor.—*Duncan v. Parsons*, 4 I. A. C. Dec. 201.

200. A woodchopper working on a piecework basis is an employee and not an independent contractor.—*Mills v. Pomon*, 4 I. A. C. Dec. 295.

201. Woodchopper—Employee.—Where a woodchopper was engaged to cut wood at so much a cord he and his companions to supply their own tools, and no hours of service agreed upon and the arrangement could be terminated by either party at any time, it was held that his services consisted of "manual labor" and that he was an employee and not an independent contractor.—*Swain v. Scott*, 5 I. A. C. Dec. 143.

202. Same—Independent contractor.—A woodchopper engaged to cut a specified amount of railroad ties and cordwood at a specified rate per cord and per tie, to furnish his own tools, select his own place of work, and to work at such times and in such manner as he chose, subject to no control except that the defendant retained the right to reject any ties or wood not up to specifications, was held to be an independent contractor and not an employee.—*Fleming v. Bucksport, etc., Co.*, 5 I. A. C. Dec. 53.

203. One who agrees with the owner of land to cut wood thereon for a specified price per cord, furnishing his own tools and working when he pleased, is an independent contractor, although there was nothing specific in the contract as to the number of cords to be cut, and the employment might be terminated at the will of either party.—*Parsons v. Industrial Accident Commission*, 178 Cal. 394, 173 Pac. 585.

204. One who agrees with the superintendent of a corporation to cut cordwood and posts at a specified rate per cord and per post, with the understanding that he was to keep at work until notified by the superintendent that a sufficient quantity had been produced, without any agreement as to hours of labor or methods to be pursued, is an independent contractor and not an employee under the act.—*Fidelity & Deposit Co. v. Brush*, 176 Cal. 448, 449, 168 Pac. 890.

205. Where the son of an independent contractor entered into an agreement with his father to work with him and divide equally the amount to be received, he was himself an independent contractor, whether he was a partner or employee of his father, so far as the company contracting with his father was concerned, although the superintendent of the latter knew and approved of arrangement.—*Fidelity & Deposit Co. v. Brush*, 176 Cal. 448, 450, 168 Pac. 890.

206. One who contracts to cut wood for a stipulated price per cord is an inde-

pendent contractor, and the owner of the land is not liable under the act for compensation for personal injuries suffered by an employee of a subcontractor.—*Donlon Bros. v. Industrial Accident Commission*, 173 Cal. 250, 251, 159 Pac. 715.

207. A tie cutter on a piecework basis, without any specification as to hours of labor, who furnishes his own tools for making the ties, and the owner furnishes the tools for felling the trees, is, under section 8(b) of the act, not an employee, but an independent contractor.—*Simpson v. Decker*, 6 I. A. C. Dec. 216.

208. Lumber piler—Employee.—Where a lumber piler contracted with a lumber company to pile lumber cut in its mill at a certain rate per thousand feet piled and he hired the men to do the work and controlled and discharged them, and the amount of lumber piled was reported to the company each night and the lumber piler did not work himself and the earnings were divided equally between him and the men, who were paid directly by the company, it was held that said men and said lumber piler were employees of said company.—*Singley v. Standard Lumber Co.*, 4 I. A. C. Dec. 161.

209. Driver of bakery wagon—Selling bread on commission—Employee.—The driver of a bakery wagon, selling bread on commission, who received a guarantee of fifteen dollars per week, returning to the bakery owner all over fifteen dollars per week, and who received nothing extra for different work, was held to be an employee of such bakery owner, and entitled to compensation as such.—*Easton v. Industrial Accident Commission*, 34 Cal. App. 321, 167 Pac. 288 (*Sohn v. Easton*, 4 I. A. C. Dec. 104).

210. Same—Choosing own time, not conclusive.—The fact that a bakery wagon driver, selling bread on a commission basis, chose his own time to go out on his route, and return, and was not directed by the bakery owner where to go or when to return, has some probative force but was not conclusive of the relationship of employer and employee.—*Easton v. Industrial Accident Commission*, 34 Cal. App. 321, 167 Pac. 288.

211. Laundry collector on commission basis—Employee.—A laundry collector and solicitor on a commission basis, held an employee under section 8(b) of the act.—*Page v. Peerless Laundry Co.*, 6 I. A. C. Dec. 56.

212. Real estate salesman on commission basis—Employee.—A person employed to sell real estate, who, by the terms of his contract of employment is required to devote all his time to making such sales, and to receive as compensation for his services a commission upon the selling price of each lot sold, the owner reserving the right to approve all sales and to designate the territory in which the agent should work, is an employee within the meaning of the act.—*Brown v. Industrial Accident Commission*,

174 Cal. 457, 163 Pac. 664, 4 I. A. C. Dec. 73 (Skidmore v. Brown, 2 I. A. C. Dec. 493).

213. Traveling salesman on commission basis—Employee.—A traveling salesman on commission basis held to be an employee and not an independent contractor.—Linder v. McBride, 6 I. A. C. Dec. 151.

213a. A salesman with exclusive sales rights, on commission—Employee.—A salesman, with exclusive sales rights under commission, and a bonus for certain incidental expenses, whose whole time is devoted to the service, is an employee and not an independent contractor.—Simmons v. Shepard Salesbrook Co., 6 I. A. C. Dec. 145.

214. Foreman of a "station gang" on the Hetch-Hetchy project — Employee.—The foreman of a "station gang" on the Hetch-Hetchy project, who had signed a station gang contract with the general contractor, was an employee of the general contractor and not an independent contractor or member of an association of independent contractors.—Athanasios v. Rolandi, 4 I. A. C. Dec. 134.

215. Expressman — Employee.—An expressman engaged to haul goods for remuneration for himself and his truck to be fixed later, is an employee and not an independent contractor.—Reeves v. Flickenger, 5 I. A. C. Dec. 173.

216. School boy engaged to assist in janitor work—Employee.—Where a school boy was engaged by the head janitor of the public school to assist in janitor work and to perform the head janitor's duties while the latter was ill, was held to be an employee and not an independent contractor.—Hurlburt v. McBurney, 4 I. A. C. Dec. 243.

217. Shingle maker on piecework basis—Employee.—An applicant for compensation, injured while at work under a contract for shingle production on piecework basis, the employer to control methods of work, held to be an employee and not an independent contractor.—Sutro v. Metropolitan, etc., Co., 6 I. A. C. 72.

218. Cemetery employment — Employee.—A person engaged by a cemetery corporation to remove from the cemetery property, by the use of explosives and blasting, some concrete foundations which had formerly supported some discarded water tanks, is an employee, and not an independent contractor, where he was to be paid by the day and no restrictions were placed upon the power of the employer to direct and control his operations at will; and for an injury received, he is entitled to compensation.—Rosedale, etc., Association v. Industrial Accident Commission, 37 Cal. App. 706, 174 Pac. 351, 5 I. A. C. Dec. 148.

219. Trim sawyer for lumber mill—Employee.—Where by the terms of a written agreement a trim sawyer was to trim all lumber sawed at a mill at a certain rate per thousand feet, was to furnish the necessary labor subject to the lumber company's approval as to persons employed and wages paid, was to do the work in the manner prescribed by the company and use the company's tools and equipment, was paid only

after all wages to his helpers had been paid and could not sublet any right under the agreement without the written consent of the company, it was held that said sawyer was an employee of the said lumber company and not an independent contractor.—Reinoldson v. Red, etc., Co., 4 I. A. C. Dec. 367.

220. Newspaper carrier — Employee.—A newspaper carrier, under the control of the newspaper company, and paid according to the number of papers delivered held to be an employee and not an independent contractor.—Smith v. Evening Herald, etc., Co., 6 I. A. C. Dec. 192.

221. Newsboy—Independent contractor—Employee.—A newsboy purchasing papers at wholesale and selling them at retail is an independent contractor and not an employee, but where he is paid a weekly wage for his exclusive services in addition to his earnings, he is an employee.—Serval v. Chronicle Publishing Co., 6 I. A. C. Dec. 23.

222. Employee or self-employee—Painters—Employees.—Where a partnership undertook as independent contractors to do certain painting and arranged with two painters to help with the work for an equal division of the proceeds of the undertaking and said painters were subject to the complete control of said partnership in the work and could be discharged at any time, it was held that they were employees of said partnership and were not independent contractors or self-employing persons.—Wilcut v. Cudahy Packing Co., 4 I. A. C. Dec. 308.

223. Same—Independent contractor.—Under the circumstances of the present case a painter was held to be an independent contractor and not an employee.—Wilcut v. Cudahy Packing Co., 4 I. A. C. Dec. 308.

224. Farmer hauling pipe for his own farm, for a contractor—Employee.—Where a farmer contracted with a pipe contractor for the laying of pipe on his farm, and he agreed to haul the pipe for a specified price per hundred feet and was subject to the direction and control of the defendant as to the time and manner of doing the work, it was held that he was an employee of the pipe contractor.—O'Hara v. Concrete Pipe and Construction Co., 4 I. A. C. Dec. 277.

225. Independent contractor or employee—Foreman of water power company, furnishing team and driver; both held employee of company.—The foreman of a water and power company employed on a daily wage basis and authorized to hire men and teams for the company is not an independent contractor in a case where he furnished both men and teams; and where he furnished his own team and hired a person to drive it, and such person was injured, the latter is an employee of the company within the meaning of the act, and entitled to an award of compensation.—Yolo, etc., Co. v. Industrial Accident Commission, 35 Cal. App. 14, 168 Pac. 1146, 4 I. A. C. Dec. 319.

226. Independent contractor — Italians pruning vines, etc.—Employees.—Under an

agreement by which the applicant on behalf of himself and three fellow Italians agreed to prune all the vines, burn all the brush and pull all the weeds in a vineyard for a fixed rate per acre, it was held that all four were employees and not independent contractors.—*Giusti v. Covell Bros.*, 5 I. A. C. Dec. 137.

227. Truck driver—Independent contractor.—One engaged in the "truck business," doing a general hauling business, and owning his own truck, was an independent contractor and not an employee.—*Flickenger v. Industrial Accident Commission*, 58 Cal. Dec. 374, 184 Pac. 851, 6 I. A. C. Dec. 169; (*Reeves v. Flickenger*, 5 I. A. C. Dec. 173; *Flickenger v. Industrial Accident Commission*, 28 Cal. App. 127, 6 I. A. C. Dec. 117).

228. Aviator—Independent contractor.—Where an aviator entered into a written contract with an exposition company to make a specified number of flights on the days and at the hours designated, each flight to include specified maneuvers; which agreement restricted him to flight for said exposition only, within a designated territory; provided for a division of the gate receipts as his remuneration and relieved the exposition company from any liability for damages in the event of an accident, it was held that said aviator was an independent contractor and not an employee.—*Bocquel v. Panama, etc., Co.*, 4 I. A. C. Dec. 88.

229. Teaming and grading—Independent contractor.—A person engaged in the business of "teaming and grading," who contracts to furnish a contractor teams, wagons and drivers, at six dollars per day in the aggregate, for each wagon, team and driver, and who himself pays the drivers, is not an employee of the contractor within the meaning of the act, even though he may drive one of the teams.—*Western Indemnity Co. v. Pillsbury*, 172 Cal. 807, 808, 159 Pac. 721.

229a. Teamster using own time—Hauling tanbark at fixed price per ton.—It was held in the present case that a teamster using his own time hauling tanbark at a fixed price per ton, was an employee and not an independent contractor.—*Seward v. Sunset, etc., Co.*, 3 I. A. C. Dec. 49.

230. Window washer—Independent contractor.—It was held under the circumstances of this case that a window washer was an independent contractor and not an employee.—*Sabini v. Loura*, 4 I. A. C. Dec. 212.

f. Partners as employees.

231. Act of 1917—Working partner receiving wages.—A working partner who receives wages is an employee under the act of 1917.—*Britten v. Rotary, etc., Co.*, 5 I. A. C. Dec. 187.

232. Act of 1913 — Partner receiving wages.—A member of a partnership performing services for it under an agreement between him and his copartners for wages and expenses, is not an employee within the meaning of the workmen's compensation act (Stats. 1913, p. 284, § 14).—*Cooper v. Industrial Accident Commission*, 177 Cal. 685,

171 Pac. 684 (*Cooper v. Bunker Hills Syndicate*, not reported; *Cooper v. Industrial Accident Commission*, 55 Cal. Dec. 480, 5 I. A. C. Dec. 47).

2. Dependent.

233. "Member of family"—Definition.—The term "member of family of deceased employee" as used in section 19(c) of the act, means a member of a collective group or household under one domestic government and maintenance, whether or not actually related to the deceased.—*Landis v. Prosser*, 4 I. A. C. Dec. 204.

234. Daughter-in-law and grandchild.—A dependent daughter-in-law and a grandchild are not members of a contributor's family and under the act of 1917 are not entitled to a death benefit.—*Block v. Board of Public Service Commissioners*, 5 I. A. C. Dec. 239.

235. Termination of assumed obligation to support sister.—Where the obligation of a deceased employee assumed to support his sister terminated by her marriage on the day before he sustained his fatal injury, she was not at the time of his death being supported by him and was not entitled to a death benefit.—*Leonock v. Southwestern, etc., Co.*, 6 I. A. C. Dec. 234.

236. Non-resident parents—Presumption as to dependency.—In view of subdivision (b) of section 19 of the act there is no conclusive presumption that the non-resident father and mother of a deceased employee were either wholly or partially dependent upon him for support.—*Garcia v. Industrial Accident Commission*, 171 Cal. 57, 58, 151 Pac. 741.

237. Minor child of divorced parents.—The minor child of parents who are divorced, without provision made for its support, is dependent where a father orally agrees to support the child.—*Tamagni v. Moore, etc., Co.*, 5 I. A. C. Dec. 176.

238. Same—Father's statutory obligation not ended by divorce decree.—A father is not relieved from liability for the maintenance of his child by an order of court in a divorce decree requiring him to pay a specified sum at stated intervals for that purpose, such order not creating in place of the statutory liability, an ordinary debt or money obligation.—*Robert Sherer & Co. v. Industrial Accident Commission*, (Cal.) 185 Pac. 797.

239. Dependency of father on minor son.—Where a minor son earns only enough to buy his own clothing, the dependency of his father is not established.—*Peabody v. Hamner & Main*, 5 I. A. C. Dec. 175.

240. Stepmother — Stepmother of deceased employee, living with him in a house owned by her but kept up entirely by him, supported entirely by him, was held to be totally dependent upon him, and the potential income from the house was disregarded.—*Reichsrath v. Fortin*, 5 I. A. C. Dec. 93.

241. Invalid son—Wife's earnings.—It was held that under the circumstances of the present case an invalid husband was

totally dependent on his father, although his wife's earnings contributed to a small extent to the family expenses.—*Block v. Public Service Commissioners*, 5 I. A. C. Dec. 239.

242. Wife—Interlocutory decree of divorce without alimony.—A widow who had obtained an interlocutory decree of divorce without alimony from her husband on the ground of desertion, and he is not living with her at the time of his death, was held not in fact to be dependent for support and that he was not legally liable for the support and that she was not entitled to a death benefit.—*Perry v. Fresno Herald*, 4 I. A. C. Dec. 110.

243. Under the act a wife who was not living with her husband at the time of his death, and who had obtained an interlocutory decree of divorce from him, on her complaint alleging wilful neglect, not asking alimony or other provision for her support, and which decree made no provision for her support, and contained no reservation of jurisdiction to award alimony or maintenance, is not entitled to compensation, since he was not at the time of his death "legally liable for her support."—*London, etc., Co. v. Industrial Accident Commission*, 58 Cal. Dec. 393, 184 Pac. 864, 6 I. A. C. Dec. 196 (*Oberg v. London, etc., Co.*, 6 I. A. C. Dec. 90).

244. Where an employee was killed by an industrial injury, after his wife had been granted an interlocutory decree of divorce, without alimony, but before final decree, and no actual dependency being shown, he was not legally liable for her support, and she was not entitled to compensation under the act.—*Capley v. Carkey*, 6 I. A. C. Dec. 203.

244a. Under the provisions of section 14(a)(1) of the act of 1917, a deceased employee was liable for the support of his wife, who had obtained an interlocutory decree of divorce, but not a final decree, prior to his death, notwithstanding the interlocutory decree did not make provision for alimony or support.—*Oberg v. California Construction Company*, 6 I. A. C. Dec. 80.

245. Divorce—No condition as to support of children—No dependency of children.—Where a wife of a deceased employee had been granted a divorce while on publication of summons only, and was awarded the exclusive custody of the minor children, without any condition of support for the children, it was held that he was not legally liable for the support of such children and that such children were not dependent upon him for support at the time of his death.—*Browning v. Swanston*, 4 I. A. C. Dec. 282.

246. Illegitimate minor children living with his family.—Where an employee was living apart from his wife, who had obtained an interlocutory decree of divorce without alimony, and his two illegitimate children and their mother were living with him as members of his family at the time of his death, it was held that the children were total dependents upon deceased for support, and that the entire total benefit

should be apportioned to them.—*Perry v. Industrial Accident Commission*, 176 Cal. 706, 709, 169 Pac. 353 (*Perry v. Fresno Herald*, 4 I. A. C. Dec. 110).

246a. Same—Finding supported by evidence.—When the evidence showed the deceased employee had separated from his wife several years before his death, and she had received nothing from him during separation, had sought nothing from him, did not expect anything, and was seeking a divorce without support, the finding of the commission against her dependency was supported by the evidence.—*Perry v. Industrial Accident Commission*, 176 Cal. 706, 708, 169 Pac. 353.

247. Woman and employee living together in good faith as husband and wife, though not married.—Where the applicant and the deceased employee were living together in good faith as husband and wife without marriage, under the mistaken belief that the possession of the marriage license issued by the county clerk was sufficient and that no ceremony need be performed, it was held that the applicant was a member of his family and a dependent within the meaning of the act.—*Temescal Rock Co. v. Industrial Accident Commission*, 180 Cal. 637, 182 Pac. 447 (*Rodriguez v. Temescal Rock Co.*, 5 I. A. C. Dec. 202).

248. Woman and employee living together—No legal liability for support.—Where the applicant was living with the deceased employee as his wife and was supported by him and there is no legal liability to support under the evidence and no evidence of marriage, it was held that she was not dependent under the act.—*Blanca v. King*, 5 I. A. C. Dec. 196.

249. Woman married to employee without divorce from previous husband.—A woman who erroneously believing herself divorced, remarried, is a member of the family for purposes of dependency under the act of her putative husband.—*Howe v. Eisenmayer-Main Grain Co.*, a corporation, 5 I. A. C. Dec. 174.

250. Wife separated from employee because of latter's desertion—Decree for separate maintenance.—Under section 14(a)(1) a woman not living with her husband at the time of his death because of his desertion of her is entitled to compensation, in the theory that he was "legally liable for her support" at the time of his death, notwithstanding the existence of a maintenance decree in her favor.—*Continental, etc., Co. v. Pillsbury*, 58 Cal. Dec. 338, 8 A. L. R. 1110, 184 Pac. 658, 6 I. A. C. Dec. 158.

251. Wife living separate and apart from her husband against his will.—Where a wife voluntarily leaves her husband against his will and continues to live separate and apart from him and was self-supporting, and the husband refused to sign an agreement of separation and there was a settlement of property rights, is not dependent upon her husband for support.—*Mills v. Pomona*, 4 I. A. C. Dec. 295.

252. Wife's justified desertion of employee.—Where a wife's desertion of her

husband was justified by his misconduct and he had commenced suit against her for divorce on the grounds of desertion, and the wife's default had been entered but had not been tried at the time of his death, it was held that he was at the time of his death legally liable for her support and also of an illegitimate child by another woman and that since there was no surviving parent of said child, both it and the wife were totally dependent upon the deceased for their support.—*Wilcut v. Cudahy Packing Co.*, 4 I. A. C. Dec. 308.

253. **Remarriage of widow of deceased employee.**—The death benefit awarded the widow of a deceased employee is not terminated by her remarriage under the circumstances of this case.—*Walters v. Mes-sick*, 5 I. A. C. Dec. 111.

254. **Wife confined in insane asylum.**—A wife confined in a state hospital for the insane is wholly dependent upon the husband, though no support is given.—*Hanson v. Jones*, 5 I. A. C. Dec. 147.

255. **Dependency—Stranger to the blood—Housekeeper for employee.**—A stranger to the blood of a deceased employee who kept house for him in his lifetime and who was not supported otherwise, was held to be a total dependent.—*Barry v. Fleishhacker & Co.*, 5 I. A. C. Dec. 162.

VI. CONDITIONS OF COMPENSATION.

a. Arising out of employment.

- 266-269. Conditions of right to compensation.
- 270. Performance of necessary and natural act, and cessation of work for act of self-indulgence.
- 271. Compensable injuries—Risk reasonably incident to employment.
- 277. Injury must arise out of employment as well as be received in the course of the employment.
- 278. Conditions of compensation under act of 1913.
- 279. Injury must arise out of and in course of employment.
- 280. Conditions of liability.
- 281. Liability of employer—Accident arising out of employment.
- 282. Proper test of meaning of phrase.
- 283. When accident "arises out of" employment.
- 284. Existence of casual connection between employment and incident.
- 285. Casual connection between injury and conditions of employment.
- 286. Accidents arising out of the employment.
- 287. An accident arising out of the employment within the meaning of the act.
- 288. Causative danger must be peculiar to the employment at the time and place.
- 289. Exposure to particular danger different from the commonality.
- 290. Unsafe condition of place of employment.
- 291. Safe access to employer's premises.
- 292. Quarrels among employees—Injuries not usually compensable.

- 293. Foreman of gang of railroad hands—Assault by section hand.
- 294. Employee assaulted by foreman.
- 295. Hotel elevator conductor—Assault by fellow employee.
- 296. Employee assaulted by fellow employee.
- 297. Assault by fellow employee—Personal feeling.
- 298. Same—Personal quarrel.
- 299. Unprovoked assault by fellow employee.
- 299a. Storekeeper of lumber camp—Assault by co-employee.
- 300. Assault due to conflict of work and not personal feeling.
- 301. Hotel houseman—Assault by applicant for employment.
- 302. Road construction foreman—Assault by discharged laborer.
- 303. Clerk in cigar store—Aggressive attack on stranger.
- 304. Restaurant cook—Assault by drunken customer.
- 305. Saloon manager—Injury while ejecting disturbing customer—Unprovoked assault.
- 360. Barkeeper shot in "holdup."
- 306a. Waiter in cafe—Killed while ejecting unruly persons.
- 307. Grocery employee—Struck by mistake—Altercation between co-employees.
- 308. Employee of commission house—Accidental killing during altercation between customer and fellow employee.
- 309. Employee of lumber company—Loading lumber.
- 310. Miner—Injured while riding on mine truck.
- 311. Carpenter working on scaffold—Epileptic fit.
- 312. Chambermaid in hotel—Killed by falling down light well.
- 313. Sailor—Disappearance without explanation—Presumption.
- 314. Bank messenger.
- 315. Cook's helper on construction train.
- 316. Boatman—Drowning.
- 317. Marine fireman—Jumping to dock instead of using gangplank.
- 318. Sailor—Finger infection.
- 319. Bargehand—Fell from deck and was drowned.
- 320. Dishwasher—Collapse of restaurant floor.
- 321. Laborer employed to shovel gravel—Driving team during temporary exchange of work.
- 322. Street car conductor—Injured while on personal errand.
- 323. Injury in automobile accident—Risk of commonality.
- 324. Hotel porter—Injured by kicking hose of vacuum cleaner.
- 325. Bootblack on ferryboat, while on his way to lunch on board.
- 326. President and shop foreman injured while delivering a message for the vice president.

327. Making repairs on automobile used in employer's business.
328. Injury sustained while obeying unauthorized order.
329. Performance of unauthorized act.
330. Injury while going to lunch on employer's premises.
331. Gamekeeper—Injury while serving self.
332. Same—Accidental gunshot.
333. Packing oranges—Breaking etaoins adhesions.
- 334, 335. Infection of vaccination wound.
336. Teamster—Automobile accident.
337. Hotel clerk—Gunshot inflicted for personal reasons.
338. Employee killed by insane employer.
339. Health officer—Mountain fever.
340. Construction camps—Use of water.
341. Employee injured in street—Special exposure to risk.
342. Employee injured in automobile accident—Special exposure.
343. Fire fighter—Injured after services ended.
- 343a. Employee at mine accidentally shot by guard.
344. Employee killed by fall down elevator shaft.
345. Retail buyer killed on way home from wholesale district.
346. Employee injured while working under his foreman's direction for another corporation.
347. Barber shop porter—Elevator accident.
348. Employee burned while extinguishing pan of burning alcohol.
349. Employee injured while cutting wood to keep warm.
350. Camp employee—Crossing railroad tracks.
351. Employee on way to place of employment—Transportation by employer.
352. Employee injured while using employer's automobile for personal purposes.
353. Employee of smelting plant—Burnt while warming foot over molten metal.
- 353a. Injury to hand by putting it into pipe to warm it.
354. Weigher on coal barge—Epileptic seizure.
355. Employee undergoing hospital treatment for injury—Death from influenza.
- 356-359. "Skylarking" with fellow employees.
360. Clerk — Friendly personal intercourse.
- 361, 362. Oil well driller—Employee—Killed on way to work.
363. Oil derrick carpenter—Employee boarding slowly moving truck on which he was entitled to ride from work.
364. Oil well driller—Fainting from exhaustion.
365. Supervising mechanical engineer of a cemetery.
366. Injury after work, while on way home—Risk of commonalty.
367. Railroad employee—Injured on way to lunch on company's cars.
368. Injury on employer's premises while gaining admission to place of employment.
369. Bond officer of bank—Injured on return from pleasure trip incidental to business trip.
370. Employee injured on way from work.
371. Employee killed while crossing railroad track on way from work.
372. Employer on way from employment to place of work.
373. Employee injured out of office on his return out of office hours.
374. Truck driver—Killed in automobile accident.
375. Driver of delivery wagon—Deviating from direct route.
376. Locomotive engineer—Sarcoma.
377. Truck driver for mining company.
378. Automobile driver—Injured in automobile accident.
379. Driver of automobile truck—Killed by passing automobile.
380. Automobile delivery driver—Special exposure to danger of such injury.
381. Traveling salesman — Entertainment of customers.
382. Same—Injury on vacation.
383. Same—Poison oak poisoning.
384. Same—Assault by robber on country road.
385. Nurse—Death from influenza—Not specially exposed.
386. Hospital interne—Influenza — Specially exposed.
387. Hospital steward's special exposure to highly infectious disease.
388. Policeman — Influenza—Special exposure.
389. Ranch foreman—Accidentally shot.
- 390, 391. Same—Injury from accidental discharge of gun.
392. Millwright—Traveling employment.
393. Mill employees—Returning across railroad track from lunch.
394. Mill employee—Actinomycosis.
- 395-397. Piano salesman—Elevator accident on Sunday.
398. Typist—Elevator accident.
399. Clerk and bookkeeper—Automobile accident while mailing letters for employer.
400. Bookkeeper—Injury from cranking automobile.
401. Employee voluntarily remaining at work after office hours to help fellow employee.
402. Lighting cigarette by employee, setting fire to oil-soaked bandage.
403. Same—Personal acts which an employee may do.
404. Janitor in public school.

405. School teacher—Moving heavy seats to get needed book from book-case.
- 406, 407. Moving picture actor—Automobile accident.
408. Same — Same — Prerequisites to award.
409. Watchman—Killed at post of duty.
410. Death with no witness present—Presumption.
411. Night watchman—Performing service for fellow employee.
412. Night watchman—Wilfully inviting detrimental occurrence.
413. Unexplained fall—Presumption.
414. Fireman—Performing work according to the custom out of the usual manner.
- 414a. Bookkeeper working extra hours at night—Taken home in employer's automobile.
- 414b. Teamster handling tanbark—Poisoned hands.
- 414c. Night watchman on engine—Temporarily operating steam shovel.
- 414d. Not arising out of employment.
- 414e. Employee on vacation.
- b. Course of employment.*
415. Reasonable act outside express duties—Employer not bound to fixed and unchangeable limits.
416. Right not limited to injury sustained while actually manipulating the tools of his calling.
417. Service not injury in the course of the employment.
418. Injury sustained while going to or returning from work.
419. Exception to rule—Use of only available means of access.
420. Same—Special exposure to risk.
421. Same—Special exposure of particular means of access.
422. Miner—Return to mine after temporary absence on private business.
423. Injury on way to receive pay check after discharge.
424. Returning after quitting employment.
425. Seaman—Reaching and departing from ship.
426. Same—Seeking to board vessel.
427. Same—Adopting perilous means of boarding ship when no other instrumentality is provided.
428. Use of hazardous means of exit from employer's premises when safe means exist.
429. Injury while leaving place of employment by unusual and dangerous exit.
- 429a. Rule of reasonable time to get off employer's premises.
430. On way to place of employment.
431. Arrival at place of employment seeking entrance.
432. Arrival at place of employment ready to perform service.
433. Injury while about to enter place of employment.
434. Injury on way to business in employer's automobile on employer's time.
435. Injury in automobile on way to work.
436. Employee injured on way to attend meeting called by employer.
437. Injury while crossing street on way to work—Stopping to converse with fellow employee an allowable personal act.
438. Going to and from work—Payment of transportation.
439. Same—Cost of transportation deducted from employee's wages.
440. Injury during transportation from work to camp.
441. On way to lunch on employer's premises.
442. Barber shop employee—Injury in elevator.
443. Same—Employee leaving place of employment with employer's consent.
444. Employee of different employers—Deviation from direct route home.
445. Stopping to take drink while on errand for employer.
446. Injury on return from business trip after temporary degression for pleasure.
447. On way home after service—No fixed hours of employment.
448. Maid employed to do housework, injured while off duty.
449. Miner—Washing up after end of time on duty.
450. Traveling salesman on trip—Injury at hotel after end of day's work.
451. Fireman taking rock from unloaded car to bed furnace.
452. Mine truck driver—Adding side-board to truck.
453. Attempted rescue of child in danger.
454. Teamster at municipal woodyard—Performance of service ordered by superintendent.
455. Hotel chambermaid—Cleaning light well.
456. Ranch hand, after finishing work, on trip to town to assist foreman to get other workmen.
457. Caring for horses on employer's ranch after end of day's work—Employment by day.
458. Unusual employment — Laborer shoveling gravel—Driving gravel team.
459. Chauffeur of taxicab shot by intoxicated passenger.
460. Secretary of garage corporation—Injury on way to inspect land proposed in exchange for garage business.
461. "Dump tender" or "ice puller," injured by fall from floor to which he had not been assigned.
462. Stevedore on employer's premises—Chopping wood to keep warm.

463. Night watchman—Injured while using circular saw.
 464. Employee stopping to light cigarette—Accidental gunshot.
 465. Motion picture actors racing horse to corral.
 466. Driver of street flushing vehicle—Fall from same.
 467. Surveyor—Inspection and consultation.
 - 467a. Employment of special officer as watchman.
 468. Going to aid of fellow workman in dangerous situation.
 469. Nursing influenza patients, outside employment with employer's consent.
 470. Voluntary services—Service outside of employment; performed at employer's request.
 471. Employee, paid full salary, serving the government voluntarily.
 472. Voluntary service—Assistance to person injured by employer's train.
 473. Service volunteered—Acquiesced in by employer.
 474. Voluntary service with employer's acquiescence—Motive immaterial.
 475. Employee at home, compelled to go to employer's place of business to open safe for robbers.
- c. Proximately caused by employment.*
476. Unexplained death—Absence of evidence to contrary—Presumption.
 477. Employed in violation of law—Injury to sixteen-year-old boy.
 478. Actinomyces following employment in grain mill.
 479. Apoplexy following quickly injuries to left hip and elbow from fall.
 480. Acute bronchitis following injury to chest.
 481. Hysterical blindness following electric flash.
 482. Dementia precox can not be caused by a fracture of the right tibia.
 483. Dislocation of knee cartilage from distinct trauma.
 484. Duodenal affection following blow.
 485. Fainting spell—Distinguished from *Bellis v. Doan*, 4 I. A. C. Dec. 340.
 486. Fall downstairs—Apoplexy.
 487. Death from rupture of right ventricle following fall from ladder.
 488. Hernia resulting from constant heavy lifting.
 489. Death from tubercular pneumonia following operation for hernia.
 490. Lobar pneumonia following bruise on left side between lower ribs and hip bone.
 491. Manic depressive insanity—Blow on head.
 492. Malposition of bone after fracture of leg.
 493. Osteoarthritis following sprain of back, hips and leg.
 494. Pemphigus—Skin disease following cut of hand of butcher.
 495. Death from pneumonia following injury to head.
 496. Prolapsus uteri following lifting of heavy bundle.
 497. Pulmonary pneumonia ten days after injury to arm.
 498. Tachycardia and hyperthyroidism—Vibrations of air drill against chest.
 499. Tonsillitis and diabetes following blow on abdomen.
 500. Disability characteristic of injury and of specific disease.
 501. Disability due partly to injury and partly to pre-existing disease.
 502. Existing disability is accepted by employer.
 503. Disability aggravated by specific disease.
 504. Impetus to pre-existing disease given by injury.
 505. Osteoarthritis and arteriosclerosis lighted up by blow.
 506. Sarcoma following trauma.
 507. Pre-existing disease — Disability prolonged.
 508. Same—Prolongation of disability due to disease.
 - 508a. Same—Increase of hernia.
 509. Pre-existing chronic arthritis of the finger joints and Dupuytren's contraction of both palms — Slight injury to finger.
 510. Partial deafness rendered serious by blow on nose.
 - 510a. Pre-existing systemic affection causing severe headaches accentuated by injury to head.
 511. Acute glaucoma caused, and loss of vision from pre-existing chronic glaucoma, hastened by blow on head.
 512. Rupture of aortic aneurysm from normal and usual exertion—Pre-existing condition.
 513. Death from pre-existing heart trouble following slight injuries.
 514. Increase of hernia following blow on groin.
 515. Depressive insanity following injury and previous predisposition.
 516. Recurring displacement of semi lunar cartilage resulting from primary injury to knee.
 517. Rupture of pre-existing pancreatic cyst from fall.
 518. Sarcoma lighted up by injury.
 519. Exacerbation of pre-existing lung disease from inhalation of dust.
 520. Tubercular affection exacerbated by a chest injury.
 521. Exacerbation of pre-existing pulmonary tuberculosis from severe strain.
 522. Death from pre-existing tumor, following injury.
 523. Dilation of saphenous vein—Pre-existing varicosity.
 524. Pre-existing disability — Secondary disability from slight injury.

- 525, 526. Second injury—Proximate and natural result of original injury.
527. Second injury while recovering from the first.
- 527a. Additional injury not in course of original employment, and not aggravating first injury.
528. Secondary disability—Blood poisoning following an accidental abrasion of the skin.
529. Same—Second fracture of leg before complete recovery from the first.
530. Sprain of ankle one year after original injury.
531. Sunburn while undergoing treatment—Prolongation of disability.
532. Osteoarthritis from dental abscesses—Prolonged inactivity incidental to treatment for hernia caused by original injury.
533. Death from operation following second injury resulting from obeying the doctor's directions.
- 533a. Erysipelas of foot resulting from laceration of great toe.
534. Death from facial erysipelas—Injury to toe which became infected.
- 534a. Same—Chain of causation.
535. Death resulting from operation after second injury.
536. Continuance of disability—Death following second operation.
- 536a. Continuing disability—Unreasonable refusal of medical treatment.
- 536b. Neglect or refusal of employee to procure or submit to medical treatment.

a. Arising out of employment.

See above subtitle "Employee."

See below, subtitles "Course of Employment"; "Proximately Caused by Employment"; and "Disability."

266. Conditions of right to compensation.—Section 12 of the act provides for an award of compensation to the dependents of an employee only where the proximate cause of the death of such employee was a personal injury sustained "by accident arising out of and in the course of the employment."—*Brooker v. Industrial Accident Commission*, 176 Cal. 275, 276, L. R. A. 1918F, 878, 168 Pac. 126.

267. The accidents which arise out of the employment of a person injured and which entitle him to compensation under the act are those in which it is possible to trace the injury to the nature of the employee's work or to the risks to which the employer's business exposes him.—*Continental Casualty Company v. Indiana Accident Commission*, (Cal.) 190 Pac. 849 (*Skidmore v. Golden State, etc., Co.*, 6 I. A. C. Dec. 183).

(Following the case of *Coronado, etc., Co. v. Pillsbury*, 172 Cal. 682, L. R. A. 1916F, 1164, 158 Pac. 212; *Ward v. Industrial Accident Commission*, 175 Cal. 42, L. R. A. 1918A, 233, 164 Pac. 1123.)

268. Where there is apparent to a rational mind, upon consideration of all the

circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury, such injury arises out of the employment within the meaning of the act.—*Globe, etc., Co. v. Industrial Accident Commission*, 36 Cal. App. 280, 171 Pac. 1088, 5 I. A. C. Dec. 36.

269. An employer can not be held liable under the act unless the accident arises out of and in the course of the employment and it devolves on the claimant to establish this fact by evidence from which such a conclusion is fairly inferable.—*Casualty Company v. Industrial Accident Commission*, 54 Cal. Dec. 599, 4 I. A. C. Dec. 340.

270. Performance of necessary and natural act, and cessation of work for act of self-indulgence.—On petition for rehearing the court was of the opinion that the only difference between a case where the employee pauses in his work to do some necessary and natural act, and the case where there is a cessation of work for an indulgence in some act merely pleasant and convenient to the employee, is that in the latter case the employer may have the right, by reasonable rules and regulations, to forbid indulgence, as smoking, during working hours. There was no such rule in the present case.—*Whiting-Mead, etc., Co. v. Industrial Accident Commission*, 26 Cal. App. Dec. 262, 5 I. A. C. Dec. 38 (original decision, 26 Cal. App. Dec. 112, 5 I. A. C. Dec. 4; *Duarte v. Whiting-Mead, etc., Co.*, 4 I. A. C. Dec. 182). Rehearing denied. Affirmed by supreme court, 178 Cal. 505, 5 A. L. R. 1518, 173 Pac. 1105, 5 I. A. C. Dec. 152.

271. Compensable injuries—Risk reasonably incident to employment.—The rule is that those injuries only are compensable which result from risk reasonably incident to the employment.—*Coronado Beach Co. v. Pillsbury*, 172 Cal. 682, 686, L. R. A. 1916F, 1164, 158 Pac. 212.

277. Injury must arise out of employment as well as be received in the course of the employment.—An injury of an employee for which compensation is claimed under the act must not only be received in the course of the employment, but must also arise out of the employment.—*Kimbol v. Industrial Accident Commission*, 173 Cal. 351, 353, Ann. Cas. 1917E, 312, L. R. A. 1917B, 595, 160 Pac. 150.

278. Conditions of compensation under act of 1913.—Under the act of 1913 (p. 279), section 12(a), an employer is liable for an injury suffered by an employee only when such injury is caused by an "accident arising out of and in the course of the employment," and this right compensation is not broadened by subdivision 2 of that section in the event of death, but is made more specific by the addition of the clause "acting within the course of his employment as such."—*Ocean Acc., etc., Co. v. Industrial Accident Commission*, 173 Cal. 313, 316, L. R. A. 1917B, 336, 159 Pac. 1041.

279. Injury must arise out of and in course of employment.—The act creates a

liability against the employer in favor of the injured employee only when the injury is the result of accident arising out of and in the course of the employment.—*Englebreton v. Industrial Accident Commission*, 170 Cal. 793, 796, 151 Pac. 421.

280. Conditions of liability.—An employer can not be held liable for accidental injuries, under the act, unless the accident arises out of and in the course of the employment.—*Casualty Company v. Industrial Accident Commission*, 176 Cal. 530, 533, 169 Pac. 76.

281. Liability of employer — Accident arising out of employment.—Section 12(a) of the act imposes liability for compensation only where the injury results from an accident arising out of and in the course of the employment of the person injured.—*Coronado Beach Co. v. Pillsbury*, 172 Cal. 682, 684, L. R. A. 1916F, 1164, 158 Pac. 212.

282. Proper test of meaning of phrase.—A proper test of the meaning of the phrase "arising out of the employment" used in the act in defining a compensable injury excludes an injury which can not be fairly traced to the employment as a contributing cause, and which comes from a hazard to which the workman would be equally exposed apart from the employment.—*Kimbol v. Industrial Accident Commission*, 173 Cal. 351, 353, Ann. Cas. 1917E, 312, L. R. A. 1917B, 595, 160 Pac. 150.

283. When accident "arises out of" employment.—An accident "arises out of" the occupation when there is a causal connection between the conditions under which the servant works and the resulting injury.—*Balboa, etc., Co. v. Industrial Accident Commission*, 35 Cal. App. 793, 171 Pac. 108, 5 I. A. C. Dec. 6 (*Stanley v. Balboa, etc., Co.*, 4 I. A. C. Dec. 162).

284. Existence of causal connection between employment and incident.—When it is apparent to the rational mind, upon consideration of all the circumstances, that a causal connection exists between the conditions under which the work is to be performed and the resulting injury, and, under this test, it can be seen that the injury followed as a natural incident of the work, and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises "out of" the employment.—*Kimbol v. Industrial Accident Commission*, 173 Cal. 351, 353, Ann. Cas. 1917E, 312, L. R. A. 1917B, 595, 160 Pac. 150.

285. Causal connection between injury and conditions of the employment.—An injury arises out of the employment within the meaning of the act, where a causal connection between the injury and the conditions under which the work is required to be done.—*Elk Grove, etc., District v. Industrial Accident Commission*, 34 Cal. App. 589, 168 Pac. 392.

286. Accidents arising out of the employment of the person injured are those in which it is possible to trace the injury to the nature of the employee's work or

to the risks to which the employer's business exposes the employee.—*Balboa, etc., Co. v. Industrial Accident Commission*, 35 Cal. App. 793, 171 Pac. 108, 5 I. A. C. Dec. 6 (*Stanley v. Balboa, etc., Co.*, 4 I. A. C. Dec. 162).

287. An accident arising out of the employment within the meaning of the act is that in which it is possible to trace the injury to the nature of the employee's work, or to the risks to which the employer's business exposes the employee.—*Ward v. Industrial Accident Commission*, 175 Cal. 42, L. R. A. 1918A, 233, 164 Pac. 1123, 4 I. A. C. Dec. 117 (*Ward v. Ward*, 3 I. A. C. Dec. 220).

288. Causative danger must be peculiar to the employment at the time and place.—The causative danger, to bring the injury within the benefit of the act, must be peculiar to the work and not common to the neighborhood, incidental to the character of the business and not independent of the relation of master and servant; it need not be foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.—*Kimbol v. Industrial Accident Commission*, 173 Cal. 351, 353, Ann. Cas. 1917E, 312, L. R. A. 1917B, 595, 160 Pac. 150.

289. Exposure to particular danger different from the commonality.—Where an employee is exposed to a particular danger, differing substantially from the normal risk to which all are subject, and the employment necessarily accentuates and increases his danger above that to which persons generally are subject, then it may be fairly held that the conclusion is warranted that the accident, although unexpected and unusual and unanticipated in any way, arose out of the employment.—*Kimbol v. Industrial Accident Commission*, 173 Cal. 351, 355, Ann. Cas. 1917E, 312, L. R. A. 1917B, 595, 160 Pac. 150.

290. Unsafe condition of place of employment.—Where the injury to the employee is due to the unsafe condition of the place where he is employed and required to work, the injury results from a risk reasonably incidental to the employment.—*Kimbol v. Industrial Accident Commission*, 173 Cal. 351, 355, Ann. Cas. 1917E, 312, L. R. A. 1917B, 595, 160 Pac. 150.

291. Safe access to employer's premises.—An employer is not required to furnish a safe means of access to the premises on which his employees work.—*Mentz v. Pacific, etc., Co.*, 4 I. A. C. Dec. 292.

292. Quarrels among employees—Injuries not usually compensable.—Ordinarily, and outside of certain exceptions, injuries suffered by employees during quarrels among themselves may not be made the basis of compensation under the act.—*Metropolitan Redwood Lumber Co. v. Industrial Accident Commission*, 28 Cal. App. Dec. 1075, 182 Pac. 315, 6 I. A. C. Dec. 78.

See *Gireaux v. Metropolitan Redwood Lumber Co.*, 6 I. A. C. Dec. 4.

293. Foreman of gang of railroad hands

—Assault by section hand.—An injury sustained by a foreman in charge of a gang of railroad section hands, at the hands of one of the latter, as a result of an assault growing out of an altercation, arising from the justifiable efforts of the injured employee to maintain his authority and protect his employer's property, was an injury resulting from an accident arising out of and in the course of his employment.—*Western Indemnity Co. v. Pillsbury*, 170 Cal. 686, 706, 151 Pac. 398.

294. Employee assaulted by foreman.

An injury sustained by an employee by reason of an assault by his foreman was held to have been incident to the employment and not because of an altercation due to personal feeling.—*Catalina v. Redwood, etc., Co.*, 5 I. A. C. Dec. 89.

295. Hotel elevator conductor—Assault

by fellow employee.—An injury sustained by a hotel elevator conductor from an assault by a fellow employee in the course of a personal altercation as to the proper use of the elevator under the rules of the employer, was held to be an injury arising out of the employment and compensable.—*Waldstein v. Hotel Richelieu*, 5 I. A. C. Dec. 177.

296. Employee assaulted by fellow employee.

An injury sustained by an employee while performing service in his employment, by an assault on the part of a fellow servant, known by the employer to be of a quarrelsome nature not due to blame or fault on the part of the injured employee, but to quarrelsome nature of the assailant, and is held to have arisen out of and been proximately caused by the employment, and to be, compensable.—*Tamborini v. Melville*, 6 I. A. C. Dec. 217.

297. Assault by fellow employee — Personal feeling.

An injury resulting from a fellow employee's assault, provoked by personal feeling, was held not to have arisen out of or been proximately caused by the employment, and was not compensable.—*Albert v. Bethlehem Shipbuilding Co.*, 6 I. A. C. Dec. 65.

298. Same—Personal quarrel.

An injury from a fellow servant's assault provoked solely by a personal quarrel, applicant being the aggressor, held not to have arisen out of the employment, and was not proximately caused thereby, and was not compensable.—*Taddei v. Pioneer Motor Company*, 6 I. A. C. Dec. 65.

299. Unprovoked assault by fellow employee.

In the case of an injury from an unprovoked assault by a fellow employee, it was held that there was an absence of special risk, and that the injury did not arise out of the employment.—*Mendel v. Redlick-Newman Co.*, 5 I. A. C. Dec. 69.

299a. Storekeeper of lumber company—

Assault by co-employee.—An injury, the result of an assault, sustained by a storekeeper in the employ of a lumber company, at the hands of a fellow clerk employed as bookkeeper and postmaster by the same company, the postoffice being located in the

store, the assault being due to friction between the two employees, and arising in connection with the employment, arose out of and was proximately caused by the employment, although the injured employee was engaged at the time of the injury in performing services at the request of the company's manager, which was not strictly in the line of his duty.—*Gireaux v. Metropolitan, etc., Co.*, 6 I. A. C. Dec. 4.

300. Assault due to conflict of work and not personal feeling.

Where an employee of one sub-contractor was assaulted and injured by an employee of another sub-contractor working on the same job and it appeared that the assault was prompted by a conflict of work and not by any personal feeling, it was held that the injury arose out of and was approximately caused by the employer.—*Mishler v. Bay City, etc., Co.*, 5 I. A. C. Dec. 119.

301. Hotel houseman—Assault by applicant for employment.

A hotel houseman, having charge of the hiring of help, was specially exposed, by reason of his employment, in excess of the commonalty, to the danger of assault from a person applying for employment, and it is held that an injury resulting from such an assault arose out of and was proximately caused by his employment.—*Badger v. Fryman*, 6 I. A. C. Dec. 108.

302. Foreman of construction of county road—Assault by discharged employee.

An injury sustained by a foreman of a gang of men employed by a county in the construction of a concrete road, from being struck by a blow by a laborer discharged by him for refusing to perform the work in the manner directed, is an injury arising out of and in the course of his employment.—*County of San Bernardino v. Industrial Accident Commission*, 35 Cal. App. 33, 169 Pac. 255, 4 I. A. C. Dec. 324.

303. Clerk in cigar store—Aggressive attack on stranger.

Where a clerk in a cigar store became involved in a quarrel with a stranger and became the aggressor and attacked the stranger, and the latter made an attack which caused injuries resulting in such clerk's death, it was held that the altercation and assault did not arise out of the employment, and that the risk thereof was not incidental to or a part of the employment.—*Treadwell v. Marks*, 3 I. A. C. Dec. 3.

304. Restaurant cook — Assault by drunken customer.

Where a restaurant cook was employed at night and was required to keep a toilet clean and presentable for the use of customers and a drunken customer soiled the seat of the toilet and the cook remonstrated with him, whereupon the customer assaulted and injured the cook, it was held that employee was specially exposed thereby to the risk of such assault and therefore the injury arose out of the employment.—*Hendricksen v. London, etc., Co.*, 4 I. A. C. Dec. 366.

305. Saloon manager—Injury while ejecting disturbing customer—Unprovoked assault.

Where it was the duty of a saloon

manager to maintain order in the saloon and eject disturbing customers and an intoxicated customer made an unprovoked assault upon him and in self-defense and in an attempt to eject him, the manager sustained an injury to his hand, it was held that said injury arose out of and was proximately caused by said employment.—*Scott v. Scott*, 4 I. A. C. Dec. 193.

306. Barkeeper, shot in "holdup."—A barkeeper was shot in a "holdup" in his employer's saloon by robbers near midnight, and it was held that he was subjected to a special risk of such assaults and that therefore the injury was compensable.—*Griffin v. Yribarne*, 5 I. A. C. Dec. 165.

306a. Waiter in cafe—Killed while ejecting unruly persons.—Where it is a part of the duty of a waiter in a cafe to assist in keeping order, quell disturbances, and eject unruly persons, his widow and a minor son are entitled to compensation under the act, for his death while assisting in stopping a brawl in such cafe previously started between a disorderly patron and another waiter.—*Stevens v. Industrial Accident Commission*, 179 Cal. 592, 178 Pac. 296.

307. Grocery employee—Struck by mistake—Altercation between co-employees.—An employee, whose duties required him to stand at the foot of a chute down which various objects used in his employer's business were projected, was injured by being struck by a fellow employee, who, in the course of a personal altercation with another employee fell down the chute, and it was held that the injury arose out of and was proximately caused by the employment. — *Deuel v. Ralphs Grocery Co.*, 6 I. A. C. Dec. 182.

308. Employee of commission house—Accidental killing during altercation between customer and fellow employee.—An employee in a commission house, who was killed by an accident caused by being shoved against a knife held in the hands of a customer during an altercation between such customer and a fellow employee, arising from an incident in the employment, but without any intent to make the deceased a party to the dispute, and in fact, without being aware of his proximity, was held not to be compensable, on the ground that the employment exposed the deceased to no greater risk of such an assault than a bystander not so employed.—*Pereira v. Hunt, Hatch & Co.*, 5 I. A. C. Dec. 170.

309. Employee of lumber company—Loading lumber.—An employee of a lumber company who was injured in some manner while pulling a piece of timber from a pile from which he was loading lumber, was injured by an accident arising out of and in course of the employment, within the meaning of section 12 of the act of 1913.—*Southwestern Surety Ins. Co. v. Pillsbury*, 172 Cal. 768, 770, 158 Pac. 762.

310. Miner—Injured while riding on mine truck.—An employee at a mine, injured while riding on the mine truck on his return from an absence on leave to a

distant point on his own affairs, who might have returned on the stage, was not injured in an accident arising out of and in the course of his employment notwithstanding the fact that before boarding the truck he stopped en route to the mine, at the request of the superintendent, and helped to unload the truck upon the superintendent's promise to pay him wages for the service, and continued his journey on the truck on the superintendent's invitation, and an award by the commission was unauthorized.—*Bogges v. Industrial Accident Commission*, 176 Cal. 534, 536, L. R. A. 1918F, 883, 169 Pac. 75.

311. Laborer in the erection of a building—Fall due to epileptic fit.—Under the act, an injury resulting in the death of a laborer employed in the erection of a building from falling from the scaffold upon which he was working to the ground thirty-nine feet below, is not an injury arising out of his employment, where it is shown that he was seized with an epileptic fit and fell to the surface of the scaffold and from thence to the ground.—*Brooker v. Industrial Accident Commission*, 176 Cal. 275, L. R. A. 1918F, 878, 168 Pac. 126, 4 I. A. C. Dec. 311 (*Fuente v. Goodbody* 3, I. A. C. Dec. 492).

312. Chambermaid in hotel—Killed by falling down light well.—A woman employed and performing service as chambermaid in a hotel, killed by falling down a light well of the hotel while voluntarily performing the service as janitor of cleaning the light well, and in spite of warning of the danger, and without knowledge of her employer, was not killed by an accident arising out of and in the course of her employment.—*Williamson v. Industrial Accident Commission*, 177 Cal. 715, 718, 171 Pac. 797.

313. Sailor—Disappearance without explanation—Presumption.—Where a sailor disappeared from the ship on which he was employed while on a voyage on the high seas, without explanation, the presumption is that his death arose out of his employment.—*Karus v. Charles Nelson Company*, 6 I. A. C. Dec. 125.

314. Bank messenger.—A bank messenger injured while having his automobile, furnished by his employer, repaired, at the employer's direction, was performing service in the course of his employment, and was entitled to compensation.—*Angier v. First National Bank*, 6 I. A. C. Dec. 156.

315. Cook's helper on construction train.—A cook's helper on a construction train, in which he was required by the terms of his contract of employment to work, eat and sleep, was injured by a fall when leaving the bunk car at night to attend to call of nature, and it was held that the danger of such injury was inherent in the use of the living conditions provided by the employer, and that the injury arose out of the employment and was compensable.—*Ientzseh v. Southern Pacific Co.*, 6 I. A. C. Dec. 158.

316. Boatman—Drowning.—The circum-

stances held to indicate that a boatman employed on Western Pacific mole at San Francisco bay was drowned in the performance of his duties.—*McLeod v. Clement & Son*, 6 I. A. C. Dec. 18.

317. Marine fireman—Jumping to dock instead of using gangplank.—Where a marine fireman was injured in attempting to jump across a space of three and a half feet from a wharf to the barge where he was employed and where he slept instead of going over the gangplank, which he erroneously believed not strong enough to support him, the injury arose out of and was proximately caused by the employment.—*Dado v. Standard Oil Co.*, 6 I. A. C. Dec. 9.

318. Sailor—Finger infection.—An infection of the finger of a sailor, who had not been off the ship where he was employed, which the evidence showed to be to some condition or injury to which he was specially exposed by reason of his employment, although the precise cause did not appear, held to have arisen out of and to have been proximately caused by the employment.—*Gresswell v. Matson, etc., Co.*, 6 I. A. C. Dec. 49.

319. Bargehand—Fell from deck and drowned.—Where a deckhand on a barge, whose sole duty was to help load and unload the barge, while on a voyage from San Francisco to Oakland, in ignorance of a rule prohibiting him from being on deck, fell from the deck and was drowned, it is held that he was killed by accident occurring in the course of and arising out of his employment within the meaning of the act.—*W. R. Rideout Co. v. Pillsbury*, 173 Cal. 132, 134, 159 Pac. 435.

320. Dishwasher—Collapse of restaurant floor.—Where a dishwasher employed in a restaurant located upon the ground floor of a building was injured in the place of his employment by the sudden giving way of the floor immediately above the restaurant, not in any way connected with the latter and not under the control of the restaurant owner, it was held that the injury arose out of employment within the meaning of the act.—*Kimbol v. Industrial Accident Commission*, 173 Cal. 351, 354, Ann. Cas. 1917E, 312, L. R. A. 1917B, 595, 160 Pac. 150.

321. Laborer employed to shovel gravel—Driving team during temporary exchange of work.—The driving of a team during a temporary exchange of work with the teamster by a laborer employed to shovel gravel, is not the regular employment of such laborer, and an award for an injury received by him while so engaged, on the ground that it arose out of and in the course of his employment must be annulled.—*Modoc Co. v. Industrial Accident Commission*, 32 Cal. App. 548, 163 Pac. 685.

322. Street car conductor—Injured while on personal errand.—It was held in this case that at the time of the injury the street car conductor was engaged in an unauthorized personal errand and that therefore the injury did not arise out of or in the course of employment.—*Rydberg v. San Francisco*, 4 I. A. C. Dec. 333.

323. Injury in automobile accident—Risk of commonality.—Where an employee was paid mileage, and his wages while being transported from his home to his place of employment, and was injured in an automobile accident, it was held that the risk of such injury was not a risk of the commonality and said injury arose out of and in the course of employment.—*Summers v. California Iron Works*, 4 I. A. C. Dec. 275.

324. Hotel porter—Injured by kicking hose of vacuum cleaner.—Where a hotel porter kicked the hose of a vacuum cleaner and suffered a slipping of the semilunar cartilage of his knee and several years theretofore he had suffered an injury to the same knee, but had suffered no intervening disability therefrom, it was held that said injury arose out of the employment and was compensable.—*Evans v. Meyers*, 4 I. A. C. Dec. 250.

325. Bootblack on ferryboat while on his way to lunch on board.—Where a bootblack employed upon a ferryboat was required by the nature of his employment to eat his lunch upon said ferryboat and, while descending the stairs on his way from the bootblack stand to the lower deck where he ate his lunch, he slipped and sustained a hernia, it was held that said hernia arose out of and was proximately caused by said employment.—*Lomoglio v. Green*, 4 I. A. C. Dec. 249.

326. President and shop foreman injured while delivering a message for vice president.—Where the president and shop foreman of a corporation was asked to deliver a message for the vice president, who lived near the applicant's home, and after performing the errand he was injured, it was held that such injury was incurred in the course of his employment, and the injury arose out of the employment.—*Goodwin v. National Cornice Works*, 4 I. A. C. Dec. 245.

327. Making repairs on automobile used in employer's business.—Where an employee used his father's automobile in the course of his employment and his employer paid for the gasoline and oil consumed, and while performing services in the course of his employment said employee started for his home in order to make necessary repairs on said automobile and he was injured on the way, it was held that the making of such repairs was so closely connected with said employment that the injury arose out of and was proximately caused by said employment.—*Davis v. Earl Publishing Co.*, 4 I. A. C. Dec. 234.

328. Injury sustained while obeying unauthorized order.—It was held under the present circumstances that an injury sustained by an employee while obeying an unauthorized order of his employer's representative, was an injury which arose out of and in the course of the employment, it being the duty of such employee to obey such directions, regardless of the power or authority of the latter to give said directions.—*Norton v. City of Oakland*, 4 I. A. C. Dec. 231.

329. Performance of unauthorized act.—An employee who, even in the performance of a duty of his employment, does an unauthorized act reasonably incident to his employment, thereby enters upon an undertaking outside the scope of his employment and an injury sustained while so doing does not arise out of or in the course of such employment.—*Townsend v. Los Angeles, etc., Co.*, 4 I. A. C. Dec. 193.

330. Injury while going to lunch on employer's premises.—Where the employees keep their lunches in the dressing room provided by the employer and eat them upon the employer's premises, and one of said employees is injured while proceeding from the place where the duties of her employment are performed to said dressing room to get her lunch, it was held that said injury arose out of and in the course of her employment.—*Mulholland v. Western, etc., Co.*, 4 I. A. C. Dec. 182.

331. Gamekeeper—Injury while serving self.—Where a gamekeeper was employed to bait duck ponds, keep trespassers away and care for the game preserve, and as part of his wages he lived upon the preserve and was supplied with provisions, including fresh meat, and was injured while attempting to shoot some mud hens for his own use, it was held that the procuring of said fresh meat was a matter of the applicant's own preference and convenience and that said injury therefore did not arise out of the employment.—*Elliott v. Meek*, 4 I. A. C. Dec. 178.

332. Same—Accidental gunshot.—The accidental killing of a gamekeeper while engaged in doing that which he was employed to do, patrolling his employer's ranch in quest of poachers, and in connection therewith, under express orders from his employer, assisting an authorized hunter in finding and killing a deer, is an act arising out of his employment within the meaning of the act.—*O. L. Shafter Co. v. Industrial Accident Commission*, 175 Cal. 522, 525, 166 Pac. 24.

333. Packing oranges—Breaking uterine adhesions.—Where, at the time of entering defendant's employ, a woman had abdominal adhesions, due to a uterine infection, which had not theretofore caused any disability, and said adhesions were strained or torn by a simple bodily movement while packing oranges, it was held that the injury arose out of and was proximately caused by the employment.—*Hawley v. El Cajon, etc., Association*, 4 I. A. C. Dec. 167.

334. Infection of vaccination wound.—Where death occurred from tetanus caused by an infected vaccination wound from a vaccination required as a condition precedent to employment, it was held that the evidence was insufficient to establish that said death arose out of or in course of employment.—*Royer v. Atchison, etc., Co.*, 4 I. A. C. Dec. 159.

335. An injury sustained because of vaccination required of an applicant, precedent to such employment, does not arise out of or in the course of the employment

which is given after such vaccination.—*Royer v. Atchison, etc., Co.*, 4 I. A. C. Dec. 159.

336. Teamster—Automobile accident.—An injury sustained by a teamster on the premises of his employer, as a result of an attempted rescue of a child getting in the way of the employer's automobile, is held to be compensable.—*Sibley, etc., Co. v. Nelson*, 5 I. A. C. Dec. 203.

337. Hotel clerk—Gunshot inflicted for personal reasons.—An injury sustained by a hotel clerk from an assault and gunshot by a woman with whom he had been on extremely friendly and intimate relations, which had been discontinued shortly before the shooting, was held not to have been an injury arising from the performance of any of his duties and that the risk of being so assaulted and shot was not an incident of his employment and that therefore the injury was not proximately caused by the employment.—*Griffin v. Argonaut Hotel*, 5 I. A. C. Dec. 195.

338. Employee killed by insane employer.—The dependents of a deceased employee who was killed by his employer while the latter was laboring under an insane hallucination that the employee was robbing him, were not entitled to compensation, on the ground that the death did not arise out of and was not proximately caused by the employment, it appearing that the insanity was the sole actuating cause.—*Wheeler v. McCaw*, 5 I. A. C. Dec. 185.

339. Health officer—Mountain fever.—Where an employee of the state board of health was engaged in an anti-rabies campaign, which necessitated living and working in a wild country and exposed him to danger of tick bites, and by reason of such bites he contracted Rocky Mountain spotted fever, it was held that such exposure was greater than that to which his usual occupation subjected him or to which the commonality in the same locality was exposed and that therefore such disease arose out of the employment.—*Adams v. State of California*, 4 I. A. C. Dec. 62.

340. Construction camp—Use of water.—Where it was intended that the water of a certain spring should be furnished for the personal use of a large number of employees living at a construction camp, but the spring water was not always conveniently available and the employees without being cautioned as to the danger of so doing, used and drank water from a creek which flowed through the camp, and from his use of such creek water one of said employees contracted typhoid fever, it was held that the typhoid fever arose out of the employment and was compensable.—*Price v. Bates, Borland & Ayer*, 4 I. A. C. Dec. 99.

341. Employee injured on street—Special exposure to risk.—Where an employee was sent by his employer upon two express errands to be performed during the noon hour and the employee, after performing the first errand, and loitering upon the

street a few minutes was injured while catching a street car to perform the second errand, it was held that he was specially exposed to the risk of such injury by reason of his employment, and that the injury arose out of the employment.—*Cousins v. Hanlon*, 4 I. A. C. Dec. 97.

342. Employee injured in automobile accident.—An injury in an automobile accident, the use of the automobile being authorized by the employer, was held to have resulted from special exposure to risk of such an injury by reason of the employment, and therefore to have arisen out of the employment.—*Kelley v. American, etc., Co.*, 5 I. A. C. Dec. 53.

343. Fire fighter—Injured after services ended.—One employed to fight a fire, injured after his services were ended and he was ready to go home, was not injured in the course of his employment, and his injury did not arise out of the same, within the meaning of section 12a of the act.—*London, etc., Co. v. Industrial Accident Commission*, 173 Cal. 642, 645, 161 Pac. 2.

343a. Employee at mine accidentally shot by guard.—The guard, although acting recklessly and negligently, was in the performance of an act within the general scope of his duties, and was not acting maliciously, and the injured employee was entitled to recover compensation for the injury.—*Atolia Mining Co. v. Industrial Accident Commission*, 175 Cal. 691, 693, 167 Pac. 148.

344. Employee killed by fall down elevator shaft.—Where the employee was killed by falling down an elevator shaft from a floor of the employer's premises where he was not employed and where the duty of his employment did not call, the award of the commission was not authorized.—*Casualty Co. v. Industrial Accident Commission*, 176 Cal. 530, 534, 169 Pac. 76.

345. Retail buyer killed on way to the wholesale district.—A retail buyer for his employer's store, killed by a street car while on his way from his home to the wholesale district to buy the day's stock of fruit for the store, according to the regular routine of his employment, held to have been injured while on his way to the place of his employment, which was the wholesale district, that such injury was the result of a risk of the commonalty and not one to which he was specially exposed, and did not arise out of and was not sustained in the course of his employment.—*Weyl v. L. D. McLean Co.*, 6 I. A. C. Dec. 64.

346. Employee injured while working under his foreman's direction for another corporation.—Employee of steel company working under the direction of a foreman employed by the steel company and also by a railroad company, was injured while working under the foreman's direction, for the latter company, with the knowledge of the former company, held that such injury arose out of and in the course of applicant's employment with the steel company and was compensable.—*Thurow v. Noble Electric Steel Co.*, 6 I. A. C. Dec. 70.

347. Barber shop porter—Elevator accident.—An injury in an elevator in the building where applicant was employed, while he was on his way to obtain a bottle of milk for his lunch, was held to have been from a risk to which he was specially exposed, and not a risk of the commonalty and was compensable.—*Miles v. Papi-neau*, 6 I. A. C. Dec. 74.

348. Employee burned while extinguishing pan of burning alcohol.—An employee, fatally burned while attempting to extinguish a pan of burning alcohol, an act outside her express duties, was held, under the circumstances, to have suffered the injury while performing an act reasonably incidental to her employment.—*Carlson v. Brunt*, 6 I. A. C. Dec. 81.

349. Employee injured while cutting wood to keep warm.—An employee, occupying furnished lodgings as a part of his wages, was injured while cutting wood to keep warm after working hours. Held not compensable.—*Hollas v. Noble Electric Steel Co.*, 6 I. A. C. Dec. 85.

350. Camp employee—Crossing railroad tracks.—Where an employee of a rice growers association resided at his employer's camp through which passed the tracks of a railroad, and was run over and killed by a train while crossing such track while on his way from his breakfast to his work, it was held that by reason of the nature of the facilities provided he was specially exposed to the risk of the injury he sustained, and that therefore such injury arose out of and was proximately caused by the employment.—*Korean National Association of America v. State Compensation Insurance Fund*, 6 I. A. C. Dec. 92.

351. Employee on way to place of employment—Transportation by employer.—Where transportation to the place of work is furnished by the employer as a part of the contract of hire, as in the present case, the employment commences when the employee starts to the place of work, and when injured on the way, the injury arises out of and in the course of the employment.—*George v. Agelakis*, 6 I. A. C. Dec. 109.

352. Employee injured while using employer's automobile for personal purposes.—An employee injured while using his employer's automobile on a personal errand, held not to be entitled to compensation.—*Clarke v. Anderson Motor Co.*, 6 I. A. C. Dec. 123.

353. Employee of smelting plant—Burnt while warming foot over molten metal.—Where the employees of a smelting plant were customarily permitted by the employer to stand near the fires or other sources of heat in its plant to warm themselves, an injury sustained by an employee by warming his foot over molten metal, it was held that the act was not inherently foolhardy or dangerous or done in disregard of common prudence or in deliberate violation of any safety rule and therefore did not constitute serious and wilful misconduct, and that the injury was compen-

sable.—*Kusulas v. Great Western, etc., Co.*, 6 I. A. C. Dec. 187.

353a. Injury to hand by putting it into pipe to warm it.—An employee who suffered an injury to his hand by putting it into a pipe containing a revolving fan, for the purpose of warming it, without knowledge that the fan was there, was not guilty of wilful misconduct and his action was reasonably incidental to the employment and so connected with the conditions thereof that the injury was held to have been suffered arose out of the employment and was proximately caused thereby.—*Mercado v. Joannes Brothers Co.*, 6 I. A. C. Dec. 259.

354. Weigher on coal barge—Epileptic seizure.—Where a weigher on a coal barge, on his way to lunch, but before leaving the dock where the barge was moored, was seen to lean against a boxcar standing on a track there, and to fall upon the track when the train was moved, and received injuries from which he died, it appeared that he was subject to epilepsy, and the question was whether the injury was proximately caused by an epileptic seizure, or by the employment. It was held that the evidence was insufficient to establish that the injury was proximately caused by an epileptic seizure, or that it was other than accidental, and that it was incidental to the conditions of the place of employment, and was compensable.—*Battles v. King Coal Co.*, 6 I. A. C. Dec. 202.

355. Employee undergoing hospital treatment for injury—Death from influenza.—The death of an employee from influenza contracted during hospital treatment for an injury was held not to be compensable.—*Perez v. Southern Pacific Co.*, 6 I. A. C. Dec. 190.

356. "Skylarking" with fellow employee.—A fall down a flight of stairs occasioned by a playful act of a fellow employee, in thrusting a newspaper in his ribs to tickle him, is not an accident arising out of the employment, although it occurred in the course of the employment.—*Coronado Beach Co. v. Pillsbury*, 172 Cal. 682, 684, L. R. A. 1916F, 1164, 158 Pac. 212.

357. It is immaterial that the playful act of a fellow employee, was momentary and void of malice, and not in excess of the usual practice among servants.—*Coronado Beach Co. v. Pillsbury*, 172 Cal. 682, 685, L. R. A. 1916F, 1164, 158 Pac. 212.

358. An injury to an employee in a toy establishment, caused by a trick camera containing a spring occasioned by the playful act of a fellow employee of normal capacity and intelligence in pointing the camera at him and releasing the spring, is not one arising out of and in the course of his employment.—*Fishing v. Pillsbury*, 172 Cal. 690, 158 Pac. 215.

359. "Skylarking."—An injury which was the result of "skylarking," although sustained while engaged in the duties of the employment, was held not to have arisen out of the employment.—*Moore v. Lokard*, 5 I. A. C. Dec. 185.

360. Clerk — Friendly personal inter-

course.—Where a clerk, in greeting a fellow employee who was delivering supplies, placed his hand upon the latter's shoulder by way of a passing act of friendliness, without intent to indulge in funmaking or horseplay, and his hand was cut by a butcher knife which, without the clerk's knowledge the other was carrying under his arm, it was held that the injury was the result of an act not in excess of the usual intercourse customary while at work, and arose out of the employment.—*Goldenson v. Southern Pacific Co.*, 4 I. A. C. Dec. 65.

361. Oil well driller—Employee killed on way to work.—Where a well driller was killed by a freight train while riding his motorcycle from his employer's shop to his place of employment and he was under no duty to report to the shop before going to work, it was held that the risk of being struck by such train was not a special exposure arising out of the employment but was a risk of the commonality.—*Brown v. Borden*, 4 I. A. C. Dec. 5.

362. Where a well driller stopped as usual at his employer's shop early in the morning and obtained some oil for his motorcycle, and also obtained a chain, and on his way to the place of employment nine miles distant was killed by a freight train; and the evidence showed that the chain had previously been used in the well drilling, though the decedent's purpose in taking it did not appear; that the deceased and his fellow employees frequently took tools on their motorcycles for use in their work and that they were required to report at the shop at night and frequently did report in the morning, though not under any duty to do so, and that they had no definite hours of labor but had to work nine hours a day, the work commencing at the well, it was held that while going from the shop to the well, deceased was not performing a service arising out of the employment.—*Brown v. Borden*, 4 I. A. C. Dec. 5.

363. Oil derrick carpenter—Added risk—Employee boarding slowly moving truck on which he was entitled to ride from work.—Where an oil derrick carpenter was permitted by the terms of his employment to ride from work to camp on his employer's truck, and while boarding a slowly moving truck for that purpose, was jostled by another employee who was boarding said truck, fell and was injured, it was held that said attempt to board the moving truck did not involve a greater risk than that inhering in the character of the service being then performed by him and that the injury therefore arose out of and happened in the course of his employment.—*Radish v. Associated Oil Co.*, 4 I. A. C. Dec. 375.

364. Oil well driller—Fainting from exhaustion—Arising out of employment.—Where an oil well driller had been doing exhausting work for a considerable period with little rest, by reason of which he fainted and fell from a stool on which he was sitting and was injured, it was held that the injury arose out of and was prox-

mately caused by the employment.—*Bellis v. Doan*, 4 I. A. C. Dec. 340.

365. A supervising mechanical engineer of a cemetery, who was injured while going from his place of residence which was also his employer's business office, and to the cemetery for the performance of duties there, was held to have been specially exposed by reason of his employment to the risk of such street injury, and that the injury arose out of such employment.—*Tally v. Roman Catholic Archbishop of San Francisco*, 5 I. A. C. Dec. 96.

366. Injury after work while on way home—Risk of commonalty.—Where an employee was injured after work and while going from his employer's premises to his home by means of a private path traversing private property of a third party, which was the only means of access to the employer's premises, it was held that the risk of such injury was a risk of the commonalty and that the injury did not arise out of the employment.—*Mentz v. Pacific, etc., Co.*, 4 I. A. C. Dec. 292.

367. Railroad employee—Injured on way to lunch on company's cars.—Where a railroad employee rode to and from his lunch each day on his employer's cars without the payment of a fare and just after leaving a car on his way to lunch, he was killed by another of his employer's cars, it was held that said death did not arise out of said employment.—*Read v. United Railroads of San Francisco*, 4 I. A. C. Dec. 251.

368. Injury on employer's premises, while gaining admission to place of employment.—The injury of an employee sustained on his employer's premises while gaining admission to such premises pursuant to his employer's expressed direction, was held to have been an injury arising out of and in course of the employment and to have occurred while the employee was performing services incidental to his employment and was therefore compensable.—*Millar v. Moore & Scott Iron Works*, 5 I. A. C. Dec. 98.

369. Bond officer of bank—Injured on return from pleasure trip incidental to business trip.—Where a bond officer of a bank, made a pleasure trip incidental to a business trip, in the course of which he decided to return to San Francisco and resume his duties, and was injured while on the way to San Francisco, it was held that the pleasure trip and the business trip were separable, and since the injury occurred on the way to San Francisco to resume his duties, it arose out of and in the course of employment.—*Rogers v. Capital, etc., Bank*, 4 I. A. C. Dec. 133.

370. Employee injured on way from work.—Where an employee was injured on his way from work, his transportation being paid for but not furnished by the employer as a part of the contract of hire, and it was held that the injury did not arise out of and was not proximately caused by the employment.—*Richardson v. Los Angeles*, 6 I. A. C. Dec. 71.

371. Employee killed while crossing rail-

road track on way from work.—Injury of employee by being struck by a motor truck while going from work across a third party's property, that route being required by his employer, held, notwithstanding such requirement, to have been proximately caused by a risk of the commonalty, and not to have arisen out of or been proximately caused by the employment.—*Gomez v. Aetna, etc., Co.*, 6 I. A. C. Dec. 54.

372. Employer on way from employment agency to place of work.—An award was unauthorized for the death of a person not employed, who was killed while on his way from an employment agency to the place of his prospective employment, the foreman at the latter place having the sole power to engage laborers, and the employment agency having no authority other than to find and send laborers, notwithstanding such agency paid their transportation.—*California Highway Commission, etc., v. Industrial Accident Commission*, 40 Cal. App. 465, 181 Pac. 112, 6 I. A. C. Dec. 54.

373. Employee injured out of office on his return out of office hours.—When an employee left the place of his employment during the regular hours of employment, and was injured on his return after such hours to perform unfinished duties, which were ordinarily performed during such hours, although he was subject to emergency calls, such injury was not received when "performing service growing out of and incident to his employment and acting within the course of his employment" within the meaning of the act, and was not entitled to compensation under the act.—*Fidelity, etc., Co. v. Industrial Accident Commission, (Cal.)* 193 Pac. 166.

374. Truck driver—Killed in automobile accident.—Where a truck driver ate his lunch upon his employer's premises and during the noon hour was told by his employer to start to perform a duty of his employment and while crossing the street to his truck he was killed by another automobile, it was held that he was obeying the express order to start at that time, and the injury arose out of and happened in the course of his employment.—*Fickett v. Burton, etc., Co.*, 4 I. A. C. Dec. 306.

375. Driver of delivery wagon—Deviation from direct route.—An injury suffered by a driver of a delivery wagon while deviating from route, with employer's consent, on special errand, is held compensable.—*Lauglais v. Fillmore Free Market*, 6 I. A. C. Dec. 73.

376. Locomotive engineer—Sarcoma.—Death from sarcoma incited by trauma held to have been proximately caused by and to have arisen out of the employment of a locomotive engineer.—*Carroll v. State Compensation Insurance Fund*, 6 I. A. C. Dec. 191.

377. Truck driver for mining company.—The act of a truck driver for a copper mining company in using a circular saw to cut side boards for the truck in his charge, for the purpose of increasing its carrying capacity, was held to be a reasonable incident

of the employment and an act which he could properly undertake without specific orders.—*Jordan v. Calaveras Copper Co.*, 6 I. A. C. Dec. 193.

378. Automobile driver—Injured in automobile accident.—An injury sustained by an automobile driver employed to take passengers to a dance and back home again at the close of the dance, during the dance, while backing the automobile for the accommodation of certain of his passengers, is held to have arisen out of his employment and while he was performing service growing out of and incidental thereto.—*Kochiopulos v. Aronson*, 6 I. A. C. Dec. 40.

379. Driver of automobile truck—Killed by passing automobile.—Under the act, the death of the driver of an automobile truck for a transfer company happened in the course of and arose out of his employment, where it was shown that the deceased left his loaded truck at the noon hour on the opposite side of the street from his employer's office, and then proceeded to the office, where he remained about forty-five minutes, and was killed by a passing automobile while attempting to recross the street to his truck.—*Burton, etc., Co. v. Industrial Accident Commission*, 37 Cal. App. 657, 174 Pac. 72, 5 I. A. C. Dec. 157 (*Fickett v. Burton, etc., Co.*, 4 I. A. C. Dec. 306).

380. Automobile delivery driver—Special exposure to danger of such injury.—The employment of an automobile delivery driver which caused him to travel continuously in the course of his employment, specially exposes him to the danger of street and road accidents, and an injury in such accident therefore arises out of the employment.—*Employers' Liability, etc., Corporation v. Elmore*, 4 I. A. C. Dec. 359.

381. Traveling salesman—Entertainment of customers.—Where a traveling salesman was authorized to entertain customers at his employer's expense, it was held that such entertainment was not a duty or service arising out of his employment in the sense that an injury incurred thereby is compensable.—*Hamnett v. Pennsylvania Rubber Co.*, 4 I. A. C. Dec. 50.

382. Traveling salesman—Injury on vacation.—A traveling salesman, injured while on vacation, held under the circumstances of this case, to have been on a special errand for the benefit of his employer, and that the injury arose out of and was proximately caused by the employment, and was compensable.—*Skidmore v. Golden State, etc., Co.*, 6 I. A. C. Dec. 183.

383. Traveling salesman—Poison oak poisoning.—Where a salesman rode over a country road with his wife in the course of his employment and his wife plucked some flowers at the side of the road near some poison oak shrubbery and he contracted poison oak but did not touch any object from which he could contract said ailment, it was held that there was no special exposure by reason of the employment to the risk of contracting poison oak and that therefore the ailment did not arise

out of the employment.—*Gates v. Ocean, etc., Co.*, 4 I. A. C. Dec. 368.

384. Traveling salesman—Assault by robber on country road.—Where a traveling salesman was required by his employment to travel by automobile on county roads and he carried small amounts of money which he collected from his employer's customers, and he was assaulted and killed by a stranger who had requested a ride and who robbed him of the money and valuables which he carried, and it did not appear that the region through which the deceased was traveling was especially subject to robberies or that the deceased carried or was reputed to carry such amounts of money or valuables as specially to subject him to the risk of assault, it was held that deceased was not specially exposed by reason of his employment to the risk of assault by robbers and that therefore the death did not arise out of the employment.—*Cullom v. Co-operative, etc., Co.*, 4 I. A. C. Dec. 365.

385. Nurse—Death from influenza—Not specially exposed by reason of employment.—The death of a nurse, not specially exposed, from influenza, during an epidemic, held not compensable.—*Frisbee v. State Compensation Insurance Fund*, 6 I. A. C. Dec. 77.

386. Hospital interne—Influenza.—Influenza contracted by a hospital interne attending influenza patients exclusively, held to have arisen out of the employment.—*Schwartz v. County of Fresno*, 6 I. A. C. Dec. 132.

See, also, *Slattery v. San Francisco*, 6 I. A. C. Dec. 140, which was the case of a hospital steward who attended influenza patients in a closed ambulance, helped to undress and put them to bed and contracted the disease after five days of service, and died from the effects of the same, and a similar conclusion was reached, and compensation awarded.

387. Hospital steward's special exposure to highly infectious disease.—Where a disease is contracted because of its highly infectious character and an employee's special exposure to it, by reason of his employment, it constitutes an injury within the meaning of the act.—*Slattery v. San Francisco*, 6 I. A. C. Dec. 140.

388. Policeman—Influenza—Special exposure.—A policeman, whose duties required him to be in close contact with influenza patients was held to be more specially exposed to the danger of contracting the disease than the commonalty, and his death from the disease therefore arose out of and way proximately caused by his employment.—*Holcomb v. State Compensation Insurance Fund*, 6 I. A. C. Dec. 144.

389. Ranch foreman—Accidentally shot.—Where a ranch foreman, while performing the duties of the employment was accidentally shot by a gun in the possession of a fellow employee who intended to use same outside of work hours for purposes unconnected with said employment, it was held that the injury arose out of and was

proximately caused by said employment.—*Estes v. Channon & Estes*, 4 I. A. C. Dec. 130.

390. Same—Injury from accidental discharge of gun.—Where an employer supplied a gun to his ranch employees with which to kill ranch pests, and an employee was injured at work by reason of the accidental discharge of the gun while it was being cleaned by another employee at the foreman's direction, it was held that the injury was a natural incident of the work and a normal result of the exposure occasioned thereby and that the injury therefore arose out of and was proximately caused by the employment.—*Padrino v. Shedd*, 4 I. A. C. Dec. 350.

391. An injury received by an employee from the accidental discharge of a gun, due to the jolting of the wagon in which such person was proceeding to his place of employment, is not an injury arising out of and in the course of his employment where the gun was taken along for the pleasure of a fellow employee as part of his belongings being conveyed to said place and had no connection with or bearing upon any part of his work notwithstanding the employer knew that he was taking the gun and made no protest thereto.—*Ward v. Industrial Accident Commission*, 175 Cal. 42, L. R. A. 1918A, 233, 164 Pac. 1123, 4 I. A. C. Dec. 117 (*Ward v. Ward*, 3 I. A. C. Dec. 220).

392. Millwright—Traveling employment.—An injury sustained by a millwright while journeying in an automobile belonging to his son to a place where he had been directed to go by his employer to install machinery, is an injury arising out of the employment, where it is shown that his employment was in the nature of a traveling employment.—*London, etc., Co. v. Industrial Accident Commission*, 35 Cal. App. 681, 170 Pac. 1074, 4 I. A. C. Dec. 386 (*Summers v. California Iron Works*, 4 I. A. C. Dec. 275).

393. Mill employee—Returning across railroad track from lunch.—Where employees of a milling company customarily, with the employer's knowledge, spent their lunch time on premises near the mill controlled though not owned by the employer, and were accustomed to cross a railroad track on their return to work, an employee injured while so crossing the track was held to have been performing service in the course of his employment at the time of his injury, and that the injury arose out of the employment.—*Jamison v. Sperry Flour Company*, 6 I. A. C. Dec. 132.

394. Mill employee—Actinomycosis.—Actinomycosis, contracted by a mill employee while grinding and sacking wheat and barley for feed, and filling sacks with pulverized grain from the spout of a grinding mill, is, under the circumstances of this case, an injury arising out of and in the course of his employment under the act of 1913.—*Hartford, etc., Co. v. Industrial Accident Commission*, 32 Cal. App. 481, 163 Pac. 225.

395. Piano salesman—Elevator accident on Sunday.—An employee of a piano com-

pany, who was hurt by falling into the elevator shaft in the building where the company occupied rented floor space, while attempting to use the elevator on his way to work, the elevator being under the sole control of the owner of the building, and maintained and operated for common use of all the tenants in the building has sustained an accident arising out of the course of his employment.—*Starr Piano Co. v. Industrial Accident Commission*, 58 Cal. Dec. 379, 184 Pac. 860, 6 I. A. C. Dec. 174 (*Steinkamp v. Starr Piano Co.*, 57 Cal. Dec. 212, 5 I. A. C. Dec. 81, 6 I. A. C. Dec. 39).

396. The fact that an employee entered the building where his employer occupied rented floor space, on Sunday, by means of a key surreptitiously obtained, and was injured while attempting to operate the elevator, in the absence of the operator, does not affect his right to compensation, under the circumstances of the present case.—*Starr Piano Co. v. Industrial Accident Commission*, 58 Cal. Dec. 379, 184 Pac. 860, 6 I. A. C. Dec. 174 (*Steinkamp v. Starr Piano Co.*, 57 Cal. Dec. 212, 5 I. A. C. Dec. 81, 6 I. A. C. Dec. 39).

397. An employee of a piano company, in charge of the company's exhibit on the fourth floor of the building, injured by falling in the passenger elevator shaft, into the open door of which he had entered for the purpose of operating the elevator to take himself and his companions to the floor on which was the exhibit, on Sunday, in the absence of the elevator operator, there being a safe means of reaching the floor by stairway, and he having entered the building with a passkey without the consent of his employer, is not entitled to compensation under the act.—*Starr Piano Co. v. Industrial Accident Commission*, 57 Cal. Dec. 212, 184 Pac. 860, 6 I. A. C. Dec. 39.

398. Typist—Elevator accident.—The act of a typist employed on the fourth floor of a building in going to the only restroom for women in the building on the ninth floor was an act reasonably incident to her employment, and was a proper use of the facilities provided for the employees of the tenants of the building, and the place of the injury on the ninth floor was constructively a part of the employer's premises, and the injury was compensable.—*O'Connell v. Blum's Advertising Agency*, 6 I. A. C. Dec. 225.

399. Clerk and bookkeeper—Automobile accident while mailing letters for employer.—An injury sustained by a clerk and bookkeeper from being run down by an automobile while crossing a public street to mail letters for his employer is an injury arising out of his employment.—*Globe, etc., Co. v. Industrial Accident Commission*, 36 Cal. App. 280, 171 Pac. 1088, 5 I. A. C. Dec. 36.

400. Bookkeeper—Injury from cranking automobile.—Where a bookkeeper was employed to work during the day only but on account of extra work was required to work with the manager at night with the understanding that he would be taken home from such night work in the employer's auto-

mobile and he was injured while cranking the automobile to go home from such work, it was held that said injury arose out of and happened in the course of the employment.—*Schentz v. Los Angeles, etc., Co.*, 4 I. A. C. Dec. 384.

401. Employee voluntarily remaining at work after office hours to help fellow employee.—An applicant for compensation who was injured while remaining on employer's premises after work and as voluntarily assisting a fellow employee, held not entitled to compensation, because performing service outside his duties.—*Speth v. Firestone, etc., Co.*, 6 I. A. C. Dec. 201.

402. Lighting cigarette by employee setting fire to oil-soaked bandage.—An injury sustained by an employee from the burning of a bandaged hand caused by the ignition of the bandage from a match which he had struck for the purpose of lighting a cigarette is an injury arising out of his employment.—*Whiting, etc., Co. v. Industrial Accident Commission*, 178 Cal. 505, 5 A. L. R. 1518, 173 Pac. 1105, 5 I. A. C. Dec. 152 (*Duarte v. Whiting, etc., Co.*, 4 I. A. C. Dec. 182, S. C., 5 I. A. C. Dec. 4, 38).

403. Same—Personal acts which an employee may do.—Under the act such acts as are necessary to the life, comfort and convenience of the servant while at work, though strictly personal to himself, and not acts of service, are incidental to the service, and injury sustained in the performance thereof is deemed to have arisen out of the employment.—*Whiting, etc., Co. v. Industrial Accident Commission*, 178 Cal. 505, 5 A. L. R. 1518, 173 Pac. 1105, 5 I. A. C. Dec. 152 (*Duarte v. Whiting, etc., Co.*, 4 I. A. C. Dec. 182, S. C., 5 I. A. C. Dec. 4, 38).

404. Janitor in public school.—Where a janitor of a public school was required to act as caretaker of the school premises during the summer vacation when he had few strictly janitorial services to perform, and he was specifically instructed not to allow any one to go through the building alone, and he was injured while showing through the building an insurance inspector who desired data on insurance rates in that vicinity, it was held that the act was reasonably incidental to his duties in general and that therefore the injury arose out of and happened in the course of his employment.—*Brown v. Conley School District*, 4 I. A. C. Dec. 353.

405. School teacher—Moving heavy seats to get needed book from bookcase.—An injury sustained by a public school teacher in moving a section of desks and seats in order to get to a bookcase and obtain a book therefrom, which she required in the course of her duties, was held to be an injury arising out of and sustained in the course of her employment.—*Elk Grove, etc., District v. Industrial Accident Commission*, 34 Cal. App. 589, 168 Pac. 392, 4 I. A. C. Dec. 284 (*Hoag v. Elk Grove, etc., District*, 4 I. A. C. Dec. 70).

406. Moving picture actor—Automobile accident.—An injury sustained by an actor employed by a moving picture company

while standing in a public street, engaged in social converse, from being struck by an automobile, is not an injury arising out of his employment, notwithstanding the corners of the intersecting street were occupied by the company as parts of its plant.—*Balboa, etc., Co. v. Industrial Accident Commission*, 35 Cal. App. 793, 171 Pac. 108, 5 I. A. C. Dec. 6 (*Stanley v. Balboa, etc., Co.*, 4 I. A. C. Dec. 162).

407. An injury received by a moving picture actor, while standing in a street, engaged in a social conversation with other employees of the same company, by being run over by an automobile driven by an officer of the same company, was not an injury arising out of his employment, although the company's plant occupied the four corners of the street crossing and he was at the time waiting to be called for service.—*Balboa, etc., Co. v. Industrial Accident Commission*, 35 Cal. App. 793, 171 Pac. 108.

408. Same — Same — Prerequisites to award.—To entitle an employee to compensation under the act it must appear that the injury is traceable to the nature of the employee's work or to the risks to which the employer's business exposes the employee, and that there is a causal connection between the conditions under which the employee works and the resulting injury; but it need not appear that the injury was foreseen or expected, but that after the event it must appear that it had its origin in a risk connected with the employment and to have followed that employment as a rational consequence.—*Balboa, etc., Co. v. Industrial Accident Commission*, 35 Cal. App. 793, 171 Pac. 108.

409. Watchman—Killed at post of duty.—The evidence in this case held sufficient to establish that the employee, a watchman, was assaulted while protecting his employer's property and that his death arose out of and was approximately caused by the employment.—*Drager v. Rosenberg, etc., Co.*, 6 I. A. C. Dec. 135.

410. Death with no witnesses present—Presumption.—Where an employee sustains a violent death while at work, with no witnesses present, and the circumstances are consistent with death caused in the course of and arising out of the employment, it will be presumed that such was the fact.—*Drager v. Rosenberg, etc., Co.*, 6 I. A. C. Dec. 135.

411. Night watchman—Performing service for fellow employee.—A corporation engaged in the construction of a railroad is not liable under the act for the death of a night watchman of a locomotive engine, whose duties were to stay on the engine nights and have it in readiness for the day's work, where such death occurred while he was temporarily in charge of a steam shovel, also operated in connection with the work, pursuant to a request of the person having the exclusive care and control of the shovel, which was without the knowledge or consent of his employer.—*Robert Sherer & Co. v. Industrial Accident Commis-*

sion, 175 Cal. 615, 166 Pac. 313, 4 I. A. C. Dec. 220 (Bowin v. Sherer, 4 I. A. C. Dec. 16).

412. Night watchman—Wilfully inviting detrimental occurrence.—An award made to the widow of a night watchman and janitor is not supported by sufficient evidence, where it may be deduced therefrom that the deceased wilfully stepped aside from the performance of his duties, and invited by direct action on his part the occurrence of the detrimental causes which produced his death.—John A. Roebbling's Sons Co. v. Industrial Accident Commission, 36 Cal. App. 10, 171 Pac. 987, 5 I. A. C. Dec. 11 (Bundshu v. John A. Roebbling's Sons Co., 4 I. A. C. Dec. 215).

413. Unexplained fall—Presumption.—An injury from an unexplained fall, not shown to be due to an attack of pre-existing illness, and not causally unconnected with the employment, occurring while performing service in the employment, held to have arisen out of and proximately caused by the employment, and proof of such injury so occurring discharges the burden of proof resting upon the applicant.—Schwartz v. Hines, 6 I. A. C. Dec. 238.

414. Fireman—Performing work according to custom out of the usual manner.—An award for the death of a fireman employed in a rolling mill operated by a railroad company, is within the jurisdiction of the commission, where the evidence shows that at the time of the death the deceased was performing the duty of his employment in accordance with the custom of the workmen, known to the foreman in charge, although not in the usual manner of performance.—Southern Pacific Co. v. Industrial Accident Commission, 177 Cal. 378, 170 Pac. 822, 5 I. A. C. Dec. 20 (Hunt v. Southern Pacific Co., 4 I. A. C. Dec. 107).

414a. Bookkeeper working extra hours at night—Taken home in employer's automobile.—Where a bookkeeper was employed to work during the day only but on account of extra work was required to work with the manager at night with the understanding that he would be taken home from such night work in the employer's automobile, which was used in the business, and he was injured while cranking the automobile to go home from such work, it was held that the said injury arose out of and happened in the course of the employment.—Schnetz v. Los Angeles, etc., Co., 4 I. A. C. Dec. 384.

414b. Teamster handling tanbark—Poisoned hands.—An injury sustained by a teamster handling rough tanbark which caused his hands to be bruised and poisoned, there being no time at which an accident occurred, was held to be an injury arising in the course of the employment and due to the occupation.—Seward v. Sunset, etc., Co., 3 I. A. C. Dec. 49.

414c. Night watchman on engine—Temporarily operating steam shovel.—A corporation engaged in the construction of a railroad is not liable under the act for the death of a night watchman of a locomotive engine, whose duties were to stay on the

engine nights and have it in readiness for the day's work, where such death occurred while he was temporarily in charge of a steam shovel, also operated in connection with the work, pursuant to a request of the person having the exclusive care and control of the shovel, which was without the knowledge or consent of his employer.—Sherer v. Industrial Accident Commission, 54 Cal. Dec. 64, 4 I. A. C. Dec. 220 (Dunn v. Steigh, 4 I. A. C. Dec. 16).

414d. Not arising out of employment.—The injury in the present case was held not to have arisen out of the employment.—Fishing v. Daly Bros., 2 I. A. C. Dec. 607 (see, also, 3 I. A. C. Dec. 215); Vittorio v. California Pottery Co., 3 I. A. C. Dec. 26.

414e. Employee on vacation.—An employee on vacation engaged in the diversions of horseback riding, deer hunting, etc., is not entitled to compensation, etc., and injured while so engaged, is not entitled to compensation, such injury not being reasonably incident to his employment or traceable to the nature of his work.—Continental Casualty Company v. Indiana Accident Commission (Cal.), 190 Pac. 849 (Skidmore v. Golden State, etc., Company, 6 I. A. C. Dec. 183).

b. Course of employment.

415. Reasonable act outside express duties—Employee not bound to fixed and unchangeable limits.—An employee is not bound to operate within fixed and unchangeable limits but is entitled to use his own judgment in the discharge of his duties to his employer, and a reasonable act performed by him in the general line of the duties of his employment, although outside of the strict limits of his instructed or usual duties, is within the course of his employment.—Landis v. Prosser, 4 I. A. C. Dec. 204.

416. Right not limited to injury sustained while actually manipulating the tools of his calling.—The right to compensation under the act is not restricted to injuries occurring while an employee is actually present manipulating the tools of his calling.—Judson, etc., Co. v. Industrial Accident Commission, 58 Cal. Dec. 29, 184 Pac. 1, 6 I. A. C. Dec. 151 (Gallia v. Judson, etc., Co., 6 I. A. C. Dec. 33).

417. Service not injury in course of the employment.—The right to an award under the act is not founded upon the fact that the injury grows out of and is incidental to his employment, but upon the fact that the service he was rendering at the time of the injury grows out of and is incidental to the employment.—Ocean, etc., Co. v. Industrial Accident Commission, 173 Cal. 313, 322, L. R. A. 1917B, 336, 159 Pac. 1041.

418. Injury sustained while going to or returning from work.—An employee injured while going to or returning from his work, whether his journey takes him over private or public ways, is not entitled to the benefits of the act.—Ocean, etc., Co. v. Industrial Accident Commission, 173 Cal. 313, 322, L. R. A. 1917B, 336, 159 Pac. 1041.

419. Exception to rule—Use of only available means of access.—Where an employee was killed about twenty feet in front of his employer's premises, while going there to work, the death was compensable, since deceased was approaching the only available access to the premises and the only way of reaching the entrance, and this means of approach had, to the knowledge of the employer, been used for years by his employees, although he owned no right of way there.—*Gallia v. Judson Manufacturing Co.*, 6 I. A. C. Dec. 33.

420. Same—Special exposure to risk.—The circumstances here take the case but of the rule that injuries incurred off the employer's premises, while going to or returning from work, are not compensable and show a special exposure to risk, and therefore the death is held to have arisen out of and to have been proximately caused by the employment.—*Gallia v. Judson Manufacturing Co.*, 6 I. A. C. Dec. 33.

421. Same—Special exposure of particular means of access.—Exception to rule that injuries incurred off employer's premises while going to or returning from work are not compensable is where the particular means of access specially exposed the employee to great risk of injury, and the employer fails to provide other means.—*Gallia v. Judson, etc., Co.*, 6 I. A. C. Dec. 33.

See, also, *De Constantin v. Public Service Commission*, 83 S. E. 88; *Hills v. Blair*, 148 N. W. 243; *In re Sundine*, 105 N. E. 433 (*Gomez v. Etna, etc., Co.*, 6 I. A. C. Dec. 54).

422. Miner—Return to mine after temporary absence on private business.—An injury sustained by a miner while returning to the mine after a temporary absence on private business to a distant city, was held not to be an injury happening in the course of his employment.—*Bogges v. Industrial Accident Commission*, 54 Cal. Dec. 598, 4 I. A. C. Dec. 343 (*Fenner v. Bogges*, 4 I. A. C. Dec. 40).

423. Injury on way to receive pay check, after discharge.—An employee who was injured after his discharge while on his way to receive his pay draft, was held to have been engaged in the course of his employment.—*McFarland v. Madera, etc., Co.*, 5 I. A. C. Dec. 124.

424. Returning after quitting employment.—Where a woodsman quit his employment for a week-end trip, with the expectation of being re-employed on his return, and his employer advanced to him the railroad fare, to be deducted from his wages thereafter to be earned, and the employee was injured while returning on a train for further employment, it was held that said injury did not happen in the course of any employment of said woodsman.—*McKenzie v. McCloud, etc., Co.*, 4 I. A. C. Dec. 389.

425. Seaman—Reaching and departing from ship.—A seaman or other employee of a vessel is entitled to the benefits of the act if injured while using the instrumentality provided either in reaching or departing from his ship, and in case no instrumentality at all is provided.—*Ocean, etc., Co. v.*

Industrial Accident Commission, 173 Cal. 313, 322, L. R. A. 1917B, 336, 159 Pac. 1041.

426. Same—Seeking to board vessel.—A seaman or employee of a vessel can not be said to be seeking to board his vessel, within the meaning of the rule allowing him compensation in such a case, until he has come into such proximity as to be using or immediately about to use the gangplank, ladder or other instrumentality "specifically connected with the ship."—*Ocean, etc., Co. v. Industrial Accident Commission*, 173 Cal. 313, 322, L. R. A. 1917B, 336, 159 Pac. 1041.

427. Seaman—Adopting perilous means of boarding ship, when no other instrumentality is provided.—In the case of a seaman or other employee an injured employee will not be excluded from the benefits of the act if he adopts some perilous means of boarding his ship, as by endeavoring to leap to her deck from the pier, where no instrumentality of reaching the ship is provided.—*Ocean, etc., Co. v. Industrial Accident Commission*, 173 Cal. 313, 322, L. R. A. 1917B, 336, 159 Pac. 1041.

428. Use of hazardous means of exit from employer's premises when safe means exist.—The use by an employee of a hazardous means of leaving his employer's premises when a perfectly safe method of exit is afforded him and he uses such hazardous means for his own convenience and in order to save a few minutes of his own time, is an added risk not contemplated in the contract of hire and an injury sustained thereby was held not to arise out of or in the course of the employment, nor while performing any service in the same.—*Sharp v. Mammoth, etc., Co.*, 5 I. A. C. Dec. 124.

429. Injury while leaving place of employment by unusual and dangerous exit.—The dependents of a ship bolter who sustained a fatal injury while leaving the place of employment to go to lunch, by an unusual and dangerous exit were not entitled to compensation.—*Moore & Scott Iron Works v. Industrial Accident Commission*, 36 Cal. App. 582, 172 Pac. 1114, 5 I. A. C. Dec. 85.

429a. Rule of reasonable time to get off employer's premises.—Where an employee performing services as guard at a battery house situated at a point between the smelter and the mine belonging to his employer and all located on property of such employer, was injured on a railroad connecting the mine and the smelter, it was held that the rule that an employee should be allowed a reasonable margin of time to get off the employer's premises did not apply, owing to the large extent of the property.—*Sharp v. Mammoth, etc., Co.*, 5 I. A. C. Dec. 124.

430. On way to place of employment.—If an employee is merely on his way to the place of employment, and is injured, the injury is not one sustained in the course of the employment.—*Starr Piano Co. v. Industrial Accident Commission*, 58 Cal. Dec. 379, 184 Pac. 860, 6 I. A. C. Dec. 174 (*Steinkamp v. Starr Piano Co.*, 57 Cal. Dec. 212, 5 I. A. C. Dec. 81, 6 I. A. C. Dec. 39).

431. Arrival at place of employment, seeking entrance, sufficient.—It is sufficient, under the act, if the employee has come to the employer's premises, and is seeking entrance thereto by the means of access provided by the employer, or reasonably used by the employee, to entitle him to compensation for an injury then sustained, and it is not necessary that he should have actually begun to render service.—*Starr Piano Co. v. Industrial Accident Commission*, 58 Cal. Dec. 379, 184 Pac. 860, 6 I. A. C. Dec. 174 (*Steinkamp v. Starr Piano Co.*, 57 Cal. Dec. 212, 5 I. A. C. Dec. 81, 6 I. A. C. Dec. 339).

432. Arrival at place of employment, ready to perform service.—When an employee has arrived at the premises of his employer and is thereon for the purpose of immediately commencing his work, he is performing service incidental to his employment within the meaning of the act.—*Judson, etc., Co. v. Industrial Accident Commission*, 59 Cal. Dec. 291, 184 Pac. 1, 6 I. A. C. Dec. 151 (*Gallia v. Judson, etc., Co.*, 6 J. A. C. Dec. 33).

433. Injury while about to enter place of employment.—An employee about to go aboard of the dredger where he was employed to assume his duties, was injured by a wire fastening the dredger to the bank and it was held that the injury was compensable.—*Gust v. Sacramento, etc., Co.*, 5 I. A. C. Dec. 164.

434. Injury on way to business in employer's automobile on employer's time.—An employee who was injured while being conveyed to work in his employer's vehicle and upon his employer's time, was held to have been injured in the course of his employment.—*Proctor v. Lindgren Co.*, 5 I. A. C. Dec. 115.

435. Injured in automobile accident on way to work.—Where an employer furnishes his employee with an automobile to convey him about while engaged in his employment, and while not so engaged, and paid the expenses of the upkeep of such machine, and such employee was injured while on his way to work, in such machine, it was held that he was entitled to compensation, since the risks of that mode of conveyance, when selected by the employer, became a part of the risks of the employment.—*Johnson v. Pure Milk Dairy Co.*, 6 I. A. C. Dec. 257.

436. Employee injured while on his way to attend a meeting called by employer.—An employee fatally injured while on his way to attend a meeting of the employees with the executive officer of the employer in charge of the employees' department, by the direction of the employer, and concerning the employer's business and his interest, in the employer's automobile, was held to have been engaged on a special errand in the course of his employment, and that the risk of the street injury was a risk to which he was specially exposed by reason of his employment, and that the injury was compensable.—*McConaughy v. Board of Public Service Commissioners of Los Angeles*, 6 I. A. C. Dec. 260.

437. Injury while crossing the street on way to work—Stopping to converse with fellow employee an allowable personal act.—Where an employee in the course of the duties of his employment, while crossing the street, stopped on the street to converse for a minute with a fellow employee, it was held that the act of stopping was one of the many personal acts which an employee may do in connection with his employment without taking him out of the course of his employment.—*Stanley v. Balboa, etc., Co.*, 4 I. A. C. Dec. 162.

But see *Balboa, etc., Co. v. Industrial Accident Commission*, 35 Cal. App. 793, 5 I. A. C. Dec. 6.

438. Going to and from work—Payment of transportation.—If transportation is provided as part of the contract of hire, injuries are usually construed compensable if the employee is likewise paid for his time both "going and coming" the case is clearly compensable.—*Wedgwood v. Victory Motor Co.*, 5 I. A. C. Dec. 215.

439. Going to and from work—Cost of transportation deducted from employee's wages.—Where an employee was transported at close of work to his home in an automobile neither owned nor operated by his employer, and a charge therefor was made, it was held that the employer did not furnish the transportation and that the injury to the employee while being so transported was not in the course of the employment.—*Wedgwood v. Victory Motor Co.*, 5 I. A. C. Dec. 215.

440. Injury during transportation from work to camp.—Where pursuant to the terms of the employment an employer transported its employees on auto trucks between the camp where they lived and the place in which they worked, and employees were allowed to ride on any of the employer's trucks if enough trucks regularly provided were not available, and an employee was injured while boarding a truck not usually used for conveyance it was held that the injury happened in the course of the employment.—*Radish v. Associated Oil Company*, 4 I. A. C. Dec. 375.

441. On way to lunch on employer's premises.—An injury sustained by an employee while on his way to lunch, is an injury in the course of employment, when occurring in part of employer's premises which was in use, even though such employee had left the actual scene of his own work.—*Koster v. Union Lumber Co.*, 5 I. A. C. Dec. 179.

442. Barber shop employee—Injured in elevator.—The fact that the elevator, in the closing doors of which an employee of a tenant of the building was caught and injured, was controlled by the owners of the building from whom the employer leased his shop, is unimportant, and such elevator was a part of the employer's premises.—*Popineau v. Industrial Accident Commission*, (Cal. App.), 187 Pac. 988, 6 I. A. C. Dec. 246 (*Miles v. Popineau*, 6 I. A. C. Dec. 74).

And the fact that the elevator was used

by all persons having occasion to do so as a means of access to the building did not affect the injured employee's right to compensation.—*Same v. same*.

443. Same—Employee leaving place of employment with employer's consent.—If an employee leaves the place of his employment with his employer's consent and approval, to procure a bottle of milk to use with his lunch, as was his custom, he, though ministering to himself, is, nevertheless, in a remote sense, in that one who works must eat, engaged in an act which contributes to his efficiency and furtherance of his work.—*Popineau v. Industrial Accident Commission*, (Cal. App.) 187 Pac. 938, 6 I. A. C. Dec. 246 (*Miles v. Popineau*, 6 I. A. C. Dec. 74).

444. Employee of different employers—Deviation from direct route home.—Where an applicant for compensation was employed by different employers at different times of the day and was unable to complete all the duties of the first employment before he entered upon the duties of the second employment, and while serving the second employer he had to go to his home and intended to deviate from a direct route home to complete the duty for the first employer, but before making said deviation he was injured, it was held that said injury happened in the course of the employment of the second employer only.—*Davis v. Earl Publishing Co.*, 4 I. A. C. Dec. 234.

445. Stopping to take drink while on errand for employer.—An injury sustained by an employee while performing an errand and when stopping for a drink was held to be compensable.—*Roney v. Ne Page, etc., Co.*, 5 I. A. C. Dec. 129.

446. Injury on return from business trip after temporary digression for pleasure.—An injury when returning from a business trip after a temporary digression for pleasure held to have been incurred in the course of the employment.—*Kelley v. American, etc., Co.*, 5 I. A. C. Dec. 53.

447. On way home after service—No fixed hours of employment.—Where a bookkeeper, after inspecting certain of his employer's vineyards, such inspection being a duty of his employment, went to his home to leave his bicycle and get some refreshments, and he was injured while riding in an automobile from his home to his employer's office, and he was employed on a monthly salary and had no prescribed hours of employment, was held to have arisen out of and in course of said employment.—*Rata v. Setchel, etc., Co.*, 4 I. A. C. Dec. 184.

448. Maid employed to do housework injured while off duty.—A maid, employed to do general housework in a sanitarium, and in addition to attend patients, was not entitled to compensation for an injury sustained by slipping on a wet floor, at a time when she was not on duty, and while she was preparing to do work for herself.—*Gernhardt v. Industrial Accident Commission*, 30 Cal. App. 129, 185 Pac. 307, 6 I. A. C. Dec. 166.

449. Miner—Washing up after end of time on duty.—Where a miner working on a night shift, at the end of his hours of labor, went to his tent, washed up, and returned to the mine, according to custom, for the purpose of investigating two unexploded blasts left by his shift, for the purpose of making them safe for the next shift, and, on his return to his tent after performing this necessary duty, was shot by a mine watchman, it is held that his injury grew out of and occurred in the course of his employment.—*Atolia Mining Co. v. Industrial Accident Commission*, 175 Cal. 691, 692, 167 Pac. 148.

450. Traveling salesman on trip—Injury at hotel after end of day's work.—Where a traveling salesman on a trip in his employment, was injured while entering the washroom in his hotel after concluding his work for the day, it was held that the injury did not arise out of or in the course of his employment.—*Peterson v. Arnstein, etc., Co.*, 4 I. A. C. Dec. 85.

451. Fireman taking rock from loaded car to bed furnace.—The act of a fireman in taking rock used to bed his furnace, from loaded cars, outside of his expressed and usual duties, for purposes of preventing delay and inconvenience in firing the furnace, was held under the circumstances of the emergency to be reasonable and proper within the course of his employment.—*Hunt v. Southern Pacific Co.*, 4 I. A. C. Dec. 107.

452. Mine truck driver—Adding side boards to truck.—Where a truck driver at a copper mine was injured while using a rip saw in the company's sawmill for the purpose of cutting material for side boards to his truck to enable him to haul a larger quantity of lumber, and he had been instructed prior to the accident to use or assist in using such saws, and no objection was made to the use upon that occasion by the sawyer in charge, it was held that the injury arose while such person was acting within the scope of his employment, and the evidence was sufficient to sustain the award.—*Calaveras Copper Co. v. Industrial Accident Commission* (Cal. App.) 6 I. A. C. Dec. 243 (*Jordan v. Calaveras Copper Co.*, 6 I. A. C. Dec. 193).

453. Attempting rescue of child in danger.—Where the essential question was whether the employee was injured in the course of his employment, and it was shown that the injury was received while the employee was engaged in stabling a team of horses for his employer, by being struck by an automobile accidentally backed upon him by an officer of the employer, who was there on the employer's business, and while in the act of attempting to rescue a child in danger of being run over by the automobile, the failure of the commission to give the insurance carrier an opportunity to cross-examine witnesses or introduce counter-testimony, was without prejudice to it.—*The Ocean, etc., Corporation, Limited, v. Industrial Accident Commission*, 57 Cal. Dec. 4764, 6 I. A. C. Dec. 82.

454. Teamster at municipal woodyard.—Performance of service ordered by superintendent.—A teamster employed at a municipal woodyard, the object of the establishment of which was the relief of indigent persons, was entitled to compensation from the municipality for an injury received while on his way, in compliance with the orders of the superintendent of the yard, to make the household effects of an indigent family.—*Oakland v. Industrial Accident Commission*, 35 Cal. App. 484, 170 Pac. 430, 4 I. A. C. Dec. 363 (*Norton v. Oakland*, 4 I. A. C. Dec. 231).

455. Hotel chambermaid.—Cleaning light well.—An injury received by a chambermaid while engaged in cleaning a light well, which was no part of her duties, and which she voluntarily assumed to perform in the absence of her employer and without the employer's knowledge or sanction, is not an injury arising out of and in the course of her employment, even though the attempted duty was done from the viewpoint of loyalty to the employer's interest.—*Williamson v. Industrial Accident Commission*, 177 Cal. 715, 171 Pac. 797, 5 I. A. C. Dec. 60 (*Landis v. Williamson*, 4 I. A. C. Dec. 204).

456. Ranch hand, after finishing work, on trip to town to assist foreman to get other workmen.—Where a ranch hand, after finishing his Sunday work, accompanied the foreman on a trip to town to get other workmen, although he went for his own pleasure and would have performed other services at the ranch that evening had he remained, and his injury was occasioned by cranking the foreman's automobile in town, it was held that since the ranch hand was actually assisting the foreman in a service in line with the duties of his employment, he was acting within the course of his employment.—*Crawford v. Jones, etc., Co.*, 4 I. A. C. Dec. 180.

457. Caring for horses on employer's ranch after end of day's work.—Employment by day.—Where a teamster who was employed with a team for a per diem wage, and the keep of his horses on his employer's ranch, was injured while caring for the horses after the close of the day's work, it was held that the injury was non-compensable, on the ground that the employment ended at the termination of the day's work, and the act of caring for the horses therefore were personal to the applicant and the injury not sustained in course of employment.—*Roux v. Batcher*, 5 I. A. C. Dec. 113.

458. Unusual employment — Laborer shoveling gravel.—Driving gravel teams.—Under the act of 1913 an injury received by a person employed as a laborer to shovel gravel, while driving a team hauling a gravel wagon under a temporary exchange of places between him and the teamster, is not an injury arising out of the course of his employment.—*County of Modoc v. Industrial Accident Commission*, 32 Cal. App. 548, 163 Pac. 685, 4 I. A. C. Dec. 25 (*Lytle v. County of Modoc*, 3 I. A. C. Dec. 382).

459. Chauffeur of taxicab shot by intoxicated passenger.—A chauffeur employed by a taxicab company who was shot by a passenger whom he had taken, together with a woman, to a roadhouse, while the passenger was intoxicated, was held to have sustained the injury in his employment and was entitled to compensation.—*Harvey v. O'Neil*, 5 I. A. C. Dec. 28.

460. Secretary of garage corporation.—Injury on way to inspect land proposed in exchange for garage business.—Where the secretary of a garage corporation was injured by an automobile accident while engaged in inspecting farm land for which it was proposed to exchange the garage business it was held that the injury was sustained while rendering services incidental to the employment, that the employment at the time of the injury was neither casual or outside of the usual course of the employee's business and that it was not farm repair.—*Evans v. Bay Cities, etc., Corporation*, 5 I. A. C. Dec. 122.

461. "Dump tender" or "ice puller," injured by fall from floor to which he had not been assigned.—Where a "dump tender" or "ice puller" for an ice and cold storage company was injured by a fall from one of the upper floors of the building down the elevator shaft to the basement, it was held that the injury was not sustained in the course of his employment, he not having been expressly assigned to duty which would take him on the upper floor.—*Casualty Company v. Industrial Accident Commission*, 54 Cal. Dec. 599, 4 I. A. C. Dec. 340.

462. Stevedore on employer's premises.—Chopping wood to keep warm.—Where a stevedore sustained an injury on the premises of the company while chopping firewood with which to keep warm during a temporary cessation of labor because of rain, no provision being customarily made by the employers for shelter as part of their wages, it was held that said injury did not occur in the course of employment of the applicant.—*Peters v. Schirmer, etc., Co.*, 4 I. A. C. Dec. 134.

463. Night watchman.—Injured while using circular saw.—An award of compensation made by the commission to a night watchman for an injury received while using a circular saw for the purpose of making a board of suitable length to barricade a door of the premises which he was employed to watch is unwarranted, as the resort to the use of the saw was beyond the scope of his employment, and not a resort to reasonable means for the purpose of securing the end intended.—*Brusster v. Industrial Accident Commission*, 35 Cal. App. 81, 169 Pac. 258, 4 I. A. C. Dec. 327 (*Gaspar v. Brewster, Jr.*, 4 I. A. C. Dec. 240).

464. Employee stopping to light cigarette.—Accidental gunshot.—Where an employee went to the bunkhouse and procured some nails and matches and he stopped for a moment outside the bunkhouse to light a cigarette and was shot in the leg as a result of the accidental discharge of a gun

which was being cleaned by a fellow employee, it was held that he was injured in the course of the employment.—*Padrino v. Shedd*, 4 I. A. C. Dec. 350.

465. Motion picture actors racing horses to corral.—It was held in the present case that a fourteen-year-old Mexican boy employed by a motion picture company was injured while racing his horse to a corral, that said employee was acting within the course of his employ and said injury arose out of said employment.—*Villaneva v. Fox Film Co.*, 4 I. A. C. Dec. 191.

466. Driver of street flushing vehicle.—Fall from same.—The driver of a street flushing vehicle is entitled to compensation for an injury sustained by falling from the vehicle while in the act of attempting to prevent a wrench from falling from the footboard into the street, although, at the time of the accident he had permitted another person to run the truck, while he was manipulating the lever to discharge the water.—*Employer's, etc., Co. v. Industrial Accident Commission*, 36 Cal. App. 568, 177 Pac. 171, 5 I. A. C. Dec. 79.

467. Surveyor.—Inspection and consultation.—A surveyor in the present case was held to have been injured in the course of his employment, the act of inspection and consultation being within the general scope of the duties of a surveyor in such circumstances.—*Brackins v. Trinity, etc., Co.*, 3 I. A. C. Dec. 22.

467a. Employment of special officer as watchman.—Where a private company or individual employs a watchman or special officer, and in making the selection deliberately chooses an officer of the law, in order to take advantage of his authority, and such officer performs acts advantageous to and expressly or impliedly directed by the employer, which happen, at the same time, to be acts which would be his official duty to perform, such employee is acting within the course of his employment within the meaning of the proviso of section 8(a) of the act.—*Engels, etc., Co. v. Industrial Accident Commission*, 58 Cal. Dec. 411, 8 A. L. R. 187, 185 Pac. 182, 6 I. A. C. Dec. 206.

468. Going to aid of fellow workman in dangerous situation.—An employee who comes to the aid of a fellow workman in a dangerous situation is in the course of his employer's business.—*United States, etc., Co. v. Industrial Accident Commission*, 174 Cal. 616, 163 Pac. 1013, 4 I. A. C. Dec. 79 (*Maffia v. Aquilino*, 3 I. A. C. Dec. 15; *Zanotti v. Aquilino*, 3 I. A. C. Dec. 53).

469. Nursing influenza patients, outside employment, with employer's consent.—Where an employee, by way of special service outside his regular employment, with his employer's consent, attended influenza patients in his employer's hospital, and contracted the disease, his services as such attendant were within the scope of his employment and the disease was an injury which, because of special exposure beyond the commonalty, arose out of and was proximately caused by the employment.—

Rebstock v. Engels, etc., Co., 6 I. A. C. Dec. 146.

470. Voluntary services.—Services outside of employment, performed at employer's request.—An injury sustained by an employee in the performance of services outside his duties, voluntary in nature, is not an injury suffered in the course of the employment, but where a safety engineer at a mine was directed by the superintendent to assist in caring for influenza patients, his services were not voluntary, though exceptional, and were in the actual scope of his employment because rendered in response to the company's direction, and his disability from heart disease, due to contracting influenza, was compensable.—*Engels, etc., Co. v. Industrial Accident Commission*, (Cal.) 192 Pac. 845.

See, also, *San Francisco v. Industrial Accident Commission*, (Cal.) 191 Pac. 26.

471. Employee, paid full salary, serving the government voluntarily.—An employee, paid full salary, while serving the government, with employer's consent, but not by its direction, and injured while so engaged, was not injured in the course of his employment, and his employer was not liable for compensation.—*Lord v. Goodyear, etc., Co.*, 6 I. A. C. Dec. 148.

472. Voluntary service.—Assistance to person injured by employer's train.—A clerk in the freight auditing department of a railroad company was not performing a service growing out of or incidental to his employment when he, voluntarily and without orders, alighted from a train of the company to render assistance to a person injured by the train, and was killed while attempting to reboard the train, notwithstanding the fact that he was traveling in the performance of his duty as such clerk, the rules of the company not requiring him to render assistance in such a case, but on the contrary, confined that duty to the conductor and brakemen.—*Northwestern Pacific Co. v. Industrial Accident Commission*, 174 Cal. 297, L. R. A. 1918A, 286, 163 Pac. 1001.

473. Service volunteered.—Acquiesced in by employer.—An employee, who, for his own pleasure, actually renders a service for his employer in line with the duties of his employment at his own request or suggestion and with the acquiescence of his employer, is acting within the course of his employment.—*Crawford v. Jones, etc., Co.*, 4 I. A. C. Dec. 180.

474. Voluntary service with employer's acquiescence.—Motive immaterial.—The motive of an employee for rendering voluntary service is immaterial where employer acquiesces.—*Crawford v. Jones, etc., Co.*, 4 I. A. C. Dec. 180.

475. Employee at home, compelled to go to employer's place of business to open safe for robbers.—Where an employee, entrusted with the combination and a key to the inner door of his employer's safe, was killed by a robber, prompted by a desire to rob the safe, and because of the employee's inability or unwillingness to assist him with his

knowledge of the combination and use of the key, he was held to have been killed in the course of his employment, although not during the hours of duty and not on the premises at the time.—*Smith v. Germantown Rochdale Co.*, 5 I. A. C. Dec. 25.

c. Proximately caused by employment.

476. Unexplained death—Absence of evidence to contrary—Presumption.—In the absence of evidence to the contrary, an unexplained death of an employee, occurring under the circumstances of this case, is presumed to have arisen out of and to have been proximately caused by the employment and is therefore compensable.—*Fahey v. Woodward, etc., Co.*, 6 I. A. C. Dec. 216.

477. Employed in violation of law—Injury to sixteen-year-old boy.—Where a foreman erroneously, but not wilfully, employed a sixteen-year-old boy to operate a tin pressing machine, in violation of the child labor law of 1917, an injury resulting from an accident in operating such machine, was held not to have been caused by such violation of the law.—*Lundgren v. Hammer-Bray Co.*, 6 I. A. C. Dec. 17.

478. Actinomyces following employment in grain mill.—An award of the commission to an employee of a grain and milling company for an affliction of the nose and mouth (actinomyces), claimed to have been contracted while employed in the work of grinding and sacking wheat and barley for feed, and while actively engaged in filling sacks from the spout of the grinding mill, is held to have been properly made where it is shown by expert evidence that such disease could be conveyed by grain to the human organism, and by the testimony of the employee himself that he had not theretofore suffered from any such disorder.—*Hartford, etc., Co. v. Industrial Accident Commission*, 32 Cal. App. 481, 163 Pac. 225, 4 I. A. C. Dec. 1 (*Burris v. Perkins*, 3 I. A. C. Dec. 465).

479. Apoplexy following quickly injuries to left hip and elbow from fall.—Where a teamster suffered severe injuries to his left elbow and hip from a fall from his wagon and suffered about three hours afterwards an apoplectic stroke resulting in paralysis, it was held that under the circumstances the injury was the proximate cause of the entire disability.—*Selaya v. Ruthven & Cerrano*, 5 I. A. C. Dec. 238.

480. Acute bronchitis following injury to chest.—Where an employee sustained an injury to his chest and two days afterwards was found to be suffering from acute bronchitis, and medical opinion was to the effect that bronchitis is not a direct result of trauma but may be a secondary effect produced by the lowering of vitality caused by trauma, it was held that the connection between the injury and the bronchitis was too indirect and uncertain to warrant a finding that the bronchitis was proximately caused by the injury.—*Vieira v. California, etc., Co.*, 4 I. A. C. Dec. 87.

481. Hysterical blindness following electric flash.—It was held in the present case

that hysterical blindness which followed an electric flash, was not proximately caused by and did not arise out of the employment.—*Embee v. Western, etc., Co.*, 4 I. A. C. Dec. 279.

482. Dementia praecox can not be caused by a fracture of the right tibia.—It was held that dementia praecox can not be caused or precipitated by trauma and that this type of insanity following a fracture of the right tibia was not caused by the accident.—*Oliver v. Birdsall*, 5 I. A. C. Dec. 193.

483. Dislocation of knee cartilage from distinct trauma.—A recurrence of a dislocation of cartilage of knee following a distinct trauma is compensable.—*Saunders v. Northwestern, etc., Co.*, 6 I. A. C. Dec. 222.

484. Duodenal affection following blow.—Where an employee in good health and without signs of stomach or duodenal trouble received a blow in that region, and at once was affected with pains and continuous disability, the blow being sufficient to cause internal injuries and two months later his ailment was diagnosed as duodenal ulcer, but its previous existence was only conjectural, or if it existed at the time of the accident, was dormant, and that it would have become acute by reason of the blow, it was found that the disability would not have been sustained but for the accident, and that it was proximately caused thereby.—*Snyder v. Pacific, etc., Co.*, 3 I. A. C. Dec. 1.

485. Fainting spell—Distinguished from Bellis v. Doan, 4 I. A. C. Dec. 340.—Fainting spell, resulting in injury, distinguished from the case of *Bellis v. Doan*, 4 I. A. C. Dec. 340, in that the circumstances do not show that the applicant's work in the course of his employment was sufficient to be considered as the proximate cause of the fainting fit and resulting injury.—*Baker v. Sloane*, 6 I. A. C. Dec. 1.

486. Fall down stairs—Apoplexy.—In this case it was held that the injury and death of the employee was caused by an accidental fall down a flight of stairs at the place of employment and not because of an attack of apoplexy, and that the death rose out of and was proximately caused by the employment.—*Henna v. Coppa's Red Paint Restaurant*, 6 I. A. C. Dec. 33.

487. Death from rupture of right ventricle following fall from ladder.—Where upon a proceeding to review an award of the commission for the death of a painter, the only point made in opposition to the award was that the fracture of the pelvic bone which the deceased sustained from a fall from a ladder was the proximate cause of death, but the immediate cause of death was a small rupture of the right ventricle of the heart and there is substantial testimony justifying the inference that the fall was the cause of the death, the award must be affirmed.—*Santa v. Industrial Accident Commission*, 175 Cal. 235, 165 Pac. 639, 4 I. A. C. Dec. 169 (*Cordova v. Santa*, 3 I. A. C. Dec. 180).

488. Hernia resulting from constant

heavy lifting.—Hernia gradually produced by constant heavy lifting in an employment as a concrete laborer requiring such lifting is compensable.—*Andersen v. Healy Tibbitts, etc., Co.*, 6 I. A. C. Dec. 222.

489. Death from tubercular pneumonia following operation for hernia.—Death from tubercular pneumonia, following an operation for hernia, incurred in employment, held compensable.—*Cox v. California, etc., Co.*, 5 I. A. C. Dec. 10.

490. Lobar pneumonia following bruise on left side between lower ribs and hip bone.—Lobar pneumonia, from which death resulted, held not to have been proximately caused by an injury from a bruise on the left side midway between the hip bone and the lower ribs.—*Durnford v. Moore Shipbuilding Co.*, 6 I. A. C. Dec. 41.

491. Manic depressive insanity—Blow on head.—Employee's injury held under the circumstances shown, to have caused manic depressive insanity precipitated by a blow on the head.—*Aetna, etc., Co. v. Burgner*, 6 I. A. C. Dec. 20.

492. Malposition of bone after fracture of leg.—It was held in the present case, where a disability resulting from the malposition of a bone after fracture of the leg in the course of employment, was proximately caused by the original injury.—*Silveira v. Grayson, etc., Co.*, 4 I. A. C. Dec. 229.

493. Osteoarthritis following sprain of back, hips and leg.—Where a piano repairer sprained his back, hips and left leg and felt a sudden pain but continued to work for two weeks and was then disabled from a condition of osteoarthritis for six weeks, after which his disability ceased and he returned to work, and he had suffered no such disability theretofore, it was held that said disability was proximately caused by said injury.—*Thomas v. Eiler's Music Co.*, 4 I. A. C. Dec. 212.

494. Pemphigus—Skin disease following cut of hand of butcher.—Where a butcher cut his hand while working on the carcass of a sheep in a slaughter house and he thereafter suffered a skin disease and the medical testimony was to the effect that the symptoms manifested thereby were characteristic of pemphigus, it was held that said disease was proximately caused by and arose out of employment.—*Guihan v. Fagan*, 4 I. A. C. Dec. 289.

495. Death from pneumonia following injury to head.—Fatal pneumonia suffered by an employee when recovering from an injury to the head, held not to have been caused by the injury.—*Meyer v. Los Angeles*, 6 I. A. C. Dec. 235.

496. Prolapsus uteri following lifting of heavy bundle.—Where a woman employed as a sleeve-setter, at the time of lifting a bundle weighing fifty pounds experienced an abdominal pain which subsequent medical examination disclosed to be the result of prolapsus uteri, disabling her after two weeks of further work and the evidence showed that malposition of the uterus must have antedated the pain though unknown to

the employer and that but for the strain of said lifting she would have been able to continue with her work indefinitely though without a strain she was likely to have become disabled at some time, it was held that the disability was proximately caused out of the lifting and arose out of the employment.—*Bart v. Cohn Goldwater Co.*, 5 I. A. C. Dec. 241.

497. Pulmonary pneumonia ten days after injury to arm.—It was held that death from pulmonary tuberculosis ten days after an injury to an arm, was not proximately caused by the injury nor by the employment, and was not compensable.—*Scott v. Birch Oil Co.*, 5 I. A. C. Dec. 197.

498. Tachycardia and hyperthyroidism—Vibrations of air drill against chest.—It is held that tachycardia and hyperthyroidism did not result from the vibrations of an air drill against an employee's breast.—*Ellis v. Los Angeles, etc., Co.*, 6 I. A. C. Dec. 266.

499. Tonsillitis and diabetes following blow on abdomen.—Where a boilermaker was struck in the abdomen and three weeks thereafter suffered tonsillitis, and shortly thereafter he was found to be suffering from diabetes, it was held that the evidence was insufficient to show that said tonsillitis and diabetes were proximately caused by said injury or arose out of said employment.—*Williams v. California, etc., Works*, 4 I. A. C. Dec. 202.

500. Disability characteristic of injury and specific disease.—Where an employee sustained an injury to his head and thereafter suffered symptoms characteristic of both such an injury and a specific disease, and the results of the injury could be complicated and the disability increased by such disease but the injury itself could not precipitate such acute symptoms and it was doubtful whether the employee had such disease and he was able to do hard work, it was held that the whole difficulty was proximately caused by the injury.—*Wilson v. Mesmer & Rice*, 4 I. A. C. Dec. 139.

501. Disability due partly to injury and partly to pre-existing disease.—Where a disability is due partly to an injury received by the employee and in part to pre-existing osteoarthritis, it is held that the disability due to the osteoarthritis was non-compensable.—*Porter v. Morse*, 4 I. A. C. Dec. 199.

502. Existing disability is accepted by employer.—An employer accepts an employee subject to a physical disability existing at the time the latter entered his employment, and an injury sustained because of such existing disability is nevertheless compensable.—*Phillips v. Southern California Edison Co.*, 6 I. A. C. Dec. 237.

503. Disability aggravated by specific disease.—Where an injury is sufficient to produce symptoms similar to those which follow the injury but such symptoms are aggravated to a comparatively slight degree by a previous existing specific disease, the whole condition is proximately caused by the injury unless the injury merely precipitated an acute exacerbation of such dis-

ease.—*Wilson v. Mesmer & Rice*, 4 I. A. C. Dec. 139.

504. Impetus to pre-existing disease given by injury.—Where a carpenter suffered from dizziness and headaches and died of softening of the brain soon after or within a short time after a fall from a scaffold, it was held that in view of the testimony of brain and medical witnesses that while the ailment would have ultimately caused death, the injury would probably not have proved fatal except for the impetus given to the pre-existing injury to the brain, it was held that the death was proximately caused by the injury.—*Perry v. Brown*, 4 I. A. C. Dec. 163.

505. Osteoarthritis and arteriosclerosis lighted up by blow.—Where a painter had chronic osteoarthritis and arteriosclerosis, which, however, were causing him no disability, and he fell and sustained a blow on the foot which lighted up the osteoarthritis in his foot and caused a disability, it was held that the whole of said disability was proximately caused by said injury and was compensable.—*Williamson v. Shell Co.*, 4 I. A. C. Dec. 222.

506. Sarcoma following trauma.—It was held in the present case that a sarcoma was a subsequent acceleration or aggravation of the same, which followed trauma, and was proximately caused by the injury.—*Villa v. Santa Ana Sugar Co.*, 4 I. A. C. Dec. 147.

507. Pre-existing disease — Disability prolonged by.—Although the employer takes the employee subject to his physical condition at the time of entering the employment, more serious disabilities proximately caused by a specific disease are to be distinguished from ordinary disabilities which are prolonged by the disease but which, without the injury to precipitate them, would not have been caused by the specific disease.—*Peterson v. Bristol, etc., Co.*, 4 I. A. C. Dec. 122.

508. Pre-existing disease — Prolongation of disability due to injury.—Where a cook sustained an injury to his knee, which was diagnosed as a chronic synovitis, and the disability was prolonged by a pre-existing condition of syphilis which could be cured in about two months by appropriate treatment, it was held that the whole disability was proximately caused by the injury and that the cook was entitled to anti-syphilitic treatment by his employer.—*Peterson v. Bristol Bay Packing Co.*, 4 I. A. C. Dec. 122.

508a. Same—Increase of hernia.—Where an applicant had had a hernia for several years, which occasionally descended, and which he reduced by himself, and for which he wore a truss, felt a slight sensation without violent symptoms on lifting a heavy article at his work, and upon removing his truss that night the hernial mass descended to a greater extent than ever before and strangulated, the increased hernia constituted a compensable injury.—*Heinz v. State Compensation Insurance Fund*, 6 I. A. C. Dec. 74.

509. Pre-existing chronic arthritis of finger joints and Dupuytren's contraction of both palms—Slight injury to finger.—Where an employee when he was hired by his employer was suffering from chronic arthritis of his finger joints and a Dupuytren's contraction of both palms, and he sustained a slight injury to his finger, which became infected, and was treated by his employer's physician, and was restored to the physical condition in which he was before his injury, it was held that the employer was not liable on account of the employee's previous condition.—*Landrath v. Mountain Copper Co.*, 4 I. A. C. Dec. 112.

510. Partial deafness rendered serious by blow on nose.—Where an employee already affected with partial deafness was struck on the nose by a twenty-five-pound chair, while unloading a truck, which did not knock him down, render him unconscious, or cause his nose to bleed, but was followed almost immediately by serious deafness, it was held that there was no causal connection between the blow and the increased deafness.—*Hampton v. U. C. Express Co.*, 5 I. A. C. Dec. 31.

510a. Pre-existing systemic affection causing severe headaches accentuated by injury to head.—Where an employee sustained an injury to his head, which set into a disabling form a pre-existing systemic infection causing severe headaches, it was held that the disability was caused by the injury, recovery having ensued as a result of rest from labor, in accordance with the advice of a physician.—*Frazier v. Universal, etc., Co.*, 5 I. A. C. Dec. 179.

511. Acute glaucoma caused, and loss of vision from pre-existing chronic glaucoma hastened, by blow on head.—It was held in the present case that acute glaucoma was proximately caused and loss of vision precipitated a hastening from pre-existing chronic glaucoma of the progressive type, by a blow on the head.—*Cousins v. Hanlon*, 4 I. A. C. Dec. 97.

512. Rupture of aortic aneurysm from normal and usual exertion—Pre-existing condition.—Where the death of an employee was caused by the rupture of an aortic aneurysm while he was undergoing a normal and usual exertion in his occupation, which he had followed for many years, and the evidence showed that the aneurysm had been progressing for a year and a half and was the result of disease and likely to rupture at any time, it was held that the death was not proximately caused by and did not arise out of the employment.—*Anderson v. De Paoli*, 4 I. A. C. Dec. 82.

513. Death from pre-existing heart trouble following slight injuries.—Death from pre-existing heart trouble after slight injuries held not to have been proximately caused by the injuries.—*Bollinger v. Pacific, etc., Co.*, 5 I. A. C. Dec. 14.

514. Increase of hernia following blow in groin.—A considerable and disabling increase in the size of a hernia, following a

low in the groin, held to be compensable.—*Wardwell v. Ekwood Lumber Co.*, 6 I. A. C. Dec. 52.

515. Depressive insanity, following injury and previous predisposition.—Where an employee was severely burned about the neck, back and arms while in the course of his employment and thereafter a mental derangement was noted and upon becoming progressively worse he was legally admitted to a state hospital for the insane and it was found that the mental derangement was of the type entitled manic depressive insanity and that it resulted from the injury, it appearing that the employee was predisposed to this kind of mental trouble and no other conditions were shown which would precipitate the derangement independently of the accident, it was held that the disability was produced by the injury.—*Garat v. Pacific, etc., Co.*, 5 I. A. C. Dec. 181.

516. Recurring displacement of semi-lunar cartilage resulting from primary injury to knee.—Under the circumstances of the present case, it was held that the recurring displacement of the semi-lunar cartilage resulted from the primary injury to the knee, and that the employer was liable for disabilities resulting from such recurrence.—*Schultz v. Schmidt, etc., Co.*, 5 I. A. C. Dec. 191.

517. Rupture of pre-existing pancreatic cyst from fall.—Where a pancreatic cyst, which might ultimately have ruptured without trauma at some indefinite time but which could be absorbed by natural means and might never rupture, was ruptured as the result of a fall, it was held that the employer takes the employee subject to his condition at the time of entering the employment, and that the disability was proximately caused by and arose out of the employment.—*Rategan v. Bates*, 4 I. A. C. Dec. 78.

518. Sarcoma lighted up by injury.—It was held in this case, where pre-existing sarcoma was lighted up by an injury sustained by an employee, and thereafter such employee died from sarcoma throughout the body, due to metastasis, that the death of the employee was proximately caused by the injury.—*Schneider v. Norton*, 4 I. A. C. Dec. 332.

519. Exacerbation of pre-existing lung disease from inhalation of dust.—Bronchitis resulting from a diseased condition of the lungs, exacerbated by inhalation of dust while at work, held to have been caused by the employment.—*Deichen v. Acme, etc., Co.*, 5 I. A. C. Dec. 91.

520. Tubercular affection exacerbated by chest injury.—In a case where an employee sustained a chest injury and was disabled by a tubercular affection of the lungs, it was held that the chest injury exacerbated the pre-existing lung affection, and compensation was awarded.—*Moore, etc., Co. v. Marks*, 6 I. A. C. Dec. 245.

521. Exacerbation of pre-existing pulmonary tuberculosis from severe strain.—A stevedore employed by a lumber company

experienced exacerbation of pre-existing pulmonary tuberculosis following a severe strain in handling a piece of lumber, and it was held that the disability was a proximate result of the injury.—*Mendes v. E. K. Wood, etc., Co.*, 6 I. A. C. Dec. 191.

522. Death from pre-existing tumor, following injury.—The death of an employee from a tumor, previously existing, shortly after receiving an injury, was held to have been proximately caused by the tumor and not the injury.—*Brady v. Standard Oil Co.*, 6 I. A. C. Dec. 105.

523. Dilation of saphenous vein—Pre-existing varicosity.—Notwithstanding pre-existing varicosity, a dilation of the saphenous vein, produced by a strain while engaged in his work, constituted a specific injury which arose out of and was proximately caused by an employment as a bolter-up in a construction plant.—*Duvel v. Union Construction Co.*, 6 I. A. C. Dec. 150.

524. Pre-existing disability—Secondary disability from slight injury.—Disability may be properly ascribed to a pre-existing condition or ailment if the injury is slight.—*Snyder v. Pacific, etc., Co.*, 3 I. A. C. Dec. 1.

525. Second injury—Proximate and natural result of original injury.—A second or subsequently occurring injury may, under some circumstances, be the natural and proximate result of the original injury, and not due to an intervening cause, and when such is the case an award may be made by the commission as compensation for the further disability arising from such second or subsequent injury.—*Head Drilling Co. v. Industrial Accident Commission*, 177 Cal. 194, 196, 170 Pac. 157.

526. Whether a second or subsequent injury is the proximate result of the original injury, or of an independent intervening cause, is a question of fact for the determination of the commission, and its conclusion must be sustained if supported by any evidence to justify it on any reasonable theory.—*Head Drilling Co. v. Industrial Accident Commission*, 177 Cal. 194, 198, 170 Pac. 157.

527. Second injury while recovering from original injury.—Where an employee sustained a spiral fracture of the leg, and three days after his discharge from the hospital sustained a second injury, causing a displacement of the bones, from the accidental striking of the heel of the foot of the injured limb against the pedestal of a table or chair to prevent himself from falling, such second injury is an injury proximately and naturally resulting from the original injury and warranting further compensation under the act.—*Head Drilling Co. v. Industrial Accident Commission*, 177 Cal. 194, 170 Pac. 157, 5 I. A. C. Dec. 1 (*Scott v. Head Drilling Co.*, 4 I. A. C. Dec. 9).

527a. Additional injury not in course of original employment, and not aggravating first injury.—Where an employee has sustained an injury by accident arising out of and in the course of the employment, the commission is not authorized by the act to

award him compensation for an additional injury sustained by him afterward, not in the course of his employment, by an accident or act which aggravated the first injury and prolongs the disability.—*Pacific Coast Casualty Co. v. Pillsbury*, 171 Cal. 319, 321, 153 Pac. 24.

528. Secondary disability—Blood poisoning, following an accidental abrasion of the skin suffered in the course of the employment by an employee, held to be an injury of which the accident was the proximate cause within the meaning of the workmen's compensation act.—*Great Western Power Co. v. Pillsbury*, 171 Cal. 69, L. R. A. 1916A, 281, 151 Pac. 1136.

529. Same—Second fracture of leg, before complete recovery from the first.—Where an employee sustained a fracture of the leg and about seven weeks later was discharged from the hospital with his leg still in a cast and three days thereafter sustained a trifling blow upon the heel of the injured leg, and a few days later was found to have sustained a separation of the fragments of the bone which prolonged his disability, and the evidence showed that such displacement could have occurred spontaneously or as a result of the blow on the heel, and was reasonably to be expected and was natural considering the character of the fracture, and there was no evidence of any independent intervening cause, it was held that the resulting further disability was proximately caused by the original injury.—*Scott v. Head Drilling Co.*, 4 I. A. C. Dec. 9.

530. Sprain of ankle one year after original injury.—A sprain of an ankle, occurring over one year after injury to foot, was held under the circumstances of the present case to have been due to the original injury.—*Noren v. Palace Hotel Co.*, 5 I. A. C. Dec. 190.

531. Sunburn while undergoing treatment—Prolongation of disability.—A burn from an intentional exposure of the injured part to sun's rays during medical care, thereby prolonging disability, is not an independent intervening cause of disability, but where the prolongation of the disability was from that cause or mere conjecture, it was held that the whole period of disability was compensable.—*De Barrows v. Bethlehem Shipbuilding Corporation*, 5 I. A. C. Dec. 220.

532. Osteoarthritis from dental abscesses—Prolonged inactivity incidental to treatment for hernia caused by injury.—Osteoarthritis, due primarily to abscesses in the teeth and connected with the injury only through prolonged inactivity incidental to treatment for the hernia caused by the injury, held not to be compensable.—*Anderson v. Moore Shipbuilding Co.*, 6 I. A. C. Dec. 122.

533. Death from operation following second injury resulting from obeying the doctor's directions.—Where an employee sustained a second injury while obeying the doctor's instructions to exercise his leg, broken in the first, and died as a result of an operation necessitated by such second injury, it was held that the second injury and

death arose from the condition produced by the first injury, and the commission was authorized to award compensation for such second injury and death.—*Shell Co. v. Industrial Accident Commission*, 36 Cal. App. 463, 172 Pac. 611.

533a. Erysipelas of foot resulting from laceration of great toe.—Erysipelas of foot resulting from laceration of great toe in course of employment, and transferred to face, causing death, held to be compensable.—*Caffrey v. Bethlehem Shipbuilding Corporation*, 6 I. A. C. Dec. 63.

534. Death from facial erysipelas—Injury to toe which became infected.—Where death occurred from a facial infection following an injury to one of employee's toes which became infected, the commission properly found that the death was proximately caused by the original injury, upon expert testimony that the germs causing the facial infection were carried to the face by external means.—*Bethlehem, etc., Co. v. Industrial Accident Commission*, 58 Cal. Dec. 421, 7 A. L. R. 1180, 185 Pac. 179, 6 I. A. C. Dec. 211 (*Caffrey v. Bethlehem, etc., Co.*, 6 I. A. C. Dec. 63).

534a. Same—Chain of causation.—The fact that infecting germs reached the face from the toe by external means can not, as matter of law, be said to have broken the chain of causation.—*Bethlehem, etc., Co. v. Industrial Accident Commission*, 58 Cal. Dec. 421, 185 Pac. 179, 7 A. L. R. 1180, 6 I. A. C. Dec. 211 (*Coffrey v. Bethlehem, etc., Co.*, 6 I. A. C. Dec. 63).

535. Death resulting from operation after second injury.—Compensation is properly awarded to the dependents of a deceased employee who met his death from heart failure from an accumulation of gas in the stomach after a surgical operation required to adjust a second fracture of the leg, occurring while exercising for a first fracture received in the course of the employment.—*Shell Co. v. Industrial Accident Commission*, 36 Cal. App. 463, 172 Pac. 611, 5 I. A. C. Dec. 50.

536. Continuance of disability—Death following second operation.—It was held in this case that the evidence supported a finding of the commission that "a slight disability consisting of said sinus and hernia was present continually from the date of the first operation until the date of the second operation," notwithstanding evidence that he returned to work and there were no visible signs of continuing trouble with the surgical wound, and that he believed himself to be cured.—*Western Indemnity Co. v. Industrial Accident Commission*, 54 Cal. Dec. 787, 4 I. A. C. Dec. 376 (*Henne v. Hjul*, 3 I. A. C. Dec. 433).

536a. Continuing disability—Unreasonable refusal of medical treatment.—Where an insurance carrier furnished hospital treatment to an applicant for the cure of a sacroiliac slip and traumatic neurosis, and said applicant, over protest of the attending physician, discontinued said treatment and left the hospital, it was held that the applicant's refusal to continue said treat-

ment was unreasonable and proximately caused any disability suffered by him after he left the hospital and that said insurance carrier was not liable for further indemnity payments or medical treatment thereafter.—Porter v. Morse, 4 I. A. C. Dec. 355.

536b. Neglect or refusal of employee to procure or submit to medical treatment.—Where the neglect or refusal of the employee to demand or obtain medical treatment caused what might result in a slight disability to become a serious disability, it was held that the rights of the employer were defined in section 16(e) of the act, rather than section 20, and it will be held in such action that the prolonged disability was not proximately caused by the injury, but by a new cause of disability.—Telford v. Healy-Tibbitts Construction Co., 3 I. A. C. Dec. 41.

VII. CONDITIONS AVOIDING LIABILITY FOR COMPENSATION.

1. Excluded employments. a. In general.

- 537. Test of excluded employment.
- 538. Gamekeeper.
- 539. Propagation of trout for domestic purposes.

b. Domestic service.

- 540. Personal attendant upon adult incompetent.
- 541. Housemaid in sanitarium.
- 542. Lodging house keeping.

c. Farm labor.

- 543, 543a. Test of farm labor.
- 544. Classification of farm employees does not make some of them artisans.
- 545. Carpenter repairing barn.
- 546. Carpenter—Erection of private residence for president of corporation engaged in farming.
- 547. Ranch carpenter.
- 548. Building fence between county highway and farm.
- 549. Carpenter killed while building silo.
- 550. Carpenter constructing ranch building.
- 551. Farm traction engine operator's helper.
- 552. Repair of farm implements.
- 553. Repairing farm machinery in a shop devoted to that purpose.
- 554. Cutting up firewood for summer resort and vineyard.
- 555. Constructing tunnel between two wells supplying a farm.
- 556. Building a road through a farm.
- 557. Chauffeur driving farm automobile.
- 558. Ranch hand injured while unloading hay.

d. Horticulture.

- 559. One employed as a gardener and janitor at a school house.
- 560. Janitor and gardener injured while pruning tree.
- 561. Laborer employed to cut and deliver evergreens.
- 562. Nurseryman and gardener.
- 563. Pruning fig tree.

e. Casual and not in usual course of employer's business.

- 564. Scope of § 14.
- 565. Act of 1917—State of law prior to enactment.
- 566. Same—Scope of act.
- 567. "Casual," meaning as used in act of 1913.
- 568. Casual employment—Test of.
- 568a. Casual employment.
- 569. Same—Employment for a month not casual.
- 570. Same—Small job incident of whole work.
- 571. Usual course of employer's business—Test of.
- 572. Same—Repair of farmer's barn.
- 573. Assisting chambermaid—Occasional work—Lodging house proprietor.
- 574. Building silos—Dairy ranch.
- 575. Blasting out former foundations of irrigating tanks in cemetery—Cemetery company.
- 576. Foreman of building construction, involving several months regular and recurring labor.
- 577. Cleaning out cellar of restaurant.
- 578. Erection of dwelling house, by day labor.
- 579. Fighting fire. Six hours' employment.
- 580. House cleaning—Seamstress.
- 581. Improving property for chicken ranch—Saloon keeper.
- 582. Person casually employed to load grain.
- 583. Loading grain in an emergency—Buyer and shipper of grain.
- 584. Nurse attendant on incompetent person—Guardian.
- 585. Moving house for renting purposes—Retired capitalist.
- 585a. Painting dwelling house, by job, employer furnishing materials.
- 586. Plastering house, for sale by owner, a housewife.
- 587. Removal of shelving from store—Four days' work.
- 588. Renting of four small houses—Housewife.
- 589. Repair of private property of stockholder of company—Laundry company.
- 590. Repairing farm traction engine—Machinist employed by the day.
- 591. Repairing clam shell dredge—Contractor leasing road making machinery.
- 592. Repairing property rented regularly and paying income.
- 593. Repair of water heater in hotel.
- 594. Roustabout laborer of motion picture company—Rodeo show for benefit of Red Cross.
- 595. Setting well house on grounds of country school—School district.
- 596. Transporting former employee to her home, at employer's request.

2. Serious and wilful misconduct of employee.

- 597. "Wilful misconduct" more than mere negligence.

- 598. Not a defense to a dependent's claim.
- 599. "Wilful misconduct"—Meaning of phrase.
- 600. Driving automobile at illegal speed.
- 601. Violation of blasting permit.
- 602. Attempt of fifteen-year-old boy to oil moving machinery while in motion.
- 603, 604. Removing obstruction from moving machinery.
- 605. Minor attempting to wipe machinery while in motion.
- 606. Wiping part of machinery in motion.
- 607. Operation of freight elevator in violation of orders.
- 608. Serious and wilful misconduct of employee in disobeying an order of his employer and placing himself deliberately in a place of serious danger.
- 609. Removing safety guard.
- 610. Brakeman using foot to align draw bar in making coupling.
- 611. Electric lineman—Failure to use safety belt, in violation of rule.
- 612. Failure to display warning signals on car in violation of orders.
- 613. No apparent need for a violation of rule.
- 614. Violation of safety rule of the commission.
- 615. Deviation from specified route to take a more dangerous one.
- 616. Failure to observe safety ruling.
- 617. Deliberate and intentional failure to comply with safety rule.
- 618. Violation of rule not known to employee.
- 619. Failure to obey rules—Knowledge of rules.
- 620. Failure to understand order.
- 621. Violation of order not intended or understood as safety order.
- 622, 623. Returning to wrecked steamer in disobedience of captain's orders.
- 624. Entering empty wine tank without testing the atmospheric conditions.
- 625. Same—Never informed as to danger.
- 626. Same—Violation of long established custom not formulated into a rule.
- 627. Same—Same—Knowledge of custom.
- 627a. Same—Attempt to save life of fellow employee.
- 628. Involuntary violation of safety order.
- 629. Inadvertent failure to comply with order.
- 630. Conduct due to inadvertence and inattention.
- 631. Exposure to specified danger in disregard of warning.
- 632. Acts not in violation of order and not inherently wilful misconduct.
- 633. Foolhardy act of seventeen-year-old boy.

- 634. Jumping from automobile just before collision with train.
- 635. Driving automobile with which employee had no experience.
- 636. Use by a truck driver of a circular saw without permission.
- 637. Leaving vessel by jumping across space of three and a half feet to dock, instead of using gang-plank.
- 638. Use of unfamiliar machinery without permission, by boy of eighteen.
- 639. Act of mine employee not wilful misconduct.
- 640. Gamekeeper's acts not wilful misconduct.
- 641. Use of unfamiliar tool without permission.
- 642. Occupying place on deck of barge during voyage.

1. Excluded employments. a. In general.

537. Test of excluded employment.—Where the nature of an employee's services when injured was incidental to an excluded employment, his right to compensation will be determined by the latter, and not by the nature of the incidental employment.—*George v. Wilson*, 5 I. A. C. Dec. 55.

538. A gamekeeper is not within the excluded employees named in section 14 of the act.—*O. L. Shafter Co. v. Industrial Accident Commission*, 175 Cal. 522, 525, 166 Pac. 24.

539. Propagation of trout for domestic purposes.—The propagation of trout for domestic purposes is not comprised either in "farm labor" or "stock raising," within the meaning of the act of 1917.—*Krobitzsch v. Industrial Accident Commission*, 58 Cal. Dec. 445, 185 Dec. 396, 6 I. A. C. Dec. 218 (*Starkey v. Krobitzsch*, 6 I. A. C. Dec. 61).

b. Domestic service.

540. Personal attendant upon adult incompetent.—Where a nurse was employed as personal attendant upon an incompetent person and lived and was employed in the home of the incompetent, it was held that while the service might be "domestic," nevertheless such services were not household services where confined to the immediate nursing, feeding and caring of the patient.—*Brown v. Nunan*, 4 I. A. C. Dec. 51.

541. Housemaid in sanitarium.—Under the act a person employed to do general housework as a maid at a sanitarium, and in addition attend patients, is not engaged in an excepted employment, as an employee "in household domestic service."—*Gernhardt v. Industrial Accident Commission*, 30 Cal. App. 129, 185 Pac. 307, 6 I. A. C. Dec. 166.

542. Lodging-house keeping.—The keeping of a lodging house is a business services in the course of which are neither household nor domestic.—*Robinson v. Walker*, 4 I. A. C. Dec. 93.

c. Farm labor.

543. Test of farm labor.—If an employee on a farm may be reasonably classified as one engaged in agriculture, the employer is

entitled to the exemption given by the act.—*Miller & Lux, Inc., v. Industrial Accident Commission*, 179 Cal. 764, 7 A. L. R. 1191, 178 Pac. 960, 6 I. A. C. Dec. 34.

543a. The question whether work of a given description is farm labor is to be determined by its own character and from the point of view of the employee, rather than the nature of the employer's business.—*Perry v. Johnson*, 4 I. A. C. Dec. 163.

544. Classification of farm employees does not make some of them artisans.—Where the work of farm employees is classified and each is given a limited rather than a diversified duty, that circumstance alone will not make some of them artisans rather than agriculturists.—*Miller & Lux, Inc., v. Industrial Accident Commission*, 179 Cal. 764, 7 A. L. R. 1191, 178 Pac. 960, 6 I. A. C. Dec. 34.

545. Carpenter repairing barn.—The work of a carpenter in repairing a barn on a farm, is not farm labor.—*Perry v. Johnson*, 4 I. A. C. Dec. 164.

546. Carpenter—Erection of private residence for president of corporation engaged in farming.—Where a carpenter was employed by the president of a corporation engaged in the business of farming and stock raising, to erect a private residence for himself upon land owned by the corporation, it was held that the carpenter was not engaged in farm labor.—*Hardwick v. Armstrong, etc., Co.*, 4 I. A. C. Dec. 109.

547. Ranch carpenter.—A carpenter employed on a ranch to repair fences, boxes and parts of the irrigation system, although doing incidentally some small amount of farm labor, and fatally injured while doing carpenter work, was held, under the decision of *Miller & Lux, Inc., v. Industrial Accident Commission*, 179 Cal. 764, 7 A. L. R. 1191, 178 Pac. 960, 6 I. A. C. Dec. 34, to have been engaged in farm labor and defendant was discharged from liability.—*Graziani v. Miller & Lux, Inc.*, 6 I. A. C. Dec. 96.

548. Building fence between county highway and farm.—The work of building a fence between a farm and a county highway is farm labor, and where the employer has not elected to accept the liabilities imposed by the act, the application of the carpenter who builds the fence for compensation for an injury sustained while engaged on the work was dismissed for want of jurisdiction.—*Jenkins v. Rhinehart*, 6 I. A. C. Dec. 180.

549. Carpenter killed while building silo.—In the case of a carpenter, killed while building a silo on a dairy farm, it was held that the evidence was sufficient to show that the dairy firm, being engaged in a business expressly exempted from the provisions of the act, elected, as it was permitted to do, to bring itself under the provisions of the act.—*Globe, etc., Co. v. Industrial Accident Commission*, (Cal. App.) 187 Pac. 452, 6 I. A. C. Dec. 262.

550. Carpenter constructing ranch building.—A carpenter engaged in the construction of a building on a ranch is not doing farm labor within the meaning of section 14

of the act of 1913.—*Miller & Lux v. Industrial Accident Commission*, 32 Cal. App. 250, 162 Pac. 651.

551. Farm traction engine operator's helper.—A person is "engaged in general farm work, excluding the operation of farm machinery" who sustains an injury resulting in death, by being struck by a bar attached to a disk harrow, being operated in the night time by an engine, where the deceased was not operating the engine or harrow, but was standing in the field using a lantern to guide such operation.—*Maryland Casualty Co. v. Industrial Accident Commission*, 178 Cal. 491, 493, 173 Pac. 993.

552. Repair of farm implements.—An employee in a farm labor shop exclusively devoted to the repair of farm implements but doing exclusively mechanical work, was held to be not engaged in farm labor and not engaged in an excluded employment under the act.—*Fish v. Miller & Lux, Inc.*, 5 I. A. C. Dec. 160.

553. Repairing farm machinery in a shop devoted to that purpose.—The repairing of farm machinery on a farm, in a shop devoted to such repairs, is an agricultural pursuit, and is excluded by section 14 of the act.—*Miller & Lux, Inc., v. Industrial Accident Commission*, 179 Cal. 764, 7 A. L. R. 1191, 178 Pac. 960, 6 I. A. C. Dec. 34.

554. Cutting up firewood for summer resort and vineyard.—Where a general farm hand lost the sight of an eye from a flying wedge which he had been driving into a stump, such stump being cut up for firewood to be used in a mountain summer resort and vineyard, the duties of such employee being to cut wood, and such general work as was required about a country resort and vineyard, it was held that such employee at the time of his injury was engaged in farm labor.—*Boschetti v. Lecas & Fomparon*, 3 I. A. C. Dec. 39.

555. Constructing tunnel between two wells supplying a farm.—A laborer engaged in constructing a tunnel connecting two wells supplying water for the farm premises of the employers, was engaged in farm labor, and his fatal injury while so engaged was excluded from the benefits of the act.—*Montgomery v. Pruner*, 6 I. A. C. Dec. 234.

556. Building a road through a farm is held to constitute farm labor, and is within the excluded employment.—*Pearson v. Crandall*, 6 I. A. C. Dec. 259.

557. Chauffeur driving farm automobile.—An automobile driver performing service in driving the automobile to and from the farm in performing errands in connection with the work of the farm, held to be engaged in general farm work, and commission has no jurisdiction to award compensation.—*Kyser v. Oussani*, 6 I. A. C. Dec. 148.

558. Ranch hand injured while unloading hay.—Where a farmer, in order to supply deficiency in the amount of hay contracted to the United States government, purchased hay, and a ranch hand employed by him was injured while unloading the hay so purchased, it was held that at the time of such

injury the said ranch hand was engaged in farm labor.—*Bingham v. Smith*, 4 I. A. C. Dec. 106.

d. Horticulture.

559. One employed as a gardener and janitor at a school house is not entitled to compensation under the act for an injury sustained while cutting off the stump of a large limb of an acacia tree projecting over the roof of the school house, for the purpose of removing an unsightly condition created thereby.—*George v. Industrial Accident Commission*, 178 Cal. 733, 174 Pac. 653 (*George v. Wilson*, 5 I. A. C. Dec. 55).

561. Laborer employed to cut and deliver evergreens.—A laborer employed to cut and deliver evergreens for a decoration company was engaged in a trade or business distinct and separate from horticultural labor.—*Pelletti v. Western Evergreen Co.*, 4 I. A. C. Dec. 304.

562. Nurseryman and gardener.—An employee working as a nurseryman and gardener in setting out trees and plants for the embellishment of a townsite is engaged in horticultural labor and is not entitled to compensation for an injury sustained while so employed.—*Ruprecht v. Dominguez Land Co.*, 3 I. A. C. Dec. 5.

See, also, *P. P. I. E. Co. v. Hooper*, 1 I. A. C. Dec. 430.

563. Pruning fig tree.—An employee doing work both as janitor and gardener was not entitled to compensation for an injury incurred while he was pruning a fig tree.—*Kramer v. Industrial Accident Commission*, 31 Cal. App. 673, 161 Pac. 278.

e. Casual and not in usual course of employer's business.

564. Scope of section 14.—Section 14 does not except employments that are casual simply, but those that are both casual and not in the usual course of the business.—*Walker v. Industrial Accident Commission*, 177 Cal. 737, 739, L. R. A. 1918F, 212, 171 Pac. 954.

565. Act of 1917—State of law prior to enactment.—Prior to the act of 1917, an employee must be injured in the usual course of the employer's business, to entitle him to compensation.—*Carter v. Industrial Accident Commission*, 34 Cal. App. 739, 168 Pac. 1065.

566. Same—Scope of act.—The act of 1917, in defining "trade, business, profession, or occupation," did not extend the ordinary definition of those words applicable to "trade or business," but was intended to have a clarifying effect only upon the terms of the original enactment.—*Lauzier v. Industrial Accident Commission*, 30 Cal. App. Dec. 284, 185 Pac. 870, 6 I. A. C. Dec. 194 (*Wilson v. Lauzier*, 6 I. A. C. Dec. 97).

567. "Casual"—Meaning as used in act of 1913.—"Casual" as used in the act of 1913 means something which comes without regularity, and is occasional and incidental, and its antonyms are "regular," "systematic," "periodic," "certain."—*Blood v. Indus-*

trial Accident Commission, 30 Cal. App. 274, 157 Pac. 1140.

568. Casual employment—Test of.—In this proceeding the commission maintained its rule expressed in several preceding decisions, that employment lasting longer than one week should not be considered casual.—*Ravenscroft v. Packard*, 3 I. A. C. Dec. 24.

568a. Casual employment—Employment for a job, existing over a substantial number of weeks is not casual.—*Perry v. Johnson*, 4 I. A. C. Dec. 163.

569. Same—Employment for a month not casual.—Where a carpenter was employed for a job which lasted for a month before his injury and several weeks after, it was held that his employment was not casual.—*Perry v. Johnson*, 4 I. A. C. Dec. 163.

570. Same—Small job incident of whole work.—A small job, not separate but a part of whole work is not casual.—*Smith v. Smyth*, 5 I. A. C. Dec. 94.

571. Usual course of employer's business—Test of.—Employment though intermittent is not necessarily casual, and where the service covers the normal operations which form part of the ordinary business carried on, and does not include incidental and occasional operations having for the purpose the preservation of the premises or the appliances used in the business, it is within the purview of the act.—*Walker v. Industrial Accident Commission*, 177 Cal. 737, 739, L. R. A. 1918F, 212, 171 Pac. 954.

572. Same—Repair of farmer's barn.—The repair of a barn on a farm where the farmer housed his live stock and stored his crop of grain, was held to be an employment in the usual course of the farmer's business.—*Perry v. Johnson*, 4 I. A. C. Dec. 163.

573. Assisting chambermaid—Occasional work—Lodging house proprietor.—A person occasionally employed to assist the chambermaid in a lodging house in keeping the rooms and hallways in a state of cleanliness and good order, and whose work was taking up carpets and matting, and cleaning walls, transoms, windows and curtains, is an employment in the usual course of the business of the employer within the meaning of section 14 of the act.—*Walker v. Industrial Accident Commission*, 177 Cal. 737, L. R. A. 1918F, 212, 171 Pac. 954, 5 I. A. C. Dec. 63 (*Robinson v. Walker*, 4 I. A. C. Dec. 93).

574. Building silos—Dairy ranch.—Silos for the storing of feed for dairy cows are essential to the business of a dairy farm. A carpenter who was fatally injured by the giving way of a scaffold while building a silo, the property of the dairy firm by whom he was employed, was held to have been killed in the employment in the regular course of business of his employers.—*Globe, etc., Co. v. Industrial Accident Commission*, (Cal. App.) 187 Pac. 452, 6 I. A. C. Dec. 262.

575. Blasting out former foundations of irrigating tanks in cemetery—Cemetery company.—The employment by a corporation engaged in cemetery work of a person

skilled in the work of blasting and in the use of explosives used in the conduct of blasting operations to remove from the cemetery property, in that manner, certain concrete foundations which had formerly supported some discarded water tanks once used in connection with irrigation, is in the ordinary course of business.—*Rosedale, etc., Association v. Industrial Accident Commission*, 37 Cal. App. 706, 174 Pac. 351, 5 I. A. C. Dec. 148.

576. Foreman of building construction, involving several months' regular and recurring labor.—The employment of a carpenter to act as foreman over a number of other carpenters over building construction involving several months' regular and recurring labor, is not casual, but one in the usual course of the trade, profession or occupation of his employer, under the act.—*Miller & Lux v. Industrial Accident Commission*, 32 Cal. App. 250, 162 Pac. 651.

577. Cleaning out cellar of restaurant.—A person employed to clean out the cellar of a restaurant, the work consuming three days, was held to be casually employed, but that it was in the usual course of the business of the resident, and such person is not excluded from the benefits of the act.—*McDermott v. Fanning*, 3 I. A. C. Dec. 14.

578. Erection of dwelling house by day labor.—Three months' employment.—A carpenter employed to work on day wages in the erection of a dwelling house to be occupied by the employer and his family, who, after having been so employed for about three months, and while engaged in work on the employer's house, sustains injuries, is entitled to compensation, since his employment is neither casual nor out of the usual course of the employer's business, notwithstanding the employment was not in the usual course of the trade, business, profession or occupation of the employer.—*Armstrong v. Industrial Accident Commission*, 36 Cal. App. 1, 171 Pac. 321, 5 I. A. C. Dec. 8 (*Hardwick v. Armstrong*, 4 I. A. C. Dec. 109).

579. Fighting fire—Six hours employment.—A person employed for six hours in fighting a fire, and paid for that time and that service, was a casual employee, and his service not in the usual course of the trade, business, profession, or occupation of his employer, within the meaning of section 14 of the act.—*London, etc., Co. v. Industrial Accident Commission*, 173 Cal. 642, 644, 161 Pac. 2.

580. House cleaning — Seamstress — A housecleaner employed by a seamstress employed as the manager of an apartment, is held to be a casual employee and the employment not in the usual course of business of employer.—*Lyman v. Lobre*, 5 I. A. C. Dec. 46.

581. Improving property for chicken ranch.—Saloonkeeper.—A saloonkeeper, improving property on which to raise chickens, undertakes a "business" for the purposes of the act.—*Smith v. Smyth*, 5 I. A. C. Dec. 94.

582. Person casually employed to load grain.—A person casually employed by a purchaser and shipper of grain to load some grain on cars, which the sellers had not been able to load at the time of its delivery, was not entitled, under the acts prior to that of 1917, to compensation for an injury sustained while so engaged, it being customary for the seller to load the grain, and it not being in the usual course of employer's business to do so.—*Carter v. Industrial Accident Commission*, 34 Cal. App. 739, 163 Pac. 1065.

583. Loading grain in an emergency.—Buyer and shipper of grain.—Under the act of 1913 prior to the amendment of 1917, a person employed by a buyer and shipper of grain in an emergency to load some grain on to cars, is not entitled to an award of compensation for injuries sustained, where it is shown that it was the general custom of the community for the sellers to load the grain and that loading grain was not within the usual course of the employer's business.—*Carter v. Industrial Accident Commission*, 34 Cal. App. 739, 163 Pac. 1065, 4 I. A. C. Dec. 301 (*Ladd v. Carter*, 4 I. A. C. Dec. 84).

584. Nurse attendant on incompetent ward —Guardian.—Where a priest is the guardian of the person of an adult incompetent and employs a nurse to attend such incompetent, it was held that under the act service as guardian is a "business" and furnishing and supervising of attendance upon such incompetent ward is the essential and continuous and therefore "usual" feature of such business and that the employment of a nurse for such attendance is within the usual course of such business.—*Brown v. Nunan*, 4 I. A. C. Dec. 51.

585. Moving house for renting purposes.—Retired capitalist.—Where a retired capitalist, who had several pieces of property which he rented, employed a laborer to move a house with the intention of making it into a dwelling house to be rented, and the work of moving the building was accomplished in ten days it was held that the employment of the laborer was both casual and not in the usual course of the business of the employer.—*Soberanes v. Morascl*, 4 I. A. C. Dec. 352.

585a. Painting dwelling house, by job, employer furnishing materials.—The act of 1913 does not include casual employees within its benefits, and one who is employed to put two coats of paint on the house of his employer, the latter to furnish paint and painting materials and the wages to be a per diem for no definite period, the understanding being that the job would take about two weeks, was a casual employee and not entitled to compensation for an injury sustained during the first day's employment.—*Blood v. Industrial Accident Commission*, 30 Cal. App. 274, 157 Pac. 1140.

586. Plastering house for sale by owner —A housewife.—The employment of a plasterer to do plastering work on a new residential building being constructed for eventual sale by a housewife on a lot owned

by her, is not casual, since it is in pursuance of a deliberate and designed undertaking which necessarily involves the performance of the work.—*Coghlan v. Schut*, 4 I. A. C. Dec. 67.

587. Removal of shelving from store—Four days' work.—A carpenter employed by a merchant to remove the shelving from an old store, the job lasting about four days, was held to be a casual employee, and not employed in the usual course of the employer's business, and was excluded from compensation for an injury sustained while so employed by section 14 of the act.—*Sutton v. Rabinowitz*, 5 I. A. C. Dec. 29.

588. Renting of four small houses—Housewife.—The renting of four small houses for residence purposes does not constitute a "business" within the meaning of the act.—*Lauzier v. Industrial Accident Commission*, 30 Cal. App. Dec. 284, 185 Pac. 870, 6 I. A. C. Dec. 194, (*Wilson v. Lauzier*, 6 I. A. C. Dec. 97).

589. Repair of private property of stockholder of company—Laundry company.—An assistant to a carpenter sent by a laundry company to repair private property of a stockholder, was killed while doing a particular piece of repair work; held, the employment was both casual and not in the usual course of the employer's business, and the company was not liable for compensation under the act.—*La Grande Laundry Co. v. Pillsbury*, 173 Cal. 777, 779, 161 Pac. 988.

590. Repairing farm traction engine—Machinist employed by the day.—A machinist engaged to repair a traction engine belonging to and used by a farmer for farm purposes, employed by the day for the time necessary for the particular work of repairing the machine, is an employee whose employment is both casual and outside the usual course of his employer's business within section 14 of the act, and he is not entitled to compensation for an injury sustained while so employed.—*Maryland Casualty Co. v. Pillsbury*, 172 Cal. 748, 749, 158 Pac. 1031.

591. Repairing clam shell dredge—Contractor leasing road making machinery.—A person employed by an individual engaged in the business of leasing road making machinery, to repair a clam shell dredge which the latter had acquired from a contractor who had been using it in harbor work, and which was in no sense road making machinery or equipment, is an employee whose employment is both casual and outside the usual course of his employer's business, and for an injury received while doing such work he is not entitled to compensation.—*Stansbury v. Industrial Accident Commission*, 36 Cal. App. 68, 171 Pac. 698, 5 I. A. C. Dec. 19 (*Husong v. Stansbury*, 4 I. A. C. Dec. 168).

592. Repairing property rented regularly and paying income.—Where a carpenter was injured while repairing property belonging to his employer and rented out by and paying income to him with regularity, it was held that the injury was sustained in the

course of the employer's business.—*Fields v. Wright*, 5 I. A. C. Dec. 224.

593. Repair of a water heater in a hotel.—The employment of a repair man to repair a water heater in a hotel is both casual and not in the usual course of the employer's business.—*Manza v. Aymard*, 4 I. A. C. Dec. 49.

594. Roustabout laborer of motion picture company—Rodeo show for benefit of Red Cross.—Where an applicant for compensation was employed to serve as a roustabout laborer by a motion picture company in the production of a rodeo show for the benefit of the Red Cross fund was injured while feeding steers which were to be used the next day in the rodeo, it was held that the employment was both casual and not in the course of the business of his employer within the meaning of section 8 of the act of 1917.—*Burdell v. Douglas Fairbanks, etc., Corporation*, 5 I. A. C. Dec. 120.

595. Setting well house on grounds of country school—School district.—The moving to and setting up of a well house on the site of a new well on the grounds of a country school by a carpenter is both casual and not in the usual course of the business of the school district controlling such school. — *Pallet v. Directors of Central School*, 4 I. A. C. Dec. 41.

596. Transporting former employee to her home at employer's request.—The insurance carrier is not liable for the death of a chauffeur in the employ of the assured, killed in an automobile collision when he was engaged in transporting to her home, at the request of the manager of assured, a young lady formerly employed by the latter.—*Western, etc., Co. v. Industrial Accident Commission*, 30 Cal. App. Dec. 191, 185 Pac. 306, (Cal.) 190 Pac. 37, 6 I. A. C. Dec. 168 (*Millard v. Kennedy*, 6 I. A. C. Dec. 118).

2. *Serious and wilful misconduct of employee.*

597. "Wilful misconduct" more than mere negligence.—"Wilful misconduct" involves something more than negligence, and it does not even include every violation of a rule.—*United States Fidelity & Guaranty Co. v. Industrial Accident Commission*, 174 Cal. 616, 620, 163 Pac. 1013.

598. Not a defense to a dependent's claim.—Under the 1917 amendments to section 6, subdv. 4, the serious and wilful misconduct of an injured employee is not a defense to a dependent's claim, whatever the rule might have been prior to such amendments.—*United States, etc., Co. v. Industrial Accident Co.*, 28 Cal. App. Dec. 157.

599. "Wilful misconduct"—Meaning of phrase.—The phrase "wilful misconduct" in section 12(a3) of the workmen's compensation act means something more than negligence—more, even, than gross negligence.—*North Pacific S. S. Co. v. Industrial Accident Commission*, 174 Cal. 500, 502, 163 Pac. 910.

600. Driving automobile at illegal speed.—An employee who, in the course of his employment, was killed by the overturning of an automobile, which he was driving

along the public highway at an unlawful rate of speed, was guilty of wilful misconduct, although such speed was sanctioned by his employer, and not so excessive as to amount to more than ordinary negligence.—*Fidelity, etc., Co. v. Industrial Accident Commission*, 171 Cal. 728, 730, L. R. A. 1916D, 903, 154 Pac. 834.

601. Violation of blasting permit.—The violation of the terms of a permit granted by a municipal corporation in using more than one stick of dynamite in each blasting charge is not wilful misconduct, in the absence of evidence that such departure from the permit regulations either proximately or remotely caused the injury.—*Rosedale, etc., Association v. Industrial Accident Commission*, 37 Cal. App. 706, 174 Pac. 351, 5 I. A. C. Dec. 148.

602. Attempt of fifteen-year-old boy to oil moving machinery.—A boy fifteen years of age, employed as a general helper about a gold dredger, is not guilty of wilful misconduct in attempting to oil the dredging machinery without waiting for the same to fully stop, notwithstanding he had been expressly warned not to oil the machinery while same was in motion, where such violation of instructions was not done intentionally and deliberately, but in a moment of thoughtlessness and for the purpose of saving time.—*Diestelhorst v. Industrial Accident Commission*, 32 Cal. App. 771, 164 Pac. 441, 4 I. A. C. Dec. 55 (*Bolinger v. Diestelhorst*, 3 I. A. C. Dec. 368).

603. Removing obstruction from moving machinery.—An attempt to disentangle a cloth from moving machinery with an iron bar was held not, under the circumstances of this case, palpably dangerous or foolhardy, and not wilful misconduct.—*Pontes v. Paraffine Paint Co.*, 5 I. A. C. Dec. 54.

604. Where an employee of a box and label company, engaged in feeding a printing press, on a sudden impulse reached his hand into the press, without stopping the machinery, to remove some sheets of box board that had fallen therein from the feed board, he was not guilty of wilful misconduct, although in so doing he violated a rule of his employers.—*Hyman, etc., Co. v. Industrial Accident Commission*, 180 Cal. 423, 181 Pac. 784 (*Weiss v. Hyman, etc., Co.*, 5 I. A. C. Dec. 71).

605. Minor attempting to wipe moving machinery while in motion.—Where a seventeen-year-old boy employed as a laborer in machine shop was injured while thoughtlessly attempting to wipe off a stream of grease on moving machinery without first stopping the same, contrary to instructions on a sign affixed to the machine, and he had been given no instructions in this respect by his superiors except general safety injunctions, and it does not appear that he knew of the consequences likely to result from disobeying the instructions on the sign, it was held that he was not guilty of serious and wilful misconduct.—*Dean v. Western Pacific Railroad Co.*, 5 I. A. C. Dec. 245.

606. Wiping part of machine in motion.—Where the operator of a drill was injured while wiping the vertical shaft of the machine when in motion, and on a sudden impulse made a dive to stop the flow of a stream of grease running down the framework, from the upper shaft, he was held not guilty of wilful misconduct, so as to bar him from the benefit of the act.—*Western Pacific Rd. Co. v. Industrial Accident Commission*, 180 Cal. 416, 181 Pac. 787 (*Dean v. Western Pacific Rd. Co.*, 5 I. A. C. Dec. 245).

607. Operation of freight elevator in violation of orders.—Where it was shown that an errand boy, killed while ascending to his place of employment in a freight elevator, had been expressly warned not to ride in or attempt to operate the freight elevators in the building, under penalty of discharge, and that similar notices were posted at or near the entrances of such elevators, and no notice of any disobedience of this order, or any negligence from which such knowledge would be chargeable, the commission was without jurisdiction to make an award for the death.—*Pacific Coast Casualty Co. v. Pillsbury*, 31 Cal. App. 701, 162 Pac. 1040.

608. Serious and wilful misconduct of employee in disobeying an order of his employer and placing himself deliberately in a place of serious danger held to have proximately caused his injury, and his compensation was reduced one-half.—*Lindquist v. Rhoads*, 6 I. A. C. Dec. 48.

609. Removing safety guard.—The removal by an experienced laundryman, while operating a wringing machine, intentionally, deliberately, and wilfully, of a safety guard placed on his machine for his protection and to prevent accidents was an act of "wilful misconduct" within the meaning of section 12 (3) of the act of 1913, so as to prevent an award of compensation for an injury which resulted from such removal.—*Bay Shore, etc., Co. v. Industrial Accident Commission*, 36 Cal. App. 547, 172 Pac. 1128.

610. Brakeman using foot to align drawbar in making coupling.—The act of a railroad brakeman, while making a coupling, in using his foot to align the drawbar, did not violate a rule of the company amounting to no more than a general safety rule, and his act was not a deliberate and wilful violation of any positive safety rule understood and well enforced as such, and did not amount to serious and wilful misconduct on his part.—*Harmon v. Hines*, 6 I. A. C. Dec. 200.

611. Electric lineman—Failure to use safety belt, in violation of rule.—A lineman who is supposed to use a safety belt while at work at the top of a pole, but who neglects to do so, thereby violating a printed rule of his employer that a safety belt must be used, and it appears that the use of the belt would have prevented the injury, due to the employee being thrown to the ground by an accidental jerk of the pole, was held to have been guilty of wilful

misconduct.—*Lockwood v. Pacific, etc., Co.*, 3 I. A. C. Dec. 26.

612. Failure to display warning signals on car in violation of rules of employer.—The failure of a fireman who went upon a car to get some rock to use in the course of his employment to display thereon certain signals required by the rules of his employer to be displayed, was not wilful misconduct.—*Hunt v. Southern Pacific Co.*, 4 I. A. C. Dec. 107.

613. No apparent need for a violation of rule.—Where an employee engaged in reaming saddle bolt holes in a locomotive without putting on his goggles to protect his eyes, used a chisel to remove the burrs and was struck and his eye injured, it was held that such voluntary act was not within the support of the rule requiring the use of goggles, that there was no apparent danger in the act without wearing goggles, that there was no deliberate violation of any known safety rule and that such employee was not guilty of such serious or wilful misconduct.—*Hogan v. Los Angeles, etc., Co.*, 5 I. A. C. Dec. 118.

614. Violation of safety rule of commission.—A laundry worker who deliberately and intentionally removed a safety guard on a machine placed there for his protection in accordance with the "laundry safety orders" of the commission, knowing fully its purpose, having been engaged in that line of work for twenty years, was guilty of wilful misconduct, although he did not thereby violate an enforced rule or instruction of his employers.—*Bay Shore, etc., Co. v. Industrial Accident Commission*, 36 Cal. App. 547, 172 Pac. 1128, 5 I. A. C. Dec. 75.

615. Deviation from specified route to take a more dangerous one.—Where a messenger was instructed by his employer to deliver a package as quickly as possible, going and returning by a specified route, and the messenger went by the designated route but started to return by another which was not inherently more dangerous than that designated by his employer, it was held that the messenger was not guilty of wilful misconduct and that the injury sustained on the return journey arose out of and in course of the employment.—*Phillips v. Calif. Special Messenger Service*, 4 I. A. C. Dec. 28.

616. Failure to observe safety ruling.—A machinist in a can manufactory was held to have been guilty of wilful misconduct when he was injured while attempting to remove an obstruction from a die which he was operating, without disconnecting the machinery, as his employer's rules required him to do.—*Deak v. American Can Co.*, 4 I. A. C. Dec. 18.

617. Deliberate and intentional failure to comply with safety rule.—A brakeman who neglected to use a fuse in accordance with the rules of the employer, a violation of which rule was punishable by dismissal, as a result of which a collision occurred and he was injured and it was shown that the failure to use the fuse was deliberate and

intentional, was guilty of wilful misconduct.—*Throla v. Atchison, etc., Co.*, 4 I. A. C. Dec. 143.

618. Violation of rule not known to employee.—The use of roller skates by a newsboy in delivering papers on his route did not constitute wilful misconduct, although in violation of a rule of his employers, he having no knowledge of such rule, and it not being an unusual practice by newsboys to use roller skates while engaged in delivering papers, and the use of roller skates was not a hazardous and uncommon means of conveyance under the circumstances.—*Batchelder v. Kahn*, 5 I. A. C. Dec. 78.

619. Failure to obey rules—Knowledge of rules.—Under section 6, subdivision 4, of the act of 1917, where a machinist's helper voluntarily and intentionally omitted to obtain and use goggles, contrary to the rules of the employer company, having knowledge of such rules, and in consequence sustained a serious injury to his eye from a glancing piece of steel, the compensation he would otherwise have been entitled to recover was cut in half.—*McAdoo v. Industrial Accident Commission*, 40 Cal. App. 570, 181 Pac. 400, 6 I. A. C. Dec. 58.

620. Failure to understand order.—Where an employee violated an order of his foreman, not wilfully and deliberately, but because he did not understand it, it is held that he was not guilty of wilful misconduct.—*Gonzales v. Mountain, etc., Co.*, 5 I. A. C. Dec. 43.

621. Violation of order not intended or understood as safety order.—It was held under the circumstances of the present case that the evidence failed to show that an order to stop work in one part of a quarry and work in another part without any reason pointed out or known to the laborers, was intended or understood to be a safety order, or that the deceased employee knew of any danger in working in the place where work had been stopped and that therefore he was not guilty of any wilful misconduct which caused his death.—*Leal v. Gray*, 4 I. A. C. Dec. 218.

622. Returning to wrecked steamer in disobedience of captain's order.—A second officer of a steamship is not guilty of "wilful misconduct" within the meaning of the act, in returning to the steamer after the captain had ordered the crew to take to the boats, where the boat was still attached to the steamer at the time of such return, and there is no evidence compelling an inference that the return was a deliberate and intentional defiance of his superior's command in reckless disregard of his own safety, at a time of greatest peril.—*North Pacific S. S. Co. v. Industrial Accident Commission*, 174 Cal. 500, 163 Pac. 910, 4 I. A. C. Dec. 76 (*Bolger v. North Pacific S. S. Co.*, 2 I. A. C. Dec. 324).

623. The second officer of a steamer about to strike on the rocks can not be said as matter of law under the facts of the case to have been guilty of wilful misconduct in returning to the ship after having, in obedience to his captain's orders, entered a

lifeboat.—*North Pacific S. S. Co. v. Industrial Accident Commission*, 174 Cal. 500, 502, 163 Pac. 910.

624. Entering empty wine tank without testing the atmospheric conditions.—A workman employed in a winery is not guilty of wilful misconduct in entering an empty wine tank for the purpose of cleaning the same, without first testing the atmospheric conditions in the tank, where there were no rules formulated by the employer prohibiting an employee from so entering before making the test, and it is not shown that the employee had knowledge of a custom among winemakers to test the atmosphere of such a tank before entering the same.—*United States, etc., Co. v. Industrial Accident Commission*, 174 Cal. 616, 163 Pac. 1013, 4 I. A. C. Dec. 79 (*Maffia v. Aquilino*, 3 I. A. C. Dec. 15; *Zanotti v. Aquilino*, 3 I. A. C. Dec. 53).

625. Same—Never informed as to danger.—It was held under the circumstances of the present case that the death of an employee by asphyxiation upon entering an empty wine tank without having first burned a candle therein to determine the purity of the air, and it does not appear by the evidence that this employee had ever been informed of such danger, or that he actually knew of such risk, or that he did not first burn a candle therein before entering, was not caused by wilful misconduct.—*Zanotti v. Aquilino & Lagomarsino Co.*, 3 I. A. C. Dec. 53.

626. Same—Violation of long-established custom not formulated into a rule.—A workman might be held guilty of "wilful misconduct" in violating a custom crystallized by long and universal practice into a rule although not formulated by the employer into a written precept or a spoken command.—*United States Fidelity & Guaranty Co. v. Industrial Accident Commission*, 174 Cal. 616, 621, 163 Pac. 1013.

627. Same—Same—Knowledge of custom.—An employee who had knowledge of such custom can not be held guilty of wilful misconduct from his mere presence in the tank, and in a dying condition, where the circumstances surrounding his death do not show whether or not he made any test before entering the tank.—*United States, etc., Co. v. Industrial Accident Commission*, 174 Cal. 616, 163 Pac. 1013, 4 I. A. C. Dec. 79 (*Maffia v. Aquilino*, 3 I. A. C. Dec. 15; *Zanotti v. Aquilino*, 3 I. A. C. Dec. 53).

627a. Same—Attempt to save life of fellow employee.—An attempt to save the life of a fellow employee, even though intensely hazardous, is not wilful misconduct.—*Maffia v. Aquilino*, 3 I. A. C. Dec. 15.

628. Involuntary violation of safety order.—A violation of a safety order, done involuntarily by reason of constantly repeated movements required by employment, was not wilful misconduct.—*Weiss v. Hyman, etc., Co.*, 5 I. A. C. Dec. 71.

629. Inadvertent failure to comply with order.—Serious and wilful misconduct of employee held not to be predicated upon inadvertent failure to wear goggles while

hurrying at foreman's direction to attend certain vats filled with a strong lye solution for removing the skin of fruit, even though he was required to wear such goggles, and they were close at hand and would have protected his eyes from the injury sustained.—*California Packing Corporation v. Larson*, 6 I. A. C. Dec. 41.

630. Conduct due to inadvertence and inattention.—Where a delivery man drove his employer's automobile along a road at about twenty-five miles an hour, and was injured by being struck by a train, although signals indicated that the train was approaching, and just prior thereto he had been driving at a prudent rate of speed and had crossed other intersecting tracks and believed that he had crossed all the tracks in that vicinity, it was held that the conduct of said employee was due to inadvertence and inattention and was not wilful in character.—*Employers', etc., Corporation v. Elmore*, 4 I. A. C. Dec. 359.

631. Exposure to special danger in disregard of warning.—Where a dancer was injured as a result of a filmy dress worn by her catching fire from a gas stove while on her way to the stage, it was held that she was guilty of serious misconduct in taking the route directly by the stove after being warned of the danger, but that such misconduct was not wilful.—*Burton v. Sloan*, 5 I. A. C. Dec. 178.

632. Acts not in violation of orders and not inherently wilful misconduct.—Acts of employee considered and found not in violation of orders of employer or inherently constituting wilful misconduct.—*Owe Ming v. Alaska Packers Association*, 6 I. A. C. Dec. 67.

633. Foolhardy act of seventeen-year-old boy.—An act of a seventeen-year-old boy employed in a printing office in putting his hand into a paper press to remove clogged sheets of paper while the machine was in motion, although the employees of such shop or office had been prohibited from doing the same thing and he had been told expressly not to do so, it was held that his act was one of foolhardiness and amounted to wilful misconduct; it was further held that the act was so obviously dangerous as to amount to wilful misconduct even in the absence of specific safety rule or instruction.—*Greenleaf v. San Pedro Daily News*, 4 I. A. C. Dec. 305.

634. Jumping from automobile just before collision with train.—Where an employee was riding in his employer's automobile and an instant before a collision with a train he jumped from the automobile and was killed, it was held that although said act may have been unwise or the result of poor judgment, it was entirely natural and justifiable under the circumstances and contained no element of wilful misconduct.—*Bird v. Smith*, 4 I. A. C. Dec. 299.

635. Driving automobile with which employee had no experience.—An employee of a hardware and metal company is entitled to compensation for injuries received from

a collision between an automobile, in which he was traveling on business of his employer, and a street car, notwithstanding the fact that the accident was due to the lack of familiarity of the employee with the automobile which he was driving, no orders having been given by his employer as to the use of any particular automobile, and the employee having the right to travel by an automobile of his own choosing.—*Maryland Casualty Co. v. Industrial Accident Commission*, 39 Cal. App. 229, 178 Pac. 542, 5 I. A. C. Dec. 225 (*Showalter v. Union, etc., Co.*, 5 I. A. C. Dec. 46).

636. **Use by a truck driver of circular saw without permission.**—The driver of a truck wagon for a copper mining company was held not to have been guilty of serious and wilful misconduct in using a circular saw to cut some side boards for the truck in his charge, for the purpose of increasing its carrying capacity, no rule forbidding its use by him for that purpose having been brought to his attention.—*Jordan v. Calaveras Copper Co.*, 6 I. A. C. Dec. 193.

637. **Leaving vessel by jumping across space of three and a half feet to dock instead of using the gangplank.**—Serious and wilful misconduct can not be charged to a marine fireman for attempting to jump across a space of three and a half feet from the dock to the barge where he was employed, instead of using the gangplank, where it was shown that he believed, though erroneously, that the gangplank was not strong enough to support him.—*Dado v. Standard Oil Co.*, 6 I. A. C. Dec. 9.

638. **Use of unfamiliar machine without permission by boy of eighteen.**—An eighteen-year-old boy employed as a helper at a stamping machine in a can factory, in the temporary absence of his superior in charge of the machine, without experience in its operation, without specific instructions not to operate it, and without warning that it was dangerous to attempt to do so, undertook to operate it, and received an injury to his hand, and it was held that he was not guilty of serious and wilful misconduct, and that the injury arose out of and was proximately caused by the employment.—*Metz v. American Can Company*, 6 I. A. C. Dec. 267.

639. **Act of mine employee not wilful misconduct.**—An employee of a mine, having finished his underground labors and while waiting for a fresh assignment from the foreman, was not guilty of "wilful misconduct" within the meaning of subdivision 3, section 12, of the act, in seating himself in the shade of an ore bin to recuperate from the heat, no warning ever having been given against doing so.—*Brooklyn Mining Co. v. State Industrial Accident Commission*, 172 Cal. 774, 775, 159 Pac. 162.

640. **Gamekeeper's acts not wilful misconduct.**—A gamekeeper engaged in assisting the lessees of a game preserve to find and kill a deer can not be said to have been guilty of wilful misconduct in proceeding to a point in advance of that agreed on, nothing appearing to indicate that he

thus intentionally imperiled his life, or recklessly sought the position of danger where he was killed.—*O. L. Shafter Co. v. Industrial Accident Commission*, 175 Cal. 522, 526, 166 Pac. 24.

641. **Use of unfamiliar tool without permission.**—Serious and wilful misconduct of employee is not predicated from the fact that the injured employee, a seventeen-year-old boy, was injured while attempting to make a wooden guide for a saw used by him as a sawyer, it appearing that other employees made such guides, and that such guides would prevent accidents such as he sustained.—*Lucky v. Hammond Lumber Co.*, 6 I. A. C. Dec. 3.

642. **Occupying a place on deck of barge during voyage.**—On review of an award made for the death of a barge employee by falling from the deck of the barge and drowning, the court can not say that he was acting recklessly and in defiance of orders in occupying the place on deck during the voyage.—*W. R. Rideout Co. v. Pillsbury*, 173 Cal. 132, 134, 159 Pac. 435.

VIII. AWARD OF COMPENSATION.

1. Compensation. a. In general.

- 643. Employment without pay.
- 644. Failure to limit award to two hundred and forty weeks.
- 645. Award in the alternative.
- 646. Temporary indemnity — Permanent disability not determinable.
- 647. Further disability.
- 648. Termination of compensation—Refusal to undergo operation justified.
- 649. Agreement to pay compensation.

b. Medical and surgical treatment.

- 650. Employer bound to tender on notice.
- 651. Written notice not required — Actual knowledge — Information.
- 652. Liability of employer — Notice — Rule stated.
- 653. Leaving hospital with employer's consent.
- 654. Improper treatment furnished by employer and insurance carrier.
- 655. Liability for treatment procured by employee.
- 656. Neglect of employer and insurance carrier to furnish.
- 657. Employer relieved of liability by failure of employee to afford him opportunity to furnish treatment.
- 658. Employer not liable unless he has fair opportunity to furnish treatment.
- 659. Employer not liable unless he neglects or refuses to furnish treatment.
- 660. Employee did not afford employer sufficient opportunity to furnish treatment.
- 661. Employee left hospital and procured his own treatment. Employer not liable.

- 662. Hospital charges. Failure to comply with employer's instructions.
- 663. Employee not guilty of unreasonable refusal to submit to treatment.
- 664. Unreasonable refusal of employee to submit to treatment—Offer must be peremptory and unequivocal.
- 665. Refusal by employee — Offer not sufficiently definite.
- 666. Repair of damages to false teeth not medical and surgical treatment.
- 667. Physician of applicant presumed to be competent.
- 668. Services of second physician to observe operation — Not compensable.
- 669. Employee not entitled to reimbursement for treatment by Chinese herb doctor.
- 670. Treatment by prayer.
- 671. Surgical operation may be optional.
- 672. Hospital treatment not allowed when disability becomes definitely permanent.
- 673. Surgical treatment to improve an action—Disability not decreased.
- 674. Where large employer does not maintain hospital.
- 675. Employee entitled to board, lodging, and attendance when hospital not available.
- 676. Unwarranted recommendation for surgical operation at carrier's expense—Award not vitiated.

c. Death benefit.

- 677. Division of death benefits—Authority of commission.
- 678. Same—Award to minor children to the exclusion of the wife.

d. Burial expenses.

- 679. Burial expenses may be allowed in addition to death benefits in case of partial dependency.
- 680. Burial expenses not an asset of the estate.
- 681. In case of part payment by lodge.

e. Liens.

- 682. Living expenses — Construction of section 29.
- 683. Same—Settlement agreement.
- 684. Same — Payment of compensation extinguishes right to lien.
- 685. Same—Allowance of lien mere matter of procedure.
- 686. Same—Where no application for compensation filed.
- 687. Same — Same — Disappearance of employee.
- 688. Same—Alimony.
- 689. Medical services—Notice prerequisite to claim of lien.
- 690. Same—Charge against carrier and not against employee.

- 691. Same—Must be incurred as required by section 24.
- 692. Attorney's fee—Payment of, may be ordered direct to attorney by employer.
- 693. Expenses of burial — Limited to \$100.

2. Computation. a. Disability.

- 694. Measure of disability.
- 695. Percentage of disability, a question of fact.
- 696. Nature, extent, and duration of disability.
- 697. Permanent disability—20 per cent of total disability.
- 698. Same—Commission not bound by schedule.
- 699. Same—Minor.
- 700. Same — Disability that does not affect efficiency.
- 701. Same—Child dancer—Scar on arm.
- 702. Partial permanent disability—Jurisdiction of commission.
- 703. Preliminary treatment—Compensation for period of.
- 704. Damage to plate of false teeth.
- 705. Cannery employee rendering divers seasonal duties.
- 706. Impairment of vision due to wood alcohol.
- 707. Release no bar to subsequently developing disability.
- 708. Award of 50 per cent compensation.
- 709. Compensation for vacation period.
- 710. Employer takes employee subject to existing disability.
- 711. Same—Rule not to be applied to work unjustly.
- 712. Same—Impossible to determine extent of disability due to pre-existing condition.
- 713. Same—Injury causing disability by reason of weakness from pre-existing diseased condition.
- 714. Same—When disability ascribed to pre-existing condition.
- 715. Occupational disease—Police officer — Flat feet and broken arches.
- 716. Same—Test of.
- 717. Same — Occupation at which engaged at time of injury.
- 718. Disability caused by injury compensable regardless of disability caused by disability due to pre-existing condition.
- 719. "Further disability."
- 720. Same—When disability is.
- 721. Same—New employer not liable.
- 722. Same—Blindness from injury to eye producing cataract.
- 723. Same—Defined.
- 724, 725. Same—Subsequent incapacity.
- 726. Same—Subsequent injury.

b. Earnings.

- 727. "Neighboring place"—Transitory occupation.
- 728. "Days when so employed."
- 729. Rate of wages.
- 730. Average earnings—Standard wages.

- 731. Average annual earnings—Salary definitely fixed.
- 732. Same—Salary not definitely fixed.
- 733. Same—Earnings of others similarly employed.
- 734. Same—School teacher.
- 735. Same—Intermittent character of work.
- 736. Same—Act contemplates steady and permanent employment—Where not shown to exist.
- 737. Same—Seven days a week employee.
- 738. Same—Neither employee nor any other working at the employment two hundred and sixty days in year.
- 739. Same—Carpenters per diem wages where no carpenter in neighborhood worked for whole year.
- 740. Same—Where employee worked 364 days in year.
- 741. Same—"Occasional jobs."
- 742. Same—Earnings in other occupations.
- 743. Same—Weekly earnings at normal wages.
- 744. Same—Average earnings of election clerk.
- 745. Same—Part of wages under bonus system.
- 746. Same—Overtime.
- 747. Same—Variations in wages—Wages for last two months taken.
- 748. Same—Same wages received at time of injury.
- 749. Same—Same—Method of compensation.
- 750. Same—Employee under twenty-one—Expected increase not considered.
- 751, 752. Same—Same—Based on conditions at time of injury.
- 753. Same—Same—Expected increase may be considered.
- 754, 755. Same—Same—Probable wage after majority may not be considered.
- 756. Same—Newsboy selling both morning and afternoon papers for different employers.
- 757. Same—Full earnings in excess of maximum.
- 758. Same—Cannery employee at divers seasonal duties.
- 759. Same—Bricklayer as volunteer fireman.
- 760. Same—Machinist earning wages as musician.
- 761. Same—Where no remuneration—Computed at minimum.
- 762. Same—Working as typist for two employers—Entire wages.
- 763. Same—Two employers—Entire wages.
- 764. Same—Night watchman—Several employees.
- 765. Same—Waiter's tips and allowance for board, etc., considered.
- 766. Student nurse—Value of instruction not considered.
- 767. Same—Wages definitely fixed.

4. Dependency.

- 768. "Member of the family."
- 769. "For whose support such husband was legally liable."
- 770. Partial dependency — "Annual amount devoted."
- 771. Same—Income from property less than expense thereof.
- 772. Same—Rate where earnings covered portion of year.
- 773. Same—Receiving money for room rent in house rented by employee.
- 774. Same—Where both father and son contributed.
- 775. Same—Part support from income of own property.
- 776. Same—Contributions for entire year not necessary.
- 777. Same—Contributions not constant.
- 778. Disposition of benefit—Needs of dependents.
- 779. Mother of family of illegitimate children.
- 780. Maintenance of child — Amount father ordered to pay.
- 781. Source of earnings not considered.
- 782. Repayments of debt, not contributions.
- 783. Claims of non-resident dependents — Policy of commission.
- 784. Support of non-resident wife—Imprisonment of husband.
- 785. Same—Presumption of partial support.
- 786, 787. Same—Presumption that husband and wife were "living together."
- 788. Non-resident widow in Spain—"Living with" husband and employee.
- 789. Non-resident widow in Italy—"Living with" husband and employee.

1. Compensation. a. In general.

643. **Employment without pay.**—A "student" motorman on a street railway is an employee and is entitled to compensation when injured, although receiving no pay.—*Beatty v. San Diego Electric Railway Co.*, 5 I. A. C. Dec. 241.

644. **Failure to limit award to two hundred and forty weeks.**—An award of the commission is not open to objection because the order fails in terms to limit the time of payment to two hundred and forty weeks, since the statute itself makes that limitation, and the order can not be effective beyond that period.—*Southwestern Surety Ins. Co. v. Pillsbury*, 172 Cal. 768, 773, 158 Pac. 762.

645. **Award in the alternative.**—While an award may be beyond the powers of the commission because of an invalid alternative which might require payment for surgical treatment longer than ninety days, yet where the other alternative is complete in itself, and the insurance carrier need not accept the objectionable alternative, the latter does not invalidate the award.—*Southwestern Surety Ins. Co. v. Pillsbury*, 172 Cal. 768, 773, 158 Pac. 762.

646. Temporary indemnity — Permanent disability not determinable.—Where the injured employee was a miner and permanently disabled and the permanent disability was not yet determinable he was given a temporary indemnity at a weekly rate payable for permanent indemnity.—*Quilien v. Pennington Sons*, 5 I. A. C. Dec. 135.

647. Further disability.—An award for further disability is authorized where the subsequent injury is the proximate and natural result of the original injury received in the course of the employment.—*Head Drilling Co. v. Industrial Accident Commission*, 177 Cal. 194, 170 Pac. 157, 5 I. A. C. Dec. 1 (Scott v. Head Drilling Co., 4 I. A. C. Dec. 9).

648. Termination of compensation—Refusal to undergo operation justified.—An award is not subject to reduction or termination by a finding that the person disabled can be relieved by a surgical operation, in view of the seriousness of the disability, where others on finding that the employee refused or was unwilling to undergo the operation or that he had the means to pay for it.—*Marshall v. Ransome*, etc., Co., 33 Cal. App. 782, 166 Pac. 846, 4 I. A. C. Dec. 154 (Marshall v. Ransome, etc., Co., 2 I. A. C. Dec. 304).

649. Agreement to pay compensation.—As to the effect of an agreement between injured employee and employer as to payment of disability indemnity, under section 16 of the act, and the essentials of such agreement.—*Northwestern Pacific Rd. Co. v. Industrial Accident Commission*, 173 Cal. 652, 161 Pac. 123.

b. Medical and surgical treatment.

650. Employer bound to tender, on notice.—An employer is bound to tender medical and surgical treatment on his becoming aware of the injury and of the necessity of medical treatment thereof, and becomes liable for the reasonable value of the treatment after the date of the notice of the injury.—*Geier v. Myers Darling Hinton Co.*, 4 I. A. C. Dec. 263.

651. Written notice not required—Actual knowledge — Information.—Although the employer's boss had no written notice or actual knowledge of the injury sustained by the employee, where he was informed by other employees of the injury and he knew that the employee was disabled, it was held that the employer had sufficient opportunity to furnish the medical treatment required on account of said injury and neglected to do so.—*Hopper v. Cuthbert Burrell Co.*, 4 I. A. C. Dec. 141.

652. Liability of employer—Notice—Rule stated.—An employer's knowledge or notice of injury to his employee must be such as to afford to the employer a reasonable notification of the need of medical treatment of the employee's claim thereof in order to make such employer liable for medical treatment.—*Ward v. Fox*, etc., Co. 4 I. A. C. Dec. 135.

653. Leaving hospital with employer's Gen. Laws—104

consent.—An employer who consents to his employee leaving the hospital is liable for the continued treatment of such employee, who fails to return to the hospital because of physical inability to travel.—*Fernandez v. Mountain Copper Co.*, 5 I. A. C. Dec. 110.

654. Improper treatment furnished by employer and insurance carrier.—It was held in the present case that the refusal of the employer's physician to permit the employee to go elsewhere for treatment was unjustifiable, and having gone elsewhere on account of improper treatment, the employer must pay the full medical bill.—*Campbell v. White Lumber Co.*, 3 I. A. C. Dec. 33.

655. Liability for consequences of treatment procured by employee.—Although an insurance carrier is discharged from liability for the cost of treatment procured by an injured employee after his refusal to accept the treatment tendered by the insurance carrier, the latter is not thereby discharged from liability for the consequences of the treatment, provided said treatment is adequate as a matter of law.—*Silveira v. Grayson*, etc., Co., 4 I. A. C. Dec. 229.

656. Neglect of employer and insurance carrier to furnish treatment.—Facts in the instant case held to warrant the conclusion that the employer and insurance carrier neglected to provide the surgical treatment reasonably required, and that the employee did not lose his right to hold the carrier liable for the services of his family physician, under section 15(a) of the act.—*Massachusetts*, etc., Co. v. *Pillsbury*, 170 Cal. 767, 170, 151 Pac. 419.

657. Employer relieved of liability by failure of employee to afford him opportunity to furnish treatment.—The failure of an injured employee to afford to his employer opportunity to provide medical treatment, relieves the employer from the obligation to furnish such treatment during the time such opportunity was denied, but does not exempt the employer from tendering treatment as soon as he has an opportunity to do so.—*Geier v. Myers Darling Hinton Co.*, 4 I. A. C. Dec. 263.

658. Employer not liable unless he has fair opportunity to furnish treatment.—Where an employer did not have a fair opportunity to furnish the required medical treatment after learning of the injury, he was held not liable for the employee's medical expenses.—*Gant v. Kraft*, 4 I. A. C. Dec. 339.

659. Employer not liable unless he neglects or refuses to furnish treatment.—Under the requirements of section 15(a) of the act, the employer has the right to designate and select the physicians who are to give treatment to the employee and the latter is authorized to make his own selection at the expense of the employer only where the latter has neglected or refused to supply the necessary services.—*Leadbetter v. Georgia Casualty Co.*, 179 Cal. 468, 177 Pac. 449, 5 I. A. C. Dec. 233 (S. C. 26 Cal. App. Dec. 1268, 5 I. A. C. Dec. 143).

660. Employee did not afford employer sufficient opportunity to furnish treatment.—It was held in the present case that the injured employee did not afford his employer a sufficient opportunity to furnish the required medical treatment and that such employer was not liable for the cost of the treatment procured by the applicant.—*Ward v. Fox, etc., Co., 4 I. A. C. Dec. 135.*

661. Employee left hospital and procured his own treatment—Employer not liable.—Where an injured employee, while under treatment by a physician and at a hospital supplied by the insurance carrier, abandons such treatment without adequate cause or justification, and without the knowledge of the insurance carrier, and procures other hospital and medical treatment at his own expense with the employer's consent, it is held that notwithstanding such consent, the insurance carrier is not liable for the expense of such medical and hospital charges.—*Spring v. J. G. Miller Co., 3 I. A. C. Dec. 4.*

662. Hospital charges—Failure to comply with employer's instructions.—Where the injured employee was directed by his employer's physician to go to a certain hospital and the address given him, and the employee went to a different hospital, the commission therefore refused to make an award covering hospital charges, since under such circumstances no neglect or refusal on the part of the employer to furnish hospital services is shown, which is a requirement to such an award.—*Cella v. Industrial Accident Commission, 38 Cal. App. 760, 177 Pac. 490, 5 I. A. C. Dec. 206.*

663. Employee not guilty of unreasonable refusal to submit to treatment.—It was held in the present case that the injured employee was not guilty of an unreasonable refusal to submit to medical treatment.—*Anderson v. Pacific, etc., Co., 4 I. A. C. Dec. 203.*

664. Unreasonable refusal of by employee to submit to medical treatment—Offer must be peremptory and unequivocal.—To constitute an unreasonable refusal to submit to medical treatment as that term is used in section 16(e) of the act, the tender of treatment must be both peremptory and unequivocal and must be so understood by the injured employee.—*Anderson v. Pacific, etc., Co., 4 I. A. C. Dec. 203.*

665. Refusal by employee—Offer not sufficiently definite.—It was held in the present case that the offer of medical treatment was not sufficiently definite to constitute the employee's failure to accept the same an unreasonable refusal to submit to medical treatment tendered by the employer.—*Norton v. City of Oakland, 4 I. A. C. Dec. 231.*

666. Repair of damage to false teeth not medical and surgical treatment.—Repair of damage to false teeth is not medical and surgical treatment required to be furnished by the employer, though the furnishing of artificial teeth where such is rendered necessary by an injury is so required.—*De Witt v. California Highway Commission, 5 I. A. C. Dec. 140.*

667. Physician of applicant presumed to be competent.—The commission can not, in the absence of convincing testimony, presume that if the employee had been in the hands of a physician furnished by the defendants he would have been more quickly cured than if in the hands of any other surgeon authorized to practice his profession in this state.—*Telford v. Healy-Tibbitts, etc., Co., 3 I. A. C. Dec. 41.*

668. Services of second physician to observe operation—Not compensable.—A physician called in by an employee to observe an operation made necessary by hernia sustained in course of employment, and the applicant at the suggestion of his physician had present a second physician to observe the operation in order to be able to give testimony as to the nature of the hernia if necessary, it was held not to be compensable for medical services within the meaning of the term as employed in the act.—*Beiter v. Rosenberg, etc., Co., 4 I. A. C. Dec. 94.*

669. Employee not entitled to reimbursement for treatment by Chinese herb doctor.—An injured employee is not entitled to reimbursement for the expense of treatment by a Chinese herb doctor who is not licensed to practice medicine.—*Knock v. Reliance, etc., Co., 4 I. A. C. Dec. 181.*

670. Treatment by prayer.—Where an employee sustained a muscular strain and consulted a healer who made no diagnosis and used no drugs or mechanical appliances in healing, but who healed by prayer and the laying on of hands and who was not licensed by the state medical board to practice medicine in this state, it was held that such treatment does not constitute medical treatment within the meaning of the act and that the defendants were not liable for the cost thereof.—*Miller v. Boos Bros. Cafeteria, 4 I. A. C. Dec. 388.*

671. Surgical operation may be optional.—An order requiring a surgical operation may be optional where there is a likelihood but no certainty of improvement of condition.—*Hughes v. Northwestern, etc., Co., 5 I. A. C. Dec. 137.*

672. Hospital treatment not allowed when disability becomes definitely permanent.—Where the evidence showed that the injured employee's disability had become definitely permanent and that recovery or further improvement would not result from further medical treatment, it was held that further hospital treatment was not allowed under the act.—*Employers', etc., Corporation v. Elmore, 4 I. A. C. Dec. 359.*

673. Surgical treatment to improve condition—Disability not decreased.—An employer may be ordered by the commission to furnish a permanently, totally disabled employee with surgical treatment where the same may improve his physical condition, although the same may not decrease disability.—*United States, etc., Co. v. Silvestro, 5 I. A. C. Dec. 161.*

674. Where large employer does not maintain hospital.—In every case where a large employer has provided no adequate

hospital facilities for serious cases, the commission will sanction the taking of such injured person out of the hands of the physician of the employer and placing him in a proper hospital and under the care of a proper physician.—Campbell v. White, etc., Co., 3 I. A. C. Dec. 33.

675. Employee entitled to board, lodging and attendance when hospital not available.—Where a hospital is not available, the injured employee is entitled to equivalent board, lodging and attendance.—Casler v. Byrne, 5 I. A. C. Dec. 224.

676. Unwarranted recommendation for surgical operation at carrier's expense—Award not vitiated.—An award of compensation made by the commission is not vitiated because it contains an unwarranted recommendation that the insurance carrier offer to the injured employee to pay the cost of a surgical operation for the purpose of reducing its liability, and that the employee accept the offer, as the same may be disregarded like any other gratuitous suggestion or recommendation.—Marshall v. Ransome Concrete Co., 33 Cal. App. 732, 166 Pac. 846, 4 I. A. C. Dec. 154 (Marshall v. Ransome, etc., Co., 2 I. A. C. Dec. 704).

c. Death benefit.

677. Division of death benefits—Authority of commission.—Under the provision of section 19(a)(3) the commission may award a death benefit on the dependents of a deceased employee in such manner as may be in proportion to their respective needs and just and equitable.—Perry v. Industrial Accident Commission, 54 Cal. Dec. 743, 4 I. A. C. Dec. 370 (Perry v. Fresno Herald, 4 I. A. C. Dec. 110).

678. Division of death benefit—Award to minor children to exclusion of wife.—An award of the entire death benefit to the minor children—issue of a union with a woman to whom he was not married, but with whom he lived for three years prior to his death—to the exclusion of his wife, from whom he had been separated for several years, and who was pressing a claim for a divorce from him without any provision for support, is not an abuse of discretion.—Perry v. Industrial Accident Commission, 54 Cal. Dec. 743, 4 I. A. C. Dec. 370 (Perry v. Fresno Herald, 4 I. A. C. Dec. 110).

d. Burial expenses.

679. Burial expenses may be allowed in addition to death benefits in case of partial dependency.—Where the employee leaves persons partially dependent upon him, the cost of burial may be allowed in addition to the death benefit awarded, while in cases of total dependency such cost may not be allowed in addition to the death benefit.—Northern, etc., Co. v. Industrial Accident Commission, 34 Cal. App. 2, 166 Pac. 828, 4 I. A. C. Dec. 173.

680. Burial expenses not an asset of the estate.—The administrator of the estate of a deceased employee without dependents has a claim for the payment to him exclusively for the burial expenses and not as

an asset of the estate generally.—Reed v. San Diego, etc., Co., 4 I. A. C. Dec. 40.

681. In case of part payment by lodge.—Where a deceased employee's lodge paid a part of his burial expense, the dependent is entitled to payment for the balance due over the lodge's contribution.—Hitzelberger v. Rolph, etc., Co., 5 I. A. C. Dec. 123.

e. Liens.

682. Living expenses—Construction of section 29.—The payment of disability indemnity mentioned in section 29(b)(3) refers to a first payment of disability indemnity and the amount thereafter to be paid mentioned in section 29(c) refers to the amount of compensation due and which remains unpaid.—Pankey v. Western, etc., Co., 4 I. A. C. Dec. 158.

683. Same — Settlement agreement.—Where pursuant to settlement agreement and before approval of the same by the commission, compensation was paid for the full amount of the applicant's estimated disability and liens were thereafter filed for the reasonable value of living expenses of the injured employee, said liens were denied and the settlement agreement was approved.—Pankey v. Western, etc., Co., 4 I. A. C. Dec. 159.

684. Same—Payment of compensation extinguishes right to lien.—Payment of compensation extinguishes the right to file a lien for the reasonable value of living expenses of an injured employee against compensation thereafter payable.—Pankey v. Western, etc., Co., 4 I. A. C. Dec. 158.

685. Same—Allowance of lien mere matter of procedure.—The allowance of the lien contemplated by section 24(b)(5) of the act of 1917, by the wife of an injured employee, for the amount of reasonable living expenses for herself and minor children, upon the ground that her husband had deserted her and was neglecting his family, is, when the employee files his written consent, a mere matter of procedure, and therefore, under section 73, the lien can be allowed after January 1, 1918, against compensation due for an injury occurring before.—Jensen v. Jensen, 5 I. A. C. Dec. 45.

686. Same—Where no application for compensation filed.—Where no application for compensation on account of injury had been filed, no award made and no liability therefor admitted either by employer or by insurance carrier, it was held that the commission was without jurisdiction to allow a lien for hospital treatment furnished to the injured employee's wife at his request, and for her board and room.—Harvey v. McNeil, 5 I. A. C. Dec. 112.

687. Same—Same—Disappearance of employee.—Under the provisions of section 17 of the act of 1917, the commission has jurisdiction of a claim of a wife for a lien upon the compensation due an injured employee, for living expenses, and where such employee, after the injury, disappeared without applying for or receiving compensation, and his whereabouts were unknown, the commission, after publication of notice of

the wife's claim under section 412, Code of Civil Procedure, as provided in section 17(a) of the act, allowed the lien asked for.—*Schaeffer v. California, etc., Co.*, 6 I. A. C. Dec. 266.

688. Same—Alimony.—Under the provisions of section 24(b)(5) a lien was allowed a divorced wife for back alimony due under an agreement, without an application and award to the injured husband.—*Harrison v. London, etc., Co.*, 5 I. A. C. Dec. 29.

689. Medical services — Notice prerequisite to claim of lien.—Under section 29 of the act the notice is a prerequisite to the claim of lien of the physician or other purpose for services in treating the injured employee.—*Pacific Coast Casualty Co. v. Pillsbury*, 171 Cal. 319, 325, 153 Pac. 24.

690. Same—Charge against carrier and not against employee.—Where an injured workman was taken by a fellow employee to a physician and the physician informed the insurance carrier of the injury and of his treatment, and afterwards made his charge against the carrier for his services and not against the employee, it was held that the commission was without jurisdiction to award a lien to such physician, the matter being a question of contract between the physician and the employer.—*Paul v. Johnson Bros.*, 3 I. A. C. Dec. 32.

691. Same—Must be incurred as is required by section 24.—Medical expense incurred by employer not allowed as a lien against compensation, where not incurred as required by section 24 of the act of 1917, although the reasonable value of services rendered was awarded.—*Abele v. Spenson*, 6 I. A. C. Dec. 22.

692. Attorney's fee—Payment of, may be ordered direct to attorney by employer.—In order to make effective the lien of the attorney provided for in section 29(b) of the workmen's compensation act, the commission may adopt the method of ordering the amount allowed as a fee to be paid directly by the employer to the attorney.—*North Pacific S. S. Co. v. Industrial Accident Commission*, 174 Cal. 500, 504, 163 Pac. 910.

693. Expenses of burial—Limited to \$100.—The cost of a burial lot and transportation of the remains can only be allowed as a lien when their cost comes within \$100, nevertheless, on the request of the person entitled to the death benefit, the commission will order the payment of more than \$100 direct to the undertaker.—*Sigman v. Columbia, etc., Co.*, 3 I. A. C. Dec. 2.

2. Computation. a. Disability.

694. Measure of disability.—The ability of the workman to do the exact work on which he was employed at the time of the injury is not the sole measure of disability, but, under the provisions of subdivision 2 [7], section 15, of the act, account should be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee and his age at the time of the injury.—*Frankfort G. Ins. Co. v. Pillsbury*, 173 Cal. 56, 58, 159 Pac. 150.

695. Percentage of disability, a question of fact.—The percentage of disability in the case before it is a matter to be determined by the commission in the exercise of its sound discretion, based upon a fair view of all the circumstances, and its conclusion in a matter is the determination of a question of fact, and is not subject to review by the courts unless palpably contrary to the undisputed evidence.—*Frankfort G. Ins. Co. v. Pillsbury*, 173 Cal. 56, 59, 159 Pac. 150.

696. Nature, extent and duration of disability.—Where an employee was suffering from the initial stages of glaucoma, which would after an indefinite period have produced total blindness independently of any injury, and he sustained an injury which precipitated acute glaucoma and hastened the inevitable condition of total blindness, it was held that the disability was temporary and total and that the period of disability proximately caused by the injury was the period during which vision would have remained if there had been no injury.—*Cousins v. Hanlon*, 4 I. A. C. Dec. 97.

697. Permanent disability—20% of total disability.—Where a carpenter suffered the loss of a kidney as a result of a fall, which prevented him from performing the strenuous work of a carpenter, he was held to have sustained a permanent disability, although the remaining kidney was normal and performing the functions of both kidneys, and such permanent disability equaled 20 per cent of the total disability.—*Fraser v. Healy-Tibbetts, etc., Co.*, 4 I. A. C. Dec. 242.

698. Same—Commission not bound by schedule.—Where the circumstances of a special case indicate that the rating appearing in the schedule published by the commission, as respects a certain kind of permanent disability, is too low, or where the testimony shows that the framers of such schedule made an underestimate as regards a certain class of permanent disability, the commission will not be bound by such schedule but will rate such disability upon the basis indicated by the evidence to be proper.—*Lee v. Pacific, etc., Co.*, 3 I. A. C. Dec. 28.

699. Same—Minor.—A ripsawyer at the age of nineteen years, who received a permanent injury to the right eye, was entitled to compensation under section 12(c) of the act of 1917, computed upon the probable wages which he would have received at the time he would become a journeyman brakeman, to the end that the injured brakeman may not be compensated on the injury on the basis of a boy's wages.—*Pacific Manufacturing Co. v. Pasquinelli*, 5 I. A. C. Dec. 184.

700. Same—Disability that does not affect efficiency.—The loss by an electric lineman, as a result of an industrial injury, of the senses of taste and smell does not interfere with his efficiency as a lineman nor cause a diminution of earning power in such occupation, and is therefore not compensable.—*Dotson v. Southern California, etc., Co.*, 4 I. A. C. Dec. 90.

701. Same—Child dancer—Scar on arm.—It was held that a child dancer was entitled to a rating for a permanent disability for a scar or burn on her arm.—*Yeager v. Universal, etc., Co.*, 5 I. A. C. Dec. 131.

702. Partial permanent disability—Jurisdiction of commission.—Under the liberal construction enjoined by section 86(a), it is held that under sections 12 and 15, the commission is authorized to make an award for partial permanent disability where it is less than ten per cent of total disability.—*Massachusetts, etc., Co. v. Pillsbury*, 170 Cal. 767, 768, 151 Pac. 419.

703. Preliminary treatment—Compensation for period of.—Where it was necessary to give the injured employee preliminary treatment before undergoing an operation required to cure the injury received, the disability will be compensable for the entire period, including preliminary treatment.—*Bishop v. National, etc., Co.*, 5 I. A. C. Dec. 223.

704. Damage to plate of false teeth not compensable.—A damage to removable plate of false teeth is an injury to property as distinguished from a compensable injury such as the knocking out of a natural tooth or damage to a bridge which is attached to and firmly fixed together with a part of the physical structure of the mouth; and the commission is without jurisdiction over a controversy concerning damage to such plate.—*DeWitt v. California Highway Commission*, 5 I. A. C. Dec. 140.

705. Cannery employee rendering divers seasonal duties.—Where a cannery employee whose employment was as forelady and also at times as labeler, so as to be employed continuously during the season, she was held to have sustained a compensable disability from an injury which prevented her from continuing in the occupation of labeling, though it did not prevent her from performing her work as forelady.—*Russell v. Western Indemnity Co.*, 5 I. A. C. Dec. 111.

706. Impairment of vision due to use of wood alcohol.—An impairment of vision due to effect of wood alcohol used in cleaning an apparatus used by an employee is an accidental injury within the meaning of section 12 of the Boynton act as it stood January 1, 1914.—*Fid. & Cas. Co. v. Industrial Accident Commission*, 177 Cal. 614, 616, L. R. A. 1918F, 856, 171 Pac. 429.

707. Release no bar to subsequently developing disability.—A release of all claims against the insurer by an injured employee on payment of an award for temporary disability does not bar a claim for permanent disability developing subsequent to the original award.—*Massachusetts, etc., Co. v. Industrial Accident Commission*, 176 Cal. 488, 492, 168 Pac. 1050.

708. Award of 50 per cent compensation.—An injured shipfitter able to do light work not accessible to him and not furnished by his employer was awarded fifty per cent compensation.—*Brown v. Southwestern Shipbuilding Co.*, 6 I. A. C. Dec. 71.

709. Compensation for vacation period.—An employee, who, after sustaining a com-

pensable injury, takes his regular vacation without pay, which he would have taken even if he had not been injured, but at a different time, should be compensated for the vacation period, even though there was no loss of wages during the same.—*Bickelnitzky v. Acme Brewing Co.*, 3 I. A. C. Dec. 5.

710. Employer takes employee subject to existing disability.—Employer takes an employee subject to his tubercular condition at the time of the employment.—*Cox v. California, etc., Co.*, 5 I. A. C. Dec. 10.

711. Same—Rule not to be applied to work unjustly.—The rule that the employer takes the employee subject to his physical condition at the time of entering his employment should not be applied where it would be unreasonable or would work injustice.—*Anderson v. De Paoli*, 4 I. A. C. Dec. 82.

712. Same—Impossible to determine extent of disability due to pre-existing condition.—It was held in the present case that the employer takes his employee as he finds him and where it is impossible to determine how much of the disability was due to the accident and how much to pre-existing conditions, it will be held that all of the disability is compensable.—*Rouda v. Massachusetts, etc., Co.*, 3 I. A. C. Dec. 36.

713. Same—Injury causing disability by reason of weakness from pre-existing diseased condition.—Where a laborer sustained a strain which caused no disability at the time and he continued working for five days and sustained another similar strain which was followed by a disabling gastro-intestinal trouble due to a pre-existing abdominal weakness of considerable standing, it was held that only such proportion of the disability as was reasonably attributable to the strains was compensable.—*Kibler v. State, etc., Fund*, 4 I. A. C. Dec. 361.

714. Same—When disability ascribed to pre-existing condition.—Disability may properly be ascribed to a pre-existing condition or ailment, if the injury is slight and the condition or ailment is known to have existed at the time.—*Snyder v. Pacific, etc., Co.*, 3 I. A. C. Dec. 1.

715. Occupational disease—Police officer—Flat feet and broken arches.—The employment of a patrolman and traffic officer, requiring him to stand eight hours a day in a very small space, usually on the pavement, was held to especially expose him to the danger of broken arches and flat feet, and such injury after five years employment arose out of and was proximately caused thereby and was compensable.—*Hedden v. State Compensation Insurance Fund*, 5 I. A. C. Dec. 1.

716. Same—Test of.—The test of whether a disease is occupational is whether it arose out of and in the course of the employment and it is immaterial whether infection was unavoidable.—*Adams v. State of California*, 4 I. A. C. Dec. 62.

717. Same—Occupation at which engaged at time of injury.—The occupation to be considered in making a permanent disability

rating is that at which the employee was engaged at the time of the injury, and not other and additional occupations.—*Felsen v. Atchison, etc., Ry. Co.*, 3 I. A. C. Dec. 11.

718. Disability caused by injury compensable regardless of disability due to pre-existing condition.—Where a mangle worker sustained an abdominal strain and a ventral hernia which disabled her from work and she was later found to be suffering also from a disabling heart trouble which was not caused by the injury or the employment, it was held that the disability caused by the injury was compensable, regardless of the disability due to the heart condition.—*Burns v. Snyder's I. X. L. Laundry*, 4 I. A. C. Dec. 241.

719. "Further disability."—Where an employee returned to work three weeks after the injury and worked continuously for five weeks and was then taken ill with metastatic infection and boils resulting from the original injury and was laid off for three weeks and then returned to work for two weeks, although able to do only a half day's work, it was held that the metastatic infection was a "further disability" within the meaning of section 16(c) of the act.—4 I. A. C. Dec. 101.

720. Same—When disability is.—A disability becomes a "further disability" within the meaning of the statute when it partially or wholly prevents the injured employee from employment after he returns to work subsequent to injury.—*Kemper v. Nathan-Dohrmann Co.*, 4 I. A. C. Dec. 101.

721. Same—New employer not liable.—The facts of this case show a new and further disability because of the incompletely healed fracture of the original injury, while serving a new employer, and it is held that the original employer and not the new employer was liable for compensation under the act.—*Snover v. Samuels*, 6 I. A. C. Dec. 215.

722. Same—Blindness from injury to eye producing cataract.—Where an employee sustained an injury to his eye and after medical treatment therefor returned to his regular work and about a year thereafter a cataract appeared which produced blindness, it was held that said blindness constituted a "further disability" within the meaning of the act.—*Lara v. Los Angeles Stone Co.*, 4 I. A. C. Dec. 298.

723. Same—Question of fact.—The question as to when the "further disability" under subdivision c of section 16 commences is a question of fact for the industrial accident commission to decide from the facts.—*Employees Credit Co. v. Industrial Accident Commission*, 177 Cal. 46, 49, 169 Pac. 1001.

723a. Same—Defined.—"Further disability" under section 16 (c) of the act of 1913, refers to any disability in addition to that for which proceedings were commenced within six months from the date of the injury, or that for which disability indemnity has been paid or agreed to be paid.—*Kauffman v. Industrial Accident Commission*, 37 Cal. App. 500, 174 Pac. 630.

724. Same — Subsequent incapacity.—Where, after an injury to his leg an employee suffered no loss of wages and required no medical treatment, although constantly in some discomfort because of the injury, and thereafter he became incapacitated from work by reason of the injury, it was held that the subsequent incapacity was a "further disability" within the meaning of section 16 (c) of the act of 1913.—*Larsen v. Sherer & Co.*, 4 I. A. C. Dec. 126.

725. Where an injury to the eye caused no immediate disability beyond the waiting period, but after eighteen months resulted in a traumatic cataract which caused permanent disability, it was held that such cataract was a "further disability" within the meaning of section 16 (c) of the act as amended in 1915.—*Ready v. City of Oakland*, 4 I. A. C. Dec. 89.

726. Same—Subsequent injury.—A "further disability" not caused by the original injury, but by the employee's own carelessness, and not happening in the course of a subsequent employment by the same employer, and arising out of it, is not compensable at all under the act.—*Head Drilling Co. v. Industrial Accident Commission*, 177 Cal. 194, 170 Pac. 157, 5 I. A. C. Dec. 1, (*Scott v. Head Drilling Co.*, 4 I. A. C. Dec. 9).

b. Earnings.

727. "Neighboring place" — Transitory occupation.—In view of the transitory nature of the occupation of a bricklayer, the term "neighboring place" as used in subdivision (2) section 17 (a) of the act of 1913, should be construed to include the various localities within the territory contiguous to the place where the deceased employee was working at the time of his death.—*Roche v. Gilson*, 5 I. A. C. Dec. 95.

728. "Days when so employed."—The phrase "days when so employed" in section 17a (1) refers to the number of days during which the employee was actually engaged in work, and not to the number of working days during which he might have been expected to work.—*Frankfort G. Ins. Co. v. Pillsbury*, 173 Cal. 56, 59, 159 Pac. 150.

729. "Rate of wages."—"Rate of wages" referred to in subdivision 4 of section 12 (a) of the act of 1917, means the daily rate.—*Mitchell v. Langley and Livingston*, 6 I. A. C. Dec. 188.

730. Average earnings—Standard wages.—In view of section 17, subdivision 2 of the act of 1913, an award of compensation on a basis of \$4.50 per day, to a painter employed at \$2.50 per day, for injuries sustained two days after he was employed, is not open to review, where it appeared that \$4.50 was the standard wage scale for painters in that locality.—*Hickox v. Industrial Accident Commission*, 35 Cal. App. 403, 169 Pac. 1048.

731. Average annual earnings — Salary definitely fixed.—The average annual earnings of a deceased employee are to be computed in accordance with the terms of section 17(a)(2) and not under the provisions of section 17 (a) (1) where his salary

is definitely fixed and his employment not for a portion of the year but for all the year around, although at the time of his death he was not working in the employment substantially the whole of the year immediately preceding death. — *Northern etc., Co. v. Industrial Accident Commission*, 34 Cal. App. 2, 166 Pac. 828, 4 I. A. C. Dec. 173.

732. Same—Salary not definitely fixed.—Under the provisions of section 17 (a) (2) of the act, where the wage or salary of the deceased employee working in the class referred to by such subdivision has not been definitely agreed to and fixed, the wage or salary of an employee of the same class, who had worked at the same or similar kind of employment substantially the whole of the year immediately preceding the death of the employee, earned during the days when so employed, should be adopted as the basis of computation. — *Northern, etc., Co. v. Industrial Accident Commission*, 34 Cal. App. 2, 166 Pac. 828, 4 I. A. C. Dec. 173.

733. Same—Earnings of others similarly employed.—The average annual earnings upon which a death benefit for the death of a bricklayer was computed upon the basis of the average daily earnings of other bricklayers, as provided in subdivision (2) of section 17 (a), instead of upon the average annual earning capacity of the deceased employee, as provided in subdivision (3) of that section. — *Roche v. Gilson*, 5 I. A. C. Dec. 95.

734. Same—School teacher.—A school teacher engaged to teach on five days per week for a term of ten months of the year at an annual salary is not employed substantially the whole year and her average annual earnings computed under section 17 (a) (3) of the act are the amount of her salary for the year. — *Hoag v. Elk Grove, etc., District*, 4 I. A. C. Dec. 70.

735. Same—Intermittent character of work.—Where an award of the commission for injuries received by an employee of a contractor, while engaged in cleaning a roof, was fixed by the commission at 300 times his daily wage and it was shown that his employment was occasional and irregular, and that neither himself nor any other person was employed steadily at it, the award was erroneous. — *Mahaffey v. Industrial Accident Commission*, 54 Cal. Dec. 740, 4 I. A. C. Dec. 368.

736. Same—Act contemplates steady and permanent employment—Where not shown to exist.—Both subdivisions 1 and 2 of section 17 of the act contemplate steady and permanent employment and the amount of average annual earnings is fixed accordingly at 300 times the daily wage, but where this kind of employment is not shown to exist, the case falls within subdivision 3, under which the annual earnings are to be taken as the sum which will "reasonably represent the average annual earning capacity" of the employee "in the kind of employment in which he was then working, or in any employment comparable therewith,

but not of a higher class." — *Mahaffey v. Industrial Accident Commission*, 54 Cal. Dec. 740, 4 I. A. C. Dec. 368.

737. Same—Seven day a week employee.—Under the act, where an injury occurred to an employee who labors seven days a week, resort is to be had to subsection 17 (a) (3) of the act, in computing the average annual earnings and not to either subsections 17 (a) (1) or 17 (a) (2) which required the use of the multiplier 300. — *City of Los Angeles v. Industrial Accident Commission*, 25 Cal. App. Dec. 100, 4 I. A. C. Dec. 227.

738. Same—Neither employee nor any other working at the employment two hundred and sixty days in year.—Where an applicant for compensation did not work two hundred and sixty days during the year preceding the injury, as a theatrical stage electrician and there was no evidence that any one else did, neither subdivision 1, 2 nor 3 of section 12 (a) of the act of 1917 applied, but his average earnings must be determined under the provisions of subdivision 4 of that section. — *Mitchell v. Langley and Livingston*, 6 I. A. C. Dec. 188.

739. Same—Carpenter's per diem wages taken, where no carpenter in neighborhood worked whole year.—Where a carpenter had been working for three months, six days in the week at \$4.00 a day, and had been working as a carpenter for several years and it did not appear whether such work continued substantially for the whole year in that neighborhood, it was held that his average annual earnings should be computed under section 17 (a) (3) on the basis of the carpenter's average annual earning capacity and thus computed were fixed at \$1200. — *Hardwick v. Armstrong, etc., Co.*, 4 I. A. C. Dec. 109.

740. Same—Where employee worked 364 days in year.—Where the evidence showed that the employee had worked for the employer an average of 364 days a year during the three years immediately preceding his injury, it was held the average annual earnings in the manner prescribed by subsection 3 of section 17 (a) of the act of 1913, and not by that of subsections 1 and 2 of the same section. — *Western Indemnity Co. v. Neill*, 5 I. A. C. Dec. 91.

741. Same—"Occasional jobs."—Subdivision 3 of section 17, and not subdivisions 1 and 2 (Stats. 1915, p. 1087), provides the basis for the computation of an injured employee who took "occasional jobs" from the contractor in whose service he was injured. — *Mahaffey v. Industrial Accident Commission*, 176 Cal. 711, 171 Pac. 298.

742. Same—Earnings in other occupations.—When the earnings of a student motorman in other occupations were in excess of wages paid him at the time of his injury, they can not be considered in computing his average earnings at the time of the injury under section 12 (a) (4), but under section 12 (a) (2) his average weekly earnings should be based upon the earnings of regular motormen, since he was at the time of his injury an employee of the same

class as a regular motorman, who worked two hundred and sixty days of the year preceding the injury.—*Boyce v. Pacific G. & E. Co.*, 6 I. A. C. Dec. 147.

743. Same—Weekly earnings at normal wages.—Where the normal wages of a teamster do not exceed three dollars per day, and an injured employee, under an agreement to share earnings, less cost of feeding team, earned an average of five dollars per day, his average weekly earnings should be computed according to the method provided by section 12 (a) (4).—*Heironimus v. California, etc., Co.*, 6 I. A. C. Dec. 19.

744. Same—Average earnings of election clerk.—The average annual earnings of an election clerk were computed on the average of the daily earnings of an employee in a similar employment under the provisions of section 17 (a) (2).—*Meehan v. City of Los Angeles*, 4 I. A. C. Dec. 52.

745. Same—Part of wages under bonus system.—Where the deceased employee received a certain per cent of his wages under the bonus system during the last three months of the year preceding his fatal injury, it was held that under the provisions of section 12 (a) of the act of 1917, his average annual earnings should be computed by adding to the weekly average of the rate of pay the average of the bonus received during the period the bonus system was in existence.—*Standley v. Pacific Coast Steel Co.*, 5 I. A. C. Dec. 130.

746. Same—Overtime.—In computing the average earnings of an injured employee, the overtime earned during the few days next preceding the injury was included.—*Charley v. Hammond Lumber Co.*, 5 I. A. C. Dec. 192.

747. Same—Variations in wages—Wages for last two months taken.—Where the rate of daily pay increased during the year preceding the injury, the amount of compensation is computed by taking the average of all wages received during the last two months when the highest wage was paid.—*Jacobson v. United Railroads, etc.*, 5 I. A. C. Dec. 195.

748. Same—Same—Wages received at time of injury.—The wages of a machinist increased at various intervals, the last increase having been two months prior to his injury are held not to have been irregular within the meaning of subdivision (3) of section 12 (a) of the act of 1917 and his average annual earnings should therefore be determined according to the provisions of subdivision (1) of that section, that is on the basis of the wages which he was receiving at the time of his injury.—*Spillane v. Cyclops Iron Works*, 5 I. A. C. Dec. 98.

749. Same—Same—Method of computation.—Where the rate of pay of a deceased employee varied during the year preceding his injury and death and was therefore irregular, the computation provided by the first three months prescribed in section 12 of the act of 1917 can not be reasonably and fairly applied, and his average weekly earning capacity was ascertained by taking the product of the total number of hours worked

during the year at the yearly rate received at the time of the injury, plus a bonus received during the year, and the same divided by 52.—*Grindell v. Maryland Casualty Co.*, 5 I. A. C. Dec. 193.

750. Same—Employee under twenty-one—Expected increase not considered.—Average annual earnings of a person, under twenty-one years of age, shown to be earning \$15 per month, for five days work after school, and Saturday, full day, and that after graduation from high school, six months before he would reach his majority, he would then be able to work full time at \$4.00 to \$5.00 per day, would be computed at the normal figure, under the condition of the business existing at the time of the injury, the expected increase pertaining solely to applicants personal circumstances and not due to the characteristics of the business.—*Rodey v. Marshall, etc., Fund*, 6 I. A. C. Dec. 2.

751. Same—Same—Based on conditions at time of injury.—In computing compensation for the permanent disability of an employee under 21 years of age, the probable wages after attaining 21 years, are to be based upon conditions at the time of the injury.—*Henneberry v. Union Iron Works*, 5 I. A. C. Dec. 158.

See *Claremont C. Club v. Industrial Acc. Com.*, 174 Cal. 395, 399, 163 Pac. 209.

752. The probable wages of an employee under 21 years of age are based upon conditions at the time of the injury.—*Quilien v. Pennington Sons*, 5 I. A. C. Dec. 135.

753. Same—Same—Expected increase may be considered.—In awarding compensation to a minor permanently injured it is proper for the Industrial Accident Commission, supporting the provisions of section 17, workmen's compensation act, to take into consideration the increased wage which a minor may be fairly expected to earn after reaching the age of twenty-one.—*Claremont C. Club v. Industrial Acc. Com.*, 174 Cal. 395, 399, 163 Pac. 209.

754. Same—Same—Probable wage after majority may not be considered.—The commission has no power under section 17(c) of the act of 1913, to award compensation to an employee a few months under twenty-one, on the basis of his probable wages after reaching twenty-one.—*Hyman, etc., Co. v. Industrial Accident Commission*, 180 Cal. 423, 181 Pac. 784 (*Weiss v. Hyman, etc., Co.*, 5 I. A. C. Dec. 71).

See *Claremont C. Club v. Industrial Accident Commission*, 174 Cal. 395, 399, 163 Pac. 209.

755. The commission had no power under section 17(c) of the act of 1913 to award compensation to an injured employee under twenty-one upon the basis of his probable earnings within a reasonable time after attaining the age of twenty-one.—*Western Pacific Rd. Co. v. Industrial Accident Commission*, 180 Cal. 416, 181 Pac. 787 (*Dean v. Western Pacific, etc., Co.*, 5 I. A. C. Dec. 168, 245).

See *Claremont C. Club v. Industrial Acci-*

Cent Commission, 174 Cal. 395, 399, 163 Pac. 209.

756. Same—Newsboy selling both morning and afternoon papers for different employers—Average earnings.—Where a newsboy sells morning and afternoon papers for different publishers, his compensation for injury sustained while selling morning papers is based upon average earnings from sale of both morning and afternoon papers.—*Servel v. Chronicle Publishing Co.*, 6 I. A. C. Dec. 23.

757. Same—Full earnings in excess of maximum.—Where an employee's full earnings exceeded the maximum, he was held to be entitled to compensation for partial disability in an amount 65 per cent of the difference between his pay during partial disability and the maximum average of weekly earnings.—*Roney v. Ne Page, etc., Co.*, 5 I. A. C. Dec. 129.

758. Same—Cannery employee at divers seasonal duties.—Where a cannery employee was employed continuously in divers seasonal duties and suffered a disability which prevented her from the performance of one of these classes of duties, but not in the other, it was held that her average annual earnings should not be limited to her earnings in the particular work she was engaged in at the time of her injury, but should include all her earnings throughout the year in her employment at the cannery.—*Russell v. Western Indemnity Co.*, 5 I. A. C. Dec. 111.

759. Same—Bricklayer as volunteer fireman.—When a volunteer fireman rendered service as such only when occasion required, and at other times engaged in his regular occupation as a bricklayer, it was held that his average annual earnings should be determined on the basis of his earnings as such fireman and not on his earnings as bricklayer.—*Gilmore v. City of Whittier*, 5 I. A. C. Dec. 58.

760. Same—Machinist earning wages as musician.—Where an injury sustained by a machinist results in the loss of his ability to play and teach the violin, whereby he earned considerable in addition to his wages as a machinist, it was held that such additional earnings must be disregarded in computing his average annual earnings, since the act contemplates an imposition of compensation only upon the basis of earnings in the industry in which the injury occurs.—*Felsen v. Atchison, etc., Ry. Co.*, 3 I. A. C. Dec. 11.

761. Same—Where no remuneration—Computed at minimum.—Where there is no remuneration from which the amount of compensation may be computed under this act, it will be computed at the prescribed minimum.—*Noyes v. City of Eureka*, 5 I. A. C. Dec. 163.

762. Same—Working as typist for two employers—Entire wages.—Where an injured employee worked for two employers as a typist, the disability indemnity rate for an injury sustained by her should be computed on the basis of her earnings from

both employers.—*O'Connell v. Blum's Advertising Agency*, 6 I. A. C. Dec. 225.

763. Same—Two employers—Entire wages.—Where a joint employee of two railroads, one of which was not within the jurisdiction of the commission, was injured, it was held that his compensation should be computed on his entire wages from both companies, for which the company not in interstate commerce should be liable although said company paid only one-half his wages.—*Robinson v. San Francisco, etc., Railways*, 5 I. A. C. Dec. 138.

764. Same—Night watchman—Several employees.—Where a night watchman was employed by a corporation for a portion of his time, and was killed while in such employ, an award for a death benefit against such corporation was properly made, although employed under separate contracts in the same capacity by five other corporations; and the amount of the award was properly based upon his earnings in the aggregate from all his employers, instead of his earnings from the employer against whom the award was made.—*Western Metal Supply Co. v. Pillsbury*, 72 Cal. 407, 418, Ann. Cas. 1917E, 390, 156 Pac. 491, 3 I. A. C. Dec. 109 (*Mason v. Western Metal Supply Co.*, 1 I. A. C. Dec. 284).

765. Same—Waiter's tips and allowance for board, etc., considered.—The commission in estimating the compensation of a waiter in a hotel, may take into consideration the amount received in tips at the time of the injury as well as his regular wage and a proper allowance for board, etc.—*Hartford, etc., Co. v. Industrial Accident Commission*, 28 Cal. App. Dec. 1374, 183 Pac. 234.

766. Same—Student nurse—Value of instruction not considered.—In computing the compensation of a student nurse for injuries received in the course of her employment as such, it was held that no value is to be given to the instruction received by her.—*Burroughs v. Santa Barbara Cottage Hospital*, 5 I. A. C. Dec. 175.

767. Same—Wages definitely fixed.—Where a deceased employee's wage or salary is definitely fixed, no necessity exists for further testimony of such fact.—*North-ern, etc., Co. v. Industrial Accident Commission*, 34 Cal. App. 2, 166 Pac. 828, 4 I. A. C. Dec. 173.

4. Dependency.

768. "Member of the family."—The words "member of the family" in section 19 (c) of the act, do not include a woman living in the illicit relationship of wife of an employee.—*Pollock v. Wagner Leather Co.*, 3 I. A. C. Dec. 37.

769. "For whose support such husband was legally liable."—Where, at the time of his death, a laborer was supporting his wife in Spain by remittances during the two years of his absence from her, it was held that she was entitled to the presumption of total dependency by reason of the amendment of the act, effective August 8, 1915, conferring the right to such presump-

tion on a widow "for whose support such husband was legally liable."—*Lopez v. Fremont, etc., Co.*, 3 I. A. C. Dec. 31.

770. Partial dependency.—"Annual amount devoted."—The term "annual amount devoted" is to be interpreted under section 9 (c) (2) and 14 (b) of the act of 1917, as the actual amount contributed during the year preceding the injury, irrespective of any increase of earnings during the course of such year enabling the contributor to enlarge the amount of support at a rate which would have been continued had there been no injury.—*Schaffer v. Moore Shipbuilding Co.*, 5 I. A. C. Dec. 198.

771. Same—Income from property less than expense thereof.—The dependency upon an employee is partial, where such dependent received, in addition to the employee's contributions, certain income from property which was less than the expense thereof, and from the income from both sources paid her living expenses and purchased certain real estate.—*Anderson v. Union Iron Works*, 6 I. A. C. Dec. 42.

772. Same—Rate where earnings covered portion of year.—Where earnings have been made only during a portion of the preceding year, the contributions for the whole year are estimated at the same rate as for the entire period of actual contribution.—*Schaffer v. Moore Shipbuilding Co.*, 5 I. A. C. Dec. 198.

773. Same—Receiving money for room rent in house rented by employee.—Where, with the exception of a small amount per month received as room rent from lodgers in the house occupied by the family, the deceased employee paid all the living expenses of his mother and sister, including the rent of the house occupied by them, it was held that the fact of receiving money as room rent did not render the dependency only partial but that the mother and sister were totally dependent upon the deceased for support.—*Corbitt v. Moore & Co.*, 4 I. A. C. Dec. 389.

774. Same—Where both father and son contributed.—A father and mother were only partially dependent on a son for support, where the latter lived at home, and habitually gave his mother his pay check, and occasionally received small amounts for his own use, and the earnings of the father and son were used for the support of family, and a small monthly payment on a mortgage on the home.—*Wilson v. Southern, etc., Co.*, 6 I. A. C. Dec. 106.

775. Same—Part support from income of own property.—Where the applicant was partly supported by the contributions of the deceased employee and partly by income from her own property, it appeared that she had deposited in a savings bank the amount of the contribution received from such deceased employee, it was held that in determining the amount of the death benefit, the amount of the banked deposits should not be considered but that the savings should be treated as though

derived entirely from the personal income.—*Dunn v. Johns-Manville Co.*, 5 I. A. C. Dec. 205.

776. Same — Contributions for entire year not necessary.—It is not necessary in a case of partial dependency that the deceased employee should have contributed to claimant's support for a year, and the annual amount provided by section 15(c)(2) of the act of 1913 may exceed the amount actually contributed during the year.—*Sharon v. Bornstein*, 5 I. A. C. Dec. 70.

777. Same — Contributions not constant.—Where the contributions made by a deceased employee have not been constant, either in amounts or times of payment, but fluctuated during the year preceding his demise, the determination of the "annual amount" rests largely in the discretion of the commission based upon the evidence, and is not subject to review if there is any evidence to support it.—*Popst v. Industrial Accident Commission (Cal. App.)*, 192 Cal. 296.

778. Disposition of benefit—Needs of dependents.—The question what disposition in any particular case is in proportion to the respective needs of the dependents and is just and equitable is one of fact, the determination of which is committed to the discretion of the commission.—*Perry v. Industrial Accident Commission*, 176 Cal. 706, 710, 169 Pac. 353.

779. Mother of family of illegitimate children.—Where a woman cohabits with a man for a long period of years, and is the mother of a family of children by such man, but was not the wife of such man, but of one who had previously deserted her, and such woman and family are in fact totally dependent on such man, it was held that such woman is not entitled to the presumption of total dependency accorded a wife.—*Pollock v. Wagner Leather Co.*, 3 I. A. C. Dec. 37.

780. Maintenance of child — Amount father ordered to pay.—It is competent for the commission to determine as a matter of fact that the father was liable for the maintenance of the child where it finds upon competent evidence that the sum which he was ordered to pay was fully sufficient for its entire support.—*Robert Sherer & Co. v. Industrial Accident Commission (Cal.)*, 188 Pac. 797.

781. Source of earnings not considered.—The source of earnings contributed to a dependent will not be considered by the commission, and where the earnings of a 17-year-old boy contributed to his mother's support were obtained after he had escaped from the state reform school, the source of such contributions will not bar the mother's right to a death benefit, and this notwithstanding such commitment and assumption of guardianship by the state.—*Silva v. Red River Lumber Co.*, 5 I. A. C. Dec. 190.

782. Repayments of debt, not contributions.—Repayments of debt do not constitute contributions for the support of dependent to be considered in fixing the compensation

of such dependent.—*Beacom v. Miller & Lux, Inc.*, 6 I. A. C. Dec. 61.

783. Claims of nonresident dependents—Policy of commission.—In dealing with death benefit claims by nonresident dependents, it is the policy of the commission to require at least some testimony as to contributions for support to be corroborated by documentary evidence of remittances.—*Claudio v. California, etc., Ry. Co.*, 3 I. A. C. Dec. 7.

784. Support of nonresident wife — Imprisonment of husband.—Failure of an Italian resident in this state to remit contributions for his wife's support during a year's imprisonment and for six months after, is not inconsistent with the fact of total dependency of his nonresident wife, where he had previously made remittances, and there is no affirmative evidence of an intent, during the period of nonremittances, to sever family relations.—*Claudio v. California, etc., Ry. Co.*, 3 I. A. C. Dec. 7.

785. Same — Presumption of partial support.—Although a wife in Italy has been supported for seven years by contributions from her husband in this country, she will be presumed to be only partially dependent on him at the time of his death, one and one-half years, after the seven year period, if during such one and one-half years he made no remittance, and she was living with three adult children at least two of whom were presumably able to support her.—*Claudio v. California, etc., Ry. Co.*, 3 I. A. C. Dec. 7.

786. Same — Presumption that husband and wife were "living together."—Evidence that an Italian resident in this state sent \$140 to his wife in Italy during 1912, and \$40 in the following February, and after eleven months' imprisonment resumes work and is killed in June, 1914, without having made any further remittance to his wife, is insufficient, without other evidence, to support a conclusive presumption that the husband and wife were "living together" within the meaning of the act.—*Claudio v. California, etc., Ry. Co.*, 3 I. A. C. Dec. 7.

787. The commission will entertain no conclusive presumption, that a wife, resident abroad, and for nine years separate from her husband, is "living with" him, within the meaning of section 19 (a) (1) of the act of 1913, in the absence of sufficient evidence of regular and substantial contributions by him tending to show an intent to renew family relations.—*Claudio v. California, etc., Ry. Co.*, 3 I. A. C. Dec. 7.

788. Nonresident widow in Spain—"Living with" husband employee.—Where up to the time of his death a laborer has by means of remittances been supporting his wife who, during two years of his absence from her had remained in the foreign country of their birth, it was held that she was "living with" him at the time of his death within the meaning of section 19 of the act.—*Lopez v. Mourenzae*, 3 I. A. C. Dec. 31.

789. Nonresident widow in Italy—"Living with" husband employee.—Where the intent

of the deceased employee was to re-unite with his wife, separated from him for a period of three years, either in California or Italy, it was held that she was living with him at the time and because of such fact and also because of such actual support, such widow was entitled to a death benefit as a total dependent.—*Petrucchi v. The Red River, etc., Co.*, 3 I. A. C. Dec. 40.

IX. PAYMENT OF COMPENSATION.

790. Set-off against amount awarded.

791. Payment of compensation by carrier.

792. Reduction for serious and wilful misconduct.

793. Payment of "scrip" is payment of compensation.

794. Payment of full wages during portion of period of disability.

795. Payment of full wages for full services, before expiration of partial disability period.

796. Payment of full wages to employee working on half pay.

797-802. Payment of wages as part compensation.

803. Same—Absence of agreement.

790. Set-off against amount awarded.—The amount of an award for compensation must be paid whether the employee owes money to the employer or not.—*Manford v. Carstenbrook*, 3 I. A. C. Dec. 21.

791. Payment of compensation by carrier.—The payment of compensation by the insurance carrier is payment in behalf of the employer in discharge of the employer's liability.—*Frandsen v. Llewellyn Co.*, 3 I. A. C. Dec. 23.

792. Reduction for serious and wilful misconduct.—The compensation of an injured employee, which he would ordinarily have received, will be reduced in half when such injury is a result of his own serious and wilful misconduct but such reduction will affect the number but not the amount of the weekly installments.—*Solari v. Theodore Pappas, George Pappas, Harry Demas and Gus Demas*, 5 I. A. C. Dec. 180.

793. Payment of "scrip" is payment of compensation.—Where an employer paid to the injured employee "scrip" as money for living expenses and such "scrip" was accepted as money, it was held that such payment of "scrip" constituted payment of compensation and that therefore the application was not barred by the statute of limitations.—*Guerrero v. Red River, etc., Co.*, 5 I. A. C. Dec. 117.

794. Payment of full wages during portion of period of disability.—Where during the first five weeks of total disability following the injury, the applicant received full wages from his employer, and during the next six weeks of total disability received more than 65 per cent of his earnings, it was held that the full sum paid be not treated as 100 per cent compensation during the five weeks, but the whole sum paid be credited in full on whatever sum

is awarded to the applicant.—*Ramirez v. Binkley & Wayne*, 3 I. A. C. Dec. 33. (See, also, *Cypher v. United Development Co.*, 1 I. A. C. Dec. 425, and *Turner v. City of Santa Cruz*, 2 I. A. C. Dec. 917.)

795. Payment of full wages for full services, before expiration of partial disability period.—Where an injured employee is awarded compensation for a permanent partial disability, and returns to work, performing full service, at full pay before the weekly payments expired, it was held that the employer was not entitled to credit on the award with any part of the wages received by the employee for such service.—*Wray v. P. P. I. E. Co.*, 3 I. A. C. Dec. 6.

796. Payment of full wages to employee working on half pay.—Payment of full wages to partially disabled employee, working on half pay, held to be payment of partial disability indemnity, for which the employer is entitled to reimbursement from the insurance carrier.—*Tucson v. York, etc.*, Co., 6 I. A. C. Dec. 110.

797. Payment of wages as part compensation.—Where the employer pays full wages after the injury, and the commission deems such payment as compensation, he will receive credit on the claim for compensation for the total amount paid, less 65 per cent as full disability indemnity.—*Oders v. Great Western, etc., Co.*, 6 I. A. C. Dec. 95.

798. Where an industrial disability was permanent and involved a fixed indemnity based upon the degree of permanent disability and not upon the length of time the employee was disabled, the defendant was entitled to credit on the permanent partial disability indemnity for the amount of wages paid during temporary disability rather than for the time such wages were paid.—*Brown v. San Francisco*, 6 I. A. C. Dec. 261.

799. Full wages paid to an injured employee, should be considered as of disability indemnity, regardless of the motive of his employer in paying the same.—*Angier v. First National Bank*, 6 I. A. C. Dec. 156.

800. Full wages paid injured employee, and deemed compensation for injuries, should be considered as indemnity at the rate of 100 per cent of the earnings rather than 65 per cent of the average weekly earnings, and the insurance carrier was entitled to credit for the period covered by the payments rather than the actual amount thereof.—*Angier v. First National Bank*, 6 I. A. C. Dec. 156.

801. Payments of full wages during temporary total disability, should be credited upon the amount of partial permanent disability compensation, and not as 100 per cent of total disability compensation for the temporary period.—*Francis v. Shephard*, 6 I. A. C. Dec. 124.

802. Where an applicant was working at light work for full wages, the payments must be considered, in the absence of special circumstances, as wages, and not as part

compensation, and the statute is not tolled.—*Enoidi v. Standard Oil Co.*, 6 I. A. C. Dec. 124.

803. Same—Absence of agreement.—In the absence of a showing that there was an agreement or understanding between an employee and his employer that the full pay he received after returning to work after his injury, or any portion thereof, was to be in the nature of compensation for such injury, or that the work he performed was unsatisfactory to his employer, or that the compensation he received was more than his services were worth, it can not be held that the mere fact that the employer permitted the employee to return to his old position at full pay and to continue therein for several months, could give rise to the claim that a portion of such pay was in the nature of compensation for his injuries.—*Hunt v. Industrial Accident Commission*, 30 Cal. App. Dec. 45, 185 Pac. 215, 6 I. A. C. Dec. 154.

X. PRACTICE AND PROCEDURE.

1. Jurisdiction. a. In general.

- 804. Commission exercises judicial functions.
- 805. Jurisdiction—Liberal construction of act.
- 806. Commission has no general jurisdiction.
- 807. Jurisdiction of commission is derived from the act.
- 808, 809. Enforcement of liability against other than employer.
- 810. Same—Subject to annulment—Not incurably void.
- 811. Reimbursement of funeral expenses advanced by third person.
- 811a. Reimbursement for funeral expenses—No application.
- 812. Injury to employee of sub-contractor where original contractor is not liable.
- 813. Power to determine question of jurisdiction after apparent bar of statute.
- 814. Consent can not confer jurisdiction.
- 815. Where jurisdiction conceded, facts should be interpreted in support of.
- 815a. Liability of insurer.
- 816. Requiring large corporation to deposit security not abuse of discretion.
- 816a. Same—Jurisdiction of employer is jurisdiction of carrier.
- 816b, 816c. Same—Controversy between employer and carrier.
- 816d. Same—Power to determine all questions of law and fact.
- 816e. Power to determine validity of insurance policy.
- 816f. Power to determine question of "wilful misconduct."
- 816g. Lack of legal authority to file application.
- 816h. Same—Consul of Russia—Treaty relations.
- 816i. Same—Alien enemy.

- 816j. Reconsideration must be upon same facts—Denial of rehearing.
- 816k. Award void on its face—Collateral attack.
- 816l. Unauthorized award—Lack of jurisdiction—Collateral attack.
- 816m. Physician's claim for services.
- 816n. Committee performing governmental functions.
- b. Interstate commerce.*
- 817, 818. Nature of employment—Question of law where facts admitted.
- 819, 820. Federal employer's liability act—Decisions of U. S. courts control.
- 821, 821a. Test of employment in interstate commerce.
822. California act inapplicable where employment is in interstate commerce.
823. Nature of service being performed determined by general character of employment.
824. New construction of facilities.
825. The work of rearranging, transferring and changing tracks.
826. Loading intrastate baggage.
827. Unloading intrastate freight.
828. A railroad car repairer.
829. Carpenter repairing freight car withdrawn from interstate commerce for repairs.
- 830, 831. Repairing locomotive taken from interstate commerce for the purpose.
832. Same—Grinding bolt for use in repair.
833. Same—Repair of truck.
834. Same—Finding as to interstate commerce held conclusion of law.
- 835, 836. Same—Not in interstate commerce.
837. A shopworker in a railroad roundhouse.
838. Steamfitter at railroad roundhouse.
- 838a. An employee engaged in the operation of a steam shovel.
- 839, 840. Track repairs.
841. Construction of new track.
842. Repairing main line track.
843. Repairing driveway over which goods in interstate commerce move.
844. Wiping insulators on main power line of electric railway.
- 844a. Electric lineman.
845. Rerailing derailed engine obstructing interstate trains.
- 845a. Removing derailed car, not obstructing interstate commerce.
846. Kitchen assistant in a railroad restaurant.
847. Cutting wood to heat interstate train.
848. Flagman.
849. Special officer killed by tramps on interstate train.
- 849a. Railroad watchman injured while driving off trespassers.
850. Yard engine foreman moving incidentally interstate cars.
851. A brakeman employed on a construction train.
852. Brakeman employed on interstate train.
853. Brakeman on work train on its way to repair a bridge.
854. Telegraph lineman.
855. Engine herder.
856. Receiving-clerk for food supplies used on interstate train.
857. Night watchman guarding tools and materials to be used in new construction.
858. Tunnel not yet in use.
- 858a. Transportation of U. S. mail—Interstate commerce.
859. Same—Delivering pouches of mail.
860. Same—Commission without jurisdiction.
861. Same—Railroad agent of government.
- c. Maritime jurisdiction.*
862. Loading a steamer at a foreign port.
863. Award in a maritime case.
864. Right and remedy of act within saving clause of federal act of 1789.
865. Authorities.
866. Admiralty jurisdiction of federal courts not exclusive.
- 866a. Seaman has an election of remedies.
- 866b. Seaman bound by an election of remedies.
- 866c. Same—No election made.
- 866d, 866e. Admiralty not bound by state law.
- 866f. Court of equity will enforce state statute in admiralty.
867. Injuries on the high seas.
- 868-870. Same—California ownership.
- 871, 872. Stevedore discharging vessel in port.
873. Stevedore—Fall from gang plank over navigable water.
874. Longshoreman working on dock.
875. Laws of parent state, when inapplicable to vessels.
876. Working on ship in Oakland estuary—Presumption from stipulation.
877. Work on ship prior to launching.
878. Employee installing apparatus on vessel in course of construction.
879. Engineer installing refrigerator on vessel under construction.
- 879a. Shipwright repairing vessel on bottom in Oakland estuary.
880. Navigable waters—Launching basin.
881. A contract for the construction of a vessel is not maritime.
882. Barge pilot sawing wood while vessel laid up for winter.
883. Contract for polishing shoes on ferryboat.
884. Ferryboat used for transporting train on inland waters.
885. Effect of Johnson bill.

d. Extraterritorial.

- 886. "Resident"
- 887. Test of residence.
- 888. Traveling salesman residing in New Jersey, under exclusive control of California agent of New York corporation.
- 889. Enforcement of obligation in tort by *lex fori*.
- 890, 891. Sailor of California ship lying in port of another state.
- 892. Mandates have no effect beyond territorial limits.
- 893. Non-maritime employment under California contract by California residents.
- 893a. Contract of hire of California resident made in California.
- 894. Contract under act of 1917—Act a regulation.
- 895. Unconstitutional enactment—Creation of privilege in favor of citizens of California.
- 896. Release in New Mexico.
- 897. Constitutionality of section 75 (a).
- 898. Section 75 (a) not limitation but grant of power.
- 899. Jurisdiction prior to enactment of 1915.
- 900. Effect of section 75 (a) of act—Death benefit for injury and death in another state.

e. Notice of injury.

- 901. Notice of original injury required, not notice of "further disability."
- 902. Notice by registered letter sufficient.
- 903. Evidence insufficient to establish actual notice.
- 904. Actual knowledge—Oral information.
- 905. Notice of injury—Actual knowledge of employer.
- 906. Actual knowledge is equivalent to notice.
- 907. Same—Actual or first hand knowledge.
- 908. Not prejudiced by want of notice.
- 909. Same—Making defense.
- 910. Same—No intention to mislead or prejudice employer.
- 911, 912. Notice of employer to employee under section 34.
- 913. Waiver by employer of right to select physician.

f. Application.

- 914. No particular form required.
- 915, 916. Filing request for disability rating.

g. Evidence.

- 917-917c. Evidence taken prior to service of notice of hearing—Invalid award.
- 917d. Same—Testimony given without opportunity to cross-examine.
- 917e. Same—Hearing before referee.
- 917f. Lack of notice—Contravention of constitutional provisions.
- 918. Evidence, power to take secretly—Want of due process.

- 919. Evidence of medical expert—Not given under oath, and not given after notice.
- 920. Burden of proof—Relationship of employer and employee.
- 921. Same—Accident arising out of and in course of employment.
- 922. Same—Unexplained injury.
- 923. Same—Existence of compensable injury.
- 924. Same—Employee not required to establish source of injury scientifically.
- 924a. Same—Same—Reasonable certainty only required.
- 925. Same—Same—Demonstration not required—Only reasonable certainty.
- 926. Same—Wilful misconduct not required to be shown affirmatively.
- 927. Same—Same—Affirmative defense.
- 928. Same—Not on dependents to prove innocence of wilful misconduct.
- 929. Same—Employee must show that influenza resulted from exceptional exposure of employment.
- 930. Same—After *prima facie* case, burden is on employer.
- 931. Same—Every contrary possibility need not be negatived.
- 932. Same—Circumstantial evidence.
- 933. Hearsay testimony—Status of employee can not be shown by.
- 944. Same—Statements of deceased employee competent.
- 945. Same—Section 77 (a) declarations of deceased.
- 946. Same—Same—Relating directly to injury, admissible.
- 947. Same—Same—Section 75 (b) not technical rule of evidence.
- 948. Same—Section 60 (a) act of 1917—Deposition admissible.
- 949. Same—Sufficiency of, as to dependency.
- 950. Unverified report of physician same as allegation of complaint—Not evidence.
- 951. Testimony by physicians—Not conclusive as against unprofessional testimony.
- 952. Report of physician—Scope of inquiry.
- 953. Mental incompetency—Recital in court order not binding on commission.
- 954. Marriage—Want of record.
- 955. Circumstantial evidence does not overturn presumption of lawful conduct.
- 956. Unauthenticated letter, not written or signed by dependent, insufficient evidence of authority.
- 957. Admissions made in delirium, or while dazed, or in shock.
- 958. Commission not bound by stipulation as to facts.
- 958a. Oral testimony as to relations of parties.
- 959. Average annual earnings—Pay roll of employer.

- 960. Conflict of evidence—Commission final arbiter.
- 961. Evidence insufficient to establish wilful misconduct.
- 962. Evidence insufficient to establish deliberate and intentional failure to observe rule.
- 963. Evidence insufficient to establish that injury proximately caused disability.
- 964. Evidence not sufficient to show serious and wilful misconduct.
- 965. Wilful misconduct—Absence of inference.
- 966. Evidence sufficient—Skin disease contracted from wood dust.
- 967. Evidence sufficient—Death result of injury.
- 968. Evidence insufficient — Injury caused death.
- 969. Evidence sufficient to show cause of disability as alleged.
- 970. Evidence not sufficient to show husband employee of wife.
- 971. Evidence insufficient to overturn inherent improbability.
- 972. Evidence not sufficient to establish that injury caused death.
- 973. Evidence sufficient to show cause of disability as claimed.
- 974. Evidence insufficient to show that alleged wilful misconduct proximately caused injury.
- 975. Absence for less than seven years may be sufficient proof of death.
- 976. Custom or usage, binding effect of.

5. Instructions.

- 977. Instruction to jury—Rule as to weight of evidence—Applicable to Industrial Accident Commission.

6. Findings.

- 978. Finding as to employment, if supported, is not reviewable.
- 978a. Status of deceased—Employee or independent contractor.
- 979. Finding as to cancer resulting from fall, held supported by the evidence.
- 980. General rules of practice—Findings should conform to.
- 981. Findings and award have effect of judgment.
- 982. Knowledge or notice—Actual knowledge.
- 983. Findings upon ultimate, not probative, facts required.
- 984. Finding upon conflicting evidence not reviewable.
- 985. Finding not warranted—Negligence in communication of infection.
- 985a. Finding as to bar of statute justified.

7. Orders.

- 986. Service—Dismissal for want of.
- 986a. Dismissal on own motion for want of jurisdiction on face of petition.
- 987. Consolidation of two proceedings—For disability and for death.

8. Statute of limitations.

- 988. Statute affects only the remedy.
- 989. The provisions of section 11 of the act of 1917 are procedural.
- 990. Force and effect of phrase "wholly barred."
- 991. Significance of word "barred."
- 992. Filing of application for rating not a commencement of proceedings for compensation.
- 993. Filing of request for permanent disability rating stops running of statute.
- 994. Application of section 16 (c), act of 1913.
- 995. Date of last payment of compensation.
- 996. Extension of period by payment of compensation.
- 997. Payment of wages—Without performing service.
- 998. Same—Performing part service.
- 999. Same—Excess of wages as compensation.
- 1000. Same—One day following injury.
- 1001. Same—Immaterial whether compensation is due.
- 1002. Furnishing medical treatment.
- 1003. Payment for medical services—Act of 1917.
- 1004. Same—Payment for prior treatment.
- 1005. Payment of damages under admiralty law.
- 1006. Collection of death benefit.
- 1007. Under the act of 1913.
- 1008. Same—Filing of application for disability rating.
- 1009. Claim by foreign dependent—Application within one year from death.
- 1010. Disability uncertain.
- 1011. "Further disability."
- 1012. Same—Application of phrase.
- 1013. Same—Continuing disability.
- 1014. Same—Not further disability.
- 1015. Same — Same — Steadily failing sight.
- 1016. Same—Injury occurring prior to amendment of section 16 (c).
- 1017. Same—When statute has run against original disability.
- 1018. Same—When statute begins to run against new disability.
- 1019. Same—Date statute begins to run.
- 1020, 1021. Same—When claim barred.
- 1022. Same — Reduction of earning power.
- 1023. Same—Arising two years after original injury.
- 1024. Continuing jurisdiction of commission.
- 1025. Two distinct injuries—One only named.
- 1026. Claim of lien for medical services.
- 1027. Effect of minority.
- 1028. Bar must be pleaded in five days.
- 1029-1031. Same—Failure to plead, waiver.

1032. Agreement to forego operation of statute.
1033. Power of commission to set aside defense of statute.
1034. Failure to file claim within agreed time.
9. *Judgment or award. a. Finality and conclusiveness.*
1035. Reopening decisions on change of law.
1036. Testimony taken before referee.
1037. Annulled on newly discovered evidence.
1038. Same—Applicant not widow.
1039. Dismissal of employer — Reinstatement.
1040. Error of procedure does not vacate award.
- b. Alteration, amendment, etc.*
1041. Waiver of objections not made.
1042. Jurisdiction to amend not unlimited.
1043. Findings, not attacked, final before proceeding to amend begun, conclusive.
1044. Notice of hearing of proceeding to amend, sufficiency.
1045. Changed conditions must be shown as basis of application to amend.
10. *Rehearing.*
1046. Notice of hearing—Right of person against whom award is made.
1047. Petition for rehearing, contents.
1048. Points raised for first time.
1049. Same—Point of lack of jurisdiction.
- 1049a. Same—Maritime injury.
1050. Failure to make express finding—Want of objection.
1051. Jurisdiction of commission expires on denial of rehearing.
1052. Substitution of insurance carrier—Request after time for rehearing has expired.
1053. “Filing” not “service.”
1054. Same—Code provision not superseded.
11. *Review.*
1055. Respondents—Members of commission.
1056. Attack upon award—Intent of act.
- 1057, 1058. Limitation of review of awards.
1059. Want of evidence to sustain findings — Newly discovered evidence—Grounds for rehearing but not for review.
1060. Power to annul awards—Grounds.
- 1061- 1061a. Scope of jurisdiction of supreme court.
1062. Certiorari—Grounds restricted to those stated in section 84.
1063. Annulment of award on review, grounds of.
1064. Exercise of discretion not reviewable, unless wholly unsupported in the record.
1065. Same—Determination as to reasonable time.
1066. Annulment of award on review, when.
1067. Award may be reviewed but not collaterally attacked.
1068. Jurisdiction of supreme court—Power to weigh evidence.
- 1069, 1070. Supreme court not a court of appeal.
1071. Appeals not provided for in the “Boynton Act.”
1072. Application for review must be made within the proper time.
- 1073- 1075. Time to apply for certiorari.
1076. Same—Medical services—Order not final judgment—Premature application for writ of review.
1077. Review of evidence, extent of.
1078. Award nullified for insufficiency of evidence.
- 1079- 1080. If any evidence to support finding, award affirmed.
1081. Admission of incompetent evidence, no ground for annulment, if supported by competent evidence.
1082. On review — Every reasonably drawn inference taken in aid of findings.
1083. Same—Drawing different conclusions.
1084. Same—If conclusion could be reached by a reasonable man.
1085. Same—Finding supported under any rational view of evidence.
1086. Same—Findings and conclusions not subject to review if reasonably supported.
1087. Order within jurisdiction, under facts, not reviewable.
1088. Petition for certiorari—Showing of insufficiency of evidence.
- 1089, 1090. Same—Same—Finding sustained—Application dismissed.
1091. Findings supported—Origin of sarcoma.
1092. Findings as to relationship of parties conclusive.
1093. Finding as to dependency not reviewable.
1094. Review of award—Questions of fact.
1095. Award without proof of accident, nullified.
1096. Award annulled for total want of evidence to sustain.
1097. Award set aside for want of support in the evidence—Unsupported award will be set aside.
1098. Findings totally unsupported are subject to review.
1099. Relationship—Finding on hearsay testimony, binding on appellate court.
1100. Finding of jurisdictional fact on hearsay testimony.

- 1101. **Annullment of award**—Hearsay statements of deceased.
- 1102. **Admission of hearsay evidence** immaterial if other evidence sufficient.
- 1103, 1103a. **Findings on conflicting evidence.**
- 1104. **Same**—Not subject to review.
- 1105. **Finding as to status of employee** on conflicting evidence.
- 1106. **Findings not subject to question** on review, where the evidence in support is conflicting.
- 1107. **Findings upon conflicting evidence** will not be disturbed where there is some support.
- 1108. **Arising out of and in course of employment**—Finding on conflicting evidence upheld.
- 1109. **Irregularities or errors in procedure** not jurisdictional.
- 1110. **Inconsistent findings** not ground for review.
- 1111. **Consideration of evidence in support of findings.**
- 1112. **Evidence taken without notice** to party affected by award.
- 1113. **Errors in admission or exclusion of evidence**—Not reviewable.
- 1114. **Findings of fact upon which jurisdiction is based** are reviewable.
- 1115. **Jurisdictional facts** must be supported by competent evidence.
- 1116. **Finding as to jurisdictional fact** unsupported—Award annulled.
- 1117. **Question of relationship of employer and employee** jurisdictional, and subject to review.
- 1118. **Questions as to whether accident** arose out of employment, and whether wilful misconduct proximately caused accident are jurisdictional.
- 1119. **"Roseberry Act"**—Question of wilful misconduct jurisdictional.
- 1120. **Question as to wilful misconduct** of employee reviewable.
- 1121. **Question of "wilful misconduct"** jurisdictional.
- 1121a. **Wilful misconduct of employee.**
- 1122. **Double employment**—Finding as to excluded employment.
- 1123. **Scope of section 84**—Reviewable facts.

1. Jurisdiction. a. In general.

804. Commission exercises judicial functions.—The industrial accident commission in awarding compensation under the act exercises judicial functions, and is a judicial body, and must observe the requirements of the federal constitution with respect to due process of law.—*Carstens v. Pillsbury*, 172 Cal. 572, 158 Pac. 218.

805. Jurisdiction—Liberal construction of act.—The industrial accident commission is a tribunal of limited jurisdiction, whose powers do not extend beyond the settlement of disputes arising under the legislation contemplated by section 21, article XX, of Gen. Laws—105

the constitution; but that section is to be liberally construed to effect its purpose.—*Employer's, etc., Corp. v. Industrial Accident Commission*, 177 Cal. 771, 775, 171 Pac. 935.

806. Commission has no general jurisdiction.—The industrial accident commission is wholly without power or authority in matters of general jurisdiction without the scope of its limited jurisdiction under the act.—*Gamble v. Superior Court*, 6 I. A. C. Dec. 26, 39 Cal. App. 661, 179 Pac. 717.

807. Jurisdiction of commission is derived from the act.—The power of the commission to award compensation is derived from the act, and exists only in the cases and to the extent defined therein.—*Massachusetts, etc., Co. v. Pillsbury*, 170 Cal. 767, 769, 151 Pac. 419.

808. Enforcement of liability against other than employer.—Section 21, article XX, of the constitution confers no authority upon the legislature to create or enforce any liability against any except employers.—*Carstens v. Pillsbury*, 172 Cal. 572, 579, 158 Pac. 218.

809. Section 21, article XX, confers no power upon the legislature to authorize the industrial accident commission to inquire into, determine and enforce liabilities under section 30 of the act in favor of an injured employee against persons other than his employer.—*Sturdivant v. Pillsbury*, 172 Cal. 581, 582, 158 Pac. 222.

810. Same—Subject to annulment—Not incurably void.—Although an award by the industrial accident commission in favor of an employee against a person other than his immediate employer, is subject to annulment on review, as in excess of the constitutional power of the commission, it is not necessarily and incurably void, and unless annulled in the manner prescribed by the act is conclusively presumed to be valid and binding.—*Thaxter v. Finn*, 178 Cal. 270, 275, 173 Pac. 163.

811. Reimbursement of funeral expenses advanced by third person.—In the absence of an application the commission has no jurisdiction to make an allowance for reimbursement to a third person for money advanced to pay the funeral expenses of a deceased employee.—*Western Indemnity Company*, 35 Cal. App. 104, 169 Pac. 261.

811a. Reimbursement for funeral expenses—No application.—The commission is without authority to allow a sum of money paid for funeral expenses of a deceased employee in the absence of the filing of an application therefor with the commission.—*Western Indemnity Co. v. Industrial Accident Commission*, 35 Cal. App. 104, 169 Pac. 261, 4 I. A. C. Dec. 328 (*Pavlovic v. Glick*, 4 I. A. C. Dec. 114).

812. Injury to employee of sub-contractor where original contractor is not liable.—The commission is only authorized to decide disputes between employer and employee in regard to claims for compensation for industrial injuries such as are allowed by the act and it has no power to decide upon

a claim by an employee for compensation against a general contractor where his employer is a sub-contractor, or against the owner of the building where he is employed, or against any one who is not his employer.—*Thaxter v. Finn*, 178 Cal. 270, 173 Pac. 163, 5 I. A. C. Dec. 101 (*Thaxter v. Thaxter*, 1 I. A. C. Dec. 197).

S13. Power to determine question of jurisdiction after apparent bar of statute.—The commission has power to determine whether it has jurisdiction to hear a controversy after the apparent bar of the statute has fallen.—*Kemper v. Industrial Accident Commission*, 177 Cal. 618, 171 Pac. 426, 5 I. A. C. Dec. 41 (*Kemper v. Nathan-Dohrmann Co.*, 4 I. A. C. Dec. 101).

S14. Consent can not confer jurisdiction.—Jurisdiction of the subject-matter may not be conferred by consent, but the parties may stipulate as to the existence of such a state of facts as bring the case within the jurisdiction of the commission.—*Employer's L. A. Corp. v. Industrial Accident Commission*, 177 Cal. 771, 171 Pac. 935.

S15. Where jurisdiction conceded, facts should be interpreted in support of.—Where the parties expressly concede the jurisdiction of the commission, the specific facts admitted or proven should, so far as reasonably can be done, be interpreted so as to support the concession.—*Employer's L. A. Corp. v. Industrial Accident Commission*, 177 Cal. 771, 171 Pac. 935.

S15a. Liability of insurer.—The commission has jurisdiction to determine all questions of law and fact upon which the liability of an insurance carrier depends.—*Employer's, etc., Co. v. Industrial Accident Commission*, 177 Cal. 771, 171 Pac. 935, 5 I. A. C. Dec. 72 (*Mann v. Johnson*, 4 I. A. C. Dec. 253).

S16. Requiring large corporation to deposit security not abuse of discretion.—It is not abuse of discretion on the part of the commission to order a large corporation, engaged in an extensive business, with many millions of dollars surplus, to deposit securities or give bond as a condition of being allowed to carry its own insurance since the highest purpose of the act is that compensation shall be made available to the injured employee when it is most needed.—*Bank of Los Banos v. Industrial Accident Commission*, 181 Cal. 150, 183 Pac. 538, 6 I. A. C. Dec. 129.

S16a. Same—Jurisdiction of employer is jurisdiction of carrier.—Jurisdiction of the employer is jurisdiction of the carrier, and where the application was filed against the carrier within the statutory period, jurisdiction is acquired over the carrier though not made a party until the lapse of that period.—*Washburn v. Morrison*, 6 I. A. C. Dec. 123.

S16b. Same — Controversy between employer and carrier.—The commission has no jurisdiction to determine the employer's right to be reimbursed by the insurance carrier for disability indemnity payments

made prior to the hearing.—*Tucson v. York, etc., Co.*, 6 I. A. C. Dec. 110.

S16c. The commission has no jurisdiction over a proceeding brought by an employer against his insurance carrier.—*St. Josephs, etc., v. Hartford, etc., Co.*, 5 I. A. C. Dec. 139.

S16d. Same—Power to determine all questions of law and fact.—The commission, having jurisdiction to make an award against an insurance carrier, has power to determine all questions of law and fact upon which the liability of such insurance carrier, including an alleged breach by the employer of certain warranties contained in the policy, and the alleged cancellation, upon such breach, of such policy.—*Employer's L. A. Corp. v. Industrial Accident Commission*, 177 Cal. 771, 171 Pac. 935.

S16e. Power to determine validity of insurance policy.—The commission has jurisdiction to consider and determine the validity of a policy of insurance against liability under the act.—*Mann v. Johnson*, 4 I. A. C. Dec. 253.

S16f. Power to determine question of "willful misconduct."—While the question of "willful misconduct" goes to the jurisdiction of the court to make an award, the commission has the right to hear and determine the controversy, and in this sense "willful misconduct" is not jurisdictional but purely a matter of affirmative defense.—*United States Fidelity and Guaranty Co. v. Industrial Acc. Com.*, 174 Cal. 616, 163 Pac. 1013.

S16g. Lack of legal authority to file application.—An unauthenticated letter purporting to authorize the filing of an application for compensation under the act on behalf of the dependent of an employee is not sufficient legal authority to initiate the proceeding.—*Western Indemnity Co. v. Industrial Accident Commission*, 35 Cal. App. 104, 169 Pac. 261, 4 I. A. C. Dec. 328 (*Pavlovic v. Glick*, 4 I. A. C. Dec. 114).

S16h. Same—Consul of Russia—Treaty relations.—A consul of Russia can not, by virtue of treaty relations, between Russia and the United States, institute proceedings for death benefit without express authorization from dependents.—*Strasdin v. Oceanic Steamship Co.*, 5 I. A. C. Dec. 237.

S16i. Same—Alien enemy.—An Austrian citizen applying for compensation under the act was held not to be barred from the right to receive compensation as an alien enemy where at the time of sustaining the injury and at the time of submission of case for decision no proclamation had been made by the President of the United States, declaring war against Austria.—*Selecht v. Illinois, etc., Co.*, 5 I. A. C. Dec. 122.

S16j. Reconsideration must be upon same facts—Denial of rehearing.—The jurisdiction of the commission to make a second award, solely upon a reconsideration of the facts upon which the first award was made, expired upon the denial of a rehearing thereon, and it has no jurisdiction after such denial to make a second award not

predicated on new facts occurring subsequent to its original award.—*Georgia C. Company v. Industrial Accident Commission*, 177 Cal. 289, 294, 170 Pac. 621.

816k. Award void on its face—Collateral attack.—An authorized award which shows upon its face want of jurisdiction of the commission to make the same, is not final and conclusive against the parties by reason of failure to apply for a rehearing or ask for a writ of review, but is void on its face, subject to attack in any proceeding in which it is drawn in question.—*Thaxter v. Finn*, 54 Cal. Dec. 620, 4 I. A. C. Dec. 433 (*Thaxter v. Thaxter*, 1 I. A. C. Dec. 196).

816l. Unauthorized award—Lack of jurisdiction—Collateral attack.—An unauthorized award of compensation may be collaterally attacked in a proceeding in mandamus to compel the execution of the award.—*Thaxter v. Finn*, 54 Cal. Dec. 620, 4 I. A. C. Dec. 433 (*Thaxter v. Thaxter*, 1 I. A. C. Dec. 196).

816m. Physician's claim for services.—The commission has jurisdiction over the claims of an employer's physician for the reasonable value of his services.—*Fry v. McKay*, 5 I. A. C. Dec. 136.

816n. Committee performing governmental functions.—The commission has no jurisdiction of a committee performing governmental functions.—*Lord v. Goodyear, etc., Co.*, 6 I. A. C. Dec. 148.

b. Interstate commerce.

817. Nature of employment — Question of law, where facts admitted.—Where all the facts touching the nature of the employment are admitted, the question as to whether it was interstate or intrastate was one of law, and if it was an interstate employment, the commission had no jurisdiction.—*Southern Pacific Co. v. Pillsbury*, 170 Cal. 782, 783, L. R. A. 1916E, 916, 151 Pac. 277.

818. The case of Southern Pacific Co. v. Pillsbury, 170 Cal. 782, L. R. A. 1916E, 916, 151 Pac. 277 (*Ruth case*) is held not to be controlling, in view of the case of *Minneapolis, etc., Co. v. Winters*, 242 U. S. 353, 37 Sup. Ct. 170, 61 L. ed. 358, Ann. Cas. 1918B, 54, with which it is wholly at variance.—*Hines v. Industrial Accident Commission* (Cal.), 192 Pac. 859 (*Brizzolara v. Hines*, 6 I. A. C. Dec. 236).

819. Federal employer's liability act—Decisions of U. S. courts control.—The decisions of the United States courts are controlling on the question as to whether a given employment falls within the scope of the Federal Employer's Liability Act (35 U. S. Stats. 65).—*Southern Pacific Co. v. Industrial Accident Commission*, 178 Cal. 20, 22, 171 Pac. 1071.

820. The decisions of the United States supreme court are the ultimate authority as to whether an employee engaged in keeping in repair or in suitable condition for use, a railroad used indiscriminately in both interstate and intrastate commerce, is, while so engaged, employed in interstate commerce.—*Southern Pacific Co. v. Industrial*

Acc. Com., 174 Cal. 8, 10, L. R. A. 1917E, 262, 161 Pac. 1139.

821. Test of employment in interstate commerce.—Where the applicability of the federal act is uncertain, the character of the employment in relation to commerce may be adequately tested by inquiring whether the employee when injured was engaged in work so closely connected with interstate commerce as practically to be a part of it.—*Southern Pacific Co. v. Industrial Accident Commission*, 251 U. S. 259, 40 Sup. Ct. Rep. 130, 6 I. A. C. Dec. 274 (*Butler v. Southern Pacific Co.*, 4 I. A. C. Dec. 294. Reviewed 55 Cal. Dec. 569, 5 I. A. C. Dec. 86).

821a. The test as to whether a railroad employee of a carrier engaged in both intrastate and interstate business was employed in one or the other at the time he sustained an injury is the nature of his employment at the time.—*Southern Pacific Co. v. Industrial Accident Commission*, 6 I. A. C. Dec. 24, 179 Cal. 665, 178 Pac. 706.

822. California act inapplicable where employment is in interstate commerce.—If the work in which a railroad's electric line-man was engaged when he received a fatal electric shock was part of interstate commerce the California act was inapplicable.—*Southern Pacific Co. v. Industrial Accident Commission*, 251 U. S. 259, 40 Sup. Ct. Rep. 130, 6 I. A. C. Dec. 274 (*Butler v. Southern Pacific Co.*, 4 I. A. C. Dec. 294. Reviewed 55 Cal. Dec. 569, 5 I. A. C. Dec. 86).

823. Nature of service being performed determined by general character of employment.—The nature of the service as to whether it is interstate or intrastate is to be determined not by the general character of the employment, but by the nature of the immediate service being rendered at the time of the injury.—*Morton v. Southern Pacific Co.*, 5 I. A. C. Dec. 118.

824. New construction facilities, such as a water tower, which on completion is to be used in interstate commerce, is not a part of, and does not facilitate such commerce.—*Dautrich v. Hines, Director General, etc.*, 6 I. A. C. Dec. 73.

825. The work of rearranging, transferring, and changing tracks, which are used for both interstate and intrastate commerce indiscriminately is labor in expediting interstate commerce.—*Cuebas v. Atchison, etc., Ry. Co.*, 3 I. A. C. Dec. 17.

826. Loading intrastate baggage.—A station agent killed while loading intrastate baggage upon a local train carrying interstate baggage, was held to be engaged in facilitating and expediting interstate commerce, and that therefore the commission was without jurisdiction to consider a claim for compensation on account of such death.—*Gabriel v. Southern Pacific Co.*, 6 I. A. C. Dec. 62.

827. Unloading intrastate freight.—The work of unloading intrastate freight from a car of a railroad engaged in both intrastate and interstate commerce, was not necessary or incidental to the transportation

of interstate commerce, and an employee of the railroad company engaged in such work was not employed in interstate commerce while so engaged.—*Perez v. Southern Pacific Co.*, 6 I. A. C. Dec. 190.

828. A railroad car repairer, whose duties required him to pass from one car to another and one track to another, seeking tagged cars requiring light repairs, his employer being engaged in both interstate and intrastate commerce, is engaged in interstate commerce and the commission is without jurisdiction to determine the question of liability for compensation for his death while pursuing his duties under the circumstances of the present case.—*Southern Pacific Co. v. Industrial Accident Commission*, 179 Cal. 59, 175 Pac. 453, 5 I. A. C. Dec. 188 (*Morton v. Southern Pacific Co.*, 5 I. A. C. Dec. 114).

829. Carpenter repairing freight car withdrawn from interstate commerce for repairs.—Where a carpenter fell and was injured while repairing a freight car which had been used in interstate commerce but which was temporarily withdrawn for the purpose of repairs from use in the conveyance of goods, it was held that at the time of said injury said carpenter was not engaged in interstate commerce.—*Vangorder v. Southern Pacific Co.*, 4 I. A. C. Dec. 354.

830. Repairing locomotive taken from interstate commerce for the purpose.—A locomotive taken from interstate service for repairs and thereafter returned to such service, was held not to have been in interstate commerce while undergoing repairs.—*Schwartz v. Hines*, 6 I. A. C. Dec. 238.

831. Repairs to locomotive taken from and returned to interstate service held to be an instrumentality of interstate commerce.—*Burton v. Hines*, 6 I. A. C. Dec. 242.

832. Same—Grinding bolt for use in repair.—A machinist's helper employed by a railroad company engaged in grinding a bolt at an emery wheel for use in a drill with which to do certain repair work on a locomotive which had been used exclusively in interstate commerce, and on completion of the repairs would be returned to such use, was held to have been engaged in work not so directly connected with interstate commerce as to be a part of it, and the commission therefore had jurisdiction to hear and determine his claim.—*Van Gaasbeek v. Los Angeles, etc., Co.*, 5 I. A. C. Dec. 97.

833. Same — Repair of truck.—A truck builder and repairer of trucks for locomotives employed in a roundhouse used for storing of locomotives used in both interstate and intrastate commerce, in making repairs on a locomotive used the previous day in interstate commerce, and returned to such use three days after, but withdrawn at the time, was employed in interstate commerce.—*Southern Pacific Co. v. Pillsbury*, 170 Cal. 782, 783, L. R. A. 1916E, 916, 151 Pac. 277.

But see *Hines v. Industrial Accident Commission* (Cal.), 192 Pac. 859.

834. Same—Finding as to interstate commerce held conclusion of law.—A finding that an employee of a railroad company killed while repairing an engine withdrawn from service for that purpose, and not then engaged in any service, interstate or intrastate, was not, at the time, engaged in interstate commerce, was a conclusion of law, and subject to review on certiorari.—*Hines v. Industrial Accident Commission* (Cal.), 192 Pac. 859.

835. Same—Not in interstate commerce.—A broken down engine, in the shops for such repairs as may be necessary, is not in interstate commerce, and its character as an instrument of such commerce depends upon its employment at the time, and not upon the probability or the accident that may, at a later date, make it such an instrument.—*Hines v. Industrial Accident Commission* (Cal.), 192 Pac. 859.

836. The repair of a locomotive temporarily withdrawn from service is not so immediately and directly connected with interstate commerce as to form a part of it, and the commission has jurisdiction of an application for an injury sustained while making such repairs.—*Dell'Era v. Southern Pacific Co.*, 6 I. A. C. Dec. 202.

837. A shopworker in a railroad roundhouse engaged in making light repairs to a locomotive used in interstate commerce was held to have been employed in interstate commerce.—*Rossetti v. Southern Pacific Co.*, 6 I. A. C. Dec. 149.

838. Steamfitter at railroad roundhouse.—A steamfitter working on steam pipes used to conduct steam from boilers to a railroad roundhouse, hospital and hotel, used by both interstate and intrastate employees, was held to be doing service too remotely and indirectly connected with interstate commerce to render it a part of such commerce, and the commission assumed jurisdiction and awarded compensation for such injury.—*Hunt v. Western Pacific Rd. Co.*, 6 I. A. C. Dec. 188.

838a. An employee engaged in the operation of a steam shovel in a gravel pit from which gravel was produced for distribution on the roadbed of the main line of a railroad used indiscriminately in interstate and intrastate commerce was awarded compensation for an injury sustained while so engaged, for similar reasons.—*Kling v. Southern Pacific Co.*, 6 I. A. C. Dec. 189.

839. Track repairs.—The liability of a railroad company using its tracks indiscriminately in interstate and intrastate commerce, to an employee injured while engaged in keeping the tracks in suitable condition for use as an instrumentality of interstate commerce, is measured entirely by the provisions of the act of congress of April 22, 1908, and the industrial accident commission of California is without jurisdiction to make an award in such a case.—*Southern Pacific Co. v. Industrial Accident Commission*, 174 Cal. 8, 13 L. R. A. 1917E, 262, 161 Pac. 1139; *Southern Pacific Co. v. Industrial Accident Commission*, 174 Cal. 16, 17, 161 Pac. 1142.

840. A railroad track used indiscriminately by a carrier in both its interstate and intrastate commerce is an instrumentality of interstate commerce, and notwithstanding its double use, those "engaged in its repair or in keeping it in suitable condition for use," are, while so engaged, employed in interstate commerce.—*Southern Pacific Co. v. Industrial Accident Commission*, 174 Cal. 8, 10, L. R. A. 1917E, 262, 161 Pac. 1139.

841. Construction of new track.—A laborer injured in the construction of a railroad track not yet used in commerce was not engaged in furthering or expediting interstate commerce. — *Lopez v. King*, 5 I. A. C. Dec. 45.

842. Repairing main line track.—Where a section laborer was killed while maintaining and repairing the main line of a railroad lying wholly within this state but over which interstate commerce was transported, was held to be engaged in interstate commerce.—*Antonopoulos v. Northwestern, etc., Co.*, 4 I. A. C. Dec. 195.

843. Repairing driveway over which goods in interstate commerce move.—Where a laborer was injured while breaking rock to surface a drive-way over which only goods moving in interstate commerce were hauled, it was held that said laborer was not engaged in interstate commerce.—*Villalobus v. Atchison, etc., Co.*, 4 I. A. C. Dec. 115.

844. Wiping insulators on main power line of electric railway.—Where a railroad's electric lineman, when he sustained a fatal shock, was wiping insulators supporting a wire carrying electric power so intimately connected with the propulsion of cars that if it had been short-circuited through his body they would have stopped instantly, the work was directly connected with interstate transportation as an essential part, and the federal and not the state act, governed the case and the rights of the lineman's dependents.—*Southern Pacific Co. v. Industrial Accident Commission*, 251 U. S. 259, 40 Sup. Ct. Rep. 130, 6 I. A. C. Dec. 274; *Butler v. Southern Pacific Co.*, 4 I. A. C. Dec. 294. Reviewed, 178 Cal. 20, 22, 171 Pac. 1071, 5 I. A. C. Dec. 86.

844a. Electric lineman.—An electric lineman employed by a railroad, killed while engaged in removing an overhead telephone wire from where it had fallen across the trolley wire, used by the railroad company in the operation of a line of electric railway, constituting its passenger system, both interstate and intrastate, and in constant use as such, was held to be employed in interstate commerce, it being shown that it was impossible to operate trains over the track until the telephone wire was removed, and the liability of the company for his death was measured by the act of congress of April 22, 1908, and the industrial accident commission of California was without jurisdiction to make an award in such case.—*Southern Pacific Co. v. Industrial Accident Commission*, 174 Cal. 19, 20, 161 Pac. 1143.

845. Rerailing derailed engine obstructing interstate trains.—A brakeman on a wrecking train sent to rerail a derailed engine which was obstructing the tracks of an interstate railway, and at the time of derailling was hauling several cars of interstate freight, was held to be engaged in expediting interstate commerce.—*James v. San Pedro, etc., Rd. Co.*, 3 I. A. C. Dec. 13.

845a. Removing derailed car, not obstructing interstate commerce.—Where a car was derailed on a main line of an interstate carrier and for a time obstructed the movement of interstate commerce but was moved aside so that it did not interfere with the passage of interstate traffic, and a shop foreman proceeded from a neighboring station to remove the car and was killed while returning with it to said station, it was held that the whole transaction was indivisible and that since the car had obstructed interstate commerce, said deceased employee was at the time of his injury engaged in such commerce.—*Grisinger v. Southern Pacific Co.*, 4 I. A. C. Dec. 354.

846. Kitchen assistant in a railroad restaurant.—A kitchen assistant in a railroad restaurant accommodating both interstate and intrastate passengers and employees, is too remotely connected with interstate commerce to be connected with it, and the commission assumed jurisdiction and awarded compensation for an industrial injury.—*Ernest v. Hines*, 6 I. A. C. Dec. 208.

847. Cutting wood to heat interstate train.—The cutting of wood for the heating of an interstate train is not employment in interstate commerce, and the wood when cut does not become an instrumentality of interstate commerce until it is put to use for that purpose, whatever may have been the intention in cutting it.—*Saunders v. Northwestern, etc., Co.*, 6 I. A. C. Dec. 222.

848. Flagman.—A flagman employed on a railroad used indiscriminately in interstate and intrastate commerce, whose duties, besides looking after the safety of persons attempting to cross the track, extended to keeping the track itself in suitable condition for the passage of trains, may be fairly said to be directly engaged, in substantial part, in interstate commerce.—*Southern Pacific Co. v. Industrial Accident Commission*, 174 Cal. 8, 11, L. R. A. 1917E, 262, 161 Pac. 1139; *Southern Pacific Co. v. Industrial Accident Commission*, 174 Cal. 16, 17, 161 Pac. 1142.

849. Special officer killed by tramps on interstate train.—A special officer of a railroad, killed by tramps while he was investigating their presence on an interstate train without authority, held to have received the fatal injury while employed in interstate commerce, and that the commission was without jurisdiction to award compensation.—*Harris v. Atchison, etc., Co.*, 6 I. A. C. Dec. 233.

849a. Railroad watchman injured while driving off trespassers.—A railroad watchman injured while driving trespassers off

the property of his employer's interstate train, was engaged, when so injured, in interstate commerce, and the state commission had no jurisdiction to entertain his application for compensation under the state act.—*Smith v. Industrial Accident Commission*, 26 Cal. App. 560, 147 Pac. 600.

850. Yard engine foreman moving incidentally interstate cars.—A yard engine foreman employed on the properties of a railroad company was injured while moving certain cars, including two interstate freight cars, which latter were moved only to separate them from the other cars, it was held that the interstate movement of the cars had terminated, and that the applicant's acts did not concern interstate commerce, and that the commission had jurisdiction to award compensation.—*Linney v. Hines*, 6 I. A. C. Dec. 258.

851. A brakeman employed on a construction train of a carrier engaged in both intrastate and interstate business, a part of whose duty was to flag approaching trains to prevent collisions, and who was injured while alighting from his train, under the direction of his conductor, to flag an approaching train engaged in interstate commerce, was employed in interstate commerce, and the commission was without jurisdiction to make an award for such injury.—*Southern Pacific Co. v. Industrial Accident Commission*, 6 I. A. C. Dec. 24, 179 Cal. 665, 178 Pac. 706.

852. Brakeman employed on interstate train.—Although the specific work being done by a brakeman employed on an interstate train, at the time of his fatal injury, was local and intrastate in its character, nevertheless it was an incident of the general movement of the train which constituted an indivisible act and that at the time of his injury he was engaged in facilitating the movement of commerce, and the proceeding for compensation was accordingly dismissed for want of jurisdiction.—*Hudson v. Southern Pacific Co.*, 6 I. A. C. Dec. 86.

853. Brakeman on work train on its way to repair a bridge.—A brakeman on a work train on its way to repair a bridge, injured while flagging an interstate train, was held to have been engaged in working his own train and not the particular train following, and that he was not engaged in interstate commerce.—*Rouse v. Southern Pacific Co.*, 5 I. A. C. Dec. 184.

854. Telegraph lineman.—The commission has jurisdiction over an injury sustained by a lineman employed on a telegraph line, notwithstanding the line extends from one state to another.—*Yonker v. Western Union Telegraph Co.*, 4 I. A. C. Dec. 267.

855. Engine herder.—Where an engine herder was injured while piloting from the train to its berth in the roundhouse an engine which had just pulled into the yard an interstate train, it was held that at the time of said injury said engine herder was engaged in interstate commerce.—*McFar-*

lane v. Los Angeles, etc., Co., 4 I. A. C. Dec. 113.

856. Receiving clerk for food supplies used on interstate train.—A receiving clerk, whose duty it was to receive and check at the ferry slip food supplies which are later used for meals served to both interstate and intrastate passengers on ferryboats operated by the railroad in connection with its railroad system, was held not to be engaged in interstate commerce.—*Goldenson v. Southern Pacific Co.*, 4 I. A. C. Dec. 65.

857. Night watchman guarding tools and materials to be used in new construction.—A night watchman employed by a railway, who was injured while guarding tools and materials intended to be used in the construction of a new station and new tracks, was not engaged in interstate commerce at the time of his injury, though the new station and tracks were designed for use when finished, in interstate commerce.—*New York, etc., Co. v. White*, 243 U. S. 188, 37 Sup. Ct. 247, 61 L. ed. 667, L. R. A. 1917D, 1.

858. Tunnel not yet in use.—An employee of an interstate railway, injured while at work on a tunnel not yet in use, was not at the time of the injury employed in interstate commerce.—*Raymond v. Chicago, etc., Co.*, 243 U. S. 268, 37 Sup. Ct. 268, 61 L. ed. 583.

858a. Transportation of U. S. mail—Interstate commerce.—The transportation of mail between different states and territories is interstate commerce, and a railroad employee performing services in connection with such transportation is employed in interstate commerce.—*Zenz v. Industrial Accident Commission*, 176 Cal. 304, 308, L. R. A. 1918D, 423, 168 Pac. 364.

859. Same—Delivering pouches of mail.—An employee of a railroad company injured while delivering pouches of mail from the company's depot to a train of the company used at the time in interstate commerce, was injured while employed in interstate commerce, to which the federal employer's liability act is applicable, and the industrial accident commission of California has no jurisdiction to make an award in such a case.—*Zenz v. Industrial Accident Commission*, 176 Cal. 304, 308, L. R. A. 1918D, 423, 168 Pac. 364.

860. Same—Commission without jurisdiction.—The commission is without jurisdiction under the act to make an award for injuries sustained by a call boy while delivering pouches of United States mail from a depot to a train of a railroad company engaged in interstate commerce.—*Benz v. Industrial Accident Commission*, 176 Cal. 304, L. R. A. 1918D, 423, 168 Pac. 364, 4 I. A. C. Dec. 316 (*Zenz v. Atchison, etc., Co.*, 4 I. A. C. Dec. 125).

861. Same—Railroad agent of government.—Although a railroad company engaged in the transportation of United States mail is an agent of the government in discharging a governmental function and therefore subject to the transportation of such mails, nevertheless the carriage of

mails destined to points outside the state is an act of interstate commerce.—*Zenz v. Atchison, etc., Co.*, 4 I. A. C. Dec. 125.

c. Maritime jurisdiction.

862. Loading a steamer at a foreign port.—The commission is without jurisdiction to make an award for injuries received by the employee of a steamship company while engaged in assisting in loading a steamer, owned and managed by the company, at a foreign port, where such employee was hired in this state for a voyage to foreign port and return, as such a contract of service was a maritime contract relating to foreign commerce and within the admiralty and maritime jurisdiction of the courts of the United States.—*Tallac Co. v. Pillsbury*, 176 Cal. 236, 168 Pac. 17, 4 I. A. C. Dec. 310 (*Classen v. Pollard, S. S. Co.*, 2 I. A. C. Dec. 598).

863. Award in a maritime case.—An award by the commission to a claimant for compensation under the act in a maritime case is void and not collectible by action at law.—*Northern Pacific S. S. Co. v. Industrial Accident Commission (U. S. Dis. Ct.)*, 5 I. A. C. Dec. 207.

864. Right and remedy of act within saving clause of federal act of 1789.—The right created by the workmen's compensation, insurance and safety act, and the remedy provided thereunder, are within the saving clause of the federal judiciary act of 1789, granting admiralty jurisdiction to the district courts, "saving to suitors in all cases the right of a common law remedy where the common law is competent to give it," such saving clause being held to include rights and remedies provided by statutes enacted subsequently.—*North Pacific S. S. Co. v. Industrial Accident Commission*, 174 Cal. 346, 353, 163 Pac. 199.

865. Authorities.—The following cases were decided upon the authority and following the case of *Northern Pacific, etc., Co. v. Industrial Accident Commission*, 174 Cal. 346, 163 Pac. 199; *Alaska, etc., Co. v. Pillsbury*, 174 Cal. 389, 163 Pac. 204, 4 I. A. C. Dec. 49; *S. S. Bowdoin Co. v. Industrial Accident Commission*, 174 Cal. 390, 163 Pac. 204, 4 I. A. C. Dec. 48 and 2 I. A. C. Dec. 386.

866. Admiralty jurisdiction of federal courts not exclusive.—The admiralty jurisdiction of the federal courts in cases of injuries of seamen on the high seas is not exclusive in all cases, and the industrial accident commission has jurisdiction to make an award of compensation in such a case under the California workmen's compensation act where the seaman was injured while employed on board a vessel owned by citizens of California.—*North Pacific S. S. Co. v. Industrial Accident Commission*, 174 Cal. 346, 163 Pac. 199.

866a. Seaman has an election of remedies.—An injured seaman is not deprived by the act of his right of action in the admiralty court for damages due to his employer's negligence in providing defec-

tive appliances for his use.—*Riegel v. Higgins*, 241 Fed. 718.

866b. Seaman bound by election of remedies.—If an injured seaman subjects himself to the state tribunal and claims and receives the compensation to which he is entitled under the act, or if he accepts payment by agreement with full knowledge of his injuries, he can not maintain an action in admiralty for the same injuries.—*Riegel v. Higgins*, 241 Fed. 718.

866c. Same—No election made.—It was held in the present case that the employee made no such election to take compensation under the act as would preclude him from recovering damages in admiralty.—*Riegel v. Higgins*, 241 Fed. 718.

866d. Admiralty not bound by state law.—Where a court of admiralty enforces a state statute in a matter of admiralty cognizance it will do so according to admiralty principles unaffected by state law.—*Western Fuel Co. v. Garcia*, 255 Fed. 817, 167 C. C. A. 145.

866e. A cause of action, maritime in character, is unaffected by any state statute, and its rights, obligations and liabilities are measured by maritime law.—*Western Fuel Co. v. Garcia*, 255 Fed. 817, 167 C. C. A. 145.

866f. Court of equity will enforce a state statute in admiralty.—If a case is of admiralty cognizance, a court of equity will enforce a state statute, although without such statute plaintiff would have no relief in admiralty.—*Western Fuel Co. v. Garcia*, 255 Fed. 817, 167 C. C. A. 145.

867. Injuries on the high seas.—The commission has jurisdiction to award compensation for injuries received by a seaman in the course of his employment while his vessel is on the high seas.—*North Pacific S. S. Co. v. Industrial Accident Commission*, 174 Cal. 346, 163 Pac. 199, 4 I. A. C. Dec. 42 (*Rose v. Northern Pacific S. S. Co.*, 2 I. A. C. Dec. 71; *Falvik v. Nott*, 2 I. A. C. Dec. 469).

868. Same — California - owned ship.—Where an employee on a California-owned ship was a resident of the state and his contract of employment was made in that state, the commission had jurisdiction of an application for compensation for an injury on board the vessel on the high seas.—*Mestrand v. Comyn Mackall & Co.*, 6 I. A. C. Dec. 126.

869. The commission had jurisdiction of an application for compensation for a death on board a California-owned ship on the high seas.—*Karus v. Charles Nelson Company*, 6 I. A. C. Dec. 125.

870. An injury to a seaman on a California ship on the high seas is within the jurisdiction of the commission.—*Johansen v. Geo. E. Billings Co.*, 6 I. A. C. Dec. 236.

871. Stevedore discharging vessel in port.—The occupation of a stevedore employed in discharging a vessel in port is maritime in its essence, and the commission has jurisdiction to award compensation for injuries received while employed.—*North Pacific S. S. Co. v. Industrial Acci-*

dent Commission, 174 Cal. 346, 163 Pac. 199, 4 I. A. C. Dec. 42 (Rose v. Northern Pacific S. S. Co., 2 I. A. C. Dec. 71; Falvik v. Nott, 2 I. A. C. Dec. 469).

872. The occupation of a stevedore is in its essence maritime; hence, it is held that the same principles that are declared in the case of North Pacific S. S. Co. v. Industrial Accident Commission, 174 Cal. 346, as to the jurisdiction of the commission to award compensation, where the injured person was a seaman, govern here.—North Pacific S. S. Co. v. Industrial Accident Commission, 174 Cal. 357, 388, 163 Pac. 203; Alaska Pacific S. Co. v. Pillsbury, 174 Cal. 389, 390, 163 Pac. 204; Steamship Bowdoin Co. v. Pillsbury, 174 Cal. 390, 391, 163 Pac. 204.

873. Stevedore—Fall from gangplank over navigable water.—A fatal injury sustained by a stevedore from a fall from the gangplank between the ship and the pier, over navigable waters, was a maritime injury, and the commission was without jurisdiction.—Karagoums v. Napa, etc., Co., 5 I. A. C. Dec. 83.

874. Longshoreman working on dock.—The commission has jurisdiction to award a death benefit in the case of a longshoreman fatally injured while working on a dock.—Price v. San Pedro Stevedoring Co., 4 I. A. C. Dec. 265.

875. Laws of parent state, when inapplicable to vessels.—The laws of the parent state apply to a ship on the high seas, but not to vessels lying in the ports of alien nations or states (as to accident occurring before section 75(a) of the act became effective).—Kruise v. Pillsbury, 174 Cal. 222, 162 Pac. 891, 4 I. A. C. Dec. 20 (Sanberg v. Kruise, 1 I. A. C. Dec. 441).

876. Working on ship in Oakland estuary—Presumption from stipulation.—Where the parties expressly concede the jurisdiction of the commission and stipulate that the employee was injured while working on a ship on the Oakland estuary, such stipulation is entirely consistent with the possibility that the ship was in course of construction and not launched, and in support of the concession as to jurisdiction will be so interpreted.—Employer's L. A. Corp. v. Industrial Accident Commission, 177 Cal. 771, 774, 171 Pac. 935 (Mann v. Johnson, 4 I. A. C. Dec. 253).

877. Work on ship prior to launching.—The maritime jurisdiction of the federal courts does not extend to claims arising out of the death of a workman employed in the construction of a ship occurring prior to its launching, and the jurisdiction of the industrial accident commission in such a case is ample.—Employer's Liability Assurance Corp. v. Industrial Accident Commission, 177 Cal. 771, 774, 171 Pac. 935 (Mann v. Johnson, 4 I. A. C. Dec. 253).

878. Employee installing apparatus on vessel in course of construction.—Where a vessel had been launched while under course of construction—but had not yet been fully fitted out or turned over to the purchaser—and an electrician was injured while install-

ing electrical apparatus of the ship construction company, it was held that neither said employment nor said injury was maritime in character and that this commission had jurisdiction to award compensation.—Bernard v. Employer's Liability Corporation, 4 I. A. C. Dec. 382.

879. Engineer installing refrigerator on vessel under construction.—An injury sustained by an engineer while installing a refrigerator on a vessel in course of construction was not a maritime injury and the commission had jurisdiction to award compensation.—Johnson v. Vulcan Iron Works, 4 I. A. C. Dec. 314.

879a. Shipwright repairing vessel on bottom in Oakland estuary.—An injury sustained by a shipwright while engaged in repairing a vessel resting on the bottom of Oakland estuary at low tide, was a maritime injury.—Pauline v. Tibbets, etc., Co., 5 I. A. C. Dec. 72.

880. Navigable waters—Launching basin.—A launching basin dredged out of land owned by a ship construction company and used by it for the purpose only of launching ships in the course of construction is not navigable water within the admiralty jurisdiction of the United States.—Bernard v. The Employers' Liability Corporation, 4 I. A. C. Dec. 382.

881. A contract for the construction of a vessel is not maritime.—A contract concerning a vessel becomes maritime, not at the time of launching a vessel, but at the time of its completion and delivery to the owners.—Johnson v. Vulcan Iron Works, 4 I. A. C. Dec. 314.

882. Barge pilot sawing wood while vessel laid up for winter.—Where an applicant was employed and paid as a barge pilot and deckhand throughout the year and during the winter months sawed wood on board said barge for sale by his employer, it was held that his duties were severable and that while so sawing wood his employment was not maritime.—Holder v. Island, etc., Co., 4 I. A. C. Dec. 268.

883. Contract for polishing shoes on ferryboat.—A contract of employment for the polishing of shoes of passengers on a ferryboat is not a maritime contract and the commission has jurisdiction over an injury sustained by the bootblack on board the ferryboat.—Lomoglio v. Green, 4 I. A. C. Dec. 249.

884. Ferryboat used for transporting train on inland waters.—A ferryboat used for transporting cars across bay used in both interstate and intrastate business, is a part of the railroad's extension and not a maritime agency, and the death of an employee thereon is not a maritime injury, and when it occurred while the boat was temporarily withdrawn from service, is compensable.—Hughes v. Southern Pacific Co., 5 I. A. C. Dec. 27.

885. Effect of Johnson bill.—An injury occurring upon navigable waters while the so-called Johnson bill was in effect, was

held to be compensable thereunder.—*Soarez v. Sudden & Christensen*, 5 I. A. C. Dec. 164.

d. Extraterritorial.

886. "Resident."—The term "resident" in section 58 of the act of 1917, applies only to citizens and aliens domiciled in California.—*Quong Ham Wah Co. v. Industrial Accident Commission*, (Cal.), 192 Pac. 1021, 6 I. A. C. Dec. 248 (*Owe Ming v. Alaska Packers Association*, 6 I. A. C. Dec. 67).

887. Test of residence.—Where a cattle buyer left this state frequently on purchasing trips lasting several months at a time but had a room in his employer's plant which he used as his living headquarters when in this state, and he registered as a voter and paid his poll tax in this state and his will recited that he was "of the county of Santa Clara" it was held that he was a resident of this state within the meaning of section 75(a) of the act.—*Furlong v. Woodward-Bennett Co.*, 4 I. A. C. Dec. 116.

888. Traveling salesman residing in New Jersey, under exclusive control of California agent of New York corporation.—Where a traveling salesman, a resident of New Jersey and an employee of a New York corporation, who was under complete and exclusive control of the California agent of the employing company, was injured while performing his duties in this state, it was held that the commission has jurisdiction to award compensation for such injury.—*Benjamin v. Garneau Co.*, 4 I. A. C. Dec. 61.

889. Enforcement of obligation in tort by lex fori.—The lex fori will not undertake to enforce an obligation in tort where the obligation was not created by the lex loci delicti.—*Quong Ham Wah Co. v. Industrial Accident Commission* (Cal.), 6 I. A. C. Dec. 248 (*Owe Ming v. Alaska Packers Association*, 6 I. A. C. Dec. 67).

890. Sailor of California ship lying in port of another state.—Where a sailor was killed on board a vessel owned and chartered within this state while lying in the port of another state, such injury was subject to the laws of the state where the vessel was at the time of the death, notwithstanding such ship may be considered a part of the territory of this state while on the high seas, and the commission is without jurisdiction to make an award.—*Kruse v. Pillsbury*, (Cal.) 162 Pac. 891.

891. Liability for the death of an employee killed on board a vessel owned in California but lying at the time of the accident in the boundaries of the state of Washington, and in a port subject to the shipping and other laws of that state, is governed by the laws of Washington.—*Kruse v. Pillsbury*, 174 Cal. 222, 224, 162 Pac. 891.

892. Mandates have no effect beyond territorial limits.—The other states may give effect to them, but as law, the mandates of a sovereign state can have no effect beyond its territorial limits.—*Quong Ham*

Wah Co. v. Industrial Accident Commission, (Cal.) 172 Pac. 1021.

893. Non-maritime employment under California contract by California residents.—The commission has jurisdiction of an injury sustained by an employee without the state, where the employment was non-maritime in character, and the contract of employment was made in this state by residents thereof, notwithstanding the services were to be performed wholly without the state and the employment was to cease on arriving in the state.—*Polin v. Bristol, etc., Co.*, 3 I. A. C. Dec. 12.

893a. Contract of hire of California resident made in California.—An employee, resident of the state, and employed under a contract of hire made in the state, is within the jurisdiction of the commission under the express provisions of section 75(a) of the act.—*Kistler v. Simpson, etc., Co.*, 5 I. A. C. Dec. 26.

894. Contract under act of 1917—Act a regulation.—The act of 1917 is not an attempt to create an obligation merely as an incident to a status, but is, in form and substance, a genuine regulation of contracts subject to the sovereignty of the state, and the legislature was lawfully empowered to impose the same duties and rights as incidents of such contracts abroad as are incidents of the same acts occurring within the geographical limits of the state.—*Quong Ham Wah Co. v. Industrial Accident Commission*, (Cal.) 192 Pac. 1021.

895. Unconstitutional enactment—Creation of privilege in favor of citizens of California.—When the legislature attempts to provide that a substantial privilege shall be incidental to certain contracts of employment when entered into in this state by citizens of this state, and that the same privilege shall not be incident to identical contracts of employment when entered into in this state by citizens of other states of the Union, the enactment is clearly violative of section 2, of article IV, of the federal constitution.—*Quong Ham Wah Co. v. Industrial Accident Commission*, (Cal.), 6 I. A. C. Dec. 248 (*Owe Ming v. Alaska Packers Association*, 6 I. A. C. Dec. 67).

896. Release in New Mexico.—A release of compensation for an injury compensable under the California act, executed in New Mexico, for an injury sustained in the latter state, is subject to jurisdiction of the California commission, and where such release does not provide for payment of full compensation it does not divest the employee of his rights under the act.—*Kistler v. William Simpson, etc., Co.*, 5 I. A. C. Dec. 26.

897. Constitutionality of section 75(a).—The section is not subject to attack on the ground of unwarranted discrimination against non-resident employees, by employers, since they do not belong to the excluded class.—*Estabrook Co. v. Industrial Accident Commission*, 177 Cal. 767, 177 Pac. 848, 5 I. A. C. Dec. 65; *Klamath S. S. Co. v. Industrial Accident Commission*, 55 Cal. Dec. 521, 5 I. A. C. Dec. 65.

898. Section 75(a) not limitation but grant of power.—Section 75(a) was obviously not designed as a limitation upon the jurisdiction theretofore vested in the commission, but was intended, rather, as a grant of power.—*North Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 6, L. R. A. 1917E, 642, 162 Pac. 93.

899. Jurisdiction prior to enactment of 1915.—Prior to the amendment of 1915, adding section 75(a) to the workmen's compensation act, the commission had no jurisdiction over questions of compensation under the act, where the injury occurred outside the territorial limits of the state of California.—*North Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 6, L. R. A. 1917E, 642, 162 Pac. 93; *Kruse v. Pillsbury*, 174 Cal. 222, 223, 162 Pac. 891.

900. Effect of section 75 (a) of act—Death benefit for injury and death in another state.—The commission has jurisdiction to award a death benefit for the injury and death in another state after the section became effective, of an employee who was a resident of and hired in this state.—*Furlong v. Woodward-Bennett Co.*, 4 I. A. C. Dec. 116.

2. Notice of injury.

901. Notice of original injury required, not notice of "further disability."—The notice in writing required to be given to the employer under section 20 of the act is a notice of the original injury, and not the further disability under subdivision c of section 16, where compensation has been given for the original disability.—*Employee's Credit Co. v. Industrial Accident Commission*, 177 Cal. 46, 49, 169 Pac. 1001.

902. Notice by registered letter sufficient.—Where an injured employee mailed to his employer's address a registered letter notifying him of the injury in form sufficient to satisfy the requirements of the act and the letter was delivered within thirty days from the date of injury at the employer's address, but the employer did not receive it because of a temporary absence, until the period of thirty days had expired, it was held that such employee had given sufficient written notice of such injury.—*Cuthbert Burrel Co.*, 4 I. A. C. Dec. 141.

903. Evidence insufficient to establish actual notice.—Evidence considered and held to be insufficient to establish actual notice on the part of the employer.—*Smith v. Industrial Accident Commission*, 174 Cal. 199, 201, 162 Pac. 636.

904. Actual knowledge—Oral information.—Oral information on the part of the employer of the employee's injury does not take the place of the actual knowledge which is the equivalent of the written notice required by section 20 of the workmen's compensation act, or the written notice itself.—*Smith v. Industrial Accident Commission*, 174 Cal. 199, 203, 162 Pac. 636.

905. Notice of injury—Actual knowledge of employer.—Under the proviso of section 20 of the act of 1917 actual knowledge of the "accident" is not equivalent to actual

knowledge of the "injury."—*Smith v. Industrial Accident Commission*, 174 Cal. 199, 203, 162 Pac. 636, 4 I. A. C. Dec. 2 (*Rives v. Smith*, 2 I. A. C. Dec. 888).

906. Actual knowledge is equivalent to notice.—Under the provisions of section 20 of the act, which provides for actual knowledge on the part of the employer, shall be equivalent to service of notice, the commission is justified in concluding that the employer had knowledge of the injury of the applicant where the foreman had knowledge that for some time after the accident, he suffered pain and was not able to do his usual work, although the employee thought that he had suffered no substantial injury and rejected the suggestion of the foreman that a report of the accident be made.—*Leadbetter v. Georgia Casualty Co.*, 179 Cal. 468, 177 Pac. 449, 5 I. A. C. Dec. 233 (*S. C. 26 Cal. App. Dec. 1268*, 5 I. A. C. Dec. 143).

907. Same—Actual or first-hand knowledge.—The proviso of section 20 of the act of 1913 that actual knowledge of the employer of the injury shall be equivalent to service of written notice therefor, contemplates actual or first-hand knowledge, and oral information of the injury conveyed to such employer is insufficient.—*Smith v. Industrial Accident Commission*, 53 Cal. Dec. 58, 4 I. A. C. Dec. 2 (*Rives v. Smith*, 2 I. A. C. Dec. 888).

908. Not prejudiced by want of notice.—Where no written notice of injury was given to the employer by or in behalf of the injured employee, but the employer was not prejudiced by the lack of such notice and he had oral information of said injury from the injured employee and knew in detail of the employee's claim for compensation on the day the injury was sustained, it was held that said employer was notified as required by section 20.—*Rives v. Smith*, 4 I. A. C. Dec. 121; *Hopper v. Cuthbert Burrel Co.*, 4 I. A. C. Dec. 141; *Hoag v. Elk Grove, etc., Dist.*, 4 I. A. C. Dec. 70; *Cousins v. Hanlon*, 4 I. A. C. Dec. 97.

909. Same—Making defense.—Under the circumstances of the present case it is held that the defendant had not sufficient opportunity to investigate the facts and was prejudiced in making his defense by failure to give notice of injury within the time and in the manner prescribed by the workmen's compensation act.—*Kirkwood v. Giant Powder Co.*, 5 I. A. C. Dec. 198.

910. Same—No "intention to mislead or prejudice employer."—It was held in the present case that the failure to notify the employer of the injury in the time required, did not under the circumstances of this case show an "intention to mislead or prejudice the employer" or that he was "in fact misled or prejudiced thereby" as those words are used in section 20 of the act.—*Telford v. Healy-Tibbitts Construction Co.*, 3 I. A. C. Dec. 41.

911. Notice of employer to employee under section 34.—The assumption of liability by an insurance carrier does not dispense with the necessity for the employer to give

written notice to the employee of that fact.—*Hoover v. Kuykendall*, 3 I. A. C. Dec. 51.

912. Under section 34 of the act, when an employer, who is insured against liability for compensation under the act with a company authorized to do such business in the state, gives to the claimant and the insurance carrier, and files with the commission the notices required by that section, he is relieved from liability for compensation, even though, when the notices are so served and filed, the right of the insurance carrier to do business in the state has been revoked.—*Weiser v. Industrial Accident Commission*, 172 Cal. 538, 539, 157 Pac. 593.

913. Waiver by employer of right to select physician.—Where the employer believing that the injuries suffered by an employee were only trivial, as did the latter after visiting a physician, tendered medical services preliminarily, he would be justified in resting upon the assurances presented by these conditions until he had notice to the contrary, and where the employee later found that the disability continued and became more aggravated and endeavored first to secure relief through physicians who he was informed and believed were the employer's physicians and the employer had notice thereof and failed to offer the services of a physician of his own selection, the right to make such selection was waived.—*Leadbetter v. Industrial Accident Commission*, 26 Cal. App. Dec. 1268, 5 I. A. C. Dec. 143.

3. Application.

914. No particular form required.—It being the policy of the law to encourage informality in proceedings before the commissioner, no particular form is required for an application for compensation.—*Knudsen v. Kallstrom*, 4 I. A. C. Dec. 259.

915. Filing request for disability rating.—The filing of a request for a rating upon one of the customary blanks supplied by the commission, accompanying a surgeon's report giving a detailed description of the permanent injury sustained and a certificate of the employer setting forth the applicant's wages, constitutes the filing of an application within the meaning of section 22 of the act.—*Knudsen v. Kallstrom*, 4 I. A. C. Dec. 259.

916. The filing of a request for a rating on one of the customary applications supplied by the commission, accompanying an affidavit setting forth details entitling the employee to general relief is the filing of an application within the meaning of section 22 of the act of 1913.—*Miller v. Oak Ridge, etc., Co.*, 4 I. A. C. Dec. 129.

4. Evidence.

917. Evidence taken prior to service of notice of hearing—Invalid award.—The industrial accident commission can not make a valid award upon evidence taken prior to service of notice of hearing upon the party liable.—*First Church v. Industrial Accident Commission*, 173 Cal. 552, 553, 160 Pac. 675.

917a. Evidence taken before the commission in support of a claim for an award against an owner of property, as an employer, without notice, can not be considered in support of findings against him.—*Carstens v. Pillsbury*, 172 Cal. 572, 158 Pac. 218.

917b. The commission is not authorized under section 24 to proceed secretly without notice to interested parties.—*Mesmer & Rice v. Industrial Accident Commission*, 26 Cal. App. Dec. 220, 5 I. A. C. Dec. 22 (*Wilson v. Mesmer & Rice*, 4 I. A. C. Dec. 139).

917c. Where evidence is taken without notice to an interested party, it is in violation of the due process clause of the federal constitution, and is a question of jurisdiction and not one of mere procedure.—*Mesmer & Rice v. Industrial Accident Commission*, 26 Cal. App. Dec. 220, 5 I. A. C. Dec. 22 (*Wilson v. Mesmer & Rice*, 4 I. A. C. Dec. 139).

917d. Same—Testimony given without opportunity to cross-examine.—Where the principal question before the commission was whether the applicant's disabilities were the result of the accident or arose from a certain disease with which it was claimed he was afflicted, and it was stipulated the commission's physician should examine him, the commission is without jurisdiction to consider the unverified reports of two other physicians, who were called in for consultation, without notice to the employer, or allowing him to cross-examine them, notwithstanding such reports were but cumulative of the report of the commission's physician.—*Mesmer & Rice v. Industrial Accident Commission*, 26 Cal. App. Dec. 220, 5 I. A. C. Dec. 22 (*Wilson v. Mesmer & Rice*, 4 I. A. C. Dec. 139).

917e. Same—Hearing before referee.—Under the act of 1917, where a proceeding for compensation is heard before a referee without notice to the insurance carrier, and without its being represented, and testimony is heard, directly controverting the contention of the carrier, and without an opportunity for cross-examination, it is the duty of the commission to reopen the matter for such cross-examination or for counter-testimony, unless there is no possibility of changing the result by that means.—*Ocean, etc., Corporation, Limited v. Industrial Accident Commission*, 180 Cal. 389, 182 Pac. 35.

917f. Lack of notice—Contravention of constitutional provisions.—Under section 25, a notice showing that the employee claims that a temporary disability has become permanent since the award was made, and stating it would be amended so as to provide a further allowance to cover a permanent disability rating "unless good cause to the contrary be shown in writing and filed with the commission within ten days, is sufficient, does not contravene the provisions of the act and is not open to objection on constitutional grounds.—*Massachusetts, etc., Co. v. Industrial Accident Commission*, 176 Cal. 488, 491, 168 Pac. 1050.

918. Evidence—Power to take secretly—Want of due process.—Even if the language of section 24 were capable of an interpretation giving the commission power to take evidence secretly, it would clearly be a violation of the right to due process of law.—*Carstens v. Pillsbury*, 172 Cal. 572, 577, 158 Pac. 218.

919. Evidence of medical expert—Not given under oath, and not given after notice.—The opinion of a medical expert, not made under oath, and not a part of the evidence given before the referee or the commission, and given without any information to the employer and insurer that it was to be given, or considered, or that it was filed, and without any opportunity to interrogate the medical expert, or to make further proof, is not entitled to any weight in the court's consideration of the question.—*Pacific Coast Casualty Co. v. Pillsbury*, 171 Cal. 319, 324, 153 Pac. 24.

920. Burden of proof—Relationship of employer and employee.—The existence of the relation of employer and employee at the time of accidental injury or death is essential to the jurisdiction of the commission to make an award, and the burden of proving such relationship is on the claimant.—*Connolly v. Industrial Accident Commission*, 173 Cal. 405, 407, 160 Pac. 239.

921. Same—Accident arising out of and in course of employment.—It devolves upon one claiming compensation to establish by evidence the fact that the employee was injured by an accident arising out of and in the course of the employment.—*Casualty Co. v. Industrial Accident Commission*, 176 Cal. 530, 533, 169 Pac. 76.

922. Same—Unexplained injury.—Where applicant proved that the employee was killed while at work, by an unexplained fall, she has established a prima facie case of an injury arising out of and proximately caused by the employment, and the burden of proving that the fall was due to other causes was upon the defendants, and upon failure to do so a death benefit was awarded.—*Schwartz v. Pacific, etc., Co.*, 6 I. A. C. Dec. 67.

923. Same—Existence of compensable injury.—The burden of proving that the injury for which compensation is asked was suffered in the course of the employment and arose out of the employment is upon the claimant.—*John A. Roeblings, etc., Co. v. Industrial Accident Commission*, 36 Cal. App. 10, 171 Pac. 987, 5 I. A. C. Dec. 11 (*Bundshu v. John A. Roeblings, etc., Co.*, 4 I. A. C. Dec. 215).

924. Same—Employee not required to establish source of injury scientifically.—The employee is not required to account scientifically for the source of contagion or the cause of a disease affecting him, but only to establish by the preponderance of likelihood that his disability arose out of and happened in the course of his employment.—*Reeves v. Diamond Match Co.*, 5 I. A. C. Dec. 236.

924a. Same—Same—Reasonable certainty only required.—In order to charge a dis-

ability to a pre-existing condition, such condition must be established to a reasonable certainty.—*Snyder v. Pacific, etc., Co.*, 3 I. A. C. Dec. 1.

925. Same—Same—Demonstration not required—Only reasonable certainty.—The act requires only that degree of proof which produces conviction in an unprejudiced mind, and a demonstration as to the cause of a death.—*Shell Co. v. Industrial Accident Commission*, 36 Cal. App. 463, 172 Pac. 611.

926. Same—Willful misconduct not required to be shown affirmatively.—An applicant for an award under the workmen's compensation act is not required to show affirmatively the absence of willful misconduct upon the part of the killed or injured employee.—*United States Fidelity and Guaranty Co. v. Industrial Accident Commission*, 174 Cal. 616, 619, 163 Pac. 1013.

927. Same—Same—Affirmative defense.—The burden of proof is not on the employee to prove jurisdictional facts and he need not affirmatively prove the absence of willful misconduct. The defense of willful misconduct is a matter of affirmative defense, to be established by the employer.—*Zanotti v. Aquilino & Lagomarsino Co.*, 3 I. A. C. Dec. 53.

928. Same—Not on dependents to prove innocence of willful misconduct.—In proceedings before the industrial accident commission the burden of proof is not upon the injured workman or the surviving dependents of a deceased employee to prove innocence of willful misconduct. In such proceedings willful misconduct on the part of the injured employee is a matter of affirmative defense.—*United States, etc., Co. v. Industrial Accident Commission*, 174 Cal. 616, 163 Pac. 1013, 4 I. A. C. Dec. 79 (*Maffia v. Aquilino*, 3 I. A. C. Dec. 15; *Zanotti v. Aquilino*, 3 I. A. C. Dec. 53).

929. Same—Employee must show that influenza resulted from exceptional exposure of employment.—Where an employee claimed compensation for a disability caused by heart disease resulting from an attack of influenza, the burden is on him to show that his disability resulted from the exceptional exposure to which he was subjected in caring for influenza patients at his employer's request.—*Engels, etc., Co. v. Industrial Accident Commission*, (Cal.) 192 Pac. 845.

See, also, *San Francisco v. Industrial Accident Commission*, (Cal.) 192 Pac. 26 (*Slattery v. San Francisco*, 6 I. A. C. Dec. 140).

930. Same—After prima facie case—Burden is on employer.—Where an injured employee has once established as a fact that his total disability was proximately caused by injury, the burden of proof that disability was not so caused is upon the employer.—*State Compensation Insurance Fund v. Tripp*, 4 I. A. C. Dec. 151.

931. Same—Every contrary possibility need not be negatived.—Even though the burden of proof is upon the applicant, it is not necessary that every possibility of death by other than accidental means

should be negatived.—*W. R. Rideout Co. v. Pillsbury*, 173 Cal. 132, 134, 159 Pac. 435.

932. Same—Circumstantial evidence.—The burden of proof of death of the employee by violence is upon the applicant, but it is satisfied by circumstantial evidence, and proof of the finding of the body is not a prerequisite.—*Western, etc., Co. v. Pillsbury*, 173 Cal. 135, 138, 159 Pac. 423.

933. Hearsay testimony—Status of employee can not be shown by.—The status of an employee, for whose accidental death compensation is asked, can not be shown by hearsay testimony.—*Connolly v. Industrial Accident Commission*, 173 Cal. 405, 407, 160 Pac. 239.

944. Same—Statements of deceased employee competent.—Hearsay testimony relative to the statements of a deceased employee relating directly to his injury is competent under section 77(a) of the workmen's compensation, insurance and safety act of 1915.—*Western Indemnity Co. v. Industrial Accident Commission*, 174 Cal. 315, 163 Pac. 60.

945. Same—Section 77(a)—Declarations of deceased.—Under section 77(a) of the act of 1913, as amended in 1915, declarations of the deceased to the effect that his crutch slipped and he fell and refractured his leg are admissible where death followed an operation made necessary by the injury.—*Shell v. Industrial Accident Commission*, 36 Cal. App. 463, 172 Pac. 611.

946. Same—Same—Relating directly to injury, admissible.—Under the amendment of section 77(a), hearsay evidence is admissible in cases of death where the hearsay testimony relates directly to the injury in question. Hearsay evidence as to the occurrence of the death which resulted from a second accident was the direct outcome of the first, is admissible.—*Shell Co. v. Industrial Accident Commission*, 36 Cal. App. 463, 172 Pac. 611, 5 I. A. C. Dec. 50.

947. Same—Same—Section 75 (6)—Not technical rule of evidence.—Neither the provisions of section 75 (subdv. 6) nor of section 77, authorize the commission to make an award where it is based solely on hearsay evidence, since the rule as to hearsay is not a technical rule of evidence.—*Englebretson v. Industrial Accident Commission*, 170 Cal. 793, 797, 151 Pac. 421.

948. Same—Section 60(a) act of 1917—Deposition admissible.—Under section 60, subdivision (a) of the act of 1917, a deposition, although hearsay as to the parties against whom it was introduced and not within any exception to the hearsay rule, was yet admissible.—*The Ocean, etc., Corporation, Limited v. Industrial Accident Commission*, 180 Cal. 389, 182 Pac. 35, 6 I. A. C. Dec. 82.

949. Same—Sufficiency of, as to dependency.—A finding of the commission of the dependency of an applicant for compensation based upon the hearsay testimony of a person with whom the deceased employee had deposited money, that such person, from time to time, had, at the request of the deceased, advanced money to him upon

the statement that he wanted to send the money home, is unsupported.—*Western Indemnity Co. v. Industrial Accident Commission*, 35 Cal. App. 104, 169 Pac. 261, 4 I. A. C. Dec. 328 (*Pavlovic v. Glick*, 4 I. A. C. Dec. 114).

950. Unverified report of physician—Same as allegation of complaint—Not evidence.—An unverified report of a physician, made a part of an application for an amendment of an award for temporary disability by providing an additional allowance for permanent disability, has the same standing as an allegation of a complaint in an ordinary action at law, and does not raise a question as to the competency of evidence.—*Massachusetts, etc., Co. v. Industrial Accident Commission*, 176 Cal. 488, 493, 168 Pac. 1050.

951. Testimony by physicians—Not conclusive as against unprofessional testimony.—The commission is not bound by the fact that the testimony of physicians offered on a medical point is unanimous; and if their testimony is weak or contradictory, and unprofessional testimony is found to be inherently more probable, the commission will be governed by the merits.—*Snyder v. Pacific, etc., Co.*, 3 I. A. C. Dec. 1.

952. Report of physician—Scope of inquiry.—Where the question arose as to whether the disability of the applicant was due to a certain disease with which it was claimed he was afflicted rather than to the injury received at the time of the accident, the physician had the right to employ assistance to make certain observations as to the applicant, including a serological examination, and to report the result for his information in observing the applicant and in coming to a conclusion.—*Mesmer & Rice (a corporation) v. Industrial Accident Commission*, 178 Cal. 466, 173 Pac. 1099, 5 I. A. C. Dec. 150 (*Wilson v. Mesmer & Rice (a corporation)*, 4 I. A. C. Dec. 139, 5 I. A. C. Dec. 22).

953. Mental incompetency—Recital as to in court order, not binding on commission.—The recitals in a superior court order appointing a guardian as to mental incompetency prior to petition, are not binding on the commission.—*Ghiorso v. Standard Lumber Co.*, 5 I. A. C. Dec. 172.

954. Marriage—Want of record.—The fact that a dependent and deceased employee were living together as husband and wife was not sufficient evidence of marriage in the absence of record required by law.—*Blanca v. King*, 5 I. A. C. Dec. 196.

955. Circumstantial evidence does not overturn presumption of lawful conduct.—Where a deceased employee was killed while driving an automobile, an award of compensation will not be annulled because the deceased was driving faster than the lawful limit of thirty miles per hour allowed by the motor vehicle act, where the evidence of such violation of the act was circumstantial, in view of the presumption that he was driving at a lawful rate of speed.—*United States, etc., Co. v. Indus-*

trial Accident Commission, 181 Cal. 147, 183 Pac. 540, 6 I. A. C. Dec. 127.

956. Unauthenticated letter, not written or signed by dependent insufficient evidence of authority.—An unauthenticated letter from the father of a deceased employee, not written or signed by such father, directed to an attorney, is not sufficient to authorize the filing of a claim for a death benefit, and the irregularity is not cured by a purported power of attorney, where there is nothing in the record to show that it was acknowledged, or its execution proved in a manner that could be accepted as a sufficient authentication thereof.—*Western Indemnity Co. v. Industrial Accident Commission*, 35 Cal. App. 104, 169 Pac. 261.

957. Admissions made in delirium or while dazed or in shock after an inquiry sustained, are held not to be sufficient to support an allegation of attempted rescue of a child as the cause of an injury.—*Sibley, etc., Co. v. Nelson*, 5 I. A. C. Dec. 203.

958. Commission not bound by stipulation as to facts.—The commission is not bound to make its award upon a stipulation of facts alone, but is authorized, under subdivision b of section 24, take further testimony, after the parties stipulate as to the facts.—*Frankfort G. Ins. Co. v. Pillsbury*, 173 Cal. 56, 58, 159 Pac. 150.

958a. Oral testimony as to relations of parties.—Upon the hearing of an application for compensation for injuries received while the applicant was personally discharging duties which devolved upon him by virtue of his written contract with his employer, the commission may admit oral testimony as to the actual relations of the parties, where the contract merely provided for furnishing a delivery truck and driver, but did not provide for any personal services by the applicant.—*Eng-Skell Co. v. Industrial Accident Commission*, 30 Cal. App. Dec. 450, 186 Pac. 163, 6 I. A. C. Dec. 209.

959. Average annual earnings—Payrolls of employer.—Where the only evidence of the amount of the earnings of the deceased employee were contained in the payrolls of certain coal companies for which the deceased had worked, it was held that testimony of fellow employees to the effect that the deceased had earned an average of \$25 a week during the year preceding his death, was held to be sufficient to justify a finding that the decedent's weekly earnings averaged that amount.—*Souza v. Western, etc., Co.*, 4 I. A. C. Dec. 95.

960. Conflict of evidence—Commission final arbiter.—Where there is a conflict in the testimony, or where opposing inferences may reasonably be drawn, the commission is the final arbiter.—*Walker v. Industrial Accident Commission*, 177 Cal. 737, 738, L. R. A. 1918F, 212, 171 Pac. 954.

961. Evidence sufficient to establish willful misconduct.—Evidence held insufficient to establish the willful misconduct of the injured employee.—*Maffia v. Aquilino*, 3 I. A. C. Dec. 15.

962. Evidence insufficient to establish deliberate and intentional failure to observe rule.—It was held that the evidence in the present case showed a deliberate and intentional failure to observe a safety rule.—*Thorla v. Atchison, etc., Co.*, 4 I. A. C. Dec. 143.

963. Evidence sufficient to establish that injury proximately caused disability.—It was held in the present case that the evidence was sufficient to establish by a reasonable preponderance of likelihood that the disability to a sarcoma was proximately caused by the injury.—*Villa v. Santa Ana Sugar Co.*, 4 I. A. C. Dec. 147.

964. Evidence not sufficient to show serious and willful misconduct.—Held that serious and willful misconduct of the employer was not shown by the evidence in this case.—*Pierce v. Rosenberg*, 6 I. A. C. Dec. 241.

965. Willful misconduct—Absence of inference.—Upon this application for a writ of review to annul an award made by the commission to the dependents of a deceased employee, it is held that the inference that the deceased was guilty of willful misconduct in returning to work to the place from which he had been taken earlier in the day and where he ultimately met his death, is not to be drawn from such action.—*Gray v. Industrial Accident Commission*, 34 Cal. App. 713, 168 Pac. 702, 4 I. A. C. Dec. 296 (*Leal v. Gray*, 4 I. A. C. Dec. 218).

966. Evidence sufficient—Skin disease contracted from wood dust.—Where a workman required continuously to walk in wood dust an inch thick, contracted a skin affection in the lower limbs, and a few other workmen similarly exposed were likewise affected, and no other probable cause for the affection was presented, it was held that the evidence was sufficient to establish that the dust was the cause of the skin affection.—*Reeves v. Diamond Match Co.*, 5 I. A. C. Dec. 236.

967. Evidence sufficient—Death result of injury.—The evidence in the present case is held to be sufficient to prove that the death of the deceased employee while employed as a pitman of a steam shovel was a result of an injury sustained in the course of employment.—*Duffy v. California, etc., Co.*, 5 I. A. C. Dec. 204.

968. Evidence insufficient—Injury caused death.—It was held in the present case that the evidence was insufficient to establish that death was proximately caused by the fall of a carpenter.—*Lind v. Anderson*, 4 I. A. C. Dec. 103.

969. Evidence sufficient to show cause of disability as alleged.—It was held in the present case that the evidence was sufficient to warrant a finding that the disability was proximately caused as alleged.—*Hoag v. Elk Grove, etc., District*, 4 I. A. C. Dec. 70.

970. Evidence not sufficient to show husband employee of wife.—It was held that the evidence in the present case was not sufficient to show that the husband was an employee of his wife, but that it showed rather that the construction was

engaged in as a community or partnership undertaking for their general benefit.—*Braun v. Braun*, 4 I. A. C. Dec. 90.

971. Evidence insufficient to overturn inherent improbability.—It was held under the circumstances of the present case to be inherently improbable that the applicant sustained a traumatic injury, or that the injury claimed to have been sustained was the cause of the ailment of the eye claimed.—*Singh v. Reclamation District*, etc., 4 I. A. C. Dec. 29.

972. Evidence not sufficient to establish that injury caused death.—It was held in the present case that the evidence was not sufficient to establish as a fact that death resulting from abscesses and pyemia was not proximately caused by a horse bite suffered in the course of his employment.—*Manning v. United Milk Co.*, 4 I. A. C. Dec. 19.

973. Evidence sufficient to show cause of disability as claimed.—The evidence in the present case was held to be sufficient to prove that the employee at employer's construction camp contracted typhoid fever from the use of the water of a creek which flowed through the camp.—*Price v. Bates, Borland & Ayer*, 4 I. A. C. Dec. 99.

974. Evidence insufficient to show that alleged willful misconduct proximately caused the injury.—An award of compensation for an injury to an eye of an employee of an electro-chemical company from getting caustic therein while engaged in the course of his employment is not subject to annulment on the ground of willful misconduct in not, at the time of the injury, protecting his eyes by glasses furnished by the company and directed by it to be used, where the evidence is such that it can not be said as to whether or not the absence of the glasses in any way contributed to or caused the injury.—*Great Western*, etc., Co. v. Industrial Accident Commission, 25 Cal. App. Dec. 895, 4 I. A. C. Dec. 362.

975. Absence for less than seven years may be sufficient proof of death.—Absence for less than seven years, coupled with other circumstances, may be sufficient proof of death at an earlier date.—*Western*, etc., Co. v. Pillsbury, 173 Cal. 135, 139, 159 Pac. 423.

976. Custom or usage, binding effect of.—A custom or usage in order to have any binding effect must be certain, well known, long established and acquiesced in; and a custom among the employees, unknown to and unrecognized by the employer, can not operate to change one kind of employment into another so as to render an accident therein compensable if it was not incidental to or in the course of the work for which the injured person was employed.—*County of Modoc v. Industrial Accident Commission*, 32 Cal. App. 548, 163 Pac. 685, 4 I. A. C. Dec. 25 (*Lytle v. County of Modoc*, 3 I. A. C. Dec. 382).

5. Instructions.

977. Instructions to jury — Rule as to weight of evidence — Applicable to indus-

trial accident commission.—The principle behind the rule that juries are to be instructed that "they are not bound to decide in conformity with the declarations of any number of witnesses, which do not produce conviction in their mind, against a less number . . . satisfying their minds" operates as strongly upon the commission as instructions under it do upon juries.—*Santa Ana*, etc., Co. v. Industrial Accident Commission, 25 Cal. App. Dec. 1509, 4 I. A. C. Dec. 381 (*Villa v. Santa Ana*, etc., Co., 4 I. A. C. Dec. 147).

6. Findings.

978. Finding as to employment, if supported, is not reviewable.—The question whether a claimant for compensation under the workmen's compensation, insurance and safety act is engaged in horticultural labor, and so not within the purview of the act is one of fact to be determined by the commission, and its finding, if supported by any rational view of the evidence, is beyond review by the supreme court.—*George v. Industrial Accident Commission*, 178 Cal. 733, 735, 174 Pac. 653.

978a. Status of deceased.—Employee or independent contractor.—The finding of the commission that the deceased was a servant of the petitioner and not an independent contractor is conclusive.—*Western Metal Supply Co. v. Pillsbury* (Cal.), 3 I. A. C. Dec. 109 (*Mason v. Western*, etc., Co., 1 I. A. C. Dec. 284).

979. Finding as to cancer resulting from fall, held supported by the evidence.—In this case it was held that the finding of the commission that the disability from cancer resulted from a fall is supported by the evidence.—*Santa Ana*, etc., Co. v. Industrial Accident Commission, 25 Cal. App. Dec. 1509, 4 I. A. C. Dec. 381 (*Villa v. Santa Ana*, etc., Co., 4 I. A. C. Dec. 147).

980. General rule of practice.—Findings should conform to.—The commission exercises judicial functions, and its findings should conform to and be judged by the general rules of practice and law governing the same.—*Smith v. Industrial Accident Commission*, 26 Cal. App. 560, 147 Pac. 600.

981. Findings and award have effect of judgment.—The findings and award made by the commission in the original proceedings for disability indemnity by an injured employee, have the effect of a judgment binding upon the insurance carrier in a matter pertinent to the inquiry regarding the cause of the employee's death, where such death followed the same injury, and it makes no difference whether the testimony upon which those findings and award were based was itself properly admitted in the widow's proceeding for death indemnity, or not.—*Western Indemnity Co. v. Industrial Accident Commission*, 176 Cal. 776, 783, 169 Pac. 663.

982. Knowledge or notice.—Actual knowledge.—A finding by the commission that the defendant "had knowledge or notice of the happening of the accident within the time prescribed by law" is not a finding

that he had "actual knowledge" of the injury within the proviso of section 20 of the act making actual knowledge equivalent to the written notice of the particulars of the injury.—*Smith v. Industrial Accident Commission*, 174 Cal. 199, 200, 162 Pac. 636.

983. Findings upon ultimate, not probative, facts required.—Specific findings upon probative facts are not required of the commission, but a finding upon the ultimate fact is sufficient.—*Frankfort G. Ins. Co. v. Pillsbury*, 173 Cal. 56, 60, 159 Pac. 150.

984. Finding upon conflicting evidence not reviewable.—A finding of the commission upon conflicting evidence that the injuries of the employee were received while engaged in the performance of his duties under the employment, can not be disturbed on certiorari.—*McDonagh v. Industrial Accident Commission*, 34 Cal. App. 177, 166 Pac. 1024, 4 I. A. C. Dec. 208.

985. Finding not warranted—Negligence in communication of infection.—The facts in this case are held not to warrant a conclusion that the commission was bound to find that infection reached the face from the toe was due to the negligence of the employee.—*Bethlehem, etc., Co. v. Industrial Accident Commission*, 58 Cal. Dec. 421, 185 Pac. 179, 7 A. L. R. 1180, 6 I. A. C. Dec. 211 (*Caffrey v. Bethlehem, etc., Co.*, 6 I. A. C. Dec. 63).

985a. Finding as to bar of statute justified.—Upon this application to review an award made by the industrial accident commission for compensation for "further disability" under subdivision (c) of section 16 of the act, it is held that the finding of the commission that the right was not barred at the time of filing of the application is justified by the evidence.—*Rea v. Employees, etc., Co.*, 4 I. A. C. Dec. 384.

7. Orders.

986. Service—Dismissal for want of.—Where an employer was erroneously named in an application and was not served, the proceeding was dismissed after the expiration of the limitation of time.—*Quaranga v. Ancil Creek Mine*, 5 I. A. C. Dec. 129.

986a. Dismissal on own motion for want of jurisdiction on face of petition.—Under section 18 (c) of the act of 1917, the commission is authorized to dismiss an application for compensation on its own motion, where it appears on the face of the application that the commission is without jurisdiction to award compensation.—*Williams v. United States, etc., Co.*, 5 I. A. C. Dec. 44.

987. Consolidation of two proceedings—For disability and for death.—Where the two compensable conditions, injury and death, arose out of the same casualty, the two proceedings—the one by the employee for the injury and the other by the widow for his death—are separate ones, and the continuing jurisdiction given by section 25 (d) is immaterial to the widow's application, and the order consolidating the two proceedings was a mere act of caution and without significance or effect, being wholly

unnecessary.—*Western Indemnity Co. v. Industrial Accident Commission*, 176 Cal. 776, 782, 169 Pac. 663.

8. Statute of limitations.

988. Statute affects only the remedy.—This section furnishes a bar within the meaning of the rule that the statute of limitations affects only the remedy, and, as matter of defense, is waived if not pleaded.—*Red River Lumber Co. v. Pillsbury*, 174 Cal. 37, 39, 161 Pac. 982.

989. The provisions of section 11 of the act of 1917 are procedural.—The provisions of section 11 of the act of 1917 are procedural and apply to any proceedings after the act became effective, although for the purpose of recovering compensation for an injury sustained under an earlier act, and where an application is filed within six months after the furnishing by the employee of medical treatment the application is not barred.—*Kinnle v. Southern Pacific Co.*, 6 I. A. C. Dec. 57.

990. Force and effect of phrase "wholly barred."—The language of this section is that the right to institute the proceeding is "wholly barred" by the specified lapse of time, and it does not mean that the provision relates back and avoids the claim from the beginning or forfeits the right.—*Red River Lumber Co. v. Pillsbury*, 174 Cal. 37, 40, 161 Pac. 982.

991. Significance of word "barred."—The use of the word "barred" in this section in itself implies that the lapse of time constituting the bar must be raised as a defense, and if it is not raised it will be of no avail.—*Red River Lumber Co. v. Pillsbury*, 174 Cal. 37, 40, 161 Pac. 982.

992. Filing of application for rating not a commencement of proceedings for compensation.—The filing of an application for a permanent disability rating with the rating department of the commission does not constitute a commencement of proceedings for the collection of compensation under section 16 of the workmen's compensation act.—*Fidelity & Cas. Co. v. Industrial Accident Commission*, 177 Cal. 472, 170 Pac. 1112 (*Knudson v. Kallstrom*, 4 I. A. C. Dec. 259).

993. Filing of request for permanent disability rating stops running of statute.—The filing of a request for permanent disability rating, together with an affidavit setting forth details sufficient to entitle applicant to general relief, stops the running of the period of time limited for instituting proceedings before the commission.—*Millar v. Oak Ridge, etc., Co.*, 4 I. A. C. Dec. 129.

But see *Fidelity & Cas. Co. v. Industrial Accident Commission*, 177 Cal. 472, 170 Pac. 1112 (*Knudson v. Kallstrom*, 4 I. A. C. Dec. 259).

994. Application of section 16 (c), act of 1913.—The extension of the limitation period of six months provided by section 16 (c) is limited to the specified case, and does not apply for the purpose of extending the time for the commencement of proceedings upon an original claim not

previously recognized by the employer by payment of indemnity or agreement.—*Ehrhart v. Industrial Accident Commission*, 172 Cal. 621, 624, Ann. Cas. 1917E, 465, 158 Pac. 193.

995. Date of last payment of compensation.—When the act, in section 16, speaks of the date of last payment of compensation, it means the date on which the money is actually paid, and the claimant must commence his proceeding within six months thereafter, unless there is some agreement for payment of compensation.—*Miller v. Industrial Accident Commission*, 172 Cal. 473, 474, 156 Pac. 1033.

996. Extension of period by payment of compensation.—Where a claim was filed against an employer and insurance carrier on October 2, 1915, for an injury sustained on November 11, 1914, and compensation was paid up to August 25, 1915, by the insurance carrier, but none was paid by the employer, it was held that such compensation was in the partial discharge of the liability of the employer, and therefore as to such employer extended the commencement of the running of the statute until payments of compensation ceased.—*Hoover v. Kuykendall*, 3 I. A. C. Dec. 51.

997. Payment of wages—Without performing service.—Payment of full wages to an employee, after injury, although performing no service, can not be considered either as wages or gratuities, but must be deemed compensation under section 11 of the act, and a claim for compensation filed more than six months after the injury though less than six months after the last payment of wages, is not barred by the statute.—*Odgers v. Great Western, etc., Co.*, 6 I. A. C. Dec. 95.

998. Same—Performing part service.—An employee, who was paid full wages after injury, which disabled him from full performance of his duties, but remained at work, the payment of wages can not be considered as payment of compensation, and a claim for compensation filed more than six months after the injury but less than six months from the last payment of wages, was held barred.—*McManes v. Ocean, etc., Corporation*, 6 I. A. C. Dec. 94.

999. Same—Excess of wages as compensation.—Where an employee who is partially disabled by reason of an industrial injury, is given light work and paid his full wages by his employer, the excess of wages paid over the wages earned is not to be considered as payments of compensation unless, in addition to these facts, an intent on the part of the employer so to consider it appeal from the circumstances of the case.—*Narta v. Union Brewing, etc., Co.*, 4 I. A. C. Dec. 152.

1000. Same—One day following injury.—Payment of wages for one day following injury did not constitute payment of compensation permitting institution of proceedings within six months from said payment.—*Balczynski v. Pacific, etc., Co.*, 5 I. A. C. Dec. 222.

Gen. Laws—106

1001. Same—Immaterial whether compensation is due.—It is immaterial whether payments made to an injured employee are intended as compensation or not whenever compensation is due; as a matter of fact, payments made for the benefit of the injured employee shall be treated as disability indemnity, and whenever such payments are made within six months prior to the filing of the application the application is not barred.—*Howell v. Lanfair*, 5 I. A. C. Dec. 176.

1002. Furnishing medical treatment.—Under the act of 1917 the furnishing of medical treatment is payment of compensation, and the statute of limitations runs from the last day of treatment.—*Cooper v. Anaheim, etc., Association*, 5 I. A. C. Dec. 187.

1003. Payment for medical services—Act of 1917.—Payment for medical services extends the period of limitations, under act of 1917.—*Hughes v. United States, etc., Co.*, 5 I. A. C. Dec. 134.

1004. Same—Payment for prior treatment.—Payment within six months for treatment theretofore furnished by employer, does not toll the statute of limitations.—*Fossett v. Venable*, 6 I. A. C. Dec. 66.

1005. Payment of damages under admiralty law.—Payment of damages under admiralty law for an injury to a seaman on board a ship on the high seas held not to bar a claim for compensation under the act, but the employer will be credited for the amount paid.—*Mestrand v. Comyn Mackall & Co.*, 6 I. A. C. Dec. 126.

1006. Collection of death benefit.—Under subdivision 2 of section 16 of the act, a proceeding to collect a death benefit can be maintained, although death ensues more than one year from the date of injury, where it is commenced within one year from the date of the death and within two hundred and forty weeks from the date of the injury.—*Western Indemnity Co. v. Industrial Accident Commission*, 176 Cal. 776, 782, 169 Pac. 663, 4 I. A. C. Dec. 376 (*Henne v. Hjul*, 3 I. A. C. Dec. 433).

1007. Under the act of 1913.—An application for compensation filed within six months after a payment of disability indemnity under the act of 1913, is not barred, although more than six months after the injury was sustained.—*Kinnie v. Southern Pacific Co.*, 6 I. A. C. Dec. 57.

1008. Same—Filing of application for disability rating.—Where proceedings for the collection of compensation were not commenced within six months after the date of the injury, it is barred, although an application for a disability rating was filed with the rating department prior to the expiration of that period.—*Fidelity & Cas. Co. v. Industrial Accident Commission*, 177 Cal. 472, 170 Pac. 1112.

1009. Claim by foreign dependent—Application within one year from death.—It was held under the circumstances of this case, of a claim by a foreign dependent of the deceased employee who had sent to his attorney in fact a formal power of attor-

ney, and the attorney in fact thereafter within one year after the death filed an application for a death benefit, that the application filed in the statutory period was sufficient and that the commission had jurisdiction to award a death benefit.—Pavlovic v. Glick, 4 I. A. C. Dec. 114.

1010. Disability uncertain.—Where an assayer suffered darkening or discoloration of the skin, due to fumes to which he was subjected by reason of his employment, and the disability resulting from such disfigurement was uncertain, it should be considered on application after six months from the award.—Smith v. Treasure Mining Co., 5 I. A. C. Dec. 97.

1011. "Further disability."—If there have been no proceedings commenced within six months from the date of the injury, and no payment of disability indemnity or agreement thereof, the employee is not entitled to institute proceedings grounded upon "further disability" under section 16 (c) of the act of 1913, after six months from the date of the injury.—Kauffman v. Industrial Accident Commission, 37 Cal. App. 500, 174 Pac. 690.

1012. Same — Application of phrase.—The words "further disability" in the proviso of subdivision (c) of section 16 of the act refers to any disability in addition to that for which proceedings were commenced within six months of the date of injury, or for which disability indemnity has been paid, or agreed to be paid, and where no proceedings were commenced within six months from the date of the injury and no payment of disability indemnity or agreement thereof, the employee is not entitled to institute proceedings founded upon "further disability" after expiration of six months from the date of the injury.—Kauffman v. Industrial Accident Commission, 37 Cal. App. 500, 174 Pac. 690, 5 I. A. C. Dec. 132 (Kauffman v. Federal Drilling Co., 5 I. A. C. Dec. 56).

1013. Same — Continuing disability.—A continuing disability in the sense that a subsequent incapacitation caused by the original injury is a continuation of the original disability and not a further disability within the meaning of section 16 (c), must be sufficient to render an employee entitled to compensation.—Larsen v. Sherer, 4 I. A. C. Dec. 126.

1014. Same — Not further disability.—Where an employee suffered no disability after an industrial injury within six months, for which compensation had been or agreed to be paid, or for which he had received an award, and he thereafter suffered a compensable disability, it was held that he had suffered no further disability within the meaning of section 16 (c) of the act of 1913.—Kauffman v. Federal Drilling Co., 5 I. A. C. Dec. 56.

1015. Same — Same — Steadily failing sight.—Where an injury to employee's eye occurred more than a year before filing claim, during which time his sight had been noticeably and steadily failing and he had

received no compensation or agreement, it was held that he had suffered no "further disability," and that his claim for compensation was barred.—Kauffman v. Federal Drilling Co., 5 I. A. C. Dec. 56.

1016. Same — Injury occurring prior to amendment of section 16 (c).—Where an injury occurred less than six months before the amendment to section 16 (c) became effective, a proceeding based upon a "further disability" by reason of the injury may be commenced within 245 weeks of the date of the original injury.—Ready v. City of Oakland, 4 I. A. C. Dec. 89.

1017. Same — When statute has run against original disability.—Where the statute has run against the original injury a claim for compensation can lie only for a new and further disability.—Engel v. National, etc., Co., 5 I. A. C. Dec. 239.

1018. Same—When statute begins to run against new disability.—Where an employee sustained a further disability about a year after the original disability, it was held that the statutory period for the institution of proceedings on account of said second disability began to run from the date of the appearance of the disability caused thereby.—Lara v. Los Angeles Stone Co., 4 I. A. C. Dec. 298.

1019. Same—Date statute begins to run.—The statutory period for the institution of proceedings on account of a "further disability" begins to run at the date of the appearance of the further disability and not from the date of the original injury.—Lara v. Los Angeles Stone Co., 4 I. A. C. Dec. 298.

1020. Same—When claim barred.—Where proceedings are instituted for the collection of compensation on the ground that the original injury has caused further disability, the right to compensation is barred for any disability existing more than six months previous to the date for filing the application.—Larsen v. Sherer, 4 I. A. C. Dec. 126.

1021. Unless proceedings are instituted within six months of the date when the injured employee is compelled to discontinue work by reason of a further disability, his claim is barred.—Kemper v. Nathan-Dohrmann Co., 4 I. A. C. Dec. 101.

1022. Same—Reduction of earning power.—The loss of wages or the reduction of earning power taken by itself is not a sufficient ground upon which to predicate a new and further disability within the meaning of the act, but the same must be accompanied by a recurrence or new development of physical incapacity traceable to the original injury.—Hafely v. Georgia Casualty Co., 5 I. A. C. Dec. 194.

1023. Same — Arising two years after original injury.—Where an injury and further disability arose two years after the original injury, the claim therefore was barred, even though two medical treatments were given at the beginning.—Balczynski v. Pacific, etc., Co., 5 I. A. C. Dec. 222.

1024. Continuing jurisdiction of commission.—The continuing jurisdiction of the

commission provided by section 25 (d) applies only to orders, decisions and awards already made, and for the purpose of making an award based upon an original injury, for which no claim was made within the period of limitation prescribed by section 16.—*Ehrhart v. Industrial Accident Commission*, 172 Cal. 621, 625, Ann. Cas. 1917E, 465, 158 Pac. 193.

1025. Two distinct injuries — One only named.—Where an employee suffered two distinct injuries from the same accident, and in his application named only one, and compensation awarded was based solely on that one, no mention being made of the other at the hearing, the commission was without jurisdiction to make a second award for the other injury after the expiration of the six month's limitation prescribed by section 16.—*Ehrhart v. Industrial Accident Commission*, 172 Cal. 621, 623, Ann. Cas. 1917E, 465, 158 Pac. 193.

1026. Claim of lien for medical services.—Where an application for an award for medical expenses was filed within six months of an injury and subsequent to death, which occurred more than six months after the injury, one of the attending physicians filed an application to be substituted for the deceased employee, it was held that the physician's claim was through the employee by way of lien, and was not barred.—*Caseri v. Marin County, etc., Association*, 4 I. A. C. Dec. 63.

1027. Effect of minority.—A female employee, who sustained a compensable injury during her minority, applied for compensation, was denied compensation on the ground of the six months bar, all during minority, and no guardian having been appointed for, and after attaining her majority, and within a reasonable time thereafter, disaffirmed her former application, and again applied for compensation, was held to be entitled thereto.—*Michaud v. Gonanillon*, 6 I. A. C. Dec. 264.

1028. Bar must be pleaded in five days.—The defendant must plead the bar of this section within five days as provided in section 23.—*Red River Lumber Co. v. Pillsbury*, 174 Cal. 37, 39, 161 Pac. 982.

1029. Same—Failure to plead waiver.—The failure of the defendant to set up the statute of limitations of section 16 (a) in his answer, or otherwise suggest or raise the point that the claim is barred in a proceeding for compensation under the workmen's compensation act, amounts to a waiver of that defense.—*United States Fidelity and Guaranty Co. v. Pillsbury*, 174 Cal. 198, 199, 162 Pac. 638.

1030. A defendant in a proceeding to fix an award for disability under this act is required by section 23 of the act to file with the commission an answer setting up the bar provided in section 16, within 5 days after service of the application upon him, and a failure to do so is a waiver of that defense.—*Red River Lumber Co. v. Pillsbury*, 174 Cal. 37, 39, 161 Pac. 982.

1031. In a proceeding to review and annul an award of a permanent partial dis-

ability indemnity made by the commission, the petitioner can not contend that the application for relief was not filed in time, where in his answer in the original proceeding he failed to plead directly or indirectly the statutory limitation provided by section 16 (a) of the act.—*United States, etc., Co. v. Industrial Accident Commission*, 53 Cal. Dec. 61, 4 I. A. C. Dec. 4 (*McGee v. Daniels, etc., Co.*, 3 I. A. C. Dec. 50).

1032. Agreement to forego operation of statute.—The parties to a controversy before the industrial accident commission may enter into an agreement to forego the statute of limitations for a definite period, and such an agreement may operate as an estoppel to a plea of the statute.—*Kemper v. Industrial Accident Commission*, 177 Cal. 618, 620, 171 Pac. 426.

1033. Power of commission to set aside defense of statute.—Where the evidence shows that the statutory period has run, the commission has no power to set aside and refuse to consider a defense of the statute, even though there is evidence to show that the employer had promised to waive this defense.—*Kemper v. Nathan-Dohrmann Co.*, 4 I. A. C. Dec. 101.

1034. Failure to file claim within agreed time.—A finding of the commission that it was without jurisdiction to hear an application for compensation filed after the expiration of the period prescribed in section 16 will not be set aside on certiorari, where the waiver was limited in its application to the filing of a claim with the commission within a reasonable time from its date, and the applicant did not rely on the waiver or file his claim until six months thereafter.—*Kemper v. Industrial Accident Commission*, 177 Cal. 618, 171 Pac. 426, 5 I. A. C. Dec. 41 (*Kemper v. Nathan-Dohrmann*, 4 I. A. C. Dec. 101).

9. Judgment or award.

a. Finality and conclusiveness.

1035. Reopening decisions on change of law.—It is in accordance with the sound policy of the commission not to reopen its earlier decisions whenever a change in the construction of the law is made by higher courts, where such construction could have been claimed before said decisions became final and that therefore said award would not be annulled.—*Soley v. North, etc., Co.*, 4 I. A. C. Dec. 289.

1036. Testimony taken before referee.—Findings and award in any proceeding where testimony is taken by a single commissioner or referee, made and signed by such, are valid when approved and confirmed by the commission, even though not accompanied by a transcript or report of the testimony.—*Hammond Lumber Co. v. Ferguson*, 4 I. A. C. Dec. 137.

1037. Annulled on newly discovered evidence.—Findings and award were annulled and the proceedings dismissed without prejudice at a rehearing at which the applicant introduced newly discovered evidence showing that his employer at the time of his injury was not the defendant against

whom the award was rendered but was a third person, not a party to the proceedings.—Grizzel v. Aaron, 4 I. A. C. Dec. 131.

1038. Same — Applicant not widow.—In this case it was found that the applicant for a death benefit was not the widow of the deceased employee and was not dependent upon him for support, and the award was accordingly rescinded.—Cordova v. Santa, 4 I. A. C. Dec. 330 (Original decision reported in 3 I. A. C. Dec. 180. The opinion of the supreme court is reported in Santa v. Industrial Accident Commission, 175 Cal. 235, 165 Pac. 689, 4 I. A. C. Dec. 169).

1039. Dismissal of employer—Reinstatement.—Where an award was rendered against the employer and insurance carrier jointly and the latter applied for a rehearing, which was denied, and afterward for a writ of review, and the employer was dismissed from the proceeding at its request, and on review the insurance carrier was held not liable, the commission had power under section 25 (d) on a petition for a rescission of the order dismissing the employer, to rescind said order.—Angus v. White Gulch Mining Co., 4 I. A. C. Dec. 330.

1040. Error of procedure does not vacate award.—Conceding that a notice to an insurance carrier that an award will be amended by providing an additional allowance for permanent disability "unless good cause be shown" places the burden upon the insurer instead of the injured employee, where it belongs, the fact, even if true, would not avoid the award, inasmuch as it would be a mere error of procedure, and in any event it would not be prejudicial to the insurer who did not seek any opportunity to introduce evidence upon the facts alleged against him.—Massachusetts, etc., Co. v. Industrial Accident Commission, 176 Cal. 488, 492, 168 Pac. 1050.

b. Alteration, amendment, etc.

1041. Waiver of objections not made.—Where the insurer objected to the amendment of an award solely upon the ground that the relation of master and servant did not exist, other objections were waived.—Massachusetts, etc., Co. v. Industrial Accident Commission, 176 Cal. 488, 491, 168 Pac. 1050.

1042. Jurisdiction to amend not unlimited.—In view of subdivision (b) of section 82, the continuing jurisdiction of the commission to amend, alter and rescind its awards, is not unlimited, but only extends in its exercise to the consideration of facts only as arise after the making of the award, and it is only upon proof of such facts that the commission has jurisdiction to review, diminish or increase such award.—Georgia C. Company v. Industrial Accident Commission, 177 Cal. 289, 293, 170 Pac. 621.

1043. Findings, not attacked, final before proceeding to amend begun, conclusive.—In a proceeding under section 25 (d) to amend an award by providing an additional allowance to cover a rating for a permanent disability, the original findings

as to the relation of the injured employee, not attacked by any proceeding in review, and that had become final long before the new proceeding began, is conclusive.—Massachusetts, etc., Co. v. Industrial Accident Commission, 176 Cal. 488, 491, 168 Pac. 1050.

1044. Notice of hearing of proceeding to amend—Sufficiency.—Where a notice of the hearing of an application to amend an award did not set the time for the hearing, but merely declared that the previous award would be amended unless good cause to the contrary was not shown in writing within ten days, the amended award is not in excess of the jurisdiction of the commission.—Massachusetts, etc., Co. v. Industrial Accident Commission, 176 Cal. 488, 168 Pac. 1050, 4 I. A. C. Dec. 336 (Kelley v. Manley, 2 I. A. C. Dec. 355).

1045. Changed conditions must be shown as basis of application to amend.—Under sections 25, 81, and 82, when the commission has once made an award and denied a rehearing its jurisdiction to annul or alter its award is exhausted, except upon the ground that the disability has increased, diminished or terminated, when based upon changed conditions or new facts occurring after the award.—Georgia Casualty Co. v. Industrial Accident Commission, 177 Cal. 289, 170 Pac. 625, 5 I. A. C. Dec. 16 (on rehearing of 53 Cal. Dec. 705, 4 I. A. C. Dec. 170; Sims v. Sherer & Co., 3 I. A. C. Dec. 197).

10. Rehearing.

1046. Notice of hearing—Right of person against whom award is made.—The right to be present at any hearing necessarily includes the right to have notice of such hearing in time to attend.—Carstens v. Pillsbury, 172 Cal. 572, 577, 158 Pac. 218.

1047. Petition for rehearing, contents.—The provisions of subdivision (c), section 81, of the act, as to the contents of a petition for a rehearing require something more than a mere statement that a certain finding is not sustained by the evidence.—Pacific Coast Casualty Co. v. Pillsbury, 171 Cal. 52, 54, 151 Pac. 658.

1048. Points raised for first time.—Points made for the first time on petition for rehearing will not be considered.—Estabrook Co. v. Industrial Accident Commission, 177 Cal. 767, 177 Pac. 848, 5 I. A. C. Dec. 100; Klamath Steamship Co. v. Industrial Accident Commission, 177 Cal. 767, 177 Pac. 848, 5 I. A. C. Dec. 100 (see same case 5 I. A. C. Dec. 65).

1049. Same—Point of lack of jurisdiction.—A rehearing of an application for a writ of certiorari to annul an award of the commission will not be granted on the ground that the facts were such as to bring the proceeding within the exclusive admiralty jurisdiction of the federal courts where no such point was suggested in the argument on which the case was originally submitted for decision.—A. F. Estabrook Co. v. Industrial Accident Commission, 177 Cal. 767, 177 Pac. 848, 5 I. A. C. Dec. 100; Klamath Steamship Co. v. Industrial Acci-

dent Commission, 177 Cal. 767, 177 Pac. 848, 5 I. A. C. Dec. 100 (see same case 177 Cal. 767, 177 Pac. 848, 5 I. A. C. Dec. 65).

1049a. Same—Maritime injury.—Where the jurisdictional defense that the injury was maritime in character was raised for the first time on petition for rehearing and it did not appear that this defense could not have been raised at the hearing, it was held that said defense could not be considered.—*Mann v. Johnson*, 4 I. A. C. Dec. 253.

1050. Failure to make express finding—Want of objection.—Under section 81 of the workmen's compensation act of 1913, an employer against whom an award has been made, who fails to make an objection because of the failure of the commission to make an express finding upon an issue raised as to an existing agreement as to indemnity in case of disability, on its application for a rehearing, must be deemed to have waived the same.—*Northwestern Pacific Rd. Co. v. Industrial Accident Commission*, 173 Cal. 652, 653, 161 Pac. 123.

1051. Jurisdiction of commission expires on denial of rehearing.—The jurisdiction of the commission over its awards expires when it derives a rehearing, or when the time to make an application has expired, except where in section 20 (d) it is empowered to alter or amend its awards on the presentation of new facts occurring since the award was made.—*Northern, etc., Co. v. Industrial Accident Commission*, 30 Cal. App. Dec. 367, 185 Pac. 991, 6 I. A. C. Dec. 204 (*Lay v. Northern, etc., Co.*, 3 I. A. C. Dec. 271, 6 I. A. C. Dec. 181).

1052. Substitution of insurance carrier—Request after time for rehearing has expired.—A request for the substitution of the insurance carrier in place of the employer, made after the decision of the commission, can be considered only on petition for rehearing, and where it is made after the time for rehearing has expired, the commission has no authority, either under section 24(d) of the act of 1913, or under section 20(c) of the act of 1917, to grant it.—*Lay v. Northern, etc., Co.*, 6 I. A. C. Dec. 181.

1053. "Filing" not "service."—Filing petition for rehearing is not "service" with the commission's rules, nor section 1013, code of civil procedure.—*Deichen v. Acme, etc., Co.*, 5 I. A. C. Dec. 91.

1054. Same—Code provision not superseded.—The provisions of the Code of Civil Procedure as to service by mail are not superseded by the commission's rule.—*Deichen v. Acme, etc., Co.*, 5 I. A. C. Dec. 91.

11. Review.

1055. Respondents—Members of commission.—The members of the industrial accident commission are not proper parties defendant in proceedings by certiorari under section 84 of the act; but the proceedings should be brought against the industrial accident commission by name.—*Carstens v. Pillsbury*, 172 Cal. 572, 574, 158 Pac. 218.

1056. Attack upon award—Intent of act.—It was the clear intent of the legislature to render awards by the commission of compensation to employees for industrial injuries free from review or attack of any kind, except as prescribed in the act.—*Thaxter v. Finn*, 178 Cal. 270, 173 Pac. 163, 5 I. A. C. Dec. 101 (*Thaxter v. Thaxter*, 1 I. A. C. Dec. 197).

1057. Limitation of review of awards.—The legislature has full authority to limit the review of awards made by the commission and to make them conclusive, except on a review in the manner and at the times specified in the act.—*Thaxter v. Finn*, 178 Cal. 270, 173, Pac. 163, 5 I. A. C. Dec. 101 (*Thaxter v. Thaxter*, 1 I. A. C. Dec. 197).

1058. The legislature is authorized to preclude, so far as the courts of this state are concerned, any attack, direct or collateral, upon any award of the industrial accident commission, except in the manner prescribed, provided, always, of course, that jurisdiction of the person of the party against whom the award is made is not wanting.—*Thaxter v. Finn*, 178 Cal. 270, 277, 173 Pac. 163.

1059. Want of evidence to sustain findings—Newly discovered evidence—Grounds for rehearing but not for review.—Under the provisions of section 82 of the workmen's compensation act the commission may grant a rehearing upon the grounds of want of evidence to sustain the findings, or newly discovered evidence; but the supreme court can not review the proceedings on such grounds.—*Cardoza v. Pillsbury*, 169 Cal. 106, 145 Pac. 1015.

1060. Power to annul awards—Grounds.—Section 84 of the act gives the supreme court power to annul awards only when the commission acted without or beyond its powers, or when the award was procured by fraud, or is unreasonable, or when unsupported by the findings.—*Southern Pacific Co. v. Industrial Accident Commission*, 177 Cal. 378, 170 Pac. 822, 5 I. A. C. Dec. 20 (*Hunt v. Southern Pacific Co.*, 4 I. A. C. Dec. 107).

1061. Scope of jurisdiction of supreme court.—The authority of the supreme court with respect to the commission's conclusions on questions of fact, goes no further than to permit the annulment of an award where the commission's finding of fact is without any evidence whatever to support it.—*Walker v. Industrial Accident Commission*, 177 Cal. 737, 738, L. R. A. 1918F, 212, 171 Pac. 954.

1061a. Scope of inquiry on review under act of 1913.—Under the act of 1913 on an application for a writ of review the inquiry can go only to the question of jurisdiction, but this includes the question whether any material finding is unsupported, in which case the award of the commission must be set aside and annulled.—*Modoc Co. v. Industrial Accident Commission*, 32 Cal. App. 548, 163 Pac. 685.

1062. Certiorari—Grounds restricted to those stated in section 84.—The courts are restricted to the grounds for a review of

proceedings of the industrial accident commission to those stated in section 84 of the act.—*Cardoza v. Pillsbury*, 169 Cal. 106, 145 Pac. 1015.

1063. Annulment of award on review.—Grounds of.—Section 84 of the workmen's compensation act, authorizes the supreme court to annul an award only when the commission acted without or beyond its powers, or when the award was procured by fraud, or is unreasonable, or when the findings of fact do not support it.—*Southern Pacific Co. v. Industrial Accident Commission*, 177 Cal. 378, 381, 170 Pac. 822.

1064. Exercise of discretion not reviewable, unless wholly unsupported in the record.—No court should interfere with exercise of commission's discretion under the act unless it is clearly made to appear that the conclusion is without substantial support in the record.—*Perry v. Industrial Accident Commission*, 176 Cal. 706, 710, 169 Pac. 353.

1065. Same.—Determination as to reasonable time.—Where an insurer stipulated to waive the statute of limitations provided the claimant should present his claim within a reasonable time, the commission was authorized to determine what was a reasonable time, and its determination in that respect can not be overruled.—*Kemper v. Industrial Accident Commission*, 177 Cal. 618, 621, 171 Pac. 426.

1066. Annulment of award on review, when.—Under section 84 of the act of 1913, an award of the commission may be annulled by the supreme court in a proceeding by writ of review, when the commission, in making the award, exceeded its powers, or its decision procured by fraud, or is unreasonable or not supported by the findings, but not because of errors of procedure, or insufficiency of the evidence if there is substantial evidence to support it, and not for error in the admission or exclusion of evidence, not affecting its jurisdiction.—*Massachusetts B. & I. Co. v. Industrial Accident Commission*, 176 Cal. 488, 490, 168 Pac. 1050.

1067. Award may be reviewed but not collaterally attacked.—An award made to an employee of a sub-contractor against the general contractor is subject to annulment upon application for a writ of review made within the time provided by the act, but is not subject to collateral attack for want of jurisdiction of the subject matter, since the well settled principles relative to collateral attacks upon judgments are not applicable.—*Thaxter v. Finn*, 178 Cal. 270, 173 Pac. 163, 5 I. A. C. Dec. 101 (*Thaxter v. Thaxter*, 1 I. A. C. Dec. 197).

1068. Jurisdiction of supreme court.—Power to weigh evidence.—The supreme court in reviewing an award of the commission is not acting as a court of appeal, and has no power to weigh the effect of positive evidence, but must assume that the commission believed all the evidence given which tends to sustain the award.—*Southern Pacific Co. v. Industrial Accident Commission*, 177 Cal. 378, 170 Pac. 822, 5

I. A. C. Dec. 20 (*Hunt v. Southern Pacific Co.*, 4 I. A. C. Dec. 107).

1069. Supreme court not a court of appeal.—The supreme court, in reviewing awards of the commission, is not acting as a court of appeal, and has no power to weigh the effect of positive evidence, but must assume that the commission believed all the evidence given which tends to sustain the award made.—*Southern Pacific Co. v. Industrial Accident Commission*, 177 Cal. 378, 380, 170 Pac. 822.

1070. A writ of review of an award made by the commission is not an appeal; an award can be annulled if the commission exceeded its powers in making it, or if it was procured by fraud, or if it is unreasonable, or if the findings of facts upon which it was made do not support it, but it can not be set aside for errors of procedure only, or for insufficiency of the evidence where there is substantial evidence to support the findings, or for rulings upon the admission or exclusion of evidence, amounting only to error and not affecting the jurisdiction.—*Massachusetts, etc., Co. v. Industrial Accident Commission*, 176 Cal. 488, 168 Pac. 1050, 4 I. A. C. Dec. 336 (*Kelley v. Manley*, 2 I. A. C. Dec. 355).

1071. Appeals not provided for in the "Boynton act."—There is no provision for appeals under the "Boynton act" (Stats. 1913, p. 279), but section 84 provides for a review of the decisions of the commission by the supreme and district courts of appeal, and such review may go far enough to determine whether findings support the order, decision or award under review.—*Smith v. Industrial Accident Commission*, 26 Cal. App. 560, 147 Pac. 600.

1072. Application for review must be made within the proper time.—A review of the proceedings of the industrial accident commission can be had only where a proceeding therefor is instituted in the proper court at the proper time.—*Thaxter v. Finn*, 178 Cal. 270, 272, 173 Pac. 163.

1073. Time to apply for certiorari.—A petition for writ of review directed to the commission must be made within thirty days after the award, whether such award shows on its face that it was beyond or in excess of the commission's jurisdiction, or not, and unless so made, will be dismissed.—*North Pacific Steamship Co. v. Industrial Accident Commission*, 34 Cal. App. 488, 168 Pac. 30.

1074. An application for a writ of certiorari filed January 24, 1918, to review an order denying a rehearing made and entered December 22, 1917, is, under section 67(a) of the act of 1917, too late.—*Neal v. Industrial Accident Commission*, 36 Cal. App. 40, 171 Pac. 696.

1075. Under section 67(a) of the act of 1917, an application for a writ of certiorari to review proceedings denying a rehearing comes too late when the order was made December 22, 1917, and the writ was filed January 24, 1918.—*Neal v. Industrial Accident Commission*, 36 Cal. App. 40, 171 Pac. 696, 5 I. A. C. Dec. 15.

1076. Same—Medical services—Order not final judgment.—Premature application for writ of review.—A judgment of the commission ordering petitioner to pay the reasonable value of medical and surgical attention, "the claims therefor to be approved by the commission before payment," is not a final judgment, can not be enforced in that form, and an application for a writ of review thereof is premature.—*Garratt-Callahan Co. v. Industrial Accident Commission*, 171 Cal. 334, 336, 153 Pac. 239.

1077. Review of evidence, extent of.—*Great Western Power Co. v. Pillsbury*, 170 Cal. 180, followed and approved as to extent of review of the evidence on certiorari. Rule not changed by new provisions as to conclusiveness of findings of commission.—*Western Indemnity Co. v. Pillsbury*, 170 Cal. 656, 704, 151 Pac. 398.

1078. Award nullified for insufficiency of evidence.—Where the jurisdiction of the commission depends upon proof that the employed was murdered, the supreme court may examine the evidence, and if it is insufficient to justify a finding of death by violence, the court will nullify the award.—*Western, etc., Co. v. Pillsbury*, 173 Cal. 135, 138, 159 Pac. 422.

1079. If any evidence, to support finding, award affirmed.—If there be any evidence to support the finding of the commission, its award must be affirmed.—*Yolo, etc., Co. v. Industrial Accident Commission*, 35 Cal. App. 14, 168 Pac. 1146, 4 I. A. C. Dec. 319.

1080. An award must be affirmed where there is any evidence to sustain the finding of the commission.—*Royal Indemnity Co. v. Industrial Accident Commission*, 35 Cal. App. 90, 168 Pac. 245.

1081. Admission of incompetent evidence, no ground for annulment, if supported by competent evidence.—An award is not subject to annulment because of the admission of incompetent evidence, provided there is enough competent evidence to uphold the same.—*Maryland, etc., Co. v. Industrial Accident Commission*, 178 Cal. 491, 173 Pac. 993, 5 I. A. C. Dec. 154 (*Dobson v. Ellis*, 4 I. A. C. Dec. 357).

1082. On review — Every reasonably drawn inference taken in aid of findings.—On review of an award by the commission every inference which may reasonably be drawn from the evidence must be taken in aid of the findings of the commission as to facts.—*Leadbetter v. Industrial Accident Commission*, 26 Cal. App. Dec. 1268, 5 I. A. C. Dec. 143.

1083. Same—Drawing different conclusions.—The commission has the right under the act where different conclusions may be rationally and fairly drawn from the evidence, one sustaining and the other opposed to the right of compensation, to adopt the conclusion favorable to the claim, and its conclusion in that regard is beyond the scope of review.—*John A. Roeblings Sons Co. v. Industrial Accident Commission*, (Cal.) 171 Pac. 956, 5 I. A. C. Dec. 62 (*Bundshu v. John A. Roeblings Sons Co.*, 4 I. A. C. Dec. 215). See same case re-

ported 36 Cal. App. 10, 171 Pac. 987, 5 I. A. C. Dec. 11.

1084. Same — If conclusion could be reached by a reasonable man.—The supreme court can not disturb an award unless it can be said that a reasonable man could not reach the conclusion from the evidence that was before the commission.—*Engel, etc., Co. v. Industrial Accident Commission*, (Cal.) 192 Pac. 845; *San Francisco v. Industrial Accident Commission*, (Cal.) 191 Pac. 26.

1085. Same—Finding supported under any rational view of evidence.—The industrial accident commission is charged with the determination of the issues of fact in proceedings for compensation of employees, and its findings are not reviewable where they find support under any rational view of the evidence.—*North Pacific S. S. Co. v. Industrial Accident Commission*, 174 Cal. 500, 502, 163 Pac. 910.

1086. Same—Findings and conclusions not subject to review if reasonably supported.—The commission is the final judge of the facts and its findings can not be overturned, where they have the support of evidence upon which a reasonable man could come to the conclusion which was reached.—*Santa v. Industrial Accident Commission*, 175 Cal. 235, 237, 165 Pac. 689.

1087. Same—Order within jurisdiction, under facts, not reviewable.—The power to weigh the evidence and determine whether presumptions are overcome rests in the commission, and the courts may not assume to review its acts within its jurisdiction.—*United States, etc., Co. v. Industrial Accident Commission*, 28 Cal. App. Dec. 157.

1088. Petition for certiorari—Showing of insufficiency of evidence.—A petition for a writ of review that fails to show a lack of evidence to support the finding of the commission that the employee's injury arose out of the employment is insufficient.—*Garratt-Callahan Co. v. Industrial Accident Commission*, 171 Cal. 334, 335, 153 Pac. 239.

1089. Same—Same—Finding sustained—Application dismissed.—An application for a writ of review will be dismissed where the record shows that the finding of the commission is sustained by the law and the evidence.—*Globe, etc., Co. v. Industrial Accident Commission*, 35 Cal. App. 89, 169 Pac. 257.

1090. Where the evidence sustains the conclusion of the commission that the relationship of employer and employee existed, the writ of review to annul the award for the reason that such relationship is not to be shown to exist will be dismissed.—*Gorter v. Industrial Accident Commission*, 35 Cal. App. 88, 169 Pac. 262.

1091. Findings supported—Origin of sarcoma.—In the case of an award for an injury arising from sarcoma or cancer, alleged to have resulted from a fall, it is held that the finding of the commission is supported by the evidence.—*Santa Ana,*

etc., *Co. v. Industrial Accident Commission*, 35 Cal. App. 652, 170 Pac. 630.

1092. Findings as to relationship of parties conclusive.—Upon an application for a permanent disability rating, the original findings and award made on the temporary disability award as to the relationship of the parties is conclusive.—*Massachusetts, etc., Co. v. Industrial Accident Commission*, 176 Cal. 488, 168 Pac. 1050, 4 I. A. C. Dec. 236 (*Kelley v. Manley*, 2 I. A. C. Dec. 355).

1093. Finding as to dependency not reviewable.—A finding of the commission, after regular hearing, that neither of the petitioners had been "wholly nor partially dependent" upon the deceased employee for support, can not be reviewed by an appellate court.—*Crosaro v. Industrial Accident Commission*, 38 Cal. App. 758, 177 Pac. 489, 5 I. A. C. Dec. 205.

1094. Review of award—Questions of fact.—The authority of the supreme court with respect to the commission's conclusions of fact goes no further than to permit the annulment of the award when the commission's finding is without evidence to support it.—*Walker v. Industrial Accident Commission*, 177 Cal. 737, L. R. A. 1918F, 212, 171 Pac. 954, 5 I. A. C. Dec. 63 (*Robinson v. Walker*, 4 I. A. C. Dec. 93).

1095. Award without proof of accident, nullified.—An award made without proof that the injury resulted from accident is void, and will be annulled on certiorari.—*Englebreton v. Industrial Accident Commission*, 170 Cal. 793, 796, 151 Pac. 421.

1096. Award annulled for total want of evidence to sustain.—The award of the industrial accident commission for accidental death was annulled on the ground that the finding as to absence of willful misconduct was wholly without support, in the evidence.—*Great Western Power Co. v. Pillsbury*, 170 Cal. 180, 190, 149 Pac. 35.

1097. Award set aside for want of support in the evidence—Unsupported award will be set aside.—An award unsupported by the evidence will be set aside on certiorari.—*Elk Grove, etc., District v. Industrial Accident Commission*, 34 Cal. App. 589, 168 Pac. 392.

1098. Findings totally unsupported are subject to review.—If totally unsupported by the evidence a finding that employee's injury was the result of his own willful misconduct is subject to review by the supreme court.—*North Pacific S. S. Co. v. Industrial Accident Commission*, 174 Cal. 500, 501, 163 Pac. 910.

1099. Relationship—Finding on hearsay testimony, binding on appellate court.—A finding of the commission as to the relationship of employer and employee, though based on hearsay testimony is binding on the appellate court.—*Perry v. Industrial Accident Commission*, 57 Cal. Dec. 535; *Pacific Gas and Electric Co. v. Industrial Accident Co.*, 57 Cal. Dec. 535 (*Kendall v. Perry*, 5 I. A. C. Dec. 167).

1100. Finding of jurisdictional fact on hearsay testimony.—An award of the commission can not stand if a finding of a juris-

ditional fact is without any support except that of hearsay testimony.—*Employer's, etc., Corp. v. Industrial Accident Commission*, 170 Cal. 800, 801, 151 Pac. 423.

1101. Annulment of award—Hearsay statements of deceased.—Where the only evidence to support the award was the hearsay statements of the deceased made to various persons, the award is beyond the power of the commission and should be annulled on writ of review.—*Employer's, etc., Corp. v. Industrial Accident Commission*, 170 Cal. 800, 802, 151 Pac. 423.

1102. Admission of hearsay evidence immaterial if other evidence sufficient.—Where there is substantial evidence to justify an award, the further admission of evidence of an incompetent character, because hearsay, upon same facts, would be mere error, which would not oust the jurisdiction nor justify a writ of review.—*Southern Surety Co. v. Industrial Accident Commission*, 173 Cal. 678, 160 Pac. 884.

1103. Findings on conflicting evidence.—Where there is a conflict of evidence the finding of the commission under the *Roseberry* act can not be inquired into by the supreme court.—*Great Western Power Co. v. Pillsbury*, 170 Cal. 180, 184, 149 Pac. 35.

1103a. An award of compensation for injuries made by the commission will not be interfered with on certiorari where the evidence upon which the award is founded is in substantial conflict.—*Richmond Dredging Co. v. Industrial Accident Commission*, 33 Cal. App. 97, 164 Pac. 407, 4 I. A. C. Dec. 67.

1104. Same—Not subject to review.—The supreme court can not disturb, on review, the finding of the commission based on conflicting evidence.—*Southwestern Surety Ins. Co. v. Pillsbury*, 172 Cal. 768, 773, 158 Pac. 762.

1105. Finding as to status of employee on conflicting evidence.—The finding of the commission as to the status of a claimant for compensation under the act, made upon a substantial conflict of evidence, will not be disturbed on certiorari.—*Western Indemnity Co. v. Pillsbury*, 172 Cal. 807, 809, 159 Pac. 721.

1106. Findings not subject to question on review, where the evidence in support is conflicting.—The findings of fact of the commission are not subject to question, if there is any evidence to support them.—*Smith v. Industrial Accident Commission*, 26 Cal. App. 560, 147 Pac. 600.

1107. Findings upon conflicting evidence will not be disturbed where there is some support.—Findings of the commission will not be disturbed on certiorari, when there is a conflict, and some evidence to support the findings.—*McDonagh v. Industrial Accident Commission*, 34 Cal. App. 177, 166 Pac. 1024; *Easton v. Industrial Accident Commission*, 34 Cal. App. 321, 167 Pac. 288.

1108. Arising out of and in course of employment—Finding on conflicting evidence upheld.—Where the evidence is conflicting as to whether the injury arose out of or in the course of the employment, the

finding of the commission must be upheld.—*Krobitzsch v. Industrial Accident Commission*, 58 Cal. Dec. 445, 185 Pac. 396, 6 I. A. C. Dec. 218 (*Starkey v. Krobitzsch*, 6 I. A. C. Dec. 61).

1109. Irregularities or errors in procedure not jurisdictional.—Under the act, an order of the commission is not subject to annulment on the ground that the commission granted a rehearing for newly discovered evidence in violation of its own rule requiring such evidence to be set out in detail in the application for a rehearing, or for taking testimony without solicitation from either party, since irregularities, or errors in mere matter of procedure do not go to the jurisdiction of the commission to make awards.—*Maryland, etc., Co. v. Industrial Accident Commission*, 178 Cal. 491, 173 Pac. 993, 5 I. A. C. Dec. 154 (*Dobson v. Ellis*, 4 I. A. C. Dec. 357).

1110. Inconsistent findings not ground for review.—The supreme court has no power to annul an award on the ground that the findings are inconsistent, and if there are findings which sustain the award, the fact that there are findings inconsistent therewith, if taken alone, will not be available to annul it.—*Southern Pacific Co. v. Industrial Accident Commission*, 177 Cal. 378, 170 Pac. 822, 5 I. A. C. Dec. 20 (*Hunt v. Southern Pacific Co.*, 4 I. A. C. Dec. 107).

1111. Consideration of evidence in support of findings.—Where the findings are meager in detailing facts upon which the commission based its conclusion, the court may refer to the evidence, for the purpose of explaining or supplementing, but not for the purpose of varying or contradicting the findings.—*Kramer v. Industrial Accident Commission*, 31 Cal. App. 673, 161 Pac. 278.

1112. Evidence taken without notice to party affected by award.—Where all the evidence tending to show the connection of the person against whom an award is made with the injury is taken before such person was made a party and before notice to him, such award is without due process of law, and the evidence can not be considered in support of the findings of the commission.—*Carstens v. Pillsbury*, 172 Cal. 572, 577, 158 Pac. 218.

1113. Errors in admission or exclusion of evidence not reviewable.—In view of sections 77 and 84, errors of the commission in the admission or exclusion of evidence is not subject to review.—*Frankfort G. Ins. Co. v. Pillsbury*, 173 Cal. 56, 61, 159 Pac. 150.

1114. Findings of fact upon which jurisdiction is based are reviewable.—Findings of fact by which the commission determines itself clothed with jurisdiction are reviewable on certiorari.—*Miller & Lux v. Industrial Accident Commission*, 179 Cal. 764, 7 A. L. R. 1191, 178 Pac. 960, 6 I. A. C. Dec. 34.

1115. Jurisdictional facts must be supported by competent evidence.—There must be competent evidence in support of every jurisdictional fact involved in an application for compensation.—*Elk Grove, etc., Dis-*

trict v. Industrial Accident Commission, 34 Cal. App. 589, 168 Pac. 392.

1116. Finding as to jurisdictional fact unsupported—Award annulled.—Notwithstanding the provisions of the act as to the conclusiveness of the findings of the commission, an award is the subject of review and may be annulled whenever the finding as to a jurisdictional fact is without substantial support.—*Employer's, etc., Corporation v. Industrial Accident Commission*, 170 Cal. 800, 801, 151 Pac. 423.

1117. Question of relationship of employer and employee jurisdictional, and subject to review.—The question of the relationship of an owner of land contracting with a woodcutter to cut wood at a stipulated price per cord, to the employee of a sub-contractor who furnishes his own tools and labors at his own pleasure and not under the owner's authority, as to liability for compensation under the act, is jurisdictional and reviewable by the supreme court.—*Donlon Bros. v. Industrial Accident Commission*, 173 Cal. 250, 252, 159 Pac. 715.

1118. Questions as to whether accident arose out of employment, and whether willful misconduct proximately caused accident are jurisdictional.—Both the question whether the accident causing the injury occurred or arose out of and in the course of the employment, and the question whether the accident was or was not the direct result of the willful misconduct of the injured employee are jurisdictional facts.—*Elk Grove, etc., District v. Industrial Accident Commission*, 34 Cal. App. 589, 168 Pac. 392.

1119. "Roseberry act"—Question of willful misconduct jurisdictional.—Under the Roseberry act the question whether the accident was caused by the willful misconduct of the employee is one that goes to the jurisdiction of the board, and is therefore open to inquiry on certiorari.—*Great Western Power Co. v. Pillsbury*, 170 Cal. 120, 186, 149 Pac. 35.

1120. Review—Question as to willful misconduct of employee reviewable.—The question whether an employee was guilty of willful misconduct at the time he was killed is a jurisdictional one, and subject to review by the supreme court.—*Fidelity, etc., Co. v. Industrial Accident Commission*, 171 Cal. 728, 729, L. R. A. 1916D, 903, 154 Pac. 834.

1121. Question of "willful misconduct" jurisdictional.—The question as to whether an employee was guilty of willful misconduct at the time of his injury was a jurisdictional one, and subject to review by the supreme court.—*Hyman, etc., Co. v. Industrial Accident Commission*, 180 Cal. 423, 181 Pac. 784 (*Weiss v. Hyman, etc., Co.*, 5 I. A. C. Dec. 71).

1121a. Willful misconduct of employee.—An award is subject to review on the question as to whether or not the employee was guilty of misconduct at the time of his injury.—*Fidelity, etc., Co. v. Industrial Accident Commission (Cal.)*, 3 I. A. C. Dec.

9 (Head v. Fidelity, etc., Co., 1 I. A. C. Dec. 451).

1122. Double employment.—Finding as to excluded employment.—Where an employee engaged in the dual capacity of janitor and gardener, was injured while trimming an acacia tree, there was evidence to justify the finding of the commission that at the time of the injury the employee was engaged in horticultural labor and that it was without jurisdiction to award compensation and this finding can not be reviewed on appeal.—George v. Industrial Accident Commission, 56 Cal. Dec. 220, 5 I. A. C. Dec. 169 (George v. Wilson, 4 I. A. C. Dec. 55).

1123. Scope of section 84. Reviewable facts.—The phrase "such questions of fact shall include ultimate facts and the findings and conclusions of the commission" in section 84 of the act of 1913, refer wholly to conclusions of facts.—Smith v. Industrial Accident Commission, 26 Cal. App. 560, 147 Pac. 600.

XI. MISCELLANEOUS.

1. Release.

- 1124. Release at time of employment does not exempt employer from liability for compensation.
- 1125, 1126. Release not providing for full compensation, not a defense.
- 1127. Release under maritime law—Election of remedies.

2. Assignment of claim.

- 1128. Claim for compensation operates as assignment.
- 1129, 1130. Same—Right of action against tort-feasor.

3. Subrogation.

- 1130a. Right not affected by release.
- 1130b. Joint employers.
- 1130c. Employer and insurance carrier.
- 1130d. Insurance carrier bound by action of employer.
- 1130e. Right of action of carrier against tort-feasor.

4. Election of remedies.

- 1130f. Election of remedy.
- 1131-1136. Same—Serious and wilful misconduct as ground for action at law for damages.

5. Action against tort-feasor.

- 1137. Parties to action—Employer and carrier.
- 1138. Same—Father.
- 1139. Settlement of claim—Credited on indemnity.
- 1140. Judgment against tort-feasor—Offset against compensation award.

6. Jurisdiction of state courts.

- 1141. Actions under federal employer's liability act.
- 1142. Equitable actions.
- 1143. Same—Enjoin collection, of award.

1. Release.

1124. Release at time of employment does not exempt employer from liability for compensation.—An agreement between an employee and employer at the time of the employment releasing the employer from any claims arising or on account of hernia, the existence of which then appeared on physical examination, did not, in view of section 27(a) of the act of 1917, exempt employer from liability for compensation.—Hines v. Industrial Accident Commission, (Cal.) 188 Pac. 277.

1125. Release not providing for full compensation, not a defense.—A release by an employee to his employer that does not provide for the payment of full compensation under the act, is not a defense to a proceeding for an award by the industrial accident commission.—Employee's Credit Co. v. Industrial Accident Commission, 177 Cal. 46, 47, 169 Pac. 1001.

1126. A release which does not provide for full compensation is, under section 32b, not valid.—Massachusetts, etc., Co. v. Industrial Accident Commission, 176 Cal. 488, 493, 168 Pac. 1050.

1127. Release under maritime law—Election of remedies.—The giving of a release on payment of full wages and all the money an injured seaman was entitled to under admiralty law, did not constitute an election of remedies sufficient to bar him from the right to compensation under the act.—Johansen v. George E. Billings Co., 6 I. A. C. Dec. 236.

2. Assignment of claim.

1128. Claim for compensation operates as assignment.—When an injured employee makes a claim for compensation under the act such action operates to assign his claim against a tort-feasor for damages for such injury as fully as though such assignment had been expressly made in writing, and any settlement which such tort-feasor might thereafter make with such employer would be ineffectual to destroy or impair the right of the employer or the insurer who pays the claim for compensation.—Massachusetts, etc., Co. v. San Francisco-Oakland Terminal Railways, 39 Cal. App. 388, 178 Pac. 974.

1129. Same—Right of action against tort-feasor.—The provisions of section 31, and of subdv. (f) of section 34, of the act of 1913, were intended to permit an assignment of the injured employee's right of action for the injury, and to provide that the making of a lawful claim under the act should operate as such an assignment to his employer or the latter's insurer, who pays such claim.—Massachusetts, etc., Co. v. San Francisco-Oakland Terminal Railways, 39 Cal. App. 388, 178 Pac. 974.

1130. Under sections 31 and 34(f) of the act, the collection by a father of compensation for the death of a minor from his son's employer, works an assignment to the employer of the cause of action against the party whose negligence caused such death, and the employer or insurance carrier can

maintain such action in their own names.—*Stackpole v. Pacific Gas & Elec. Co.*, (Cal.) 186 Pac. 354, 6 I. A. C. Dec. 270.

5. Subrogation.

1130a. Right not affected by release.—The right of action of an employer against the owner of a building for an industrial injury to his employee caused by being caught in the elevator of the building, is not affected by a release by the employee executed to such owner in consideration of money paid to such employee by such owner, without such employer's knowledge.—*Papineau v. Industrial Accident Commission*, (Cal. App.) 187 Pac. 988, 6 I. A. C. Dec. 246 (*Miles v. Papineau*, 6 I. A. C. Dec. 74).

1130b. Joint employers.—In the case of joint employers, where one is held liable and the other held not liable, section 26 of the act is construed to mean the employer who is held liable and not the one who is held not liable, and such employer is entitled to credit upon his indemnity liability for the amount paid the employee on a settlement by the other joint employer.—*Robinson v. San Francisco, etc., Railway*, 5 I. A. C. Dec. 182.

1130c. Employer and insurance carrier.—While it is true that as between an insurer and an employee the right of subrogation would be an equitable one arising out of the payment by the former of the latter's claim for damages, still when such payment has been made, and the assignment of Silva's cause of action against the tort-feasor consummated by subrogation, the right thus accrued in the insurer was the right, as assignee, of maintaining the same action that the employee could have maintained had no such assignment been made.—*Massachusetts, etc., Co. v. San Francisco-Oakland Terminal Railways*, 39 Cal. App. 388, 178 Pac. 974.

1130d. Insurance carrier bound by action of employer.—An insurance carrier is bound by the action of the assured employer in changing a physician furnished by the insurance carrier in the absence of proof of injury to assume his liability as a condition precedent to subrogation, and such carrier was liable for the reasonable value of the substituted physician's services.—*Turner v. Cass-Smurr-Damerel Co.*, 5 I. A. C. Dec. 186.

1130e. Right of action of carrier against tort-feasor.—The right of action of an insurer who has paid the claim of an injured employee against the tort-feasor is legal and not equitable.—*Massachusetts, etc., Co. v. San Francisco-Oakland Terminal Railways*, 39 Cal. App. 388, 178 Pac. 974.

4. Election of remedies.

1130f. Election of remedy.—In the present case it was held that the applicant had made a lawful claim for compensation under the act, and was bound thereby.—*Benjamin v. Garneau Co.*, 4 I. A. C. Dec. 124.

1131. Same.—Serious and willful misconduct as ground for action at law for damages.—Serious and willful misconduct of

an employee as ground for action at law for damages is not predicated upon a failure to provide a safety guard for a saw as required by order No. 600 of the commission, there being no evidence that he knowingly or willfully refused to provide such guard.—*Lucky v. Hammond Lumber Co.*, 6 I. A. C. Dec. 3.

1132. Serious and willful misconduct can not be imputed to an electric railway company from the act of a motorman starting a train standing in the company yards, without orders, without receiving or giving a signal or endeavoring to ascertain whether the track was clear, the train not being one of which he was in charge, all in violation of the express order of the company, it not being shown that any such violation of the rules was practiced with the approval or acquiescence of an executive or managing officer of defendant.—*Nicholson v. San Francisco-Oakland Terminal Railways*, 6 I. A. C. Dec. 10.

1133. An employee is innocent of any element of willfulness in employing a sixteen-year-old boy to operate a tin-pressing machine in violation of the child labor law of 1917, where at the time of the employment the boy presented a school certificate entitling him to be employed at a proper employment, and the foreman of such employer erroneously believed such certificate sufficient to authorize the employment.—*Lundgren v. Hammer-Bray Co.*, 6 I. A. C. Dec. 17.

1134. The failure of the employer to place a guard on a saw according to general safety order of commission does not constitute, in the absence of inspection or instructions, serious or willful misconduct of the employer.—*Burke v. Chandler Shipbuilding Co.*, 5 I. A. C. Dec. 237.

1135. Where a scaffold on a vessel under construction was not provided with railings or other enclosures, by reason of which the employee fell and was fatally injured, it was held that the scaffold was unsafe and improper within the meaning of section 402C of the Penal Code and section 35 of the act of 1917 and that its maintenance by the employer constituted serious and willful misconduct.—*Davis v. Craig, etc., Co.*, 5 I. A. C. Dec. 118.

1136. The act of overweighing a roof undergoing repair by placing too many workmen thereon, is not serious and willful misconduct within the meaning of the act.—*Butt v. Hampton & Co.*, 5 I. A. C. Dec. 159.

5. Action against tort-feasor.

1137. Parties to action.—Employer and carrier.—An action for the death of a minor son may be brought by his father against the person whose negligence caused the death, even though he may have received compensation for such death from his son's employer or insurance carrier; but if objection is made, the action can not be prosecuted without the employer and carrier being made parties.—*Stackpole v. Pacific G. & E. Co.*, (Cal.) 186 Pac. 354, 6 I. A. C. Dec. 270.

Such objection must be made in the manner prescribed by the code for non-joiner of necessary parties.—*Same v. Same.*

1138. Same—Father.—In an action by the employer and insurance carrier against a third person for the death of a minor employee, the father of such minor, who has received compensation under the act, is interested in the recovery to the extent of the excess over the amount necessary to reimburse the employer or carrier.—*Stackpole v. Pacific G. & E. Co., (Cal.) 186 Pac. 354, 6 I. A. C. Dec. 270.*

1139. Settlement of claim—Credited on indemnity.—An amount paid the injured employee's widow by a third party in settlement of a claim for compensation for his death was ordered credited upon the indemnity due under the act from the employer.—*Donald v. The Travelers, etc., Co., 5 I. A. C. Dec. 162.*

1140. Judgment against tort-feasor—Offset against compensation award.—An employee who recovers a judgment against a third party in a personal injury action, may maintain a claim for compensation for the same injury, but the amount of the judgment will be offset against the compensation award.—*Goody v. Daley, 6 I. A. C. Dec. 179.*

6. Jurisdiction of state courts.

1141. Actions under federal employers' liability act.—The state courts may take jurisdiction of personal injury actions by employees against employers under the

federal employers' liability act as well as under the state act, and in such an action, under the state act, if the defendant does not, as he may, specially plead the fact that he desires to invoke the federal statute, it will be presumed that plaintiff's employment was intrastate and not interstate.—*Terry v. Southern Pacific Co., 34 Cal. App. 330, 169 Pac. 86.*

1142. Equitable actions.—The inhibition contained in subsection (d) of section 84 of the act does not deny to the courts the jurisdiction upon equitable grounds to "suspend or delay the operation or execution" of any order, decision or award of the commission upon the proper application of a stranger to the proceedings before the commission.—*Gamble v. Superior Court, 6 I. A. C. Dec. 26, 39 Cal. App. 661, 179 Pac. 717.*

1143. Same—Enjoin collection of award.—An action to enjoin the collection by execution or otherwise of an award by the industrial accident commission, where the complaint alleges that the plaintiff is a large stockholder in the corporation against which the award was made, that the award was obtained by fraud, and that its enforcement would result in irreparable injury to plaintiff, is in form and nature of relief sought an equitable proceeding, of which courts of equity take cognizance and have power to grant relief.—*Gamble v. Superior Court, 6 I. A. C. Dec. 26, 39 Cal. App. 661, 179 Pac. 717.*

EMPLOYER'S CASUALTY REPORTS.

ACT 2782—An act to provide for the keeping by employers of a record of injuries suffered by their employees; the reporting of such injuries to the industrial accident board by employers and attending physicians; the keeping by employers and insurance companies of records of claims for injuries suffered by employees and of compromises and settlements made therefor and requiring the reporting thereof to said board; and fixing a penalty for refusal or neglect to keep such records or make such reports.

History: Approved January 10, 1912, Stats. 1911 (ex. sess.), p. 217.

Record of personal injury to employees. Report of employer to industrial accident board.

§ 1. Every employer of labor in this state shall keep a full, true and correct record of every personal injury suffered by his or its employees, arising out of or in the course of the employment, and resulting in death, or in disability extending over a period of a week or more. Within fifteen days after the happening of any such personal injury, a written report thereof shall be mailed by the employer to the industrial accident board informally, or on blanks to be provided by said board for this purpose. The said report shall contain the name of the employer, location of place of employment, nature of employment, name, address, age, nationality, sex and occupation of the injured person, length of time the injured person had worked at the particular employment previous to injury, date and hour of the day or night of the accident, the hour at which the injured employee began work on the date of the accident, nature of the injury, cause of the injury and rate of wages of the injured employee.

Supplemental report. Details of claim, payment, or settlement.

§ 2. Upon the termination of the disability of the injured employee or at the expiration of sixty days from the date of the accident, if the disability should extend beyond

such period, the employer shall mail to the industrial accident board a supplemental report in relation to such disability, informally or on blanks to be provided by said board for this purpose. Such report must contain complete statements as to any claim made by the injured employee for indemnification for the injury sustained, payment made to him or in his behalf for medical, surgical or other care, claim for compensation or damages made for such injuries and any compromise or settlement of claim for compensation or damages entered into between the employer and such injured employee, his heirs, dependents or legal representative. In the event that any payment shall be made to such injured employee, or his dependents at any time thereafter, in compromise or settlement of a claim for compensation or damages, the amount of such payment shall be forthwith reported by the employer to the industrial accident board.

Report of attending physician.

§ 3. Every physician who attends any such injured employee shall keep a record of his case. Within ten days from the date of his first attendance upon the injured employee, he shall mail to the industrial accident board a report, informally or on blanks to be provided by the said board for this purpose. The said report shall contain the name and address of the employer, name, address, sex and age of the injured employee, date of accident, description of the injury, probable nature and extent of disability. Upon the termination of the disability of the injured employee or the termination of said physician's attendance upon his case, he shall forthwith mail to the industrial accident board a supplemental report in relation to such case describing the physical condition of the injured employee, his disability, convalescence or discharge from the doctor's care.

Report of insurance or indemnity companies.

§ 4. Every person, firm, association or corporation insuring against the liability of employers for damages or compensation for personal injury to employees or indemnifying any employer for, or on account of any such liability shall keep a record thereof, and shall within the first five days of each and every month, report in writing to the industrial accident board, informally or on blanks to be provided by said board for this purpose, every such injury to employees reported to it, every claim for damages or compensation for such injury filed with such person, firm, association or corporation and any settlement or compromise of any such claim for damages or compensation whether made with such injured employee, his heirs, dependents or legal representative.

Additional information.

§ 5. Every employer, physician or insurance company, firm or association, shall furnish to the industrial accident board all further information required by it in order to constitute a substantially complete and accurate history of each injury and the damages or compensation paid therefor.

Use of records or reports.

§ 6. The record required to be kept in pursuance of the provisions of this act shall at all times be open to inspection of the industrial accident board or any member thereof, or any examiner appointed thereby. Any statement contained in such report shall not be admissible as evidence in any action arising out of the death or injury of any employee by reason of the accident reported.

Penalty for failure to observe law.

§ 7. It shall be unlawful for any person, firm, corporation, agent or officer of a firm or corporation to fail, neglect or refuse to comply with any of the provisions of this act. Any person, firm, corporation, agent or officer of a firm or corporation that violates or omits to comply with any of the provisions of this act, shall be guilty of a misdemeanor for each and every offense and shall be, upon conviction thereof, punishable by fine of

not less than ten dollars or more than one hundred dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment.

Not to apply to certain pursuits.

§ 8. Nothing in this act shall apply to employers of labor engaged in farming, dairying, agricultural or horticultural pursuits, in poultry raising or domestic service.

EMPLOYERS' HOSPITAL SERVICE.

ACT 2783—An act requiring employers who provide hospital service for their employees and who make a charge therefor, to keep books, records and accounts of all such charges, and to make an annual written report thereof; requiring each such charge to be just and reasonable and to be devoted to no other purpose than such hospital service; and prescribing penalties for violations of the provisions thereof.

History: Approved June 8, 1915. In effect August 8, 1915. Stats. 1915, p. 1310. Amended April 6, 1917. In effect July 27, 1917. Stats. 1917, p. 83.

Definitions.

§ 1. The following terms, as used in this act, shall be construed as follows:

“Employer.”

(a) The term “employer” shall mean and include every person, partnership, company, association, joint stock association or corporation engaged in any business or enterprise in this state and hiring or employing five or more persons in such business.

“Charge.”

(b) The term “charge” shall mean and include any deduction from the salary or wage of an employee, or any collection from or contribution by an employee, whether such charge be made regularly at stated intervals or at the time of injury or illness of an employee, or at any other time or in any other manner.

Employer furnishing hospital service to make report.

§ 2. Every employer who affords or provides hospital service of any sort for his employees, for which service any charge is received or collected by such employer, or at his instance or request, shall in each year, on or before the thirtieth day of January thereof, file as hereinafter provided a written report for the next last preceding year, which report shall contain a statement showing (1) the total amount of hospital charges collected or received during the year, (2) an itemized account of all expenditures, investments or other disposition of such charges, and (3) a statement showing what balance, if any, remains. This report shall be verified by the employer, if an individual; by a member, if a partnership; by the secretary or president, if a corporation, company, association or joint stock association.

Hospital charges must be just.

§ 3. Every such hospital charge demanded, collected or received by an employer shall be just and reasonable. The railroad commission is hereby given authority to decide what is an unreasonable charge in all cases where such charge is made by a hospital maintained by a common carrier by rail, and in all cases where the charge is made by a hospital maintained by other than a common carrier by rail, the industrial accident commission is hereby given authority to decide what is an unreasonable charge. [Amendment of April 6, 1917. In effect July 27, 1917. Stats. 1917, p. 83.]

Purpose of charges.

§ 4. No such hospital charge collected or received by an employer shall be devoted to any purpose other than bona fide hospital or medical service for the employees from whom the charge is demanded, collected or received.

Common carrier subject to railroad commission. Other employers under industrial accident commission.

§ 5. Every common carrier by rail employer who is under a duty to render the report referred to in section two of this act shall be subject to the jurisdiction, control and regulation of the railroad commission in respect to auditing and inspection of all books, records and accounts and to enforce its orders in the same manner and to the same extent as said commission now possesses over any public utility that is subject to the provisions of the "public utilities acts" of this state, approved December 23, 1911, as amended June 11, 1913, and June 14, 1913, and all acts amendatory thereof or supplemental thereto. Every employer coming under the provisions of this act shall be required to post a copy of this statement or report upon all bulletin boards at terminals or in a conspicuous place where employees can read such statement or report. Every employer other than a common carrier by rail, who is under a duty to render the report referred to in section two of this act, shall be subject to the jurisdiction, control and regulation of the industrial accident commission in respect to the auditing and inspection of all books, records and accounts and the authority is hereby conferred upon said industrial accident commission to enforce by appropriate orders and processes the provisions of this act. The written report required by section two hereof when made by a common carrier by rail shall be filed with the railroad commission. All other written reports required by section two hereof shall be filed with the industrial accident commission. [Amendment of April 6, 1917. In effect July 27, 1917. Stats. 1917, p. 83.]

Penalty.

§ 6. Every employer neglecting or failing to render or file the report required by section two of this act is guilty of a misdemeanor and is punishable by a fine not less than one hundred dollars or more than two thousand dollars for each offense.

VOCATIONAL RE-EDUCATION AND REHABILITATION.

ACT 2784—An act to provide for the support of vocational re-education and rehabilitation of workmen disabled in industry in this state, and to create a fund for these purposes to be known as the "industrial rehabilitation fund" by fixing an additional liability upon all employers liable under said act in cases where employees receive fatal compensable injury and leave no dependents.

History: Approved May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 273.

"Industrial rehabilitation fund" created.

§ 1. Whenever any fatal compensable injury is suffered by any employee coming under the provisions of said compensation, insurance and safety act and such deceased employee does not leave surviving him any person entitled to a death benefit, the employer, or his insurance carrier, if he be insured under said compensation act, shall pay into the treasury of the state of California the sum of three hundred fifty dollars for each such fatal injury in addition to any other payments under the provisions of said compensation act; provided, that the total payments shall not exceed three times the average annual earnings of said deceased employee. Said moneys paid into the state treasury under the provisions of this section shall be covered into a special fund to be known as the "industrial rehabilitation fund," which fund is hereby created and appropriated for the purposes set forth in this act.

Purpose.

§ 2. The industrial accident commission may draw upon said fund for the promotion of vocational re-education and rehabilitation of persons disabled in industry in this state, in addition to any other money appropriated for such purposes. The controller is hereby ordered to draw his warrant on said fund from time to time in accordance

with the direction of the commission, and the treasurer is hereby authorized and directed to pay the same.

Disposition of remainder.

§ 3. The treasurer shall place the remainder, if any, of the fund, after making the payments required by the preceding sections of this act, semi-annually, to the credit of the accident prevention fund, established by said compensation act.

Revolving fund. Expense of administration.

§ 4. As soon as the sum of five thousand dollars shall have accumulated in said fund, the treasurer shall, upon the order of the industrial accident commission, deposit the same with the state compensation insurance fund as a revolving fund. The state compensation insurance fund shall, upon the order or award of the industrial accident commission, make the payments required by sections two, three and four from said revolving fund, accounting therefor to the state board of control as in other cases, and the state treasurer shall from time to time, upon the order of the commission, reimburse said state compensation insurance fund from the industrial rehabilitation fund for expenditures made from said revolving fund. The reasonable expense of administration of the said state compensation insurance fund in carrying out the duties imposed by this act shall, upon the auditing and approval thereof by the state board of control, be paid from said industrial rehabilitation fund in the same manner as is provided in this section for other payments. The controller is hereby directed to draw his warrant from time to time in favor of the state compensation insurance fund in accordance with the direction of said commission, and the treasurer is hereby authorized and directed to pay the same.

Proceedings to collect amount or determine liability. If claim of dependency established.

§ 5. If any proceedings are necessary to collect from any employer the amount mentioned in the preceding section, or to determine the liability of any employer under said compensation act with respect to said amount, such proceedings shall be instituted before the industrial accident commission of its own motion or by the attorney general on behalf of the people of the state of California and such proceedings shall be tried and determined in the same manner and with the same effect as any other proceeding to collect compensation; provided, that if proceedings be instituted by any other person to collect benefits under the compensation act on account of such fatal injury, the commission may, if it finds said sum of three hundred fifty dollars payable to the state treasurer, award said sum to the state of California without the people of the state of California being a party to said proceedings; and provided, further, that if said sum of three hundred fifty dollars shall be paid into the treasury and at any time thereafter any person claiming to be a dependent of the deceased employee shall establish such dependency and secure an award therefor, the commission may make an award against the state of California in favor of said dependent for said sum of three hundred fifty dollars, or as much thereof as may be necessary to meet the claim of such dependent, said sum to be applied to said death benefit and to relieve to that extent the employer or his insurance carrier against liability therefor.

Authority of industrial accident commission.

§ 6. The industrial accident commission of the state of California is hereby vested with full jurisdiction and authority to hear and determine any and all questions and controversies arising under this act and to make and enter all orders and awards necessary to carry out the purposes herein set forth.

MATERNITY HOSPITALS.

See tit. "Charities and Corrections."

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